

Terms and Conditions

Processing Terms and Conditions
Funds Transfer Instructions
Association Rules
Addendum
Rate Descriptions
Check Services
CHARGE Anywhere

Provided by



First National Bank of Omaha
800.853.9586
Member Bank for Visa, Inc. and MasterCard International, Inc.

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PROCESSING TERMS AND CONDITIONS

This Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), is by and among the parties in the Merchant Application (the "PARTIES"). The AGREEMENT shall become effective as set out in the signature block of the Merchant Application.

- A. WHEREAS, BANK is a Member of VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD"), and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, and other financial service card organizations, including ATM/Debit networks (together herein known as "CARD(S)"). VISA, MASTERCARD, ATM/Debit Networks, and the other financial service card organizations shall be collectively known as "ASSOCIATIONS";
- B. WHEREAS, TMS has a relationship with the Discover Network ("DISCOVER"), and American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"), and other financial service card organizations, including certain ATM/Debit networks (collectively included in the definition of "CARDS" above). VISA, MASTERCARD, DISCOVER, AMERICAN EXPRESS, ATM/Debit Networks, and the other financial service card organizations and their related international entities shall be collectively known as "ASSOCIATIONS";

Notice: Depending on MERCHANT's authorization and settlement composition, the reference to DISCOVER and AMERICAN EXPRESS in this AGREEMENT may not apply.

- C. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and have BANK process the resulting transactions ("SALES") pursuant to the terms and conditions set out below. For purposes of this AGREEMENT, ATM/Debit transactions shall mean those transactions processed on an ATM/Debit network ("NETWORK(S)") in an on-line real time environment requiring the entry of a personal identification number ("PIN");
- D. WHEREAS, MERCHANT may desire to be sponsored as a participant in certain NETWORKS, under the terms of the rules and regulations of each such NETWORK;
- E. WHEREAS, ASSOCIATIONS and BANK each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated herein by this reference and shall be referred to as the "RULES"; and
- F. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing.
- G. WHEREAS, BANK has assigned and/or delegated some of its rights and obligations under this AGREEMENT to TMS; provided however that it is able to do so by the ASSOCIATIONS, NETWORKS, RULES, and any applicable law. To the extent that BANK has assigned and/or delegated rights and/or obligations to TMS under any particular provision of this AGREEMENT, references to BANK in such provisions shall include TMS.;
- H. WHEREAS, all applicable ADDENDA are attached hereto and are made a part of this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. GENERAL:

- 1.1 As a result of MERCHANT submitting SALES for processing to BANK, BANK will process such SALES and credit or debit MERCHANT's DESIGNATED ACCOUNT (as defined herein) with the resulting financial proceeds of such SALES, provided, however, that no payment for SALES will take place unless and until BANK has received payment for such SALES from the ASSOCIATIONS. In addition, when a disputed transaction ("CHARGEBACK") occurs, MERCHANT agrees to provide all requested information to BANK and BANK agrees to forward such information to the ASSOCIATIONS in accordance with the RULES and the ASSOCIATIONS' dispute resolution guidelines. BANK is not responsible for the outcome of any CHARGEBACK.
- 1.2 The CARDS designated herein will be processed under the terms and conditions of the AGREEMENT as long as BANK is contractually permitted to offer such SERVICES by the respective ASSOCIATIONS.
- 1.3 On an exclusive basis, MERCHANT agrees to submit all SALES for processing from CARDS accepted in MERCHANT's business as described in the Merchant Application to BANK in accordance with the RULES and pursuant to the terms of this AGREEMENT.
- 1.4 MERCHANT and BANK agree to abide by the RULES, a summary of which is attached hereto. BANK and ASSOCIATIONS may from time to time amend the RULES or operating procedures related to SALES and SERVICES. MERCHANT has been supplied with a summary of the RULES and by signing AGREEMENT, acknowledges that it has reviewed them. MERCHANT agrees to comply with all applicable state, federal and local laws, rules and regulations ("LAWS"). MERCHANT agrees to assist BANK in complying in a complete and timely manner with all LAWS and RULES now or hereafter applicable to any SALE or this AGREEMENT. MERCHANT will execute and deliver to BANK all such instruments that BANK may from time to time deem necessary. It is MERCHANT's responsibility to know all applicable LAWS and the RULES that apply to MERCHANT's acceptance of CARDS and to ensure that MERCHANT's equipment complies with all LAWS and RULES. MERCHANT agrees to indemnify, defend, and hold BANK harmless from and against any loss, cost or damage (including reasonable legal fees and court costs) incurred as a result of MERCHANT's failure to comply with applicable LAWS or RULES.
- 1.5 MERCHANT agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of BANK, including but not limited to the terms of this AGREEMENT, and will safeguard such information and data by using a reasonable degree of care but in no event less than the same degree of care that MERCHANT uses to protect its own confidential information.

1.6 Security Standards

A. MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by law. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. MERCHANT must keep all systems and media containing account, cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than MERCHANT's authorized personnel. MERCHANT must destroy, in a manner that will render the data unreadable, all such media that MERCHANT no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction.

B. If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify BANK of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must: (1) only allow the Merchant Providers access to the cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at www.visa.com), the MasterCard Site Data Protection Program ("SDP") (found at www.mastercard.com), Discover Information Security and Compliance ("DISC") (found at <http://www.discovernetwork.com/fraudsecurity/disc.html>), and the American Express Data Security Operating Policy ("DSOP") (found at https://www.209.americanexpress.com/merchant/singlevoice/pdfs/en_US/DSOP_Merchant_US.pdf), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify BANK of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. MERCHANT is responsible for demonstrating MERCHANT's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers' ability to prevent future security violations. Any fees, fines or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify BANK and the ASSOCIATIONS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information.

C. In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT's cost, to provide all information requested by BANK, an ASSOCIATION, other financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT and BANK) be considered BANK's confidential information. MERCHANT agrees that BANK may release to the ASSOCIATIONS, other financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to BANK in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the ASSOCIATIONS' websites.

1.7 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of or publication by the ASSOCIATIONS of amended RULES to MERCHANT shall be evidence that MERCHANT was provided with and/or received access to the amended RULES and has agreed to abide by them.

1.8 If MERCHANT is a healthcare provider or other entity covered by the Health Insurance Portability and Accountability Act of 1996, as amended, and the supporting regulations under 45 C.F.R. Part 160 and 164, as amended, MERCHANT agrees it will not provide BANK with Personal Healthcare Information (as defined in such act).

2. SPECIFIC OPERATING PROCEDURES:

2.1 MERCHANT agrees that it will comply with all Card Acceptance Procedures in the RULES for each SALE, including, but not limited to the following:

- A. MERCHANT agrees that it will obtain and record a valid positive authorization for all SALES in accordance with the RULES before submitting them to BANK for processing;
- B. MERCHANT must be able to prove, by evidence of a terminal capture of the magnetic stripe or a signed SALES DRAFT (as defined in the RULES) showing imprint of the CARD, that the CARD was present at the time of SALE, unless specifically set up for Card Not Present transactions; and
- C. Failure to read the magnetic stripe on the card may result in a DISCOUNT rate tier downgrade or a CHARGEBACK.

2.2 BANK and/or third party banks with which BANK has a relationship are members of certain NETWORKS and are willing to sponsor MERCHANT as a participant in such NETWORKS ("SPONSOR") as set forth in the Merchant Application. Additional NETWORKS may be available from time to time. BANK does not warrant the continuing availability of any NETWORK. MERCHANT agrees to pay BANK the then current FEES for any NETWORK added or deleted after the effective date of this AGREEMENT.

2.3 MERCHANT agrees to accept valid CARDS of each of the selected NETWORKS and will not impose purchase minimums, maximums, or surcharges, unless specifically allowed by the NETWORKS. MERCHANT agrees to comply with Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.

- 2.4 BANK may provide MERCHANT access through MERCHANT's terminals to the NETWORKS as set forth herein.
- 2.5 MERCHANT must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which MERCHANT totals and settles all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmits the information to BANK. In all cases, MERCHANT must present the record within three (3) business days after the transaction date, unless otherwise permitted by the RULES. Transactions contained in an untimely Batch Out may incur higher rates, be refused, be held for a one hundred eighty (180) day period, or become subject to a CHARGEBACK. MERCHANT is responsible for re-submitting a Batch Out or a sales ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. BANK is not liable to MERCHANT for higher rates or for amounts BANK did not collect, including but not limited to amounts collected by third party service providers.

3. PAYMENT OF SUMS DUE:

- 3.1 MERCHANT agrees to pay BANK the fees as set forth in the Merchant Application and all other sums owed to BANK ("FEES") for SALES and SERVICES as set forth in this AGREEMENT as amended from time to time. FEES include but are not limited to all CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to BANK by any affiliated entities of MERCHANT.
- 3.2 As set out in the Merchant Application and the Rate Descriptions, discount ("DISCOUNT") is a FEE charged as a percentage of gross SALES submitted by MERCHANT, which generally includes "Processing," "Authorizations," "Assessments," and "Interchange." Assessments and Interchange are the standard fees that the ASSOCIATIONS charge for the clearing of SALES transactions and are subject to change by the ASSOCIATIONS. BANK has no direct control over these fees. Any adjustment in Interchange and Assessments by the ASSOCIATIONS may result in an adjustment to MERCHANT's DISCOUNT. BANK will notify MERCHANT in writing of any change in FEES caused by action of ASSOCIATIONS prior to any such change becoming effective. Notice to MERCHANT of any change in FEES caused by ASSOCIATIONS may be less than thirty (30) days.
- 3.3 DISCOUNT is quoted by BANK based on the information supplied by MERCHANT as set forth in the Merchant Application. MERCHANT agrees that the FEES are based on the term of this AGREEMENT, the method of processing, and the information set forth in the Merchant Application. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, BANK may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change. MERCHANT agrees to pay such amended and/or additional FEES.
- 3.4 MERCHANT agrees that FEES not listed in the AGREEMENT will be charged at BANK's current rate.
- 3.5 The FEES may be amended by BANK on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.6 MERCHANT agrees to pay BANK for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that BANK is in no way financially responsible for CHARGEBACKS. Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS. MERCHANT's obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.
- 3.7 If the ASSOCIATIONS or a regulatory body governing BANK should levy a fine or penalty or assess a charge to BANK as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.8 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions set out herein, authorizes BANK to make deposits and withdrawals from the DESIGNATED ACCOUNT. MERCHANT hereby grants to BANK a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT's (or any related entity under MERCHANT's control) obligations to BANK under this AGREEMENT. If required by BANK, MERCHANT agrees to cooperate with BANK and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount specified by BANK and MERCHANT agrees to deposit funds into the DESIGNATED ACCOUNT so that the minimum balance required by BANK is maintained. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. BANK may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to BANK under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with BANK without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the DESIGNATED ACCOUNT, if any, shall be paid to MERCHANT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from BANK with respect to the DESIGNATED ACCOUNT. MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due BANK under this AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a RESERVE ACCOUNT, as defined below, is established, MERCHANT authorizes BANK to make withdrawals from the DESIGNATED ACCOUNT to replenish the RESERVE ACCOUNT as necessary.
- 3.9 MERCHANT agrees to provide BANK with a deposit in the amount of money required by BANK ("RESERVE ACCOUNT"), if determined necessary by BANK: (i) at the time this AGREEMENT is executed; (ii) if in the opinion of BANK, information received or discovered about MERCHANT reflects an adverse change in status; (iii) in the event that any information requested by BANK is not received; (iv) upon the notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of this AGREEMENT. BANK may withhold the payment for SALES in an amount reasonably determined by BANK as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, BANK may require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with BANK in the name of BANK and under the sole control of BANK, and MERCHANT grants to BANK a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to BANK under this AGREEMENT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the

period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. BANK may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to BANK under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the RESERVE ACCOUNT, if any, shall be paid to MERCHANT.

- 3.10 BANK agrees to pay MERCHANT for SALES less FEES owed to BANK by MERCHANT. BANK shall recoup and deduct FEES from incoming transactions or recoup and debit the same from MERCHANT's DESIGNATED ACCOUNT or the RESERVE ACCOUNT. MERCHANT agrees that BANK has the right to deduct these FEES at any time including on a daily basis if necessary. BANK is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to BANK after MERCHANT becomes insolvent, ceases to do business, or dissolves.
- 3.11 BANK has the right of recoupment and set-off. This means that BANK may recoup and offset any outstanding or uncollected amounts owed to BANK from: (i) any amounts BANK would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts BANK may owe MERCHANT under this AGREEMENT or any other agreement.
- 3.12 If MERCHANT does not pay any sums due within thirty (30) days from date of notice, BANK will charge, and MERCHANT agrees to pay, a late fee of one and one-half percent (1.5%) per month on the balance outstanding or the highest amount allowed by law. If MERCHANT breaches AGREEMENT or if BANK identifies suspicious or irregular activity related to SALES or SERVICES, BANK may refuse to process SALES or to provide SERVICES and/or may hold funds pending the cure of such breach or resolution of such activity.
- 3.13 If BANK takes any action against MERCHANT to collect any FEES or monies due to BANK from MERCHANT, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney fees, to the extent allowed by law.
- 3.14 If MERCHANT is a participant in a BANK third party program including, but not limited to, Agent Bank and/or Association programs, and MERCHANT subsequently leaves such third party, BANK may amend the FEES or terminate the AGREEMENT.

4. TERM OF AGREEMENT:

- 4.1 The initial term of this AGREEMENT shall be for three (3) years ("INITIAL TERM") commencing on the date this AGREEMENT is executed or approved by an authorized agent of BANK or approved and uploaded by BANK's Risk Department.
- 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive two (2) year periods ("RENEWAL TERM") unless terminated as set out below.

5. TERMINATION OF AGREEMENT:

- 5.1 This AGREEMENT may be terminated by BANK at any time effective upon thirty (30) days written notice.
- 5.2 MERCHANT may terminate this AGREEMENT as follows:
 - A. upon BANK's default of any material obligation to MERCHANT thereunder and the failure of BANK to cure such default within thirty (30) days after written notice of such default;
 - B. upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM; or
 - C. on thirty (30) days notice of termination accompanied by payment to BANK of the EARLY TERMINATION FEE.
- 5.3 In order to protect the ASSOCIATIONS and BANK, BANK may terminate this AGREEMENT effective immediately for any of the following reasons:
 - A. insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT's assets for the benefit of MERCHANT's property creditors, or if any part of MERCHANT's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter;
 - B. if MERCHANT fails to pay any FEES when due;
 - C. if MERCHANT has misrepresented or omitted any material information provided to BANK;
 - D. if MERCHANT is in breach of the AGREEMENT or the RULES;
 - E. if MERCHANT, after BANK's request, fails to send copies of SALES DRAFTS to BANK;
 - F. if MERCHANT submits for processing SALES that were not originated as a result of a direct SALE transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");
 - G. if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of SALES in that or any prior month;
 - H. in the event of a material change of MERCHANT's business as described in the Merchant Application ("BUSINESS");
 - I. in the event the ASSOCIATIONS identify MERCHANT, its principal, or associated parties under any program designed to monitor merchants, or MERCHANT creates circumstances that cause harm or loss of goodwill to the VISA system;
 - J. if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT; or
 - K. in the event that Guarantor (if designated) gives notice of its intention to withdraw the Guaranty.
- 5.4 Effect of Termination of the AGREEMENT:
 - A. In the event that this AGREEMENT is terminated by BANK for cause, BANK may be required to report the name and address of MERCHANT and MERCHANT's principals to the ASSOCIATIONS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to BANK for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.
 - B. MERCHANT hereby releases, indemnifies and holds BANK and the ASSOCIATIONS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by BANK or its Agents on the ASSOCIATIONS' merchant monitoring lists.

6. BANKRUPTCY:

- 6.1 It is not the intention of the PARTIES that BANK remain obligated to continue processing SALES or providing SERVICES in the event of a bankruptcy filing by MERCHANT. Upon filing voluntary or involuntary bankruptcy proceedings by or against MERCHANT, MERCHANT must notify BANK in writing within five (5) days. Notification must be sent by certified mail to BANK at the addresses for NOTICES set out herein.
- 6.2 Credits to MERCHANT's DESIGNATED ACCOUNT and other payments to MERCHANT are provisional. The PARTIES acknowledge the AGREEMENT is an agreement whereby BANK is extending financial accommodations to MERCHANT within the meaning of Section 365 of the Bankruptcy Code as amended from time to time. The right of MERCHANT to receive any amounts due or to become due from BANK is expressly subject and subordinate to the CHARGEBACKS, recoupment, setoff, lien, and security interest rights of BANK under this AGREEMENT without regard to whether such CHARGEBACKS, recoupment, setoff, lien, and/or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

7. INFORMATION AND DOCUMENTATION:

- 7.1 MERCHANT agrees to comply with all requests for information and documentation regarding SALES and the CARDS utilized in processing such SALES or SERVICES under AGREEMENT within the time period stated by BANK in its request.
- 7.2 **USA PATRIOT ACT REQUIREMENTS.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means: When MERCHANT opens an account, BANK will ask for the applicant's name, physical address, date of birth, taxpayer identification number, and other information that will allow BANK to identify the applicant. BANK may also ask to see the applicant's driver's license or other identifying documents. BANK will advise MERCHANT if additional information is required.
- 7.3 Upon BANK's request, MERCHANT shall provide BANK with current financial statements in a format acceptable to BANK.
- 7.4 MERCHANT and its signing officer/owner/partner/principal authorize BANK, or its agents or assigns, to make, from time to time, any business and personal credit and other inquiries BANK considers necessary to review the acceptance and continuation of this AGREEMENT. MERCHANT authorizes parties contacted by BANK or any of its affiliates, in relation to this AGREEMENT, to release the credit information requested by BANK or any affiliate.
- 7.5 MERCHANT is supplied with monthly reports by BANK regarding MERCHANT's SALES or SERVICES activity. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to BANK within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
- 7.6 MERCHANT will notify BANK immediately of any change in ownership, corporate or "d/b/a" name, location address, or the information contained on MERCHANT's imprinter plates.
- 7.7 If MERCHANT participates in any BANK third party program, MERCHANT agrees that BANK may report information as required to such third party.
- 7.8 MERCHANT is solely responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, SALES and any other customer information in accordance with this AGREEMENT, LAWS, and RULES.

8. PROCESSING RESTRICTIONS:

- 8.1 MERCHANT agrees that it will not materially change its BUSINESS or the method in which it markets or sells the goods and services of BUSINESS without informing BANK in advance of such change. BANK will only process SALES from the BUSINESS as defined in the AGREEMENT.
- 8.2 If actual monthly SALES volume substantially exceeds the projected annual SALES volume as provided in the Merchant Application and pro-rated to one month, BANK may, at its option, do one or more of the following: (i) refuse to process SALES in excess of such sum; (ii) process such SALES and retain the proceeds of such SALES until the next month and release such sums to MERCHANT at that time counting this volume as SALES volume for that month; (iii) terminate this AGREEMENT; and/or (iv) amend this AGREEMENT in a way as to ensure that BANK has security for the increased volume. Such rights of termination and retention of funds are in addition to those already provided for herein.
- 8.3 In the event of failure, including bankruptcy, insolvency, or other suspension of business operations by MERCHANT, MERCHANT shall not sell, transfer, or disclose any materials that contain cardholder account numbers, personal information, or other ASSOCIATION transaction information to third parties. Upon request from BANK, MERCHANT shall either (i) provide this information or (ii) provide acceptable proof of destruction of this information.

9. USE OF THE INTERNET, SYSTEM INTEGRATORS, AND/OR THIRD PARTY SERVICE PROVIDERS:

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its: (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent establishment" on its web site along with MERCHANT's country of domicile, either: a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.
- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to BANK in accordance with the then current RULES and requirements of BANK and ASSOCIATIONS. If MERCHANT is using a Member Service Provider's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the Member Service Provider is providing the customer service, then such Member Service Provider is a separate entity and is not an agent of BANK. MERCHANT understands the AGREEMENT is between BANK and MERCHANT. Disputes involving a Member Service Provider shall be dealt with independently from BANK.

If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify BANK at the address set out in the AGREEMENT. MERCHANT must pay BANK regardless of any disputes it has with any Member Service Provider. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to BANK, MERCHANT must disclose the relationship to BANK and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by BANK. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. BANK is not liable for SALES that it did not receive. MERCHANT understands that in the event MERCHANT rents BANK terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.

- 9.3 MERCHANT agrees that BANK is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that BANK is not responsible for and is not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. MERCHANT should contact the third party for service of this equipment. MERCHANT shall not allow any third party to install, remove, or modify any terminal software application of BANK without the express written consent of BANK. MERCHANT agrees BANK can only process SALES received by BANK, and any third party is responsible for ensuring SALES are formatted and transmitted to BANK in accordance with the then current requirements of BANK and ASSOCIATIONS. BANK may increase FEES if a third party presents SALES transactions not in accordance with the then current ASSOCIATIONS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by BANK.
- 9.4 MERCHANT shall assume full liability and shall indemnify and hold BANK and ASSOCIATIONS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

- 10.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. BANK shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. BANK shall not be liable for any services or products of third parties. In any event, BANK's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid to BANK by MERCHANT in the month prior to the incident giving rise to liability. In no event shall BANK, the ASSOCIATIONS, or the ASSOCIATIONS' contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL BANK, THE ASSOCIATIONS, OR THE ASSOCIATIONS' CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR BANK WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- 10.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY BANK, THE ASSOCIATIONS, AND THE ASSOCIATIONS' CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BANK ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

11. WARRANTIES AND INDEMNITIES:

- 11.1 MERCHANT understands that BANK merely provides processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, BANK does not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the ASSOCIATIONS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to BANK.
- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to BANK and does by this reference assign all its rights, title, and interest to payment for such SALES to BANK so that BANK may process SALES under the AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.
- 11.4 MERCHANT agrees to indemnify and hold harmless BANK, SPONSORS, and ASSOCIATIONS, including the ASSOCIATIONS' contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. BANK, SPONSORS, or the ASSOCIATIONS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify BANK, SPONSORS, and the ASSOCIATIONS for reasonable attorney fees or any other necessary expenses incurred by BANK by reason of such defense.

- 11.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 11.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

12. NOTICES:

- 12.1 All notices required under this AGREEMENT from MERCHANT shall be written paper notices effective, unless otherwise stated in AGREEMENT, upon the earlier of actual receipt thereof or the third (3rd) business day following such notices being deposited postage prepaid in the United States Postal System.
- 12.2 All written paper notices shall be sent to the following addresses, which may be changed by any PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:

If to TMS:

TSYS Merchant Solutions, LLC
Attention: Legal Department
1620 Dodge Street, Stop 3231
Omaha, NE 68197

If to MERCHANT:

At the address set out in the Merchant Application or such alternative address as designated in writing by MERCHANT.

If to BANK:

First National Bank of Omaha
Attention: Acquirer Legal & Risk Department
1620 Dodge Street, Stop 3395
Omaha, NE 68197

If to ISO:

At the address set out in the Merchant Application or such alternative address as designated in writing by ISO.

- 12.3 MERCHANT consents to receiving electronically rather than in paper form all notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at BANK's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Application. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that MERCHANT has such access. MERCHANT understands that there are costs related to access DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 12.1 and 12.2.

13. MISCELLANEOUS:

- 13.1 Assignment. Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of BANK. BANK may assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT.
- 13.2 Governing Law and Forum. The PARTIES acknowledge and agree that this AGREEMENT and the Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or otherwise characterized) arising out of or relating to this AGREEMENT and any Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or any Guaranty contained herein, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein. If MERCHANT brings legal action against BANK for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.
- 13.3 Waiver. No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.
- 13.4 Force Majeure. BANK is not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.
- 13.5 Entire Agreement. This AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.
- 13.6 Costs. Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.
- 13.7 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.

- 13.8 Amendment. This AGREEMENT may be amended or modified by BANK effective upon thirty (30) days written notice. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.
- 13.9 Authority. By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.
- 13.10 P-Card. To the extent applicable, BANK agrees not to use any information supplied by MERCHANT in the Purchasing Card Information that is required for acceptance of purchasing cards, in its decision as to whether to accept MERCHANT for processing. MERCHANT agrees to hold BANK harmless from any and all claims relating to the collection, processing, dissemination, and use or misuse of the information contained in the Purchasing Card Information. MERCHANT acknowledges that the information from the Purchasing Card Information will be sent to MERCHANT's corporate customers who pay with a purchasing card. MERCHANT agrees that BANK is not responsible for any actions or omissions of others regarding this information.
- 13.11 Taxes. MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes which may be assessed in connection with the services and related products provided under this AGREEMENT.
- 13.12 Disclosure of Merchant Identification Number ("MID"). For security reasons, MERCHANT must disclose its MID thereby authorizing BANK to make changes to its account. BANK may request from MERCHANT additional information to further verify MERCHANT's identity. BANK may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.
- 13.13 Information Release. MERCHANT authorizes BANK to release MERCHANT's information to third parties that provide services to BANK or MERCHANT or to any third party that requests and has a reason to know such information, including but not limited to the ASSOCIATIONS, and any third-party having regulatory control over the PARTIES.
- 13.14 Counterparts/Facsimile. This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes BANK and its affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.
- 13.15 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and BANK may be monitored and recorded.
- 13.16 Binding Agreement. This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is signed or approved by an authorized Agent of BANK; and (ii) BANK has received a negative response to its inquiry of the ASSOCIATIONS' programs designed to monitor merchants.
- 13.17 Products and Services. BANK may from time to time add products and/or services to the SERVICES. At MERCHANT's request, BANK may provide such additional products and/or services to MERCHANT at BANK's then current rate. MERCHANT agrees to abide by all parameters set by BANK for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. BANK has made reasonable efforts to secure information and abides by the ASSOCIATIONS' security guidelines but BANK does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify BANK immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. BANK shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. Either PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.
- 13.18 Communication. MERCHANT authorizes BANK and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by BANK, its affiliates, or any third party that BANK shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold BANK, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.
- 13.19 Disclosure. The ASSOCIATIONS require that the following be disclosed to MERCHANT: (i) if applicable, BANK is in control of Independent Sales Organization's ("ISO") and/or Member Service Provider's ("MSP") performance under this AGREEMENT; (ii) BANK must pre-approve all FEES; (iii) the AGREEMENT may not be amended without BANK's express written consent; (iv) if applicable, ISO and/or MSP may not have access to MERCHANT's funds; and (v) BANK may not waive the foregoing requirements.

FUNDS TRANSFER INSTRUCTIONS

MERCHANT desires to effect settlement of credits and debits from MERCHANT's DESIGNATED ACCOUNT by means of ACH and/or wire transfer in conjunction with the processing of SALES transactions or SERVICES as anticipated by AGREEMENT. In accordance with this desire, MERCHANT authorizes BANK to initiate debit and credit entries to the DESIGNATED ACCOUNT (the details of which are set out herein and in the Merchant Application). MERCHANT agrees to maintain sufficient funds in DESIGNATED ACCOUNT to cover debit transactions. By signing this AGREEMENT, MERCHANT states that it has authority to agree to such transactions and that the DESIGNATED ACCOUNT indicated is a valid and legitimate account for the handling of these transactions. This authority is to remain in effect until BANK receives written notice from MERCHANT revoking it. This authorization is for the payment of SALES, returns and FEES, CHARGEBACKS, or any other sums owed between the PARTIES. MERCHANT also certifies that the appropriate

authorizations are in place to allow MERCHANT to authorize this method of settlement. All changes to the identification of the DESIGNATED ACCOUNT under this authorization must be made in writing in accordance with AGREEMENT. MERCHANT agrees that if the DESIGNATED ACCOUNT is an IBA and MERCHANT closes the IBA, the DESIGNATED ACCOUNT shall become the Home Account without further written notification and these instructions will apply. MERCHANT understands that if the information supplied as to the ABA Routing Number and Account Number of the DESIGNATED ACCOUNT is incorrect, and funds are incorrectly deposited, BANK will attempt to assist MERCHANT in the recovery of such funds but has no liability as to restitution of the same. BANK's assistance in recovering the funds, where available, will be billed to MERCHANT at BANK's current hourly rate for such work. MERCHANT acknowledges that the origination of ACH transactions to the DESIGNATED ACCOUNT must comply with the provisions of U.S. law.

ASSOCIATION RULES

NOTICE: This information is a summary of common ASSOCIATION regulations; however, card acceptance, processing and chargeback procedures are subject to change. If there are any differences between the ASSOCIATIONS' regulations and these RULES, the ASSOCIATIONS' regulations will prevail in every instance. The ASSOCIATIONS publish summaries of the regulations for MERCHANTS. Some of these summaries may be accessed at www.visa.com and www.mastercard.com, while AMERICAN EXPRESS and DISCOVER regulations may be accessed at www.tsysmerchantsolutions.com.

ASSOCIATION CARD ACCEPTANCE PROCEDURES

1. Honor All CARDS:

- 1.1 MERCHANT shall honor all CARDS issued by an ASSOCIATION, when presented in accordance with these RULES, for the purchase of goods or services by an authorized holder of CARD or in processing a request for credit resulting from such a transaction, unless MERCHANT provides BANK with a thirty (30) day written notice that it no longer wishes to accept either credit or debit cards, including check or prepaid cards (i.e., non-PIN based debit). If MERCHANT has provided such notice to BANK, upon the expiration of the thirty (30) day notice period, MERCHANT will no longer be required to accept such cards.
- 1.2 If a cardholder presents a VISA CARD that is in the MERCHANT's category of acceptance and that bears a mark representing another payment service: (i) MERCHANT must honor the cardholder's request if the cardholder indicates that the transaction is to be processed as a VISA transaction and (ii) MERCHANT may process the transaction as something other than a VISA transaction despite an initial indication by the cardholder that the transaction is to be processed as a VISA transaction, but only if the cardholder agrees that the transaction may be processed as something other than a VISA transaction. MERCHANT may not mislead the cardholder concerning what payment service or system will be used. These rules do not require MERCHANT to explain any loss of consumer rights if the transaction is not processed as a VISA transaction, but if MERCHANT provides any information on this topic, that information must be accurate.
- 1.3 PROHIBITIONS - A MERCHANT must not:
 - A. Accept cardholder payments for previous Visa Card or Visa Electron Card charges incurred at the MERCHANT location;
 - B. Establish a minimum or maximum Transaction amount as a condition for honoring a Visa Card or Visa Electron Card;
 - C. 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;
 - D. Add any surcharge to transactions;
 - E. Add any tax to transactions, unless applicable law expressly requires that a MERCHANT be permitted to impose a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately;
 - F. Enter into interchange any transaction receipt for a transaction that was previously charged back and subsequently returned to the MERCHANT irrespective of cardholder approval. The MERCHANT may pursue payment from the customer outside the VISA system;
 - G. Request or use an account number for any purpose other than as payment for its goods or services, except to support the Health Care Eligibility Service or VISA Activation and Load Service, as specified in VISA regulations;
 - H. Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT;
 - I. Disburse funds in the form of cash, unless:
 - 1) MERCHANT is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign currency plus any commission or fee charged by the MERCHANT; or
 - 2) MERCHANT is participating in the Visa Cash Back Service, as further specified in the VISA regulations.
 - J. Accept a Visa Card or Visa Electron card for the purchase of Scrip;
 - K. Accept a Visa electron Card for Manual Cash Disbursement;
 - L. Accept a Visa TravelMoney Card for a Manual Cash Disbursement;
 - M. Accept a card to collect or refinance an existing debt that has been deemed uncollectible by the merchant providing the associated goods or services. (Note: A transaction that represents a payment on an existing obligation must be identified by the appropriate indicator in the Authorization Request and Clearing Record.);
 - N. Enter into interchange a transaction that represents collection of a dishonored check; or
 - O. Require a cardholder to waive his or her rights to dispute the transaction as a condition of the SALE.

2. Sales Transactions:

- 2.1 No SALE may be completed if cardholder (the duly authorized holder and user of CARD) fails to present his/her CARD to MERCHANT at time of SALE, except in the case of Card Not Present environments where MERCHANT has received written permission by BANK to do so.

- 2.2 IF USING A MANUAL IMPRINTER, MERCHANT MUST IMPRINT THE CARD. IF USING AN ELECTRONIC DEVICE, MERCHANT MUST HAVE THE CARD SUCCESSFULLY READ BY A MAGNETIC STRIPE CARD READER/TERMINAL WITH PRINTER ATTACHED. If MERCHANT's terminal cannot successfully read the magnetic stripe, MERCHANT must imprint the card, even if it is a key entered transaction. MERCHANT must imprint the CARD on the same SALES DRAFT (a paper record evidencing the purchase of goods or services using a CARD) containing the remainder of the transaction information and the cardholder signature. Failure to obtain a signed and imprinted SALES DRAFT when a transaction is not captured by swiping through a magnetic stripe reader will expose MERCHANT to a CHARGEBACK on such a transaction regardless of the authorization that may or may not be received. Failure to read the magnetic stripe on the card may result in a DISCOUNT rate tier downgrade.
- 2.3 MERCHANT shall require cardholder to sign the SALES DRAFT.
- 2.4 Unless specifically permitted by BANK to the contrary, goods and services purchased must be delivered to cardholder at time of SALE.
- 2.5 MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a SALE, unless required by the RULES.
- 2.6 BANK, the ASSOCIATIONS, or their designated agent, on behalf of itself or others, shall have the right to inspect MERCHANT's security systems and procedures from time to time after reasonable notice to MERCHANT.
- 2.7 If MERCHANT receives BIN information from BANK, MERCHANT must not use such information for any reason other than to identify VISA debit category products at the point of sale, unless authorized by VISA. VISA BIN information is proprietary and confidential information belonging to VISA. MERCHANT must not disclose VISA BIN information to any third party without prior written permission from VISA. If MERCHANT uses an agent or Merchant Servicer, MERCHANT must include the foregoing provisions in its agreement or contract with such agent or Merchant Servicer.

3. SALES DRAFTS:

- 3.1 MERCHANT shall deliver to the cardholder, at the time of a SALE, a true, complete, and legible copy of the SALES DRAFT or suitable receipt evidencing a SALE involving use of CARD.
- 3.2 The following information must be included on the SALES DRAFT:
 - A. final four digits of CARD account number;
 - B. MERCHANT's d/b/a name;
 - C. MERCHANT's city and state;
 - D. amount of the SALE (including any applicable taxes);
 - E. date of the SALE;
 - F. space for cardholder signature if applicable;
 - G. transaction payment type;
 - H. legend identifying the party to whom it will be delivered (i.e. merchant copy, customer copy);
 - I. authorization code; and
 - J. clear imprint of the CARD unless successfully read by a magnetic stripe reader.
- 3.3 Under federal law, MERCHANT is prohibited from displaying more than the last five digits of the account number or the expiration date of the CARD on any electronically generated SALES DRAFT.
- 3.4 MERCHANT shall not disclose a cardholder's account information or any other personal information to third parties other than MERCHANT's agents for the purpose of completing the transaction or as specifically required by law or by the RULES.
- 3.5 MERCHANT shall store all SALES DRAFTS and transaction records in a limited access area for at least one (1) year after the date of SALES. MERCHANT shall retain all original SALES DRAFTS or legible microfilm copies of all SALES DRAFTS and transaction records for at least three (3) years.
- 3.6 MERCHANT shall not deposit SALES DRAFTS that it knows or should have known to be either fraudulent or not authorized by the cardholder.

4. Security Features:

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.
- 4.2 When an Electronic Cash Register ("ECR") or Electronic Draft Capture ("EDC") terminal reads the magnetic stripe on the CARD, MERCHANT must check the CARD account number on the terminal (if displayed) against the account number embossed on the CARD or follow such other security check as is mandated by BANK from time to time. If the CARD is read with a terminal that displays the CARD number and the SALES DRAFT is printed, MERCHANT shall verify that the account number displayed on the terminal match the embossed numbers on the face of the CARD. In the event that they do not match, the SALE must not be completed. Failure to follow these checks and procedures will expose MERCHANT to CHARGEBACKS.
- 4.3 In the event that the terminal is programmed to require MERCHANT to key the last four (or more) digits of each CARD used for a SALE, and the terminal indicates that the numbers keyed are not the same as those present on the card, the SALE must not be completed.
- 4.4 In order to protect the integrity of the ASSOCIATIONS' systems, BANK may hold funds settled by MERCHANT in the event of a breach of AGREEMENT, irregular SALES activity, or receipt of detrimental financial information.

5. Authorization:

- 5.1 On all SALES, MERCHANT shall request an authorization for the total amount of the SALE and shall record the positive authorization response code on the SALES DRAFT prior to completing the SALE. If MERCHANT receives a negative authorization response, MERCHANT shall not complete the SALE and may receive further instructions from the authorization center.
- 5.2 MERCHANT may not, after receiving a negative response or decline on an authorization request:
 - A. split the SALE amount into multiple transactions in order to obtain a valid authorization for each one, so that the separate transactions total the original dollar amount of the SALE; or
 - B. attempt any further electronic or voice authorizations.
- 5.3 In the event that an unsigned CARD is presented at the point of sale, MERCHANT must request that cardholder provide proof of identification and sign the card before completing the SALE. Details of the identification provided must be placed on the SALES DRAFT unless prohibited by local law. In the event that the cardholder refuses to do so, the SALE must not be completed.
- 5.4 In any of the following cases, MERCHANT shall obtain authorization from the voice authorization center, designated or approved by BANK, before completing a SALES transaction:
 - A. paper MERCHANTS whose SALES exceed MERCHANT's floor limit as established by BANK, or amended from time to time;
 - B. an unsigned CARD is presented;
 - C. if MERCHANT believes the CARD may be counterfeit or stolen or that the SALE is in some other manner suspicious or unusual, MERCHANT should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or
 - D. in any other circumstances hereinafter established by BANK or stated in the RULES and/or AGREEMENT.
- 5.5 If permitted in writing by BANK, a retail store that accepts an infrequent telephone order transaction should obtain an authorization using the above authorization procedures. The floor limit for Card Not Present authorization is zero. In such cases, the authorization does not protect the MERCHANT from CHARGEBACKS where the cardholder disputes that the CARD use was authorized.
- 5.6 MERCHANT shall indicate to the voice authorization center the reason for the authorization request except where the sole reason for the request is that the SALE exceeds the MERCHANT's floor limit.
- 5.7 When MERCHANT requests and receives a positive authorization code, MERCHANT shall enter such code onto the SALES DRAFT. In the event that a negative response is obtained, the MERCHANT shall not complete the SALE and, if instructed, shall attempt to pick up CARD by reasonable and peaceful means and notify the voice authorization center and ask for further instructions.

6. Recovery of Cards:

- 6.1 MERCHANT shall use its best effort to recover any CARD, by reasonable and peaceful means, if:
 - A. the account number thereon is listed on an Electronic Exception File;
 - B. the printed four digits do not match the first four digits of the embossed account number (VISA);
 - C. MERCHANT is advised to do so by the authorization center; or
 - D. MERCHANT has reasonable grounds to believe such CARD is counterfeit, fraudulent, or stolen.
- 6.2 This obligation upon MERCHANT in no way authorizes a breach of the peace or any injury to persons or property, and MERCHANT will hold BANK and the ASSOCIATIONS harmless from any claim arising from any injury to person or property or other breach of peace.

7. Multiple SALES and SALES DRAFTS and Partial Consideration:

- 7.1 Generally, all SALES accomplished at the same time should be included on one SALES DRAFT.
- 7.2 MERCHANT shall not affect a SALE when only part of the amount due is included on the single SALES DRAFT except:
 - A. when the balance of the amount due is paid by the cardholder at the time of the SALE in cash, by check, with another CARD, or any combination thereof; or
 - B. when the cardholder executes two separate SALES DRAFTS in a delayed delivery transaction, whereby a deposit is made by completion of one SALES DRAFT and payment of the balance is tendered by completion of a second SALES DRAFT, conditioned upon delivery of merchandise or performance of services. If the total amount of both SALES DRAFTS exceeds the floor limit, authorization must be obtained.
- 7.3 The use of multiple CARDS for one purchase is permissible, as long as an individual SALES DRAFT is used for each CARD. The use of multiple SALES on one CARD, for one purchase, is not permitted.

8. Returned Merchandise and Adjustments:

- 8.1 If MERCHANT agrees to credit a cardholder for any merchandise or service that was the subject of a SALE, MERCHANT must provide a Credit Transaction Receipt using the same CARD as in the original SALE. Such credit shall not exceed the original SALE amount. MERCHANT shall not make any cash refund on SALES.
- 8.2 MERCHANT may limit its acceptance of returned merchandise or establish a policy to make price adjustments for any SALE provided proper disclosure is made and purchased goods and service are delivered to the cardholder at the time of the SALE.
- 8.3 Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the SALES DRAFT prior to obtaining the cardholder's signature on the SALES DRAFT. MERCHANT may stipulate other special circumstances or terms of the SALE on the SALES DRAFT.
- 8.4 For each credit transaction, MERCHANT must be able to provide BANK with evidence of the original purchase.

9. Cash Transaction:

- 9.1 MERCHANT shall not receive money from a cardholder and subsequently prepare a credit voucher for the purpose of depositing to the cardholder's account.

- 9.2 Cash disbursement by MERCHANT to a cardholder is not permitted. Additionally, MERCHANT shall not make any cash advance to an employee, principal, or family member of MERCHANT, who is a cardholder.
- 9.3 MERCHANT will not accept SALES from cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

10. Quasi Cash Transactions:

- 10.1 MERCHANT shall not accept SALES for processing that are classified as "Quasi-Cash Transactions" including, but not limited to, the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip.
- 10.2 No MERCHANT shall accept a CARD or use a VISA and MASTERCARD processing terminal to issue scrip exchangeable for cash, products, or services as a result of a SALE.

11. Promotional Materials:

- 11.1 MERCHANT will adequately display promotional materials provided by BANK to inform the public that MERCHANT will honor CARDS.
- 11.2 All uses by MERCHANT of decals, signs, printed and broadcast materials, and other promotional materials must be in conformity with the requirements of ASSOCIATIONS. MERCHANT will not at any time do or cause to be done any act or deed in any way impairing or intended to impair BANK's or ASSOCIATIONS' exclusive right, title, and interest in and to its respective protected marks.
- 11.3 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS' services.
- 11.4 MERCHANT may not refer to the CARDS in stating eligibility for its products, services, or membership.
- 11.5 MERCHANT shall permit BANK or ASSOCIATIONS, at all reasonable times, to inspect the MERCHANT's use of the promotional materials. Should any materials so submitted fail to meet with BANK's or ASSOCIATIONS' approval, for any reason whatsoever, the MERCHANT agrees to cease using such material. Neither BANK nor ASSOCIATIONS shall have any liability to MERCHANT relating to disapproved materials using a protected mark.

12. CARDS Other than VISA, MASTERCARD, AMERICAN EXPRESS and DISCOVER:

- 12.1 MERCHANT is required to comply with the specific regulations, as set out in its agreements with ASSOCIATIONS other than VISA, MASTERCARD, AMERICAN EXPRESS, and/or DISCOVER with regard to the acceptance of cards issued by such ASSOCIATIONS. BANK is not responsible for the funding of such transactions. Further, BANK is not responsible for payment for SALES for any ASSOCIATIONS unless and until BANK has received payment for such SALES from the ASSOCIATIONS.

CHARGEBACKS

13. General:

- 13.1 Failure to comply with the RULES will reduce BANK's ability to reverse CHARGEBACKS and increase the likelihood of MERCHANT receiving a CHARGEBACK.
- 13.2 MERCHANT may be subject to a CHARGEBACK on SALES for a minimum period of 180 days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT, from the date the SALE was entered into the ASSOCIATIONS' processing system.
- 13.3 BANK agree to mail all CHARGEBACK documentation to the address provided by MERCHANT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If BANK elects, at its sole discretion, to take action on CHARGEBACKS after the ASSOCIATION time limits have expired, such action shall be done at additional cost.
- 13.4 MERCHANT agrees that it will not re-deposit SALES that have been previously charged back and not represented. This restriction applies whether or not the cardholder consents to such activity.
- 13.5 MERCHANT agrees that if it receives a CHARGEBACK for an international cardholder, the MERCHANT is responsible for any currency conversion differences in the dollar amount.

14. CHARGEBACK Reasons:

- 14.1 The summary of reasons for CHARGEBACKS includes, but is not limited to, any one of the following:
 - A. an invalid CARD account number submitted by MERCHANT;
 - B. neither the cardholder nor a person authorized by the cardholder received the goods or services requested;
 - C. the cardholder received the good or services but disputes the quality;
 - D. the cardholder never received credit for a returned item or a canceled order;
 - E. the cardholder was charged incorrectly;
 - F. the amount of the SALE exceeded the Floor Limit and an Authorization was not obtained or was denied;
 - G. the SALE was authorized but not for the correct amount;
 - H. the Authorization code provided is invalid;
 - I. the CARD was expired at the time of the SALE or had not reached its effective date;
 - J. the SALES DRAFT was not signed. An exception will be made where Card Not Present SALES are permitted;
 - K. the CARD issuer has information that a MERCHANT fraud has occurred;
 - L. the CARD account number and the amount of SALE are missing from SALES DRAFT or are illegible;
 - M. the SALES DRAFT bears the imprint of a CARD which to the ASSOCIATIONS is a counterfeit CARD because the CARD is not embossed in accordance with the standards set forth in the ASSOCIATIONS' regulations, even if the SALE was authorized.

15. CHARGEBACK Monitoring Programs:

15.1 Any MERCHANT location that exceeds a one percent (1%) CHARGEBACK to Interchange ratio for all incoming CHARGEBACKS for that location is considered an excessive chargeback merchant and may be subject to Visa and MasterCard's monitoring programs. Merchants are responsible for monitoring their monthly chargeback percentage and developing chargeback reduction plans as required by Visa and MasterCard. Excessive CHARGEBACK activity for an unreasonable period of time may result in termination of this AGREEMENT. MERCHANT will pay BANK for any fine or charge levied by the ASSOCIATIONS on BANK or MERCHANT as a result of its chargeback activity. This section may be amended from time to time as a result of action by ASSOCIATIONS.

16. Other Association Monitoring Programs:

16.1 If MERCHANT is identified by certain ASSOCIATION monitoring programs, BANK's ability to reverse CHARGEBACKS may be severely restricted.

16.2 Certain monitoring programs review the number of lost, stolen and counterfeit CARDS accepted by MERCHANT in its normal course of business and the percentage of CARDS used for SALES that were not read electronically by terminals or ECRs. The purpose of these programs is to reduce the use of lost, stolen and counterfeit CARDS.

16.3 In the event that MERCHANT is identified under these programs as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on lost, stolen, or counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated by BANK.

17. ASSOCIATION Registration Programs:

17.1 If MERCHANT is identified by certain ASSOCIATION registration programs, BANK will take the necessary steps to register the merchant. MERCHANT will pay BANK for any fine or charge levied by the ASSOCIATIONS on BANK or MERCHANT as a result of the registration program including but not limited to one-time registration fees, ongoing registration fees and non-compliance fees. This section may be amended from time to time as a result of action by ASSOCIATIONS.

UNIQUE BUSINESS REQUIREMENTS

18. Card Not Present Merchants:

18.1 MERCHANT may not accept Card Not Present SALES unless AGREEMENT specifically refers to Card Not Present SALES. If this is not the case, MERCHANT should contact BANK if they wish to accept Card Not Present SALES and provide descriptions of product types and marketing methods. BANK may refuse MERCHANT permission to accept Card Not Present SALES.

18.2 If MERCHANT is specifically authorized by BANK to accept Card Not Present SALES, no SALE shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the cardholder.

18.3 Card Not Present SALES do not require the cardholder's signature on the SALES DRAFT. MERCHANT is required to obtain the valid dates for each CARD used for a SALE. The expiration date must be submitted as part of the Authorization inquiry.

18.4 If MERCHANT supplies goods and/or services under a Pre-Authorization Order ("PO"), it shall not charge a cardholder for goods after receiving notice from a cardholder that the authorization for goods or services is canceled.

18.5 The receipt of a valid Authorization does not protect MERCHANT from CHARGEBACKS on SALES for the Unauthorized Purchaser reason code. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code.

18.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.

18.7 Card Not Present MERCHANTS are encouraged to investigate the CHARGEBACK protection attributes of the various Address Verification Services and Card Verification Value Services available from ASSOCIATIONS.

18.8 MERCHANT, or its agent, shall implement and maintain all of the security requirements specified in PCI. MERCHANT shall immediately notify BANK of the use of an agent. MERCHANT shall immediately notify BANK of any suspected or confirmed loss or theft of material or records that contain account information and both:

- A. demonstrate its ability to prevent future loss or theft of account or transaction information; and
- B. allow the ASSOCIATIONS, or an acceptable independent third party, to verify this ability by conducting a security review.

18.9 Electronic Commerce Merchants (VISA):

A. VISA makes the 3-D Authentication system available to Electronic Commerce Merchants as a way to reduce fraud in Internet Transactions. Electronic Commerce Merchants may elect to implement 3-D Secure. Electronic Commerce Merchants that process 3-D Secure Transactions must comply with requirements specified in the: (i) VISA Operating Regulations; (ii) the VISA 3-D Secure: Merchant Implementation Guide and (iii) VISA Cardholder Information Security Program.

B. A web site operated by an Electronic Commerce Merchant must contain all of the following information: (i) a complete description of the goods or services offered; (ii) the merchant's returned merchandise and refund policy; (iii) the merchant's customer service contact, including electronic mail addresses and/or telephone number; (iv) the transaction currency; (v) any export or legal restrictions (if known); (vi) the merchant's delivery policy; (vii) the address of the merchant's permanent establishment; (viii) the merchant's consumer data privacy policy; and (ix) the security method for the transmission of payment data.

C. Electronic Commerce Merchants must offer cardholders a secure transaction method, such as: (i) Secure Sockets Layer (SSL), or (ii) 3-D Secure.

18.10 Installment Billing Transactions (VISA):

A. If it offers an Installment Billing Transaction option, MERCHANT must:

- 1) Disclose, in writing, the terms, including but not limited to, whether the installment terms are limited to certain goods that a cardholder may purchase. The written disclosure must also include the shipping and handling charges and any applicable tax;

- 2) Inform a cardholder not billed in the transaction currency of the MERCHANT that each Installment Billing Transaction amount may vary due to currency conversion rate fluctuations;
 - 3) Ensure that the sum of the Installment Billing Transactions does not include any finance charge or exceed the total price of the goods; and
 - 4) Authorize all transactions (zero floor limit).
- B. MERCHANT must not add finance charges to an Installment Billing Transaction.
- C. MERCHANT must not deposit the first installment Billing Transaction with BANK until the shipment date of the goods. MERCHANT must deposit subsequent Installment Billing Transaction Receipts at either of the following intervals: (i) 30 calendar days or more, or (ii) monthly anniversary of the shipment date (same day of each month).

18.11 Card Identification Data (CID) (Discover):

- A. MERCHANT is required to submit the CID with the authorization request for a Card Not Present CARD sale. MERCHANT's failure to include the CID in an authorization request where required may result in a negative authorization response and may increase the fees MERCHANT is obligated to pay. If MERCHANT does not submit CID with an authorization request for a Card Not Present CARD sale, MERCHANT may lose a dispute of the CARD sale. MERCHANT is prohibited from retaining, archiving or otherwise storing the CID in any form or format for any reason, including the recording of the CID on SALES DRAFTS or the making of photocopies of the front or back of CARDS.

19. Vehicle Rental Authorization Procedures:

- 19.1 A special authorization procedure is available if MERCHANT estimates the transaction amount based upon cardholder's intended rental length at time of rental, the applicable rental rate, tax, and/or mileage rates. Such estimated transaction amount shall not include ancillary charges representing amounts to cover potential vehicle damages or insurance deductibles when cardholder waives insurance at time of rental.
- 19.2 MERCHANT shall record on the SALES DRAFT the date, amount, and all authorization approvals obtained.
- 19.3 MERCHANT shall disclose to cardholder the amount authorized at the time of rental.
- 19.4 Subsequent Authorization:
- A. If no Authorization was obtained at time of rental and MERCHANT, based upon cardholder's actual charges later estimates the transaction amount will exceed the applicable floor limit, MERCHANT may obtain an Authorization approval code for the new estimated amount.
 - B. MERCHANT may obtain Authorization for additional amounts (above any amount not authorized) on the car rental pick-up date or prior to the car rental return date. Additional Authorization is not necessary if the sales transaction does not exceed the sum of the authorized amounts plus fifteen percent (15%) of the sum of the authorized amounts.

20. Paper Processing Merchants:

- 20.1 Paper processing MERCHANTS shall authorize by using the established Floor Limits. Any MERCHANT that wishes to accept a SALES transaction under the established Floor Limits, and which is not authorized, is liable for the resulting CHARGEBACKS from those CARD numbers listed on the Electronic Exception File.
- 20.2 In the case of a MERCHANT depositing paper drafts, such drafts shall be deposited with BANK within five (5) days of the SALE date.

21. Express Payment Services ("EPS"):

- 21.1 Any "fast food" restaurant, motion picture theater, or parking lot MERCHANT that wishes to participate in the VISA or MASTERCARD EPS program must first obtain an EPS Agreement with BANK.

22. Travel and Entertainment ("T&E") Merchants:

- 22.1 A MERCHANT whose primary function is to provide travel related services shall be referred to as a Travel & Entertainment ("T&E") MERCHANT. These include but are not limited to car rental, lodging, and central reservation services.
- 22.2 A T&E MERCHANT may process delayed or amended charges if the cardholder has consented to be liable for those charges. These charges may NOT include charges for loss, theft, or damage.

23. T&E Services:

- 23.1 A T&E MERCHANT may participate in any of the following VISA T&E Services:

- A. Priority Check-Out Service
- B. T&E Advance Deposit Service
- C. T&E Cash Disbursement Service
- D. VISA Reservation Service

RULES which apply to the VISA T&E Services are available upon request.

23.2 Priority Check-Out Service:

- A. MERCHANT agrees to do the following for VISA transactions:
- 1) accept all VISA CARDS;
 - 2) have cardholder complete, sign, and return a Priority Check-Out Agreement ("Agreement") which includes the cardholder's mailing address;
 - 3) complete a SALES DRAFT which includes the total SALES amount and the words "Priority Check-Out" on the signature line;
 - 4) review the completed Agreement and ensure the account number matches the account number on the SALES DRAFT if applicable;
 - 5) comply with normal Authorization and deposit requirements;

- 6) at the cardholder's request, MERCHANT must mail the SALES DRAFT copy, the itemized bill, and the signed Agreement to the cardholder within three (3) business days of the cardholder's departure; and
- 7) MERCHANT must retain the itemized bill and signed Agreement for a minimum of six (6) months after the transaction date.

B. MERCHANT agrees to do the following for MasterCard transactions:

- 1) accept all MasterCard CARDS;
- 2) obtain a card imprint;
- 3) complete a SALES DRAFT with one of the following typed or legibly printed on the signature line: telephone order ("TO"), mail order ("MO") "PO," "Guaranteed Reservation/No Show," "Signature on File-Express Check-out," or "Advance Deposit;"
- 4) retain and make available to the acquirer upon request the customer's written request to the MERCHANT for pre-authorization; and
- 5) not deliver goods or perform services covered by a pre-authorization after receiving notification that the pre-authorization is canceled or that the MasterCard card covered by the pre-authorization is not to be honored.

C. MERCHANT agrees to do the following for Discover transactions:

- 1) If MERCHANT offers priority check-out services, MERCHANT must comply with the following requirements: (i) require the cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a SALES DRAFT at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the cardholder signature line of the SALES DRAFT; (iv) obtain a final authorization code for any additional amounts from the check-in estimate to equal the total amount to be billed to the cardholder by following the normal authorization procedures; and (v) mail (at the address shown on the registration card) or otherwise deliver a copy of the SALES DRAFT and the itemized lodging bill (portfolio) to the cardholder within seven (7) calendar days of check-out.

23.3 T&E Advance Deposit Service: MERCHANT agrees to:

- A. accept all VISA CARDS;
- B. obtain the cardholder name, account number, expiration date on the card, telephone number, mailing address, scheduled date of arrival/embarkation/rental, and intended length of stay/term/rental;
- C. determine the Advance Deposit amount, which is the cost of the intended length of stay, cost of the cruise, or cost of the intended term of rental, not to exceed fourteen (14) days;
- D. apply the deposit amount to the total obligation;
- E. provide: (1) reservation confirmation code to the cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
- F. advise the cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;
- G. advise the cardholder that MERCHANT will retain the deposit amount if the cardholder has not canceled the reservation within the specified timeframes;
- H. MERCHANT must not charge for a no-show transaction;
- I. complete the SALES DRAFT including Advance Deposit amount, cardholder name/ mailing address/telephone number/account number, expiration date, the words "Advance Deposit" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- J. follow normal Authorization procedures;
- K. mail a SALES DRAFT copy and cancellation policy to the cardholder within three (3) business days of the SALES date;
- L. accept all cardholder cancellations within the time limits specified by MERCHANT;
- M. upon cancellation, MERCHANT shall complete a Credit Transaction Receipt with the information set out in I above and including the cancellation code. MERCHANT must deposit the Credit Transaction Receipt within five (5) days of the transaction date and mail a copy to the cardholder within three (3) days of the transaction date of the Credit Transaction Receipt;
- N. for a lodging MERCHANT, if the reserved accommodations are unavailable, the MERCHANT must provide the cardholder the following services without charge: refund the entire Advance Deposit amount, provide a copy of the Credit Transaction Receipt to the cardholder, comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed fourteen (14) nights or until the reserved accommodations become available, two (2) three (3) minute telephone calls, message forwarding to the alternate establishment, transportation to the alternate establishment and return to the original establishment and if requested, daily transportation to and from the alternate establishment and the MERCHANT location; and
- O. for a car rental MERCHANT, if the reserved vehicle is unavailable, the MERCHANT must provide the cardholder the following services without charge: refund the entire Advance Deposit amount and provide a comparable vehicle for the number of days specified in the reservation, not to exceed fourteen (14) days or until the reserved vehicle becomes available.

23.4 T&E Cash Disbursement Service: MERCHANT may make cash disbursement to a registered VISA Gold or Platinum cardholder under the following conditions:

- A. cardholder indicates at registration the intent to pay for services with a VISA CARD;

- B. before disbursement, the MERCHANT reviews positive identification, and if permitted by applicable law, records type and number on the SALES DRAFT;
 - C. MERCHANT completes an eighty (80) column Cash Disbursement SALES DRAFT or a fifty-one (51) column Cash Disbursement SALES-T&E that includes the cardholder's positive identification or a Cash Disbursement Record;
 - D. MERCHANT does not disburse more than two hundred fifty dollars (\$250.00) during the cardholder's stay. Cash availability may limit cash disbursements; and
 - E. MERCHANT must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.
- 23.5 **Visa Reservation Service:** Any MERCHANT who accepts CARDS to guarantee reservations must do so in accordance with the following requirements:
- A. MERCHANT must accept all VISA CARDS;
 - B. MERCHANT will obtain the cardholder's account number, expiration date, and name embossed on the CARD. MERCHANT must quote to cardholder the rate of reserved accommodation, MERCHANT name and address, and the Confirmation Code advising that it be retained. Advise the cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the cardholder will be billed for one night's lodging plus applicable taxes. If requested, the MERCHANT will provide a written confirmation with the above information including the VISA Reservation Service provisions relating to the cardholder's obligation, and any other reservation details;
 - C. MERCHANT must accept all cancellations prior to the specified time. The MERCHANT must not require more than seventy-two (72) hours cancellation notification prior to the scheduled arrival date. But, if the cardholder makes the reservation within seventy-two (72) hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If the MERCHANT requires that the cardholder cancel before 6:00 p.m. on the arrival date, the MERCHANT must mail the cancellation policy to the cardholder;
 - D. if the reservation is properly canceled, MERCHANT must provide a cancellation code and advise the cardholder to retain it. If requested, MERCHANT must mail a confirmation of cancellation that includes the following: cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
 - E. if cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. MERCHANT may then complete a SALES DRAFT for one night's lodging plus applicable tax, indicating the cardholder's account number, expiration date, and name embossed on the CARD and the words "No Show" on the cardholder signature line. MERCHANT must obtain an authorization code for the no show transaction; and
 - F. if guaranteed accommodations are unavailable, MERCHANT must provide cardholder with comparable accommodations for one night at another establishment, transportation to the location of the alternative establishment, and if requested, provide cardholder with a three (3) minute telephone call and message forwarding to the alternate establishment. These services shall be provided at no cost to cardholder.

24. Pre-authorized Health Care Transactions:

- 24.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:
- A. a request for the services to be charged to the cardholder's account;
 - B. assignment of insurance benefits to the MERCHANT;
 - C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
 - D. duration of time, not to exceed one (1) year, for which permission is granted; and
 - E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.
- 24.2 MERCHANT must:
- A. retain a copy of the order form during the period it is in effect;
 - B. provide a copy of the order form upon BANK's request;
 - C. type or print the words "Pre-authorized Health Care" on the signature line of the SALES DRAFT; and
 - D. submit a SALES DRAFT within ninety (90) days of the service date and request authorization for the amount due upon receipt of notice of adjudication from the cardholder's insurance company.
- 24.3 MERCHANT must not complete a Pre-authorized Health Care Transaction after receiving a notice of cancellation from cardholder, BANK, or if the MERCHANT receives a decline response.

25. Visa Supermarket Program:

- 25.1 Any MERCHANT that wishes to participate in the VISA Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement from BANK.

26. Electron Card Program:

- 26.1 MERCHANT may accept Electron Cards. If a MERCHANT chooses to accept Electron Cards, it must accept all Electron Cards when properly presented and process all transactions as Electron Card transactions.

27. Automated Fuel Dispenser ("AFD") Program:

- 27.1 When an AFD transaction takes place, the card must be present and the entire, unaltered contents of either track 1 or track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.
- 27.2 The MERCHANT name, city, state, and zip code of the actual station location where the transaction took place must be included in any authorization or clearing message.
- 27.3 A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

- 27.4 MERCHANT must obtain an authorization for the exact amount of the transaction or use the Status Check Procedure that requires the MERCHANT to request an authorization for no more than one dollar (\$1.00).
- 27.5 MERCHANT must use the Status Check Procedure if the floor limit is zero and the actual transaction amount is no more than fifty dollars (\$50.00).
- 27.6 MERCHANT must have an established self-service terminal operating plan on file with BANK and must establish a velocity-check program that monitors the volume and frequency of account transactions.
- 27.7 The transaction ratio of CHARGEBACKS to total VISA Interchange for the MERCHANT chain must not exceed an average of 0.30 percent (0.003%) for the previous six (6) months.
- 27.8 The transaction ratio of fraud to total VISA Interchange for the MERCHANT chain must not exceed an average of 0.40 percent (0.004%) for the previous six (6) months.
- 27.9 Under no circumstances should the MERCHANT use an arbitrary estimation of the transaction amount to obtain an authorization.
- 27.10 An AFD must not dispense scrip.

28. Recurring Transactions:

- 28.1 MERCHANT will not accept recurring SALES transactions where the delivery of, provision of, or billing for, goods or services is performed on a periodic basis ("RECURRING TRANSACTIONS") without the express written consent of BANK and without following the rules stated below.
- 28.2 MERCHANT must obtain from the cardholder a completed Order Form containing a written request for the goods or services to be charged to the cardholder's CARD. The Order Form must include the transaction amount (unless the RECURRING TRANSACTIONS are for varying amounts), the frequency of the recurring charges, and the duration of time for which the cardholder's permission is granted. The cardholder signature (including electronic signature or other similar authentication) must be effective under applicable law.
- 28.3 MERCHANT must retain a copy of the Order Form for the duration of the RECURRING SERVICES and provide it to BANK upon request.
- 28.4 Upon completion of the SALES DRAFT, MERCHANT should write the words "Recurring Transaction" on the signature line.
- 28.5 When a RECURRING TRANSACTION is renewed, MERCHANT must obtain an updated Order Form (as set out above) from the cardholder.
- 28.6 For an Electronic Commerce Transaction, include the frequency and duration of the RECURRING TRANSACTION, as agreed to by the cardholder, on the SALES DRAFT and provide a simple and easily accessible online cancellation procedure, if the cardholder's request for goods or services was initially accepted online.
- 28.7 For RECURRING TRANSACTIONS, MERCHANT must not:
- A. include partial payment for goods or services purchased in a single transaction;
 - B. include additional finance charges on a RECURRING TRANSACTION;
 - C. complete a RECURRING TRANSACTION if it does not receive an Authorization or if it receives a cancellation notice from the cardholder; or
 - D. request or use a cardholder account number for purposes other than as payment for its goods or services.
- 28.8 For RECURRING TRANSACTIONS of varying amounts, the MERCHANT must:
- A. on the Order Form, allow the cardholder to specify a minimum and a maximum transaction amount to be charged;
 - B. inform the cardholder of his/her right to receive, with at least ten (10) days notice before the transaction date, a written notification of the amount and date of the next charge; and
 - C. allow the cardholder to choose to receive notice in any of the following ways: (i) for every charge; (ii) when the transaction amount is outside of the specified minimum and maximum amount range; and (iii) when the transaction amount will differ from the most recent charge by more than an agreed upon amount.

29. Delayed Delivery Transactions:

- 29.1 MERCHANT must obtain an authorization if the cumulative total of both SALES DRAFTS exceeds the floor limit. MERCHANT must obtain authorization for each SALES DRAFT on each transaction date.
- 29.2 MERCHANT must:
- A. Assign a separate authorization number for each SALES DRAFT; and
 - B. Write the following information on the appropriate SALES DRAFT:
 - 1) Words "Delayed Delivery;"
 - 2) Word "Deposit" or "Balance," as appropriate; and
 - 3) Authorization date and authorization code, if applicable.
- 29.3 MERCHANT may deposit the SALES DRAFT for the delayed delivery deposit before delivery of the goods or service.
- 29.4 MERCHANT must not deposit the SALES DRAFT for the balance before delivery of the goods or service.

30. Card Checks (Discover):

- 30.1 Card checks are frequently issued to cardholders. MERCHANT agrees to accept Card checks on a basis consistent with the terms of MERCHANT's policy applicable to the acceptance of other payment card checks. MERCHANT should handle these Card checks like any other personal check drawn upon a bank in United States.

31. Employee Purchases:

- 31.1 MERCHANT is prohibited from conducting Cash Advances, Card Sales or returns for goods or services with the MERCHANT's owners, officers or employees using such individual's personal Card(s), except for bona fide Card Transactions in the ordinary course of MERCHANT's business. MERCHANT is responsible for the actions and omissions of MERCHANT's principals, officers,

employees and agents, including any fraud committed by, and/or any intentional or negligent acts or omissions by, any owner, officer or employee of MERCHANT.

ATM/DEBIT NETWORK RULES

NOTICE: This information is a summary of common ATM/Debit Network rules; however, card acceptance, processing and chargeback procedures are subject to change.

ATM/DEBIT NETWORK CARD ACCEPTANCE PROCEDURES

1. Discrimination:

- 1.1 MERCHANT shall honor all valid CARDS without discrimination. When MERCHANT has multiple locations, the MERCHANT shall instruct each location not to discriminate between the cardholder and other customers.
- 1.2 MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a CARD, unless required by the RULES.
- 1.3 MERCHANT may not require or request the cardholder's signature or any other means of verifying the cardholder's identity.
- 1.4 MERCHANT shall place the PIN Entry Device in an area accessible by all cardholders and that can reasonably prevent others from observing the entered PIN.
- 1.5 MERCHANT shall not request or require the cardholder to provide or disclose their PIN in any oral or written manner to the MERCHANT.

2. SALES DRAFTS:

- 2.1 MERCHANT shall deliver to the cardholder at the time of a SALE a true and completed copy of the SALES DRAFT evidencing a SALE involving use of a CARD. The SALES draft must comply with the requirements of all RULES, and LAWS.
- 2.2 The following information must be included on the SALES DRAFT: (i) CARD account number; (ii) MERCHANT's DBA name; (iii) MERCHANT's city and state; (iv) amount of SALE; and (v) SALE date.
- 2.3 A SALES DRAFT shall be made available to the cardholder at each terminal.
- 2.4 MERCHANT may not require or request the cardholder to divulge the PIN belonging to that cardholder.
- 2.5 MERCHANT shall not impose any fee or charge without the prior written consent of BANK. If surcharging is approved by BANK, it must be a separate line item on the SALES draft and must be in compliance with all NETWORKS' rules, and LAWS.
- 2.6 MERCHANT shall not process any SALE if the terminal does not receive an authorization code. When a denial to an authorization request is received, the POS transaction shall not be completed, unless completed as a MERCHANT Store and Forward Transaction or Resubmission Transaction.
- 2.7 A SALE shall not be completed if the MERCHANT knows or should know that the SALE is fraudulent or not authorized by the cardholder.
- 2.8 A SALE may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the SALE was initiated. To effect a reversal or void, cardholder must re-enter the PIN, the magnetic stripe reader must read the card, and MERCHANT must transmit the trace number and the exact dollar amount of the SALE to be reversed or voided. A reversal or void must be initiated at the same MERCHANT identified on the SALES draft at which the original SALE was initiated, but need not be initiated at the same POS terminal.
- 2.9 All returns shall be processed in accordance with the MERCHANT's normal procedures, except that MERCHANT or cardholder shall not attempt to reverse a previously approved POS Transaction, unless otherwise permitted in accordance with the rules.
- 2.10 Any SALES known by the MERCHANT to be erroneous should be canceled and re-billed, in the cardholder's presence.
- 2.11 Balance inquiries may be performed only by the cardholder at a cardholder-operated terminal and shall at all times require the cardholder to enter the PIN and use the magnetic stripe reader.

3. SALES DRAFTS - Distribution and Storage of Information:

- 3.1 MERCHANT shall not disclose a cardholder's account information or any other personal information to third parties other than to MERCHANT's agents for the purpose of completing the SALE or as specifically required by law or by the RULES.
- 3.2 MERCHANT shall store in a limited access area for at least one (1) year after the date of SALES all transaction records and MERCHANT shall make and retain for at least two (2) years the original or legible microfilm copies of both sides of all transaction records; Prior to discarding, MERCHANT shall destroy or make unreadable all material containing cardholder account numbers.
- 3.3 There are no voice authorizations for transactions and no manually imprinted SALES drafts.

4. Promotional Materials:

- 4.1 MERCHANT will adequately display promotional materials to inform the public that MERCHANT will honor CARDS.
- 4.2 All uses by MERCHANT of decals, signs, printed and broadcast materials and other promotional materials must be in conformity with the requirements of the NETWORKS and BANK. MERCHANT will not at any time do, or cause to be done, any act or deed in any way impairing or intended to impair BANK's, NETWORKS's, or SPONSOR's exclusive right, title and interest in and to its respective protected marks.
- 4.3 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS' services.
- 4.4 MERCHANT may not refer to CARDS in stating eligibility for its products, services, or membership.
- 4.5 MERCHANT shall permit BANK or SPONSOR, at all reasonable times, to inspect the MERCHANT's use of the promotional materials. Should any materials fail to meet BANK's, NETWORKS' or SPONSOR's approval, for any reason, the MERCHANT agrees to cease using such material. Neither BANK, NETWORKS nor SPONSOR shall be liable to MERCHANT for losses relating to the disapproval of use of such materials.
- 4.6 MERCHANT shall be responsible for all costs associated with promotional material.

4.7 All advertising or publicity by any terminated MERCHANT using the Service mark shall immediately cease upon such termination.

CHARGEBACKS

5. General:

- 5.1 MERCHANT agrees to pay BANK for any NETWORK fees, fines or charges imposed on MERCHANT or BANK. Such reimbursement will be accomplished by the debit of the sum(s) involved from the MERCHANT's DESIGNATED ACCOUNT.
- 5.2 Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS.
- 5.3 BANK agrees to mail all CHARGEBACK documentation to MERCHANT promptly to MERCHANT's address shown on AGREEMENT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If BANK elects, at its discretion, to take action on CHARGEBACKS after the NETWORK time limits have expired, such action shall be done at additional cost. Upon request of NETWORK or BANK, the MERCHANT will retrieve and forward to BANK, within the time frame required by the NETWORKS, either the original or a readable copy of the Terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the NETWORK such information from such transaction records as it requests by telephone. The MERCHANT will, on request of the NETWORK, cooperate fully with the NETWORK and the card-issuing participant in order that the participant may comply with the error resolution procedures.

6. Monitoring Programs:

- 6.1 If certain monitoring programs identify MERCHANT, BANK's ability to reverse CHARGEBACKS can be severely restricted.
- 6.2 Certain Monitoring Programs review the number of Lost, Stolen and Counterfeit CARDS accepted by MERCHANT in its normal course of business. The purpose of these Programs is to reduce the use of Lost, Stolen and Counterfeit CARDS.
- 6.3 In the event that MERCHANT is identified under these PROGRAMS as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on Lost, Stolen, or Counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated on notice by BANK.

OPERATIONAL REQUIREMENTS

7. MERCHANT Name and Address:

- 7.1 All forms submitted to BANK must bear both the corporate and "Doing Business As" ("DBA") name.

8. Use of Service Marks:

- 8.1 The MERCHANT shall prominently display service marks at or near all major public access points to inform the public that MERCHANT will honor CARDS. The service marks of all POS services shall be displayed in the same location and shall be of equal size. MERCHANT shall always display the service marks in their full color version. The MERCHANT must display the service marks upon acceptance of the CARDS.
- 8.2 The MERCHANT shall not use the service marks for any other purpose without the express written consent of the NETWORKS.
- 8.3 The NETWORKS shall have the right to inspect the MERCHANT's use of the service marks and require the MERCHANT to cease use of its respective service mark if not in compliance with these RULES or any other of its respective NETWORK rules.
- 8.4 The MERCHANT's right to use and display the service marks shall terminate upon termination of this agreement. Upon termination, voluntary or involuntary, the MERCHANT shall immediately remove all service marks from all terminals and from any other display location maintained by such MERCHANT or otherwise associated with such terminals.
- 8.5 MERCHANTS who use the service marks shall obtain no interest in the service marks except the right to use them in accordance with the RULES.

9. Equipment:

- 9.1 A MERCHANT shall take all necessary steps to insure that all POS Terminals and PIN Pads operated in all of its locations:
 - A. are placed in an area accessible by all cardholders;
 - B. are available for use whenever open for business;
 - C. will function with a minimum of error meeting all applicable technical specifications and security regulations; and
 - D. will require the cardholder to enter the cardholder's PIN at or near the check out location when initiating a POS Transaction.
- 9.2 A PIN pad or PIN processor must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released.
- 9.3 Terminals must have a Magnetic Stripe reader capable of reading Track 2 on the CARDS.
- 9.4 PINS used in conjunction with any store and forward transaction or MERCHANT resubmission must be encrypted and stored within a Tamper Resistant Security Module.
- 9.5 If MERCHANT's authorization system is capable of store and forward, it must comply with the NETWORKS's rules and regulations regarding this capability. BANK, the Issuer, and the NETWORKS shall not be liable for any losses suffered by a MERCHANT arising from the use of the store and forward function.
- 9.6 A PIN must never be logged in any form as a function of software either in the clear or encrypted.

MISCELLANEOUS RULES

10. Liability of MERCHANT:

- 10.1 MERCHANT shall be liable for all actions of its employees and agents and shall insure that they comply with the RULES and all LAWS.

11. Supply of Information:

- 11.1 MERCHANTS must submit all information requested by the NETWORKS and BANK, including, but not limited to, lists and mailing addresses of terminals.
- 11.2 A MERCHANT shall not sell, purchase, provide, or exchange account number information in the form of transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, or other media obtained by reason of a SALE to any third party other than to the MERCHANT's agents for the purpose of assisting the MERCHANT in its business; or to the NETWORK or BANK; or pursuant to a government request.

12. Left CARDS:

- 12.1 CARDS that are inadvertently left at a MERCHANT location must be held under dual control during the time they are retained.
- 12.2 CARDS inadvertently left at a MERCHANT location may be returned to the cardholder by MERCHANT under the following conditions: (i) the CARD was inadvertently left by the cardholder at an on-premise location, and (ii) the cardholder requests the CARD within one business day, and (iii) the cardholder provides two forms of current identification, one of which is a photo identification.
- 12.3 If the cardholder has not requested the CARD within one business day, the CARD should be destroyed by cutting it in half through the stripe and processed in the normal manner.

13. Security Features:

- 13.1 BANK, NETWORK or their designated agent, on behalf of itself or others, shall have the right to inspect MERCHANT's security systems and procedures from time to time.

ADDENDUM TO THE MERCHANT TRANSACTION PROCESSING AGREEMENT

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("FNBO" or "BANK") TSYS Merchant Solutions, LLC ("TMS") and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

WHEREAS, BANK, and GRAPHITE PAYMENTS ("GRAPHITE PAYMENTS") and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which FNBO provides transaction processing and other services regarding credit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and

WHEREAS, the PARTIES desire to amend the AGREEMENT as set forth below.

NOW THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. Capitalized terms which are not defined herein shall have the same meaning as when defined in the AGREEMENT.
2. The PARTIES agree to delete the first paragraph of the Processing Terms and Conditions and replace it in its entirety with the following:

This Merchant Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), is by and among the parties in the signature block of the Merchant Application, GRAPHITE PAYMENTS, TMS and BANK (the "PARTIES"). GRAPHITE PAYMENTS and Credit Card Processing USA, Inc. d/b/a MSI Merchant Services, Inc. shall together be referred to as "SERVICE PROVIDERS". The AGREEMENT shall become effective as of the last date in the signature block of the Merchant Application.

3. The PARTIES agree to delete Section 1.6 of the AGREEMENT and replace it in its entirety with the following:

MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by law. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. MERCHANT must keep all systems and media containing account, cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than MERCHANT's authorized personnel. MERCHANT must destroy, in a manner that will render the data unreadable, all such media that MERCHANT no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store magnetic stripe, CVV2 or CVC2 data after a transaction. If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify TMS, BANK, and GRAPHITE PAYMENTS of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must (1) only allow the Merchant Providers access to the cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at www.visa.com) or the MasterCard Site Data Protection Program ("SDP") (found at www.mastercard.com), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify TMS, BANK, and GRAPHITE PAYMENTS of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. MERCHANT is responsible for demonstrating MERCHANT's and Merchant Providers' compliance with the CISP, SDP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers ability to prevent future security

violations. Any fees, fines, or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify TMS, BANK, and GRAPHITE PAYMENTS and the ASSOCIATIONS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT's cost, to provide all information requested by TMS, BANK, GRAPHITE PAYMENTS, an ASSOCIATION, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT and TMS and/or BANK) be considered to be TMS and/or BANK's confidential information. You agree that TMS, BANK, and/or GRAPHITE PAYMENTS may release to ASSOCIATIONS, financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to TMS and/or BANK in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the ASSOCIATIONS websites.

4. The PARTIES agree to delete the third sentence of Section 2.2 of the AGREEMENT and replace it in its entirety with the following: "TMS, BANK, and GRAPHITE PAYMENTS do not warrant the continuing availability of the NETWORK."
5. The PARTIES agree to delete Section 2.4 of the AGREEMENT and replace it in its entirety with the following:
 - 2.4 TMS, BANK, and GRAPHITE PAYMENTS may provide MERCHANT access through MERCHANT's terminals to the NETWORKS as set forth herein."
6. The PARTIES agree to delete the third sentence of Section 3.3 of the AGREEMENT and replace it in its entirety with the following:
 - 3.3 MERCHANT agrees that if such information is shown to be incorrect or such information changes, TMS, BANK, and/or GRAPHITE PAYMENTS may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change.
7. The PARTIES agree to amend the first sentence of Section 3.7 of the AGREEMENT as follows:
 - 3.7 "If the ASSOCIATIONS or a regulatory body governing TMS, BANK, or GRAPHITE PAYMENTS should levy a fine or penalty or assess a charge to TMS, BANK, or GRAPHITE PAYMENTS as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same."
8. The PARTIES agree to delete the second and third sentence from the last sentence of Section 3.8 of the AGREEMENT and replace it in its entirety with the following:
 - 3.8 "MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to Funds Transfer Instructions set out herein, authorizes TMS, BANK, and/or GRAPHITE PAYMENTS to make deposits and withdrawals for the DESIGNATED ACCOUNT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from TMS, BANK, and/or GRAPHITE PAYMENTS with respect to the DESIGNATED ACCOUNT.
9. The PARTIES agree to add to the end of Section 3.8 the following sentence:
 - 3.8 MERCHANT shall notify TMS, BANK, and/or GRAPHITE PAYMENTS at least 5 business days prior to a change in the DESIGNATED ACCOUNT, and shall submit an ACH Change Form to TMS, BANK, and/or GRAPHITE PAYMENTS."
10. The PARTIES agree to delete Section 3.9 of the AGREEMENT and replace it in its entirety with the following:
 - 3.9 MERCHANT agrees to provide TMS and/or BANK with a deposit in the amount required by TMS, BANK, and/or GRAPHITE PAYMENTS ("RESERVE ACCOUNT"), if determined necessary by TMS, BANK, and/or GRAPHITE PAYMENTS: (i) at the time this AGREEMENT is executed, (ii) if in the opinion of TMS, BANK, and/or GRAPHITE

PAYMENTS, information received or discovered about MERCHANT reflects an adverse change in status; (iii) in the event that any information requested by TMS, BANK, and/or GRAPHITE PAYMENTS is not received; (iv) upon notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of the AGREEMENT. TMS, BANK and/or GRAPHITE PAYMENTS may withhold the payment for SALES in an amount reasonably determined by TMS, BANK, and/or GRAPHITE PAYMENTS as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, TMS, BANK, and/or GRAPHITE PAYMENTS may require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with BANK in the name of BANK and under the sole control of BANK, and MERCHANT grants to TMS and BANK a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to TMS, BANK and/or GRAPHITE PAYMENTS under this AGREEMENT. RESERVE ACCOUNT funds may be commingled with other funds, and need not be maintained in a separate account designated to MERCHANT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days plus, the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. TMS, BANK, and/or GRAPHITE PAYMENTS may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to TMS, BANK, and/or GRAPHITE PAYMENTS under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance of the RESERVE ACCOUNT, if any, shall be paid to the MERCHANT.

11. The PARTIES agree to delete Section 3.10 of the AGREEMENT in its entirety and replace it with the following:

- 3.10 TMS, BANK, and/or GRAPHITE PAYMENTS agree to pay MERCHANT for SALES less FEES owed to TMS, BANK, and/or GRAPHITE PAYMENTS by MERCHANT. TMS, BANK, and/or GRAPHITE PAYMENTS shall recoup and deduct FEES for incoming transactions or recoup and debit the same from MERCHANT's DESIGNATED ACCOUNT or the RESERVE ACCOUNT. MERCHANT agrees that TMS, BANK, and/or GRAPHITE PAYMENTS have the right to deduct these FEES at any time including on a daily basis if necessary. TMS, BANK, and/or GRAPHITE PAYMENTS is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to TMS and/or BANK after MERCHANT becomes insolvent, ceases to do business, or dissolves.

12. The PARTIES agree to delete Section 3.11 of the AGREEMENT and replace it in its entirety with the following:

- 3.11 TMS, BANK, and/or GRAPHITE PAYMENTS have the right of recoupment and set-off. This means that TMS, BANK, and/or GRAPHITE PAYMENTS may recoup and offset any outstanding or uncollected amounts owed to TMS, BANK, and/or GRAPHITE PAYMENTS from (i) any amounts TMS, BANK, or GRAPHITE PAYMENTS would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts TMS and/or BANK may owe MERCHANT under this AGREEMENT or any other agreement. MERCHANT acknowledges that in the event of a bankruptcy proceeding, in order for MERCHANT to provide adequate protection under Bankruptcy Code § 362 to TMS, BANK, and/or GRAPHITE PAYMENTS, MERCHANT must create or maintain the RESERVE ACCOUNT as required by TMS, BANK, and/or GRAPHITE PAYMENTS, and TMS, BANK, and GRAPHITE PAYMENTS will have the right to offset against the RESERVE ACCOUNT for any and all obligations which you may owe to TMS, FNBO, and GRAPHITE PAYMENTS without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition."

13. The PARTIES agree to delete the second sentence of Section 3.12 of the AGREEMENT and replace it in its entirety with the following:

- 3.12 If MERCHANT breaches AGREEMENT or if TMS, BANK, and/or GRAPHITE PAYMENTS identify suspicious or irregular activity related to SALES or SERVICES, TMS, Bank, and/or GRAPHITE PAYMENTS may refuse to process SALES or to provide SERVICES and/or may hold funds pending the cure of such breach or resolution of such activity."

14. The PARTIES agree to delete Section 3.13 of the AGREEMENT and replace it in its entirety with the following:
 - 3.13 If any action is taken against MERCHANT to collect any FEES or monies due pursuant to this Agreement, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney's fees, to the extent allowed by law.

15. The PARTIES agree to delete Section 5.1 of the AGREEMENT and replace it in its entirety with the following:
 - 5.1 This AGREEMENT may be terminated by TMS, BANK and/or GRAPHITE PAYMENTS at any time effective upon thirty (30) days written notice.16. The PARTIES agree to delete Section 5.2(B) of the AGREEMENT and replace it in its entirety with the following:
 - 5.2 (B) upon written notice of non-renewal at least thirty (30) and no more than ninety (90) days prior to the commencement of any RENEWAL TERM; or

17. The PARTIES agree to delete the first portion of Section 5.3 of the AGREEMENT and replace it with the following:
 - 5.3 "In order to protect the ASSOCIATIONS, TMS, BANK,and/or GRAPHITE PAYMENTS, TMS, BANK, and/or GRAPHITE PAYMENTS may terminate this AGREEMENT effective immediately for any of the following reasons:"

18. The PARTIES agree to delete Section 5.4 of the AGREEMENT and replace it in its entirety with the following:
 - 5.4
 - A. In the event that this AGREEMENT is terminated by TMS, BANK, and/or GRAPHITE PAYMENTS for cause, TMS, BANK, and/or GRAPHITE PAYMENTS may be required to report the name and address of MERCHANT and MERCHANT's principals to the ASSOCIATIONS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to TMS, BANK, and/or GRAPHITE PAYMENTS for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.
 - B. MERCHANT hereby releases, indemnifies and holds TMS, BANK, GRAPHITE PAYMENTS, and the ASSOCIATIONS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by TMS, BANK, and/or GRAPHITE PAYMENTS, or its Agents on the ASSOCIATIONS merchant monitoring lists.

19. The PARTIES agree to delete the second and third sentences of Section 6.1 of the AGREEMENT and replace them in their entirety with the following:
 - 6.1 "Upon filing voluntary or involuntary bankruptcy proceedings by or against MERCHANT,MERCHANT must notify TMS, BANK, and GRAPHITE PAYMENTS in writing within five (5) days. Notification must be sent by certified mail to TMS, BANK, and GRAPHITE PAYMENTS at the address for NOTICES set out herein."

20. The PARTIES agree to add the following sentence after the second sentence of Section 6.2 of the AGREEMENT:
 - 6.2 "MERCHANT acknowledges that MERCHANT's obligation to TMS, BANK, and GRAPHITE PAYMENTS for all amounts owed under this AGREEMENT arise out of the same transaction as FNBO's obligation to deposit funds in the DESIGNATED ACCOUNT."

21. The PARTIES agree to delete Section 7.1 of the AGREEMENT and replace it in its entirety with the following:
 - 7.1 MERCHANT agrees to comply with all requests for information and documentation regarding SALES and the CARDS utilized in processing SALES or SERVICES under AGREEMENT within the time stated by TMS, BANK, and/or GRAPHITE PAYMENTS in its request. MERCHANT authorizes TMS, BANK, and/or GRAPHITE PAYMENTS to audit MERCHANT's records to confirm compliance with AGREEMENT. MERCHANT will obtain, and submit a copy of an audit of MERCHANT's business when requested by TMS, BANK, and/or GRAPHITE PAYMENTS.
22. The PARTIES agree to delete Section 7.3 of the AGREEMENT and replace it in its entirety with the following:
 - 7.3 Upon request by TMS, BANK, and/or GRAPHITE PAYMENTS, MERCHANT shall provide TMS, BANK, and/or GRAPHITE PAYMENTS with current financial statements in a format acceptable to TMS, BANK, and/or GRAPHITE PAYMENTS.
23. The PARTIES agree to delete Section 7.5 of the AGREEMENT and replace it in its entirety with the following:
 - 7.5 MERCHANT is supplied with monthly reports by TMS and GRAPHITE PAYMENTS regarding MERCHANT's SALES or SERVICES activity. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to GRAPHITE PAYMENTS within thirty (30) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports and to have accepted any change in FEES listed in said reports as delivered.
24. The PARTIES agree to delete Section 7.6 of the AGREEMENT and replace it in its entirety with the following:
 - 7.6 MERCHANT will notify TMS and GRAPHITE PAYMENTS immediately of any change in ownership, Corporate or "DBA" name, location address, or the information contained on MERCHANT's imprinter plates.
25. The PARTIES agree to delete the first sentence of Section 8.1 of the AGREEMENT and replace it with the following:
 - 8.1 "MERCHANT agrees that it will not materially change its BUSINESS or the method in which it markets or sells the goods and services of BUSINESS without informing TMS, BANK, and GRAPHITE PAYMENTS in advance of such change."
26. The PARTIES agree to delete Section 9.3 of the AGREEMENT and replace it in its entirety with the following:
 - 9.3 MERCHANT agrees that TMS, BANK, and GRAPHITE PAYMENTS are not responsible for any services or equipment provided by any third party with which MERCHANT has contracted.
27. The PARTIES agree to delete Section 9.4 of the AGREEMENT and replace it in its entirety with the following:
 - 9.4 MERCHANT shall assume full liability and shall indemnify and hold TMS, BANK, GRAPHITE PAYMENTS and ASSOCIATIONS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAW or RULES.
28. The PARTIES agree to delete Section 10 of the AGREEMENT and replace it in its entirety with the following:

LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

 - 10.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. TMS, BANK, and/or GRAPHITE PAYMENTS shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. TMS, BANK, and/or GRAPHITE PAYMENTS shall not be liable for any services or products of third parties. In any event, TMS', BANKS, and GRAPHITE PAYMENTS's liability to MERCHANT, whether arising in contract, tort (including, without

limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid by MERCHANT in the month prior to the incident giving rise to liability. In no event shall ASSOCIATIONS, or VISA's contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL TMS, BANK, GRAPHITE PAYMENTS, ASSOCIATIONS, OR VISA'S CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR TMS, BANK, OR GRAPHITE PAYMENTS WERE ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

10.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED by TMS, BANK, GRAPHITE PAYMENTS, ASSOCIATIONS, AND VISA'S CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. TMS, BANK, AND GRAPHITE PAYMENTS ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

29. The PARTIES agree to delete Section 11.4 of the AGREEMENT and replace it in its entirety with the following:

11.4 MERCHANT agrees to indemnify and hold harmless TMS, BANK, GRAPHITE PAYMENTS, SPONSORS, and ASSOCIATIONS, including VISA's contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any applicable LAWS, the RULES or the rights of another person or otherwise injures any third party. TMS, BANK, GRAPHITE PAYMENTS, SPONSORS, or the ASSOCIATIONS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify TMS, BANK, GRAPHITE PAYMENTS, SPONSORS, and the ASSOCIATIONS for reasonable attorney's fees or any other necessary expenses incurred by TMS, BANK, and/or GRAPHITE PAYMENTS by reason of such defense.

30. The PARTIES agree to amend Section 12.2 to add the following:

If to GRAPHITE PAYMENTS:

GRAPHITE PAYMENTS
32070 South River Road
Harrison Township, MI 48045
Attn: Legal Department

31. The PARTIES agree to delete the second sentence of Section 13.1 of the AGREEMENT and replace it in its entirety with the following:

13.1 "TMS, BANK, and/or GRAPHITE PAYMENTS may assign their rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT."

32. The PARTIES agree to delete the third sentence of Section 13.2 of the AGREEMENT and replace it in its entirety with the following:

13.2 "If MERCHANT brings legal action against TMS, BANK, and/or GRAPHITE PAYMENTS for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred."

The PARTIES agree to add the following to the end of Section 13.2:

13.2 If the dispute is solely between MERCHANT and GRAPHITE PAYMENTS, such dispute will be governed by the Federal Arbitration Act and applicable federal law. For the purposes of bringing a claim in small claims court this agreement will be governed by the laws of the state in which the MERCHANT legal address is located.

For the purposes of Arbitration, for all claims that total less than \$50,000, the forum will be the county and state in which the MERCHANT legal address is located. For claims above \$50,000 the forum will be Lehigh County, Pennsylvania. For the purposes of bringing a claim in small claims court the proceedings shall be held in the county and state in which the MERCHANT legal address is located.

This provision shall survive termination of the AGREEMENT.

33. The PARTIES agree to delete Section 13.6 of the AGREEMENT and replace it in its entirety with the following:
 - 13.6 Costs. TMS, BANK, and GRAPHITE PAYMENTS shall not be responsible for the costs incurred by MERCHANT in negotiating or implementing this AGREEMENT.
34. The PARTIES agree to delete the first sentence of Section 13.8 of the AGREEMENT and replace it in its entirety with the following:
 - 13.8 This AGREEMENT may be amended or modified by TMS, BANK, and/or GRAPHITE PAYMENTS effective upon thirty (30) days written notice.
35. The PARTIES agree to delete Section 13.12 of the AGREEMENT and replace it in its entirety with the following:
 - 13.12 Disclosure of MID. For security reasons, MERCHANT must disclose its MID thereby authorizing TMS, BANK, and/or GRAPHITE PAYMENTS to make changes to its account. TMS, BANK, and/or GRAPHITE PAYMENTS may request from MERCHANT additional information to further verify MERCHANT'S identity. TMS, BANK, and/or GRAPHITE PAYMENTS may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring the MID is kept confidential.
36. The PARTIES agree to delete Section 13.13 of the AGREEMENT and replace it in its entirety with the following:
 - 13.13 Information Release. MERCHANT authorizes TMS, BANK, and/or GRAPHITE PAYMENTS to release MERCHANT'S information to third parties that provide services to TMS, BANK, and/or GRAPHITE PAYMENTS or MERCHANT or to any third party that requests and has reason to know such information.
37. The PARTIES agree to delete Section 13.15 of the AGREEMENT and replace it in its entirety with the following:
 - 13.15 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and TMS, BANK, and/or GRAPHITE PAYMENTS may be monitored and recorded.
38. The PARTIES agree to delete Section 13.17 of the AGREEMENT and replace it in its entirety with the following:
 - 13.17 Products and Services. TMS, BANK, and/or GRAPHITE PAYMENTS may from time to time add products and/or services to the SERVICES. At MERCHANT's request, TMS, BANK, and/or GRAPHITE PAYMENTS may provide such additional products and/or services to MERCHANT at TMS, BANK, and/or GRAPHITE PAYMENTS then current rate. MERCHANT agrees to abide by all parameters set by TMS, BANK, and/or GRAPHITE PAYMENTS for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. TMS, BANK, and/or GRAPHITE PAYMENTS have made reasonable efforts to secure information and abide by the ASSOCIATIONS security guidelines but TMS, BANK, and GRAPHITE PAYMENTS

do not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify TMS, BANK, and GRAPHITE PAYMENTS immediately if its passwords or TMS, BANK, and GRAPHITE PAYMENTS shall at all times retain all title to and ownership to the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble, or derive source code from the products and SERVICES. Any PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.

39. The PARTIES agree to delete the second sentence of Section 12.1 of the "Rules" portion of the AGREEMENT and replace it in its entirety with the following:

12.1 "Neither TMS, BANK, and/or GRAPHITE PAYMENTS are responsible for funding such transactions."

40. The PARTIES agree to add the following to the agreement as §13.20 to the AGREEMENT:

13.20 If AGREEMENT is terminated early either during the INITIAL TERM or any RENEWAL TERM for any reason other than set out in paragraph 5.1, 5.2.A or 5.2.B, MERCHANT agrees to pay an early termination fee ("EARLY TERMINATION FEE") equal to the greater of \$250 or \$35 multiplied by the number of months remaining in the then-current term, in addition to all other amounts MERCHANT owes. MERCHANT agrees that the EARLY TERMINATION FEE is not a penalty, but rather is reasonable in light of the financial harm caused by MERCHANT's early termination. Notwithstanding the foregoing, the early termination fee will not exceed the maximum amount set forth by applicable law (ex. Arkansas law governing early termination fees will not exceed fifty (\$50) dollars under this agreement.)

41. The PARTIES agree to add the following to the agreement as §13.21 of the AGREEMENT

13.21 If this AGREEMENT is terminated, MERCHANT shall pay all fees associated with deconversion. Deconversion means assistance in moving MERCHANT to a new processor. Deconversion costs include but are not limited to customer service or technical support during the period of deconversion, communication costs, and attorney's fees.

42. The PARTIES agree to add the following to the agreement as §13.22 of the AGREEMENT

13.22 Third Party Providers. If MERCHANT is using a third party provider's terminal, (i.e. dial terminal or equivalent sales capture device), and the third party provider is providing the customer service, then such third party provider is a separate entity and is not an agent of TMS, BANK, and/or GRAPHITE PAYMENTS. MERCHANT understands the AGREEMENT is among TMS, BANK, GRAPHITE PAYMENTS and MERCHANT. Disputes involving a third party provider shall be dealt with independently from TMS, BANK, or GRAPHITE PAYMENTS. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify TMS, BANK, and GRAPHITE PAYMENTS at the addresses set out in the AGREEMENT. MERCHANT shall pay BANK regardless of any disputes it has with any third party provider.

In addition to FEES, MERCHANT agrees to pay GRAPHITE PAYMENTS the fees as set forth in the Merchant Application and the Rate Descriptions and all other sums owed to GRAPHITE PAYMENTS ("GRAPHITE PAYMENTS FEES") for SALES and SERVICES as set forth in this AGREEMENT and as amended from time to time as set forth in this AGREEMENT.

43. The PARTIES agree to add the following to the AGREEMENT as Section 13.23 of the AGREEMENT:

13.23 Dispute Resolution and Arbitration:

(a) GRAPHITE PAYMENTS AND MERCHANT AGREE TO ARBITRATE ALL DISPUTES BETWEEN THE PARTIES, EXCEPT AS PROVIDED BELOW. This arbitration agreement covers any dispute arising out of or relating to any aspect of the relationship solely between Merchant and GRAPHITE PAYMENTS, whether based in contract, tort, statute, fraud, or any other legal theory, even if the claim arises or may arise before or after the period(s) during which Merchant is receiving service or

supplies from GRAPHITE PAYMENTS. We each also agree that the Agreement affects interstate commerce so that the Federal Arbitration Act and federal arbitration law apply (despite the choice of law provision in Section 13.2 of the AGREEMENT and as amended in Section 31 of this ADDENDUM) THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THE ARBITRATOR MUST FOLLOW THIS AGREEMENT AND CAN AWARD THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING ATTORNEYS' FEES).

Notwithstanding the above, **YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION IF:** (1) your claim qualifies for small claims court in a location where jurisdiction and venue over Merchant and GRAPHITE PAYMENTS is proper, in which case you may initiate proceedings in small claims court; or (2) **YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM EITHER (i) THE DATE WHEN YOU ENTERED INTO A MERCHANT AGREEMENT, OR (ii) FOR A MERCHANT AGREEMENT THAT WAS ENTERED INTO PRIOR TO AUGUST 15, 2012, WITHIN 30 DAYS FROM THE FIRST TIME AFTER AUGUST 15, 2012, WHEN YOU AGREED TO EXTEND OR RENEW YOUR TERM OF THE MERCHANT AGREEMENT (the "Opt-Out Deadline").** You must opt out by the Opt-Out Deadline for each agreement entered into. You may opt out of these arbitration procedures by calling 888-228-1011 or by emailing legal@graphitepayments.com and providing your merchant identification number with your request to opt out of the arbitration process. **Any opt-out received after the Opt-Out Deadline will not be valid and you must pursue your claim in arbitration or small claims court.**

For all disputes, whether pursued in court or arbitration you must first give us an opportunity to resolve your claim by sending a written description of your claim to 32070 South River Road, Harrison Township, MI 48045 Attn: Disputes Department. We each agree to negotiate your claim in good faith. If we are unable to resolve the claim within sixty (60) days after we receive this claim description, MERCHANT or GRAPHITE PAYMENTS may pursue your claim in arbitration or small claims court. We each agree that if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue, in small claims court, claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or the AGREEMENT.

A party who intends to seek arbitration must first send to the other, by certified mail or courier service a written Notice of Dispute ("Notice").

The Notice to GRAPHITE PAYMENTS should be addressed to: Disputes Department, GRAPHITE PAYMENTS, 32070 South River Road, Harrison Township 48045. The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand").

The arbitration will be governed by the Commercial Arbitration Rules ("AAA Rules") of the American Arbitration Association ("AAA"), and all disputes will be administered by the AAA. You can find the AAA Rules at www.adr.org or by calling 1-800-778-7879. Upon filing of the arbitration demand, GRAPHITE PAYMENTS will pay all filing, administration and arbitrator fees for claims that total less than \$50,000. For claims that total more than \$50,000, the payment of filing, administration, attorneys' fees, and arbitrator fees will be governed by AAA Rules. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Further, for claims under \$50,000, except for claims that are determined to be frivolous, GRAPHITE PAYMENTS agrees not to seek an award of attorneys' fees in arbitration even if an award is otherwise available under applicable law.

- (b) **CLASS ACTION WAIVER.** GRAPHITE PAYMENTS AND MERCHANT EACH AGREE THAT ANY PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. If a court or arbitrator determines in an action between MERCHANT and GRAPHITE PAYMENTS that this Class Action Waiver is unenforceable, the arbitration agreement will be void as to you. **If you choose to pursue your claim in court by opting out of the arbitration provision as specified above, this Class Action Waiver provision will not apply to you. Neither GRAPHITE PAYMENTS nor you can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt out requirements above.**
- (c) **JURY TRIAL WAIVER.** If a claim proceeds in court rather than through arbitration, **WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.**

This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Office of the Comptroller of the Currency or the Consumer Financial Protection Bureau. Such agencies can, if the law allows, seek relief against us on your behalf.

44. This ADDENDUM, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
- 44.. Except as amended hereby, TMS, BANK, GRAPHITE PAYMENTS, and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

GRAPHITE PAYMENTS PRODUCTS AND SERVICES

POS PROGRAM

1. MERCHANT acknowledges that it will receive GRAPHITE PAYMENTS Point of Sale System (s) ("HTPOS") which shall contain the GRAPHITE PAYMENTS computer program (in object code) ("Software") as described in Exhibit A to the GRAPHITE PAYMENTS Services Agreement as a Base Package (collectively referred to as "Equipment") under the following terms and conditions, any additional Equipment shall be in accordance with the same terms and conditions;
2. **Quarterly Software Support Fee.** MERCHANT AUTHORIZES GRAPHITE PAYMENTS TO DEBIT QUARTERLY FROM THE ACCOUNT LISTED IN THE MERCHANT APPLICATION (AND AS UPDATED FROM TIME TO TIME) ("Account") FIFTY NINE (\$59.00) DOLLARS AS A QUARTERLY SOFTWARE SUPPORT FEE ***FOR EACH SET OF EQUIPMENT*** AT THE MERCHANT LOCATION. Merchant is responsible for purchasing all paper and supply products through GRAPHITE PAYMENTS or its designated affiliate. The Quarterly Software Support Fee includes Remote Database Backup and Software Maintenance as described herein.
3. **Additional Equipment.** All Fees listed in Section 2 above shall apply for **each set of additional Equipment** requested by the Merchant. **GRAPHITE PAYMENTS reserves the right to change the Quarterly Software Support Fee upon thirty (30) days written notice.**
4. **Software Maintenance:** To the extent that GRAPHITE PAYMENTS has developed such, GRAPHITE PAYMENTS shall make available to Merchant, in the form at its reasonable discretion, corrections to errors and updates, if any, in the GRAPHITE PAYMENTS Software (hereto after referred to as "Software Revisions"). Software Revisions do not alter or add new functionality to the Software. Notwithstanding anything to the contrary, GRAPHITE PAYMENTS shall not be obligated to produce or create any Software Revisions to the Software, and the production of such is at the sole discretion of GRAPHITE PAYMENTS. Merchant shall at its sole cost and expense, install all Software Revisions within four (4) weeks of being made available to it. Notwithstanding anything to the contrary contained in this Agreement, GRAPHITE PAYMENTS, in its sole discretion, reserves the right not to provide support

as set forth in this Agreement if the Merchant fails to install the Software Revisions in accordance with the terms of this section or to charge Merchant the then current rate for such support.

GRAPHITE PAYMENTS HAS NO OBLIGATION TO PROVIDE MERCHANT WITH UPGRADES OR NEW VERSIONS OF SOFTWARE.

5. **Remote Backup:** GRAPHITE PAYMENTS will provide remote backup of the Equipment on a regular basis. Upon a failure of the Equipment, GRAPHITE PAYMENTS representatives will assist in the recovery or reloading of Merchant data backup files or images to facilitate the operation of the Equipment.
6. **Location.** Merchant will locate the Equipment on Merchant's premises, and will not remove it without GRAPHITE PAYMENTS's prior written consent.
7. **Use/Term.** (a) Merchant will use the Equipment business purposes only, solely to process credit and debit card transactions through GRAPHITE PAYMENTS and with no other card processor, for no other purpose. Merchant will not sell or lease the Equipment, and will not allow anyone else to use the Equipment for any reason. GRAPHITE PAYMENTS has the right to change the terms of this agreement at any time. (b) Merchant agrees that it will continue to abide by the terms of the Merchant Transaction Processing Agreement and its Terms and Conditions.
8. **Shipping.** Shipping charges shall be assessed on the first monthly statement after account approval at the following rates:

Contiguous 48 States:

Per Base Package: Ground-\$25.00—2nd Day Air-\$51.50—Next Day Air-\$76.95
Per Additional Accessory: Ground-\$11.00— 2nd Day Air-\$26.00—Next Day Air-\$39.00

Alaska and Hawaii:

Per Base Package: Ground- \$115.00—2nd Day Air-\$139.00
Per Additional Accessory: Ground-\$57.00— 2nd Day Air-\$75.00

9. **Maintenance.** Merchant acknowledges that it has been trained on the proper use of the Equipment. Merchant will maintain the Equipment in good condition and repair. Merchant will not change or remove any lettering or numbering on the Equipment.

GRAPHITE PAYMENTS TABLESIDE SOFTWARE LICENSE

1. **License.** (a) MERCHANT will have a non-exclusive, non-transferrable license to use the computer program (in object code) and documentation that accompanies this license; in its business ("GRAPHITE PAYMENTS Tableside Software"). MERCHANT shall install and use one copy of the GRAPHITE PAYMENTS Tableside Software on a single device. This license may not be shared or used concurrently on different devices. MERCHANT will only have a license subject to the terms of this Agreement; GRAPHITE PAYMENTS reserves and retains all rights not extended hereunder. This license is not a license of any trademarks, service marks, trade names, or logos, and does not include any software other than the GRAPHITE PAYMENTS Tableside Software (b) MERCHANT may not alter the GRAPHITE PAYMENTS Tableside Software, or reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the GRAPHITE PAYMENTS Tableside Software. MERCHANT's failure to use the GRAPHITE PAYMENTS Tableside Software during the term of this Agreement shall not relieve MERCHANT of any of its obligations hereunder. (c) This license does not include any rights to manufacture, copy, sublicense, distribute, transfer or otherwise dispose of any copies of the GRAPHITE PAYMENTS Tableside Software. Nothing contained in this Agreement shall give MERCHANT any ownership interest, or title to, the GRAPHITE PAYMENTS Tableside Software,

source code, and the related documentation (including any adaptation of copies). MERCHANT has no right to create derivative works, enhancements or modifications to the GRAPHITE PAYMENTS Tableside Software, and if at any time any such are made, all ownership shall vest and remains with GRAPHITE PAYMENTS. (d) MERCHANT acknowledges that the performance of the GRAPHITE PAYMENTS Tableside Software is conditioned on MERCHANT providing, at its sole cost and expense continued and secure network. (e) This license is expressly made subject to any laws, regulations, orders or other restrictions on the export from the United States of America of the GRAPHITE PAYMENTS Tableside Software and MERCHANT agrees to abide by such limitations.

A MAXIMUM OF FIVE (5) GRAPHITE PAYMENTS TABLESIDE SOFTWARE LICENSES SHALL BE FUNCTIONAL FOR EACH GRAPHITE PAYMENTS TABLESIDE HUB.

2. **GRAPHITE PAYMENTS TABLESIDE SOFTWARE LICENSE FEE. MERCHANT AUTHORIZES GRAPHITE PAYMENTS TO DEBIT MONTHLY FROM THE "ACCOUNT", TWELVE (\$12.00) DOLLARS AS A GRAPHITE PAYMENTS TABLESIDE SOFTWARE LICENSE FEE FOR EACH LICENSE.** The GRAPHITE PAYMENTS Tableside Software License Fee includes GRAPHITE PAYMENTS Tableside Software Maintenance as described herein.
3. **GRAPHITE PAYMENTS Tableside Software Maintenance:** To the extent that GRAPHITE PAYMENTS has developed such, GRAPHITE PAYMENTS shall make available to MERCHANT, in the form at its reasonable discretion, corrections to errors and updates, if any, in the GRAPHITE PAYMENTS Tableside Software (hereto after referred to as "GRAPHITE PAYMENTS Tableside Software Revisions"). GRAPHITE PAYMENTS Tableside Software Revisions do not alter or add new functionality to the GRAPHITE PAYMENTS Tableside Software. Notwithstanding anything to the contrary, GRAPHITE PAYMENTS shall not be obligated to produce or create any GRAPHITE PAYMENTS Tableside Software Revisions to the GRAPHITE PAYMENTS Tableside Software, and the production of such is at the sole discretion of GRAPHITE PAYMENTS. MERCHANT shall at its sole cost and expense, install all GRAPHITE PAYMENTS Tableside Software Revisions within four (4) weeks of being made available to it. Notwithstanding anything to the contrary contained in this Agreement, GRAPHITE PAYMENTS, in its sole discretion, reserves the right to not provide support as set forth in this Agreement if the MERCHANT fails to install the GRAPHITE PAYMENTS Tableside Software Revisions in accordance with the terms of this section or to charge Merchant the then current rate for such support.

GRAPHITE PAYMENTS HAS NO OBLIGATION TO PROVIDE MERCHANT WITH UPGRADES OR NEW VERSIONS OF THE GRAPHITE PAYMENTS TABLESIDE SOFTWARE.

DISCLAIMER OF WARRANTIES AND LIMITATION OF WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, GRAPHITE PAYMENTS, ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED AS TO ANY GRAPHITE PAYMENTS SERVICE, RELATED PRODUCTS, EQUIPMENT, SOFTWARE, GRAPHITE PAYMENTS TABLESIDE SOFTWARE, OR DOCUMENTATION. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY GRAPHITE PAYMENTS, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. GRAPHITE PAYMENTS DOES NOT GUARANTEE THAT THE EQUIPMENT, SOFTWARE, CONTAINED THEREIN, OR GRAPHITE PAYMENTS TABLESIDE SOFTWARE WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR EXPRESS WARRANTIES STATED HEREIN, IF ANY, THE EQUIPMENT, SOFTWARE, GRAPHITE PAYMENTS TABLESIDE SOFTWARE, AND SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. GRAPHITE PAYMENTS SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE AND STANDARD OPERATING PROCEDURES.

ECR Program

The merchant identified in the Merchant Transaction Processing Agreement (“Merchant”) acknowledges that it will receive one Electronic Cash Register (“ECR”) and one Credit Card Processing Device, (collectively referred to as “Equipment”) under the following terms and conditions,;

1. Ownership. All Equipment is and will remain at all times, the exclusive property GRAPHITE PAYMENTS (“GRAPHITE PAYMENTS”) or its assigns, and Merchant’s use of the Equipment confers no ownership rights of any kind on Merchant.

2. Fees. (a) **Annual Fee. Merchant authorizes GRAPHITE PAYMENTS to debit annually from the account indicated below (“Account”) \$79 as an Annual Fee for each set of Equipment sent to the Merchant in the ECR Program.** Merchant is responsible for purchasing all paper and supply products through GRAPHITE PAYMENTS or its designated affiliate. Merchant shall have the option to have the Equipment programmed to their specifications via the Online Configurator prior to shipment of the Equipment. The Annual Fee is assessed within the first 30 to 60 days after entering into this agreement and then again on each successive anniversary date. The annual fee includes priority replacement (of Equipment of equal to or lesser value), shipping fees apply. See Section 8 for further details. (b) **Security Fee. If applicable, as a condition of approval, Merchant authorizes GRAPHITE PAYMENTS to debit a security fee of \$99 based on a determination by the Underwriting Department.** If Underwriting determines that such a fee is necessary, Merchant will again be asked to consent to this fee upon the completion of the Online Configurator. The \$99 fee shall be deducted from your account in three equal payments of \$33. The \$33 dollar payments shall be deducted in monthly installments during the first three months from the date of this agreement. In the event the account closes and the cash register is returned to GRAPHITE PAYMENTS in normal use condition and the Merchant has no outstanding balance on its account the \$99 dollars will be returned within ten (10) business days; otherwise GRAPHITE PAYMENTS reserves the right to use these funds to offset costs or outstanding balances. (c) **Rental Fee. Merchant authorizes GRAPHITE PAYMENTS to debit monthly from the Account a Rental Fee for each set of Equipment sent to the Merchant in the ECR Program. Rental Fee shall be set at the sole discretion of GRAPHITE PAYMENTS.**

3. Location. Merchant will locate the Equipment and any additional Equipment on Merchant’s premises, and will not remove it without GRAPHITE PAYMENTS’s prior written consent.

4. Use/Term. (a) Merchant will use the Equipment and any additional Equipment for business purposes only, solely to process credit and debit card transactions through GRAPHITE PAYMENTS and with no other card processor, for no other purpose. Merchant will not sell or lease the Equipment or any additional Equipment, and will not allow anyone else to use the Equipment or any additional Equipment for any reason. GRAPHITE PAYMENTS has the right to change the terms of this agreement at any time. (b) Merchant agrees that it will continue to abide by the terms of the Merchant Transaction Processing Agreement and its Terms and Conditions.

5. Maintenance. Merchant acknowledges that it has been trained on the proper use of the Equipment and any additional Equipment. Merchant will maintain the Equipment and any additional Equipment in good condition and repair. Merchant will not change or remove any lettering or numbering on the Equipment or any additional Equipment.

6. Return. If Merchant ceases processing card transactions with GRAPHITE PAYMENTS, or if Merchant’s contract with GRAPHITE PAYMENTS terminates, Merchant will return the Equipment and any additional Equipment to GRAPHITE PAYMENTS within 30 days and GRAPHITE PAYMENTS is authorized to repossess the Equipment and any additional Equipment. If any Equipment or additional Equipment is not returned, whole or in part, the Merchant will owe GRAPHITE PAYMENTS **\$649 dollars for each set of Equipment.** If Merchant is receiving replacement Equipment it shall return the replaced Equipment whole or in part (as applicable). With respect to a replacement of Equipment, Merchant shall have thirty (30) days to return Equipment, whole or in part, to GRAPHITE PAYMENTS. **If Merchant does not return the Credit Card Processing Device within thirty days of receipt of replacement, Merchant shall be charged \$195. If Merchant does not return the ECR within thirty days of replacement, it shall be charged \$649.** Equipment returned in excess of normal wear and tear will be considered as a Loss as described in Section 7. In the event the Equipment or any additional Equipment is returned more than thirty (30) days from the date of termination an additional \$75 restocking fee will apply per set of Equipment. Merchants are responsible for all return shipping costs and must ship Equipment back to GRAPHITE PAYMENTS at

32070 South River Road, Harrison Township, MI 48045. If Equipment or any additional Equipment is not returned to this address, it will be considered not returned.

7. Loss. If the Equipment breaks due to normal wear and tear, GRAPHITE PAYMENTS will provide priority replacement of the Equipment with comparable Equipment and will ship to merchant within 72 hours from receipt of notice. Delivery times will be based on the option the Merchant chooses as described in Section 8 below. Merchant will be responsible for all other loss, theft, destruction or damage. If that happens, Merchant will notify GRAPHITE PAYMENTS, will hold the Equipment or any wreckage, and will owe **GRAPHITE PAYMENTS \$649 dollars** per each set of Equipment. Merchant authorizes GRAPHITE PAYMENTS to debit the Account for any amount owed under this agreement.

8. Shipping. All Equipment and additional Equipment in the ECR Program will be shipped via UPS Ground Shipping, UPS 2nd Day Air Shipping, or UPS Next Day Air Shipping or an entity providing similar service ("Courier") as selected on the account setup form. Merchant authorizes GRAPHITE PAYMENTS to debit the amount for shipping from your account in the amount of **\$25 for UPS Ground, \$51.50 for UPS 2nd Day Air, and \$76.95 for UPS Next Day Air Saver**, when the unit ships. Shipping fees shall apply any time the Equipment or additional Equipment is shipped to or from GRAPHITE PAYMENTS. GRAPHITE PAYMENTS shall have no liability for failure of Equipment or additional Equipment to reach its destination in a timely manner once it has delivered the Equipment or additional Equipment to the Courier.

"FT PROGRAM" AGREEMENT

Merchant acknowledges that it will receive the terminal indicated on Section C1 of the Merchant Application under ("Terminal"), under the following terms and conditions:

1. Ownership. The Terminal is, and will remain at all times exclusive property of GRAPHITE PAYMENTS ("GRAPHITE PAYMENTS") or its assigns, and Merchant's use of the Terminal confers no ownership rights of any kind on Merchant.
2. Use/Term. Merchant will use the Terminal for business purposes only, solely to process credit and debit card transactions through GRAPHITE PAYMENTS and with no other card processor, for no other purpose. Merchant will not sell or lease the Terminal, and will not allow anyone else to use the Terminal for any reason. GRAPHITE PAYMENTS has the right to change the terms of this Agreement at any time.
3. Maintenance. Merchant acknowledges that it has been trained on the proper use of the Terminal. Merchant will maintain the terminal in good repair. Merchant will locate the Terminal on Merchant's premises, and will not remove it without GRAPHITE PAYMENTS's prior written consent. Merchant will not change or remove any lettering or numbering on the Terminal.
4. Return. If Merchant ceases processing card transactions with GRAPHITE PAYMENTS or if Merchant's contract with GRAPHITE PAYMENTS terminates, Merchant will return the Terminal to GRAPHITE PAYMENTS within thirty (30) days and GRAPHITE PAYMENTS is authorized to repossess the Terminal. If any equipment is not returned Merchant will owe GRAPHITE PAYMENTS the following fees: \$450 for the Terminal, \$850 for the Nurit 8000 wireless, \$150 for the check reader, and \$100 for the signature pad. In the event that merchant returns the Terminal after thirty days, it will be assessed a \$75 restocking fee.
5. Loss. If the equipment breaks due to normal wear and tear, GRAPHITE PAYMENTS will provide priority replacement of the Terminal with a comparable terminal within 48 hours from receipt of notice. Merchant will be responsible for all other loss, theft, destruction or damage. If the terminal is lost, stolen, destroyed, or damaged. Merchant will notify GRAPHITE PAYMENTS, will hold the Terminal or any wreckage, and will owe GRAPHITE PAYMENTS \$450. Merchant authorizes GRAPHITE PAYMENTS to debit the Account for any amount owed under this agreement.

CHECK SERVICES APPLICATION/SERVICE AGREEMENT

In signing the Application/Service Agreement (hereinafter "Agreement") YOUR STORE(s) agrees that YOUR STORE(s) has read, understands, and accepts, all the provisions of this Agreement, to include the terms and conditions within this Agreement and consent to same herein. YOUR STORE(s) further understands and agrees that upon acceptance of an officer of CrossCheck, Inc. (hereinafter "Check Center"), this Application, and your Confirmation Letter, including description of any Premiums purchased, shall constitute a binding Agreement between YOUR STORE(s) and Check Center. YOUR STORE(s) further understands that YOUR STORE(s) shall include all Agents, Representatives, and/or Employees. YOUR STORE(s) covered by this Agreement shall have a unique Check Center store number and shall be billed individually. YOUR STORE(s) may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of an officer of Check Center.

YOUR STORE(s) hereby authorizes Check Center to initiate a debit on a consumer account based exclusively on specific information provided to Check Center by YOUR STORE(s) and further grants a security interest to Check Center as to all transactions contemplated under this Agreement.

All information contained in this Agreement was completed by Consumer/Principal and they warrant that the application information noted above and sales volume indicated in the Agreement is accurate and further acknowledge that any misrepresentation of this information could result in delayed and/or withheld settlement of funds as well as the loss of all processing privileges of all checks. No blank spaces were left incomplete. N/A or none has been filled in, in any spaces where applicable.

No agency relationship is either expressed or implied with respect to any communications or referrals by Check Center personnel regarding the leasing of equipment for the purpose of Check Conversion.

Authorization is hereby given by Consumer/Principal, individually and as Consumer/Principal on behalf of YOUR STORE(s) to obtain a credit report of both the Consumer/Principal and YOUR STORE(s)' credit history through credit reporting agencies selected by Check Center or Check Center's agents. Pursuant to the Fair Credit Reporting Act, said reports are to be used by Check Center or Check Center's agents solely in connection with the referenced business transaction, to be defined herein as this Agreement, there is a legitimate business need for the information and it is intended to be used as a potential servicer in connection with a valuation of, or an assessment of the credit or prepayment risks associated with an existing obligation.

I. SERVICE RATES AND PAYMENTS: YOUR STORE(s) agrees to pay Check Center, in consideration for the services YOUR STORE(s) receives from Check Center, the fees as contemplated in this Agreement. Further, YOUR STORE(s) shall pay monthly to Check Center, in consideration for the information and service YOUR STORE(s) receives from Check Center, the fees indicated above and contained within this Agreement, which will never be less than one dollar and fifty cents per call when applicable, plus a monthly \$5 risk management fee if applicable, plus a monthly \$5 archive fee if applicable, plus an additional fee for each Premium Service Option purchased. The service rate will be applied to the check amount of all checks called into Check Center; the transaction charges will be applied per item for which an approval number is sought. Check Center shall have, and YOUR STORE(s) acknowledges that Check Center shall have, the right to set off against any amount payable by Check Center to YOUR STORE(s) under any provision of this Agreement, any amounts owed Check Center by YOUR STORE(s), or any damages sustained by Check Center as a result of YOUR STORE(s)' violation, breach or non-performance of its obligations under this Agreement, Check Center shall have, and YOUR STORE(s) acknowledges that Check Center shall have, the right to deduct applicable charges as previously set forth in this Agreement, from those amounts due YOUR STORE(s) as a result of checks processed by Check Center, under the terms and conditions of this Agreement. It is further understood and agreed upon by YOUR STORE(s) that said funds are to be deducted from the referenced checks upon transaction settlement by Check Center. YOUR STORE(s) agrees to permit Check Center or Check Center's agents to debit YOUR STORE(s)' designated bank account for check guarantee services according to the terms of the Agreement between YOUR STORE(s) and Check Center. YOUR STORE(s)' payment will be delinquent if not successfully debited on the first attempt. Check Center shall have, and YOUR STORE(s) acknowledges that Check Center has, the right to bill YOUR STORE(s) a 1.5% interest fee per month on any amount owed by YOUR STORE(s) to Check Center that becomes delinquent. It is understood that all payments due under this Agreement may be debited from YOUR STORE(s)' bank account. **BY SIGNING THIS AGREEMENT, YOUR STORE(S) HEREBY AUTHORIZES CHECK CENTER TO AUTOMATICALLY DEBIT THE BANK ACCOUNT LISTED WITHIN FOR ALL PAYMENTS DUE UNDER THIS AGREEMENT AND FURTHER AUTHORIZES THAT THE PARTY EXECUTING THIS AGREEMENT HAS FULL FORCE AND AUTHORITY TO DO SO. (MUST ALSO ATTACH ORIGINAL VOIDED CHECK WHERE INDICATED).** YOUR STORE(s) agrees to pay a \$25.00 service charge for any initial check or ACH debit which is not paid by YOUR STORE(s)' bank upon presentation and a \$35.00 service charge for any subsequent dishonor. YOUR STORE(s) agrees that the service charge may be debited from YOUR STORE(s)' bank or set off against monies otherwise owed to YOUR STORE(s) under this Agreement. If an invoice is required to be created by Check Center a fee of \$10.00 will be assessed. If YOUR STORE(s) changes bank accounts, YOUR STORE(s) shall provide Check Center with a completed and signed Bank Change Authorization form and original voided check, the new bank account information and authority to debit such new account prior to implementing any such bank change. Check Center may adjust fees, charges and payments payable by YOUR STORE(s) under this Agreement without prior notice in the event information about YOUR STORE(s) shown on this Agreement above is not fully accurate, or if, in the sole opinion of Check Center, YOUR STORE(s) has significantly altered its method of doing business. If YOUR STORE(s) believes any adjustments are needed with respect to any debits or credits effected by Check Center with respect to the account for any amounts due to or due from YOUR STORE(s), or if YOUR STORE(s) has any other questions or concerns regarding its check transactions that are processed and settled by Check Center or regarding any statement provided by Check Center, YOUR STORE(s) shall notify Check Center in writing within thirty (30) days after such debit or credit is effected, or such statement is provided upon request by YOUR STORE(s), whichever is sooner. Said notice must be received at Check Center's corporate location, as identified within this Agreement within thirty (30) days after such debit or credit is effected. If YOUR STORE(s) notifies Check Center after such time period, Check Center may, in its discretion and at YOUR STORE(s)' cost, investigate the matter addressed in YOUR STORE(s)' notice but Check Center shall not have any liability to effect any related adjustment absent any gross negligence or willful misconduct by Check Center. Any voluntary efforts by Check Center to investigate such matter shall not create any obligation to continue such investigation or to investigate any future notice of a question, concern or possible adjustment that is not timely submitted. Any discrepancies in billings must be brought to the attention of Check Center within ninety (90) calendar days of same. The failure by YOUR STORE(s) to so notify Check Center of these discrepancies within the prescribed timeframe shall result in the waiver of YOUR STORE(s)' right to subsequently claim an entitlement to the referenced billings.

II. CHECK ACCEPTANCE: Only YOUR STORE(s), covered by this Agreement, shall contact Check Center to request approval numbers for all U.S. and U.S. Territories' checks, drawn in U.S. dollars, and presented to YOUR STORE(s) for goods or services purchased at the time of approval by the check writer. Based on Check Center's experience, the information in Check Center's computer files, and the information provided by YOUR STORE(s), Check Center shall inform YOUR STORE(s) whether Check Center will issue an approval number on each such check. YOUR STORE(s) understands and agrees that from time to time, Check Center may change, modify or otherwise revise Approval Parameters in order to effectively manage YOUR STORE(s) account. YOUR STORE(S) understands and agrees that it may be subject to billing adjustments for providing inaccurate check amount information to Check Center, including but not limited to instances wherein a discrepancy is identified between the actual check amount and the amount submitted by YOUR STORE(s) to Check Center for approval. If check is not approved, YOUR STORE(s) shall politely and discreetly advise the check writer of this fact and provide the check writer with a Check Center supplied card, highlighted in accordance with the directions of Check Center describing how to contact Check Center directly. **YOUR STORE(s)' decision to accept or reject any check shall be made solely at YOUR STORE(s)' own discretion.** Acceptance for processing or issuance of an approval number by Check Center of any check does not mean such check conforms to the requirements of this Agreement or any applicable law, rule, regulation or policy. YOUR STORE(s)' acceptance of check(s) subject to this agreement effectuates an immediate assignment by operation of law, to all right, title and interest in and to such check(s) to Check Center. In conformance with applicable Federal and State Laws, Check Center has policies and procedures in place to safeguard all sensitive, confidential and private information. Check Center shall use commercially reasonable efforts to maintain the security of the information provided by YOUR STORE(s) and to prevent the unauthorized use and/or disclosure of same.

III. WARRANTY: Check Center warrants the accuracy of its information. Check Center will pay YOUR STORE(s), the amount approved by Check Center of any check covered by this Agreement which strictly complies with all the requirements of this Agreement. YOUR STORE(s) shall treat all information received from Check Center as strictly confidential and shall hold Check Center harmless from any loss, damage, costs, or reasonable attorney's fees incurred as a result of communication in any manner of such information by YOUR STORE(s).

For Business Office Conversion processing, funding under the terms of this Agreement is provided as a limited warranty and only applies to those checks for which YOUR STORE receives an approval number from Check Center for checks submitted to YOUR STORE as payment on an Accounts Receivable, current account for which the check writer has been invoiced. Expressly excluded from the funding process are those checks which are issued and presented to YOUR STORE as payment for the following, including but not limited to aged receivables, past-due accounts and any and all delinquent debts. For purposes of this Agreement, the foregoing shall be defined as those obligations in excess of thirty (30) days. In addition, the scope of warranty pursuant to this provision is limited to those checks returned by the maker's bank marked or otherwise indicated as Non-Sufficient Funds (NSF), Uncollected Funds, and if so selected as Premium by YOUR STORE(s), Stop Payment items.

IV. YOUR STORE(S)' PUBLIC DISCLOSURE RESPONSIBILITIES: Check Center shall provide signage to be displayed at the point-of-sale (POS) which informs check writers of YOUR STORE(S)' use of Check Center's check processing service. YOUR STORE(S) agrees to post any and all notices required by law to consumers regarding check services, check charges or consumer fees charged for dishonored checks. YOUR STORE(S) agrees to display these materials in the best visible and unhindered location so as to inform the public that YOUR STORE(S) will honor check-processing service by Check Center. From time to time, Check Center may design educational and promotional materials and send same to YOUR STORE(S) for YOUR STORE(S) to distribute to check writers. YOUR STORE(S) further agrees to immediately remove and properly dispose of stale promotional materials and to display the most current materials upon receipt of same from Check Center. YOUR STORE(S) will discontinue the use of all of Check Center's promotional materials and properly remove said materials upon receipt of written notification of suspension, termination, or cancellation of this Agreement. In the event of termination, YOUR STORE(S) immediately shall properly discard all promotional materials related to Check Center's services at YOUR STORE(S)' expense.

V. SUBMISSION OF CHECKS FOR STANDARD GUARANTEE: All approved checks assigned to Check Center under this Agreement shall be the property of Check Center. YOUR STORE(S) is authorized and directed to deposit all approved checks to YOUR STORE(S)' bank account, on Check Center's behalf as Check Center's agent for such limited purpose, and it is agreed that such deposit will constitute full payment by Check Center to YOUR STORE(S) of all approved checks, unless warranty coverage is applicable under this agreement. All checks covered under this Agreement shall be deposited on Check Center's behalf to YOUR STORE(S)' bank account within three (3) business days of the date of approval. The original check, bank certified copy or Image Replacement Document (IRD) of the returned paper check, along with all additional paperwork, must reach Check Center within thirty (30) calendar days from the date of acceptance by YOUR STORE(S) and the date of approval by Check Center which shall be identical. The original check, bank certified copy or Image Replacement Document (IRD) must be mailed to Check Center. Photocopies, facsimile copies and copies of checks downloaded or printed from bank websites, and checks created utilizing check writing, check creation or check printing software shall be ineligible for prospective warranty reimbursement. Check Center shall process any dishonored check it receives within thirty (30) calendar days of receipt. Checks ineligible for Warranty Reimbursement will be assigned to Optio Solutions, LLC, dba Qualia Collection Services, for contingency collection, unless said checks are returned to YOUR STORE(S) at the discretion of Check Center or Qualia Collection Services. There is no fee for this service unless monies are recovered from YOUR STORE(S)' customer following the date of assignment. Upon such recovery, the fee will be 25% of the amount collected. YOUR STORE(S) may opt out of this service by providing Check Center with written notice of YOUR STORE(S)' desire to do so. Upon receipt of this notice, Check Center will return said checks to YOUR STORE(S).

VI. REQUIREMENTS FOR PROCESSING ELECTRONIC CHECKS: For Business Office Conversion processing, YOUR STORE(S) shall provide YOUR STORE(S)' customers via statement message, the exact language printed in the Confirmation letter. Receipt of this notice constitutes authorization by YOUR STORE(S)' customers to the Check Processing procedure as provided in the Service Agreement. YOUR STORE(S) shall retain the source document (check) for a minimum of fourteen (14) days following receipt of the item from the check writer. Thereafter, in accordance with all applicable State and Federal laws, YOUR STORE(S) shall destroy said items in a manner consistent with those laws. YOUR STORE(S) shall comply with all applicable terms and conditions when processing checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by Check Center from time to time or as established in your merchant start-up kit and Confirmation letter. YOUR STORE(S) shall accept only the following checks to initiate debit entries through Check Center: (a) Demand deposit account checks, which must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount not greater than the maximum approval limit for YOUR STORE(S) as established by Check Center; (b) YOUR STORE(S) shall obtain proper identification from the check writer so as to verify that the check writer is authorized to negotiate the check before submitting the check to Check Center for authorization; (c) YOUR STORE(S) shall obtain a check writer authorization in the form of the check writer's full signature agreeing to the terms on the transaction receipt printed at the point of sale; (d) YOUR STORE(S) shall maintain a POS printer compliant with the Check Conversion Plus Program as set forth in this Agreement. Should YOUR STORE(S) lack such equipment, YOUR STORE(S) shall utilize the EFT stamp as provided to YOUR STORE(S) by Check Center in your merchant start-up kit. Should your equipment have the capability to scan the front and back of the item, YOUR STORE(S) agrees to stamp the back of the item and obtain check writer's full signature prior to scanning the front and back of the item; (e) YOUR STORE(S) shall scan each check through its POS terminal and check imaging device to initiate processing; (f) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt, invoice, or buyer's order; (g) YOUR STORE(S) shall void the approved, original check and shall not at any time process or reprocess the approved, original check for payment either manually or electronically, or attempt deposit of same by any means. At the time YOUR STORE(S) initiates authorization, YOUR STORE(S) warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. Failure to comply with any of the terms and conditions established herein or in the Agreement will, in addition to other penalties, subject YOUR STORE(S) to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of Check Center by YOUR STORE(S) pursuant to this Agreement. YOUR STORE(S) shall document each transaction with a printed receipt, or utilize the appropriate stamp where applicable, reflecting the following: (i) YOUR STORE(S)' name and location including store number; (ii) the date and amount of the transaction; (iii) the check sequence number; (iv) the MICR data imprinted on the check (which must match the MICR data transmitted to Check Center upon authorization); (v) the approval number and transaction ID obtained by YOUR STORE(S) from Check Center; and (vi) the check writer's consent to initiate one or more ACH debits, in lieu of processing of the actual check, for the amount of the check and any applicable returned check service fees. YOUR STORE(S) shall obtain the check writer's signature on the receipt, provide a copy to the check writer, and retain the receipt for three (3) years from the date thereof or for such longer period as required by any applicable law, rule or regulation. YOUR STORE(S) shall at all times maintain a demand deposit account ("Account") at a bank that is a member of the Federal Reserve System utilizing the Automated Clearing House paperless entry system. YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT OR DEVICE TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE AS FOLLOWS: IF THE SUBJECT TRANSACTION HAS AN AGGREGATE VALUE OF \$500 OR MORE, AND INVOLVES INTERSTATE COMMERCE, THEN THE VIOLATION MAY BE PUNISHABLE BY A FINE NOT TO EXCEED \$10,000 OR TEN YEARS IMPRISONMENT. SHOULD THE VIOLATION FAIL TO MEET THE ABOVE STANDARD, THE VIOLATION MAY RESULT IN A FINE NOT TO EXCEED \$5,000 WITH POTENTIAL IMPRISONMENT OF NOT MORE THAN ONE YEAR. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR DEPOSIT OF CHECK(S) OR IS INTENDED FOR DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFULLY INITIATED DEBIT TRANSACTION PURSUANT TO THIS NOTICE. THESE PENALTIES RESTATE FEDERAL LAW AS CODIFIED IN MAY 2002. ANY AMENDMENTS TO SAID STATUTES MAY NOT APPEAR IN THIS AGREEMENT AND CHECK CENTER EXPRESSLY RESERVES THE RIGHT TO DETERMINE WHETHER TO INCLUDE ANY SUCH AMENDMENTS. IN THE EVENT OF SUCH A VIOLATION, YOUR STORE(S) AGREES AND WARRANTS TO HOLD CHECK CENTER AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS, INDEMNIFY AND DEFEND, AND REIMBURSE CHECK CENTER FOR THE TRANSACTION(S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF YOUR STORE(S) REFUSES OR IS UNABLE TO REIMBURSE CHECK CENTER FOR ANY SUCH OCCURRENCE IT IS EXPRESSLY STATED AND UNDERSTOOD THAT YOUR STORE(S) IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND CHECK CENTER WILL PURSUE ALL LEGAL, CIVIL AND COLLECTION REMEDIES AS IS POSSIBLE UNDER LAW.

VII. CHECK WRITER'S AUTHORIZATION INITIATES DEBIT ENTRY: YOUR STORE(S) acknowledges that the check writer's authorization allows YOUR STORE(S) to instruct Check Center to initiate a CHECK DEBIT ENTRY ("ENTRY") for YOUR STORE(S) against that check writer's account. It further permits Check Center to reinitiate an ENTRY where the original ENTRY is returned and to assess a fee against check writer. Any and all fees received by Check Center for returned checks shall be the sole property of Check Center. If a check is returned unpaid after any presentment and is submitted to Check Center for possible warranty payment, YOUR STORE(S) understands and agrees that said check will be reviewed to ensure YOUR STORE(S) complied with all the provisions of the Agreement relative to that check, to include the Agreement in its entirety. YOUR STORE(S) agrees to pay a Returned Item Fee to Check Center equal to the amount specified in the SCHEDULE OF FEES on the front of this document for each and every processed check that is returned unpaid from a check writer's bank. YOUR STORE(S) understands and agrees that if Check Center determines, at its sole discretion, that the check did not comply with all aspects of this Agreement, to include the Agreement in its entirety, Check Center shall be entitled to either debit YOUR STORE(S)' account for the amount of the check if YOUR STORE(S) received

credit for the transaction, or decline to credit YOUR STORE(s). Checks shall only be eligible for presentment by YOUR STORE(s) on one occasion. Thereafter, if said checks do not clear the check writer's bank, they shall be subject to the Assignment provision in Article VII below and in addition, shall be subject to reverse funding on behalf of Check Center.

VIII. PROVISIONAL SETTLEMENTS: YOUR STORE(s) acknowledges that all settlements between Check Center and YOUR STORE(s) are provisional and are subject to Check Center's review of YOUR STORE(s)' compliance with this Agreement, as well as the check writer's rights to dispute the charges against the check writer's account. YOUR STORE(s) acknowledges that Check Center has the right to receive payment on all checks processed by YOUR STORE(s). Further, YOUR STORE(s) will not attempt to collect on any such transactions. If any payment is tendered to YOUR STORE(s), YOUR STORE(s) will notify Check Center by telephone of the payment and immediately mail the payment to Check Center by overnight mail courier. Failure of YOUR STORE(s) to reimburse Check Center for such payments shall entitle Check Center to debit YOUR STORE(s)' designated account or any other funds for the amount of said payment.

IX. AUTHORIZATION TO ACCESS YOUR STORE(s)' ACCOUNT: YOUR STORE(s) hereby authorizes Check Center to initiate debit and credit entries to YOUR STORE(s)' designated account. YOUR STORE(s)' authorization shall continue in effect for at least one hundred eighty (180) days after termination of this Agreement, or for a longer period as determined necessary by Check Center in the exercise of its sole discretion in order to properly conclude business. Unless a reserve or delay is placed on YOUR STORE(s)' account, Check Center will transmit settlement to YOUR STORE(s)' bank within two business days following the successful debit of a processed check from a check writer's account. YOUR STORE(s) understands and agrees that for business reasons, Check Center may select a processing option at its discretion that may result in a delay of funding to YOUR STORE(s). In no event shall YOUR STORE(s) close, restrict, deny access to or change the account in any way without written approval from an officer of Check Center. Check Center may holdback certain amounts where Check Center is investigating a transaction for breach of warranty or transactional requirements by YOUR STORE(s) or for other reasons. Check Center shall monitor YOUR STORE(s)' transactional activity and YOUR STORE(s) agrees that Check Center may holdback funds for a reasonable period to investigate account activity. Check Center will attempt to notify YOUR STORE(s) of any investigation but Check Center shall have no liability to YOUR STORE(s) or any other party, for any such actions taken by Check Center. YOUR STORE(s) agrees that Check Center may hold, setoff or retain funds to protect against amounts owed Check Center or based on YOUR STORE(s)' financial condition. Check Center will not be liable for the dishonor of any item or fees associated therewith as a result of actions taken hereunder. YOUR STORE(s) is subject to review, verification, audit and acceptance by Check Center. Representatives of Check Center may, during normal business hours, conduct an inspection of YOUR STORE(s)' premises and activities, as well as examine, audit and make copies of YOUR STORE(s)' books, accounts, records and files as they may pertain to use of any services provided under this Agreement.

X. TERMS AND CONDITIONS: YOUR STORE(s)' compliance with the terms and conditions of this Agreement to include the Agreement in its entirety, is an express condition to Check Center's obligation to pay YOUR STORE(s) or agent thereof when Check Center's approval information proves inaccurate. Check Center shall determine, in its reasonable discretion whether YOUR STORE(s) has complied with the terms and conditions of this Agreement. All terms and conditions of this Agreement, to include the Agreement in its entirety, may be changed by Check Center at any time upon ten (10) calendar days written notice. Such changes shall supersede any previous terms and conditions. This Agreement may not be modified unless it is in writing and accepted by an officer of Check Center. Check Center may cancel this Agreement upon ten (10) calendar days written notice to YOUR STORE(s). If YOUR STORE(s): (i) files for bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or any similar proceedings applicable to similarly situated companies or corporations, as applicable, or (ii) has such a proceeding instituted against it, Check Center may terminate this Agreement immediately upon written notice to YOUR STORE(s). Within ten (10) calendar days notice of an increase in fees, YOUR STORE(s) may cancel this Agreement (subject to a cancellation fee), by giving written notice to Check Center. Said notice must be received at Check Center's corporate location, as identified within this Agreement within ten (10) calendar days from the date of the increase in fees. Any notice permitted or required by this Agreement shall be deemed given when sent by first class or certified mail or facsimile transmission or overnight delivery and addressed to the appropriate party at the respective address contained within this Agreement. The term of this Agreement shall be for a twelve (12) month period from the date of acceptance by an officer of Check Center. Upon expiration of the twelve (12) month term, this Agreement will automatically renew for successive twelve (12) month periods unless terminated by written notice from YOUR STORE(s) at least thirty (30) days prior thereto. Such notice must be received at Check Center's corporate location, as identified within this agreement, within thirty (30) days prior to the date of termination. YOUR STORE(s) understands and agrees that should YOUR STORE(s) terminate this Agreement prior to the conclusion of the applicable term, YOUR STORE(s) shall be billed \$249 as an early termination fee. YOUR STORE(s) further agrees that this termination fee is reasonable and shall be imposed based on the financial impact caused by early termination. **This Agreement includes all provisions set forth in your Confirmation letter(s) and this Agreement, which collectively form the entire Agreement between YOUR STORE(s) and Check Center with respect to the subject matter hereof, and supersedes any prior Agreement, oral or written, between YOUR STORE(s) and CheckCenter and/or its representative(s).** YOUR STORE(s) agrees that the failure by Check Center to enforce any terms or conditions of this Agreement is not a waiver of any terms or conditions herein contained.

XI. RESERVE ACCOUNT IMPLEMENTATION: YOUR STORE(s) expressly authorizes Check Center to establish a reserve account for all transactions. The amount of the reserve account shall be established by Check Center, in its sole discretion, based upon criteria as established by Check Center, including but not limited to YOUR STORE(s)' processing history and projected losses to Check Center. Said reserve account shall be funded in full upon five (5) days' notice to YOUR STORE(s); where breach of this Agreement has occurred or there is reasonable indicia of fraudulent transactions, the reserve account shall be funded immediately at Check Center's discretion. YOUR STORE(s) may fund the reserve account by combining all of the following or selecting one option: (a) one or more deductions or offsets to any payments otherwise due to YOUR STORE(s) from Check Center or any of its affiliates; (b) one or more debits to YOUR STORE(s) Account (and you hereby expressly authorize Check Center to make said debits); or (c) YOUR STORE(s) shall provide adequate assurances to Check Center by way of a letter of credit provided or established by a financial institution which meets the approval of Check Center and in addition, consists of a form satisfactory to Check Center. In the event of termination of this Agreement by either party, an immediate reserve account may be established without notice in the manner provided above. Any reserve account will be held by Check Center for twelve (12) months following termination of this Agreement. YOUR STORE(s) funds may be held in an account established as a reserve account for the segregated funds of other Check Center Merchant Subscribers and YOUR STORE(s) understands and agrees that said accounts will not necessarily involve an independent escrow agent. Further, these accounts shall be non-interest bearing accounts. Should YOUR STORE(s)' funds in the reserve account prove to be insufficient to cover any delinquent fees, chargebacks or non-compliant and reassigned warranty items, or any other fees and charges due from YOUR STORE(s) to Check Center or its affiliates, or if the funds in the reserve account have been released, YOUR STORE(s) shall immediately pay Check Center such sums upon request. In the event the reserve account is not funded by YOUR STORE(s) for any reason, Check Center may fund such reserve account in the manner set forth above.

XII. DEFAULT: Should YOUR STORE(s) become delinquent, or fail to comply with the terms and conditions of this Agreement, then Check Center may at its option: add to the normal payment cycle of any dishonored checks which would otherwise be paid by Check Center under this Agreement the number of days that YOUR STORE(s) was delinquent in paying any fee when due; delay the transmission of a settlement to YOUR STORE(s)' bank account for a processed check the number of days that YOUR STORE(s) was delinquent in paying any fee when due; void all approvals given to YOUR STORE(s) for checks not previously paid; demand immediate payment for all amounts owed under this Agreement; immediately terminate this Agreement; or any of the above. Should any employee, or agent(s) thereof, of YOUR STORE(s) engage or participate, directly or indirectly, as principal or accessory, in any activity for the purpose of improperly obtaining any approval numbers, or if YOUR STORE(s) has notice, either actual or constructive, of any fraudulent activity or conduct, then this Agreement shall be immediately terminated, all approval numbers voided, and the total amount due for all YOUR STORE(s) covered by this Agreement shall become due and payable immediately. YOUR STORE(s) acknowledges that the assessment of any late fee and/or acceptance of any payment from YOUR STORE(s) does not waive any rights that Check Center may have under this Agreement. If legal action is taken by Check Center to enforce this Agreement, then Check Center shall have the right to court costs, reasonable attorney's fees as determined by the court and collection costs as permitted by law. For any checks or ACH debits tendered to Check Center by YOUR STORE(s), YOUR STORE(s) agrees to pay a \$25.00 service charge and a \$35.00 service charge for any subsequent dishonor. YOUR STORE(s) agrees that the service charge may be debited from YOUR STORE(s)' bank or set off against moneys otherwise owed to YOUR STORE(s) under the Warranty Provision of this Agreement. Upon dishonor of any checks or ACH debits tendered to Check Center by YOUR STORE(s) or where Check Center is unable to access YOUR STORE(s)' bank account for fees under this Agreement and YOUR STORE(s) has not authorized the Automatic Debit Option, YOUR STORE(s) shall be assessed a ten dollar monthly statement fee. If Check Center is found to be liable under this agreement, the entire liability of Check Center for all causes of action arising out of or in connection with this agreement at any time, or the relationship between the parties, shall not exceed in the aggregate, the total fees actually paid by YOUR STORE(s) to Check Center pursuant to this agreement for the three (3) month period immediately preceding the date the first claim arises hereunder. In addition to the foregoing limitations, in no event shall Check Center be liable for damages of any kind whatsoever except for YOUR STORE(s)' direct compensatory damages resulting solely from a material breach of this

agreement by Check Center. In no event shall Check Center be liable for any lost profits, loss of goodwill, or for special, indirect, incidental, consequential or punitive damages or any other damages not so specified and for which Check Center has not accepted responsibility.

This Agreement is a legally binding contract wherein Check Center is extending financial accommodations to YOUR STORE(s) pursuant to Section 365(c) of the U.S. Bankruptcy Code. YOUR STORE(s)' right to receive any amounts due and payable or to become due and payable from Check Center is expressly subject and subordinate to chargeback, offset, security interest and lien rights as well as the rights of Check Center to withhold settlement funds under this Agreement, without regard to whether such chargeback, offset, security interest, lien rights and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

XIII. YOUR STORE(s) WARRANTIES: As a condition to Check Center's warranty to the accuracy of the approval information Check Center provides, YOUR STORE(s) represents and warrants to Check Center that each and every check assigned to Check Center by YOUR STORE(s) has been completed by the maker in accordance with the requirements of this agreement and is thus properly payable, and that with respect to such checks, the customer of YOUR STORE(s) has no valid defense to payment as determined in the exercise of reasonable discretion of Check Center, nor does the customer of YOUR STORE(s) have claims against YOUR STORE(s), whether legal or equitable, based on federal, state or local laws, statutes, regulations, rules or ordinances. YOUR STORE(s) shall not subcontract, assign, subrogate or transfer any interest, obligation or right under this Agreement without prior written consent from Check Center. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns. Check Center hereby reserves the absolute right to charge back any checks which have previously been paid, if upon further review by Check Center, such checks fail to meet any conditions or provisions set forth in the Agreement, as determined in the exercise of reasonable discretion by Check Center. In the event that any customer of YOUR STORE(s) asserts a valid defense against payment of any dishonored check, disputes payment or asserts a valid claim against YOUR STORE(s), or YOUR STORE(s) accepts any payment on any dishonored check, or a check is charged back, YOUR STORE(s) agrees to reimburse Check Center the amount paid by Check Center for the dishonored check, including reasonable attorney's fees, and agrees to indemnify, defend and hold Check Center harmless from any and all claims made by such customer. Such amounts shall be due within ten (10) calendar days notice to YOUR STORE(s). YOUR STORE(s) hereby agrees to indemnify, defend and hold Check Center harmless from any and all claims, damages, liabilities, and expenses, including reasonable attorney fees, including fees to enforce this provision, and litigation costs arising from the performance or nonperformance of YOUR STORE(s)' obligations under this Agreement including, but not limited to, any negligence of YOUR STORE(s) or any alleged or actual violations by YOUR STORE(s)' agents or its subcontractors, or YOUR STORE(s)' employees, of any governmental laws, regulations or rules. YOUR STORE(s) shall take any and all measures necessary to assist Check Center in locating, recovering damages from, and prosecuting any person who has tendered a dishonored check to YOUR STORE(s), including but not limited to the filing of a police report upon the request of Check Center and including the submission to Check Center of work orders, credit applications and any additional paperwork such as sales invoices, repair orders and sales slips. **YOUR STORE(s) agrees to post any and all notices required by law to consumers regarding check services, check charges or consumer fees charged for dishonored checks.** YOUR STORE(s) agrees not to use any competitive check approval service during the term of this Agreement. YOUR STORE(s) agrees that Check Center may use YOUR STORE(s)' name in its promotional and advertising material. As a Covered Entity, Business Associate or Affiliate, Check Center safeguards the Privacy of its Customers, Business Associates and Affiliates' non-public personal information in compliance with applicable laws. As such, Check Center may request certain non-public personal information from YOUR STORE(s) in connection with legitimate business needs pursuant to this Agreement. YOUR STORE(s) shall produce all requested information in your possession in order to qualify for prospective warranty reimbursement with respect to the relevant transaction(s). In addition, YOUR STORE(s) may request certain non-public information obtained by Check Center in connection with legitimate business needs for processing or other purposes. Check Center will provide said information, provided it is legally permitted to do so.

XIV. SETTLEMENT OF TRANSACTIONS: As further contemplated in paragraph XIV below, within twenty-four hours thereof, Check Center must receive a digital image from YOUR STORE(s) of each and every check approved through the electronic check conversion processing system through this Agreement on the date said check is processed by YOUR STORE(s). Furthermore, if so requested by Check Center, any supporting paperwork relative to the subject transaction, including but not limited to invoices, transaction receipts printed at the point of sale, work orders, buyers orders, and credit applications, must be received at Check Center's corporate location, as identified within this Agreement within five days from the request date. All checks not processed through the electronic check conversion processing system and which are approved and assigned to Check Center shall be the property of Check Center. YOUR STORE(s) is authorized and directed to deposit all approved checks to YOUR STORE(s)' bank account, on Check Center's behalf as Check Center's agent for such limited purpose, and it is agreed that such deposit will constitute full payment by Check Center to YOUR STORE(s) of all approved checks, unless warranty coverage is applicable under this agreement. All checks covered under this Agreement shall be deposited on Check Center's behalf to YOUR STORE(s)' bank account within three business days. The original checks, along with all additional paperwork, must reach Check Center within thirty (30) calendar days from the date of the approval and the check's acceptance. The date of approval and the date of acceptance shall be identical. Check Center shall process any dishonored check it receives within thirty (30) calendar days of receipt.

XV. CHARGEBACKS, RETURNS, NON-CREDITED CHECKS AND WARRANTY EXCLUSIONS: YOUR STORE(s) shall bear all risk of loss, without warranty or recourse to Check Center for the amount of any transaction, or other amounts due Check Center due to or caused by chargebacks and returns of any kind, whether for check writer chargebacks, insufficient funds returns, administrative returns, or any other type of returns. In addition, Check Center reserves the right to charge a \$25 fee for said chargebacks. Check Center shall have the right to debit YOUR STORE(s)' transactions, designated account or any other funds of YOUR STORE(s) in YOUR STORE(s)' direct or indirect control by reason of YOUR STORE(s) security interest granted to Check Center by YOUR STORE(s) hereunder, and to chargeback or refuse to credit YOUR STORE(s)' account for such transactions wherein Check Center has determined that YOUR STORE(s) failed to comply with any of the terms and conditions of this Agreement in its entirety including the chargeback fee as provided in the Schedule of Fees. In addition to the foregoing, Check Center may at its option debit YOUR STORE(s)' account or decline to credit YOUR STORE(s) for reasons to include, but not limited to, any of the following situations: a) The warranty by Check Center does not apply to any check not properly made and completed in its entirety at the time of its acceptance as follows: (i) where YOUR STORE(s) accepts any check that is not properly made and completed in its entirety at the time of its acceptance and prior to scanning each check through its POS terminal and check imaging device to include: (ii) YOUR STORE(s)' store number, (iii) the Check Center approval number. YOUR STORE(s) understands and agrees that the Check Center approval number must be provided to Check Center after the check has been scanned through the POS terminal and check imaging device after the initiation of processing, (iv) the check writer's valid U.S. Motor Vehicle Driver's License number and state of issuance, valid State Identification Card, or valid U.S. Military I.D. of the person presenting the check, (v) the signatory of the check and the correct and current U.S. residence address of the account holder must be commercially imprinted on the check. The telephone number of the signatory and account holder must be written on the face of the check. If Post Office box is used, or telephone number is not imprinted, the correct and current residence address and correct and current telephone number must be written on the check at the time of approval, (vi) YOUR STORE(s) as the payee, or (vii) the check writer's signature and complete check amount, (viii) where YOUR STORE(s) accepts a check the date of which does not accurately coincide with the date of the approval number and/or sale. The numeric and written amounts of the check(s) must be identical. The amount of the check(s) must be identical to the approved amount; (ix) where YOUR STORE(s) accepts any check that is a two party, travelers, employee at the time of approval, government, equity, line of credit, investment, trust account, money market or credit card check or convenience check, counter check, temporary check, unpersonalized check or photocopy of a check, postdated, predated, undated, redeposited check, previously deposited or previously electronically processed check, any check made out to cash. The check must be drawn on a demand deposit account (DDA), or (x) where YOUR STORE(s) accepts any check with changes or alterations to the original check. b) The warranty by Check Center does not apply: (i) where YOUR STORE(s) fails to comply with any representation, warranty or covenant or failed to meet the requirements of this Agreement, to include the Agreement in its entirety, or applicable law, or has not been authorized in advance by Check Center as required hereunder, (ii) where the transaction is for a type of goods or services sold other than as disclosed in YOUR STORE(s)' application or accepted in writing by an officer of Check Center, or the amount shown on the transaction receipt printed at the point of sale differs from the copy given to the check writer; (iii) in any other situation where the check approval was executed or a credit was given to YOUR STORE(s) in circumstances constituting a breach of any representation or warranty of YOUR STORE(s) or in violation of applicable law or where YOUR STORE(s) has not provided necessary documents to Check Center or resolved a check writer dispute whether or not a transaction is charged back, the item was charged back and represented whether or not the check writer knows or consents to this representation; (iv) where Check Center does not receive a digital image of a processed check on the date of processing of the check or within twenty-four hours thereof, a copy of the signed transaction receipt printed at the point of sale, any work orders, buyer's orders, credit application, or any and all paperwork that may assist Check Center in locating and recovering money from a check writer of YOUR STORE(s) as requested by Check Center within five (5) calendar days from the time of the initial request. Work orders, invoices, credit applications and all other supporting documentation shall indicate the name of the check writer on the applicable document, or; (v) where security procedures were not followed by YOUR STORE(s). c) The warranty by Check Center does not apply where goods have been returned or service canceled by the check writer submitting the check and that check writer has requested a credit and such credit was not processed by YOUR STORE(s). In addition, the scope of Warranty provided by Check Center pursuant to this Agreement does not extend to policies imposed on YOUR STORE(s)' customers by YOUR STORE(s). YOUR STORE(s) understands and agrees that such policies are expressly excluded from prospective warranty

reimbursement and Check Center shall not reimburse YOUR STORE(s) for any fees assessed to YOUR STORE(s) customers as a result of YOUR STORE(s)' internal policies; (i) where a check writer or an agent of the check writer asserts a valid dispute to Check Center. Such valid dispute shall be determined to be asserted in good faith as determined by the exercise of reasonable discretion of Check Center, or (ii) any check against which a Stop Payment order has been issued or has been marked Refer to Maker or Unable to Locate or Account Frozen/Held or is subject to any prior lien, as well as the following, including but not limited to unauthorized, forgery, altered/fictitious, unable to process and counterfeit; d) The warranty by Check Center does not apply (i) where the transaction was generated through the use of an account that was not valid or made on an altered, fraudulent, or counterfeit check, (ii) where the signature on the check does not match the pre-printed name, where no signature for the transaction appears on the sales authorization document or if YOUR STORE(s) failed to obtain specific approval in advance of the sale from Check Center to complete the transaction and/or a valid approval number was not on the sales receipt and/or the check writer has certified in writing to Check Center or his financial institution that no authorized user made or authorized the transaction; or where the transaction was generated through the use of (iii) any stolen or counterfeit check or where Check Center has information from the check writer's financial institution or the check writer submits a notarized affidavit of forgery or police report that said item(s) were reported as stolen or forged or where YOUR STORE(s) failed to compare the signature on the check against the signature on the current valid identification as displayed by the person presenting the check at the time of the transaction. e) The warranty by Check Center will also not apply (i) where the check writer's financial institution or Check Center has information that YOUR STORE(s) committed fraud at the time of the transaction(s), or the transaction is not a sale by YOUR STORE(s) whether or not such transaction(s) was authorized by the check writer or, if with respect to any one of YOUR STORE(s)' location(s), the number of any counterfeit or fraud incidents becomes excessive, in the sole determination of Check Center, then YOUR STORE(s) may be charged back for all transactions and this Agreement may be terminated immediately without notice, (ii) where YOUR STORE(s) accepts any check that is a business check. If the business checks premium service option is selected by YOUR STORE(s), YOUR STORE(s) understands that business checks must be approved by confirming the correct and current business phone number as answered and listed in the business' name. Business checks approved in any other manner will be excluded from warranty coverage. The valid I.D. of the person presenting the business check must also be imprinted or written on the business check, (iii) where YOUR STORE(s) accepts any check as a replacement of any previously dishonored payment, payment for accounts receivable or on credit or account, (iv) any check upon which YOUR STORE(s) has accepted partial payment for any one particular sale or transaction, return of merchandise or entered into an agreement for payment, (v) any check for which the check writer is not the purchaser of the goods or services at the time of approval; the name imprinted on the check and the name on the work order, sales receipt or any other supporting documentation must match, (vi) where YOUR STORE(s) accepts any check for which a refund is negotiated or cash is given at any given time or where YOUR STORE(s) accepts any check with changes or alterations to the original check, (vii) where YOUR STORE(s) accepts any check for which an approval number has previously been sought from Check Center or any competitive Check or Inquiry Service, or (viii) where YOUR STORE(s) accepts any check negotiated for the purchase of a motor vehicle, except as provided in the paragraph below. In addition, expressly excluded from warranty coverage are multiple checks written to avoid or which appear to have been written to avoid, the maximum approval limit, checks under the bank designated minimum dollar amount, checks from merchant or its employees or other agents, checks that are limited as to their negotiability based on time parameters, and checks designated debtor in possession.

XVI. IDENTIFICATION EXCLUSION: For purposes of this Agreement concerning BUSINESS OFFICE CONVERSION checks only, YOUR STORE shall be excused from the obligation to inscribe the check writer's valid U.S. Motor Vehicle Driver's License Number and State of Issuance, valid State Identification Card or valid U.S. Military Identification Card on checks issued and presented to YOUR STORE. However, the foregoing Identification information, as well as the correct and current telephone number of the check writer must be forwarded to Check Center upon submission of any and all applicable checks.

XVII. CONSUMERS OPTING OUT: Upon receipt of notice that a consumer wishes to opt out of the Business Office Conversion service, YOUR STORE understands and agrees that it shall not convert, attempt to convert, or otherwise attempt to electronically process the consumer's item utilizing the CrossCheck Business Office conversion system. Checks submitted by YOUR STORE not in compliance with this provision shall be returned to you and are expressly excluded from prospective warranty reimbursement.

XVIII. MOTOR VEHICLE LEASING AND SALES: Checks for the sale or lease of a Motor Vehicle shall not be processed unless all the following requirements are met: 1) A valid approval number shall be obtained on each qualified check; 2) the down payment price shall not exceed thirty-five percent (35%) of the cash price of the vehicle, excluding trade-ins and manufacturer's rebate, dealer incentives and taxes. Should YOUR STORE(s) accept a check which exceeds this amount, said check shall be ineligible for prospective warranty reimbursement; 3) Should the sale or lease be financed, said sale or lease shall be financed by a finance company that does not have common ownership with YOUR STORE(s). Pre-paid leases are ineligible for prospective warranty reimbursement. Check Center shall not process checks issued and presented for purchases and/or leases which subsequently result in a rollback, rescission or an unwound deal.

XIX. TERMINATION: Based on the TERMS AND CONDITIONS established in the Agreement, YOUR STORE(s) shall be subject to a \$249 fee should it cancel this Agreement prior to the conclusion of the contract term established herein. Said fee shall be subject to debit from YOUR STORE(s)' designated account or any other funds of YOUR STORE(s) in YOUR STORE(s)' direct or indirect control.

XX. INDEMNIFICATION: YOUR STORE(s) hereby agrees to indemnify, defend and hold Check Center harmless from any and all claims, damages, liabilities, and expenses, including reasonable attorney fees and litigation costs arising from the performance or nonperformance of YOUR STORE(s)' obligations under this Agreement including, but not limited to, any negligence of YOUR STORE(s) or any alleged or actual violations by YOUR STORE(s)' agents or its subcontractors, or YOUR STORE(s)' employees, of any governmental laws, regulations or rules.

XXI. FINANCIAL AND OTHER INFORMATION: YOUR STORE(s) shall provide financial statements and other information concerning YOUR STORE(s)' business and YOUR STORE(s)' compliance with the terms and provisions of this Agreement as Check Center may reasonably request. Such financial statements shall be prepared in accordance with generally accepted accounting principles. YOUR STORE(s) and the individuals listed within this Agreement each authorize Check Center to obtain from third parties financial and credit information to determine whether to accept this Agreement and to conduct continuing credit risk evaluations. Upon request, YOUR STORE(s) shall provide to Check Center or its representatives reasonable access to YOUR STORE(s)' facilities and records for the purpose of performing any inspection and/or copying of YOUR STORE(s)' books and/or records deemed appropriate by Check Center. YOUR STORE(s) and the undersigned shall inform Check Center in writing of any material change in YOUR STORE(s)' financial condition.

XXII. CONFIDENTIALITY: Pursuant to all applicable State and Federal law, YOUR STORE(s) shall treat all information that comes to its attention in connection with the performance of this Agreement, including but not limited to, information concerning Checks and Check writers, as strictly confidential and certifies that it shall utilize confidential information only for the purpose set forth in this Agreement. Check Center may use the information it receives from YOUR STORE(s) relating to Checks and Check writers for the services provided under this Agreement or any of its other products or services, if applicable.

XXIII. FORCE MAJEURE: Check Center shall not be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond Check Center's control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of Check Center whose performance is affected. Check Center shall not be liable for any failure or delay in performance under this Agreement to the extent said failures or delays are proximately caused by causes beyond Check Center's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non liability, the party experiencing the difficulty shall give the other prompt notice, defined hereinafter as that degree of notice which is reasonable under the circumstances. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

XXIV. VENUE: THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE THAT ANY ACTION ARISING OUT OF THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE BROUGHT IN THE COURTS OF SONOMA COUNTY, CALIFORNIA. YOUR STORE(S) AGREES THAT THIS AGREEMENT WAS FORMED IN SONOMA COUNTY, CALIFORNIA UPON ACCEPTANCE BY AN OFFICER OF CHECK CENTER.

XXV. PRINCIPAL OF YOUR STORE(s): In consideration for entering into this Agreement, Consumer/Principal of YOUR STORE(s) hereby absolutely and unconditionally personally guarantees the full and prompt payment of any and all amounts owed as contemplated by this Agreement. In addition and if applicable, Consumer/Principal of YOUR STORE(s) understands and expressly consents to waive any and all protections as afforded by Consumer/Principal of YOUR STORE(s)' status as a corporation. Consumer/Principal of YOUR STORE(s) understands and expressly consents that this guaranty is continuing, binding upon heirs and successors and may not be changed except in writing, signed by an authorized representative and accepted by an officer of Check Center. Consumer/Principal of YOUR STORE(s) agrees to all terms and conditions herein and attached recitals. Consumer/Principal of YOUR STORE(s) understands and agrees that nothing contained therein modifies any of the terms and conditions of the executed Agreement currently in effect.

Check Center is a registered dba of CrossCheck, Inc.

Terms and Conditions of the Service Agreement

This is a legal contract. By signing this form, I warrant, represent, and agree that: (1) I have received, carefully read, agree to and understand the terms and conditions of this Service Agreement, including those provided on the reverse side of this document and Service Agreement Attachment A; (2) I am at least 18 years old and I am authorized to sign for and bind any account named above; (3) all statements made above are true and correct, and have been made by me in order to induce CHARGE Anywhere LLC ("CHARGE Anywhere") to grant credit to me, or my business, with knowledge that CHARGE Anywhere will rely thereon; (4) I expressly authorize CHARGE Anywhere to investigate, re-examine, and report business payment and credit history at any time and exchange such information with others in connection with this application; and (5) this agreement is accepted and agreed to.

Customer or CHARGE Anywhere may terminate this Service Agreement upon not less than thirty (30) days prior written notice to CHARGE Anywhere.

For ACH Debit Payers: Customer authorizes CHARGE Anywhere LLC to present Automated Clearing House credits/debits to and from the account listed, for the purposes set forth in this Customer Service Agreement. For Credit Card Payers: Customer agrees to pay according to the card issuer agreement. This authorization is valid until revoked in writing.

For the purposes of this Service Agreement, (a) "CHARGE Anywhere" shall refer to CHARGE Anywhere LLC, (b) "Seller" shall refer to the entity listed in the box entitled "Seller Name" on the front side of this Agreement, (c) "Customer" shall refer to the entity listed in the box entitled "Customer Company Name" on the front side of this Service Agreement, (d) "Service(s)" shall refer to CHARGE Anywhere's payment processing services and certain other services offered by CHARGE Anywhere in connection therewith that are listed on the front side of this Service Agreement, (e) "Hardware" shall refer to the equipment purchased from Seller or CHARGE Anywhere that is authorized by CHARGE Anywhere for use in connection with the Services and (f) "Software" shall refer to any software imbedded in the Hardware and the web-based software that is made available by CHARGE Anywhere for use in connection with the Services.

1. SERVICES

(a) **Use of the Services.** If Customer's use of Services is in violation of the following requirements, then CHARGE Anywhere shall have the right, without notice to Customer, to terminate this Service Agreement and cease providing the Services.

(i) Services must be used in compliance with the Federal Communications Commission and other federal, state and local laws, rules and regulations.

(ii) Unauthorized or otherwise illegal charges may not be transmitted via services.

(iii) Services may not be resold or otherwise provided to third parties.

(b) **Modifications to the Services.** CHARGE Anywhere reserves the right in its discretion and without notice to Customer, from time to time, to make changes in the Services, Hardware, Software, any of its other products or its business operations. CHARGE Anywhere shall have the right, in its discretion, to terminate Customer's access to, and use of Services, as and when necessary, to permit other customers to use the radio frequency, or frequencies, on which its services are being provided.

(c) **Availability of Service.** Customer acknowledges that Services are subject to transmission limitations caused by conditions such as Customer's operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Services may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of CHARGE Anywhere's facilities and Services.

2. PAYMENTS

(a) **Charges.** Customer agrees to pay CHARGE Anywhere in full and when due, the amounts set forth on the front side of or attachments to this Service Agreement.

(b) **Taxes.** All applicable excise, value added, utility, sales or use taxes and any applicable surcharges, assessments or government fees shall be billed to Customer and shall be paid by Customer, or, in lieu thereof, Customer will provide CHARGE Anywhere with a tax exemption certificate acceptable to the applicable taxing authorities.

(c) **Payments.** Except amounts due and payable upon execution of this Service Agreement, charges shall be invoiced monthly. Payment must be made within fifteen (15) days of the date of the invoice. When a billing cycle covers less than or more than a full month, CHARGE Anywhere may make reasonable adjustments and pro-rata. If Customer signed a payment authorization and provided CHARGE Anywhere with a credit card number, or bank account number then Customer expressly authorizes CHARGE Anywhere to charge any or all amounts owed to it by Customer to that credit card number or bank account number to demand immediate payment from the credit card's issuer. To the extent permitted by law, Customer must pay a fee (presently \$25.00, but subject to change by CHARGE Anywhere) for any of Customer's checks returned for any reason. In the event Customer's wireless handheld device is lost or stolen, Customer shall nonetheless be liable for all charges attributable to such device until such time as CHARGE Anywhere is notified of the loss or theft. This Service Agreement shall not terminate due to any such notice.

(d) **Late Payments, Billing Dispute.** If CHARGE Anywhere does not receive Customer's payment on or before the due date, to the extent allowable by law, Customer will pay to CHARGE Anywhere a late payment fee equal to the greater of (i) \$5 or (ii) 1.5% on all due and unpaid amounts to be paid to CHARGE Anywhere. Acceptance of late or partial payments and/or late payment fees shall not waive any of CHARGE Anywhere's rights to collect the full amount due under this Service Agreement. Customer waives any objection it may have with respect to any invoice, charge or fee if Customer fails to provide CHARGE Anywhere with written notice of such objection within fifteen (15) days of receipt of invoice. Customer shall pay to CHARGE Anywhere, \$25.00 per wireless handheld device to reconnect services that have been terminated as provided in this Service Agreement.

3. NONEXCLUSIVE

CHARGE Anywhere and Seller are free at any time to market and sell Services, Hardware and Software and any other services, hardware or software to third parties and upon such prices, terms and conditions as CHARGE Anywhere or Seller, as applicable, in its sole discretion deems appropriate. Customer is free to obtain services similar to and/or competitive with the Services, hardware similar to and/or competitive with the Hardware and software similar to and/or competitive with the Software, from third parties upon such prices, terms and conditions as Customer in its sole discretion deems appropriate.

4. THIRD PARTY EQUIPMENT AND SERVICES

Except as may otherwise be specifically agreed to in writing between CHARGE Anywhere and/or Seller and Customer, Customer shall be solely responsible for the selection, implementation, and performance of any and all third party equipment, software and services used by Customer in connection with the Services, Hardware or Software. CHARGE Anywhere AND SELLER MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD PARTY EQUIPMENT, SOFTWARE AND SERVICES AND WITHOUT LIMITING THE FOREGOING, DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. CHARGE Anywhere AND SELLER SHALL HAVE NO LIABILITY FOR THE FAILURE OR UNAVAILABILITY OF ANY SUCH THIRD PARTY EQUIPMENT, SOFTWARE OR SERVICES. CUSTOMER SHOULD DIRECTLY CONTACT THE THIRD PARTY CONCERNING ALL ISSUES THAT ARISE OUT OF THE USE OF SUCH THIRD PARTY EQUIPMENT, SOFTWARE AND SERVICES.

5. TERMINATION

(a) Customer or CHARGE Anywhere may terminate this Service Agreement upon not less than thirty (30) days prior written notice to CHARGE Anywhere with or without cause

(b) In the event that CHARGE Anywhere is prevented from providing any portion or all of the Services pursuant to this Service Agreement, by any law, regulation, requirement or ruling, or if a notice from a government agency or department indicates CHARGE Anywhere is not permitted to provide any portion or all of the Services, CHARGE Anywhere may immediately cease providing the Services without any liability whatsoever to Customer. Nothing herein shall be construed to require CHARGE Anywhere, and CHARGE Anywhere is not required to seek a waiver of any law, rule, regulation, or restriction, or seek judicial review or appeal of any court order.

(c) If Customer commits or permits an Event of Default, then CHARGE Anywhere may, in addition to all other rights and remedies provided by this Service Agreement or by law or equity, terminate this Service Agreement. "Events of Default" shall include, but shall not be limited to, (i) failure to perform a material term or condition of this Service Agreement unless such failure is corrected within fifteen (15) days of notice from CHARGE Anywhere

advising Customer of the failure, (ii) Customer's failure to pay any sums due and payable as and when required and such failure continuing for a period of ten (10) days after notice from CHARGE Anywhere advising Customer of the failure to pay, (iii) Customer's insolvency or failure to pay debts as they come due and (iv) Customer's becoming subject to any proceeding under the Bankruptcy Act or similar laws.

(d) Notwithstanding any termination of this Service Agreement, Customer shall be liable and shall immediately pay to CHARGE Anywhere all charges due, or which would have become due under this Service Agreement.

6. FORCE MAJEURE

Neither CHARGE Anywhere nor Seller shall be liable to Customer for any failure, termination or interruption of the Services or any delay or failure in performance hereunder due to fires, strikes, civil disturbances, threatened strikes, stoppage of work, embargoes, requirements imposed by governmental or judicial regulations, rules or orders, civil or military authorities, acts of God (including, by way of example, weather conditions), omissions of common carriers, the public enemy, acts of terrorism or other causes which are beyond the control of the party unable to perform.

7. CUSTOMER INDEMNITY/LIABILITY

Customer shall defend, indemnify and hold harmless, CHARGE Anywhere, its parents, successors, affiliates and agents from any claims, damages, losses, or expenses incurred by CHARGE Anywhere in connection with all claims, suits, judgments, and causes of action (i) for infringement of patents or other proprietary rights arising from combining with or using any device, system or service in connection with Hardware or Services or (ii) for libel, slander, defamation or infringement or violation of copyright or other proprietary right with respect to material transmitted by Customer via Services.

8. DISCLAIMER OF WARRANTY

OTHER THAN ANY WRITTEN WARRANTY PROVIDED SEPARATELY TO CUSTOMER WITH THE HARDWARE, IF ANY, CHARGE Anywhere AND SELLER MAKE, AND CUSTOMER RECEIVES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES, SOFTWARE OR HARDWARE. CHARGE Anywhere AND SELLER SHALL HAVE NO LIABILITY TO CUSTOMER FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF TRADE SECRETS WITH RESPECT TO THE SOFTWARE OR HARDWARE. CUSTOMER'S SOLE RECOURSE IN THE EVENT OF ANY CLAIM OF PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF TRADE SECRETS WITH RESPECT TO SOFTWARE OR HARDWARE SHALL BE SOLELY AGAINST THE MANUFACTURER OF SUCH SOFTWARE OR HARDWARE.

9. LIMITATION OF LIABILITY

(a) **Hardware, Services and Software.** Customer's sole remedies for loss or damage caused by partial or total nonperformance of any Hardware or Software, or for delay or nonperformance of any Services under this Service Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, shall be Customer's direct damages, if any, and shall not in any event exceed the amount paid by Customer to CHARGE Anywhere under this Service Agreement. CHARGE Anywhere AND SELLER SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER FOR THE ACCURACY, TIMELINESS OR CONTINUED AVAILABILITY OF THE SERVICES.

(b) **Disclaimer.** AS A MATERIAL PART OF THE CONSIDERATION PAID BY CUSTOMER FOR THE SERVICES, SOFTWARE AND HARDWARE, CUSTOMER AGREES THAT CHARGE Anywhere AND SELLER SHALL IN NO EVENT BE LIABLE FOR AND CUSTOMER HEREBY WAIVES ITS RIGHT TO CLAIM ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR REVENUES, LOSS OF THE USE OF SERVICES, SOFTWARE OR HARDWARE, OR ANY ASSOCIATED PRODUCTS, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT SERVICES, DOWNTIME COSTS OR CLAIMS OF CUSTOMER OR CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES) DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS SERVICE AGREEMENT, THE SERVICES OR THE HARDWARE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN.

11. NO THIRD PARTY BENEFICIARIES

Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the parties hereto and not for any other person.

12. WAIVERS OF DEFAULT

Waiver by any party of any default by another party shall not be deemed a continuing waiver of such default or a waiver of any other default.

13. GOVERNING LAW

This Service Agreement shall be construed in accordance with the laws of the State of New Jersey applicable to agreements executed and wholly performed within that State. Customer hereby consents to the personal jurisdiction of the appropriate New Jersey court, or, if that Court lacks subject matter jurisdiction, then to the personal jurisdiction of the state of New Jersey in any county that may be an appropriate venue under such Court's rules. Customer agrees that in any action brought by CHARGE Anywhere in either such Court, Customer shall not challenge such action for lack of in personam jurisdiction.

14. ASSIGNMENT AND DELEGATION

CHARGE Anywhere may assign this Service Agreement and any of its rights and obligations hereunder without notice to or consent of Customer. Customer shall not assign this Service Agreement or any of its rights or obligations hereunder. CHARGE Anywhere may perform all of the Services to be performed under this Service Agreement directly or may have some or all of the Services performed by its subsidiaries, affiliates or subcontractors.

15. AMENDMENTS

Any modification(s) to this Service Agreement to be effective must be in writing in the form of an amendment to this Service Agreement and signed by both parties.

16. ENTIRE AGREEMENT

This Service Agreement contains the entire agreement between CHARGE Anywhere and Customer and there are merged hereto all prior representations, promises, and conditions in connection with the subject matter hereof. Any representations, promises, or conditions not incorporated herein shall not be binding upon either party and this Service Agreement supersedes and is in lieu of all existing agreements or arrangements between the parties with respect to the subject matter hereof.