

# Merchant Bankcard Application and Agreement Please print and fill out completely.

HUMBOLDT MERCHANT SERVICES An Affiliate of 1st National Bank of Nevada, Reno, NV P.O. Box 1479, Eureka, CA 95502

Sales ID #		Representative's Name Repre							epreser	esentative's Phone									
PROCESSIN	G IN	IFOF	RMA	TIOI	N														
Maximum Monthly Visa/MC Volume		\$					Avera	age Vis	sa/MC	Ticket	\$_								
Visa/MasterCa		Do yoı	ı proce	ss re	curring	transa	actions						ccept card numbers over the Internet?						
☐ Retail/Storefro	F	Fee Summary (Refer to Section 25 of Merchant Agreement for additional fees.)											onal fees.)						
☐ Service ☐ Lodging ☐ Trade Show					Qualifie	Rate		redit Card %					Signature Debit*						
<ul><li>☐ Mail Order/Telephone Order</li><li>☐ Internet (shopping cart required)</li></ul>					Auth/Batch Fee \$										al Fee	<b>;</b>	\$		
☐ Virtual Termina	al (no s	shoppi	ng car	t)	Monthl	ly Minir	num		\$						/lercha	w \$_5.00			
Swiped		9/	%		Device Monthly Fee \$ (Internet/Wireless)														
Non-Swiped		9	%		$\sqsubseteq$	MQ	)R	$\overline{}$	MQR 8	& NQR A		STMENTS	3						
Total Must	Equal	100%			L_				<u></u>	IVGIT				SD MQR/NQR			* If left blank, signature debit rate and credit card rate will be the same.		
Special Program/Eve	:nt																		
Discover																Apply			
JCB																			
American Express		$\overline{\Box}$	$\overline{\top}$		Apply (Must Initial Below)														
Apply for American Express																			
☐ Discount Ra	ıte		_% c	or [	] Month	hly Flat	Fee: §	\$5.95				] Monthly	/ Gross	Pay (+.	.03% if	\$100k+	+) <b>or</b> Daily Gross Pay		
Est. Annual Vo	lume: \$	ì		_ E	Est. Average Ticket: \$					-	Pay Frequency: ☐ 3 Day ☐ 15 Day ☐ 30 Day								
reporting agencies. American Express v accept the American Welcome Letter. By	nerican E If I ask will give In Expres	Express America me the ess Card	s") to ver can Expr name a d, the Ter	rify the in ress whe and addr erms and	informati ether or ress of the d Conditi	tion on the not a count the agent tions for the tions for	his App onsume ncy that Americ purcha	plication a er report at furnished can Expr ase of go	and to ret was remed it. I uress Ca	receive a equested understa ard Accep	and ed, Ame and the eptance	exchange erican Exp nat upon A ce ("Terms	informat press wi American s and Co	tion abou ill tell me n Express anditions	ut me, in e, and if s' appro ") will b	including, America oval of the sent to			
Terminal Type			DS	3L/IP	Con	ntactless	s Pr	rinter Ty	ре		_			_	_	_	PIN Pad Type		
Software Type/Versio	'n						<u> </u>	DSL/IP	Gate	eway HMS to set up: Authorize.Net USA ePay									
DISCLOSUR	Ε																		
MEMBER BANK (Acquire	•									ME	RCHA	NT INFORM	ATION						
· '			nk of Ne Reno,		a 8951 <sup>-</sup>	1					Merchant DBA:								
Acquirer Phone: (86  IMPORTANT MEMBER BAN  1. A Visa Member is	IMPORTANT MEMBER BANK (Acquirer) Responsibilities  1. A Visa Member is the only entity approved to extend acceptance of Visa									3	Important Merchant Responsibilities  1. Ensure compliance with cardholder data security and storage requirements.  2. Maintain fraud and chargebacks below thresholds.  3. Review and understand the terms of the Merchant Agreement.  4. Comply with Visa Operating Regulations.								
products directly to a Merchant.  2. A Visa Member must be a principal (signer) to the Merchant Agreement.  3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.  4. The Visa Member is responsible for and must provide settlement funds to the Merchant.									the	The responsibilities listed for Member Bank and Merchant do not supersede terms the Merchant Bankcard Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Merchant have any problems.									
from settlement.	<ol><li>The Visa Member is responsible for all funds held in reserve that are derived from settlement.</li></ol>										rcha	ınt's Signa	ature				Date		
								Merchant's Name and Title											

BUSINESS INFORMATION														
Legal Business Name	Doing Business As													
Location Address	City	City							State Zip					
Billing Address			City	City							State Zip			
Contact Name			Federal	Tax ID#										
Business Phone	Phone Fax													
E-mail	URL (use additional sheets if needed to list all URLs)													
Type of Ownership ☐ Sole Proprietor ☐ Par	Corporation Non-profit LLC Government													
Publicly Traded Company (NASDAQ/NYSE/AMEX)	Do you currently process Visa/MC?  Yes  No (If yes, provide 3 most recent statements.)													
Years in Business Has this merchant or any of the principals ever had a merchant relationship terminated?														
Describe Products/Services Sold			Do you use a Fulfillment House?											
Refund Policy (select one) No Refunds Refund Within 30 D	ays 🗌 [	Damaged/Def	fective Me	rchandise	Only [	Res	tocking	g Fee Cl	narged	Sto	ore Cre	dit Only	,	
Return Authorization Required (RM/RM	MA) 🔲 O	Other												
Product/Service is received (select one) after Card is processed.	tely [	] 1-10 Days		11-30 Da	ys		31-90	) Days		□ 91	l-180 D	ays		>180 Days
Marketing Methods Newspaper/Magazine	Television/	/Radio	Yello	ow Pages		□Dir	ect Ma	ail 	□In	ternet		Oth	ner	
DATA SECURITY QUESTIONS														
Do you store account data electronically?														
Do you utilize a fraud scrubbing service? Yes No If yes, name of service:														
Do you utilize a shopping cart service? ☐Yes ☐ No	Do you utilize a shopping cart service?													
Do you utilize a hosting provider(s)? ☐ Yes ☐ No	If yes, n	name of provi	ider(s):											
PRINCIPAL #1		PRIN	CIP	4L #	2									
Name		Name												
Position/Title		% Owne	ərship	Position/T	ītle								%	6 Ownership
Social Security #	Date	e of Birth		Social Se	curity #							Date	of Bir	th
Driver's License #	State	e		Driver's Li	icense	#						State	<del></del>	
Home Address	Rent	ent Home Address Own								Rent				
City		City State Zip												
Home Phone	Home Phone													
Relative Not Living With You		Relative N	Not Livir	ng With	You				Pho	ne				
AUTHORIZATION TO ACH (Inc	oludo V	loided (	Chock	۸										
Bank Name	iuu <del>c</del> v	olueu (	DIIECK	•)			Pho	ne						
Transit & Routing/ABA#				]	Ac	count #	/DDA							

### 25 FEES

Merchant agrees to pay FNBN and HMS all fees, discount rates, and other charges set forth herein or in any other document issued contemporaneously herewith, and any other charges as may be shown on the monthly statement or that arise out of this Agreement, as amended from time to time. Merchant agrees that all charges are considered accurate and final unless Merchant disputes them within sixty (60) calendar days of receipt of documentation showing the charges. No charges will be prorated for partial months including the month in which the Merchant's account is closed, and all charges commence on the date that the Merchant Bankcard Application is approved by FNBN and HMS.

The following charges are applicable to this Agreement as of the effective date hereof (Merchant acknowledges that such charges may be changed and that other fees and/or charges may be added by FNBN and HMS pursuant to this Agreement):

Qualified Discount Rate for sales and credits: See Fee Summary on Application.
Rewards Discount Rate for sales and credits: An additional 0.14% over the credit Qualified Discount Rate.

Mid-Qualified Discount Rate (MQR) for sales and credits: An additional 0.70% over the credit Qualified Discount Rate or as otherwise noted in the Adjustments Section on Application.

Non-Qualified Discount Rate (NQR) for sales and credits: An additional 1.79% over the credit Qualified Discount Rate or as otherwise noted in the Adjustments Section on Application.

Auth/Batch Fee: See Fee Summary on Application.

Voice Auth Fee: \$1.00 each

Maintenance Fee: \$10.00/mo per account Address Verification Service (AVS): \$0.10 each Device Monthly Fee: See Fee Summary on Application. Retrieval Fee: \$7.00 each eMerchant View: \$5.00/mo per account

Chargeback Fee: \$25.00 each

Documentation Research Fee: \$20.00 per hour Overlimit Fee: \$35.00 per occurence ACH Reject Fee: \$25.00 per occurrence

Early Cancellation Fee: \$159.00 if Merchant cancels this Agreement prior to its

Date

one year anniversary.

Settlement Account Change Fee: \$15.00 per occurrence Merchant DBA Name Change Fee: \$15.00 per occurrence Monthly Minimum: See Fee Summary on Application per account.

Annual Fee: See Fee Summary on Application; to be charged the first full month the account is open, and annually thereafter on Anniversary Date.

Requests for refunds of fees or statements or questions relating to fees must be addressed in writing to HMS within sixty (60) days of receipt of statement, but in no event more than ninety (90) days following imposition of the fee in question. FNBN's and HMS' liability with respect to any fee is limited to ninety (90) days from date statement issued.

### **26 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles. Any action or dispute arising from, or related to, this Agreement shall not be deemed proper unless brought in a court of competent jurisdiction located in Humboldt County, California.

AGREEN	MENT OF PARTIES										
	WHEREOF, the Merchant, HMS										
day of found herein.	200, a	and hereby agree to all terms a	and conditions i	ncluded on all e	leven (11)	pages of this intercria	ant Bankcard Agreem	nent (OA-004)			
MERCHANT:											
	Principal or Corporate Officer S	Signature	Date	Principal or C	orporate C	Officer Signature		Date			
ACCEPTED BY:	Print Name			Print Name							
	Humboldt Merchant Services, I	P.O. Box 1479, Eureka, CA	Date	1st National B	ank of Nev	/ada		Date			
GUARAN	ITEE										
FNBN's and H Agreement un- as it now exist amendment ar and perform a remedies agai indemnity deri suretyship law without limitati discount rate, FNBN and HN contractual rel any default he	BUARANTEE: As a primary indu HMS' acceptance of this Merch conditionally and irrevocably gu ts or as it may be amended from the conditionally and irrevocably guts or as it may be amended from the event of any breach be any other obligation of Merchant inst any other person or entity revived from Merchant and all other instance of the event o	ant Bankcard Application and arantees the full and faithful per m time to time, whether before y Merchant, hereby waives Not pursuant to the terms of the esponsible to, or any security later rights and defenses availated all rights or defenses arising eleration, or other change in the onfirms that Guarantor, collect debit any overdue fees, costs, and Merchant from any personal Credit I	Agreement, the erformance by e or after terminative of Default Agreement. FN held by, FNBN able to Guaran by reason of a he time any partively or individuo, chargebacks, onal checking a Bureau Report	e undersigned Merchant of each nation or expira and agrees to it	Guaranto ch of its old tition and windemnify may process arantor was ornia. Civil in or change performant to the Ags, expensed account rees to part of the part of	r, jointly and severall oligations to FNBN are whether or not Guara FNBN and HMS for a seed directly against Gives any and all right. Code Section 2787 ge in the terms of the ce thereunder is due greement, and unconces, or obligations uncowned or controlled by all costs and expeging the property of the cost of the co	ly if more than one, and HMS pursuant to intor has received ariny and all funds due suarantor without first of 2856, inclusive, e Agreement whatso, and/or any change ditionally and specifier the Agreement a by Guarantor, and fenses of whatever n	by signing this this Agreement, by notice of any a from Merchant at exhausting its mbursement, or (or any similar oever, including, in any interest, cally authorizes nd/or any other urther, to report			
<b></b>		, An Individual					, An Individual	<del></del>			
Signature		Date	Si	gnature			Da	te			
MERCHA	NT SITE SURVEY -	To Be Completed	∟by Sales	Represe	entativ	re_					
	emises: Own Rent L	Landlard's Name		,			Phone				
Permanent S	ignage:  Yes  No	Zoning: Commercial	Industrial   F	Residential	Is inven	tory consistent with be	usiness? Yes	] No			
Type of Buildi	ing: Shopping Center O	ffice Building  Residence [	Retail Store	front		Appears Legitimate?	Yes No				
listed in the B	elow, I certify that I have inspecte Business Information and Princip and belief, the information set fort	al Sections of this Application A	AND I have con		•						

Sales Representative's Signature



#### **HUMBOLDT MERCHANT SERVICES**

An Affiliate of 1<sup>st</sup> National Bank of Nevada, Reno, NV P.O. Box 1479, Eureka, CA 95502

# MERCHANT BANKCARD AGREEMENT TERMS/CONDITIONS

THIS AGREEMENT (the "Agreement") by and between Humboldt Merchant Services, LP ("HMS"), First National Bank of Nevada ("FNBN"), and "Merchant," whose name, complete address, business organization, and type of business are stated on the attached Merchant Bankcard Application, is entered into as of the date it is accepted by HMS, as such date is set forth immediately following Paragraph 26 on the Merchant Application. FNBN is a Member Bank (as defined below) and HMS is an affiliate of FNBN. In consideration of the premises set forth herein, FNBN, HMS, and Merchant hereby agree as follows:

### 1. DEFINITIONS

The terms set forth below and used in this Agreement shall have the following meaning:

- a) "Auth/Batch Fee" is the amount charged for dialing out including authorizations, approvals, and declines for all card types and the opening and closing of a batch.
- b) "Bankcard" means a Visa or MasterCard card.
- c) "Cardholder" or "Purchaser" means the person whose name is embossed on the Bankcard or whose signature appears thereon in the signature panel as an authorized user.
- d) "Discount Rate" is the amount charged for processing credit card or Signature Debit card sales and/or returns and is based upon whether a transaction is classified as a QT, RT, MQT, or NQT as defined in items (j), (k), (l), and (m) below.
- e) "Electronic Combined Warning Bulletin or National Card Recovery File" refers to the Restricted Card List maintained by Visa and MasterCard. The Restricted Card List/Electronic Warning Bulletin contains the account numbers of Bankcards which have been lost, stolen, fraudulently used, or which otherwise are not to be honored by Merchant.
- f) "Electronic Commerce" means transactions which occur over the Internet.
- g) "Electronic Commerce Merchant" is any merchant accepting customer card information via the Internet for the purpose of processing Bankcard transactions.
- h) "Floor Limit" is a term used by Visa and MasterCard to specify the threshold transaction dollar amount below which Merchant is not required to obtain authorization. Under this Agreement, the Floor Limit on all transactions is always zero.
- i) "Member Bank" means any financial institution which is a member of either MasterCard, Inc. or MasterCard International, Inc. (collectively, "MasterCard"), or VISA U.S.A., Inc. or VISA International, Inc. (collectively, "Visa").
- j) "MQT", a mid-qualifying transaction, is a transaction that either does not contain all of the attributes of a QT or RT, or is from a card type that is more expensive or contains greater risk according to Visa or MasterCard and/or HMS. MQT credit transactions will be

charged an additional percentage over the credit Qualified Discount Rate. MQT Signature Debit transactions will be charged an additional percentage over the credit Qualified Discount Rate unless otherwise noted in the adjustments section of the Fee Summary on the Application.

- k) "NQT", a non-qualifying transaction, is a transaction that either does not contain all of the attributes of a QT, RT, or MQT, or is from a card type that is more expensive or contains greater risk according to Visa or MasterCard and/or HMS. NQT credit transactions will be charged an additional percentage over the credit Qualified Discount Rate. NQT Signature Debit transactions will be charged an additional percentage over the credit Qualified Discount Rate unless otherwise noted in the adjustments section of the Fee Summary on the Application.
- l) "QT", a qualified transaction, is a transaction that is classified by HMS to be charged the most favorable rate as processed by HMS and Visa or MasterCard. HMS will attempt to assist merchants to qualify transactions as QTs by periodically providing best-practice tips on merchant statements and/or its website www.hbms.com. Certain transactions, including transactions utilizing MasterCard's World Card, Visa's Signature Card, Business Cards, Foreign Cards, and Corporate/Purchase Cards, will never be QTs. HMS, in its sole discretion, may revise the classification of transactions based on a variety of factors, including, but not limited to, Visa or MasterCard Interchange rules or HMS updates to its processing system. NOTE: All transactions may qualify for higher rates, Rewards Discount Rate, Mid-Qualified Discount Rate, or Non-Qualified Discount Rate. m) "RT", a rewards transaction, is a credit transaction that is from a card type that is more expensive according to Visa or MasterCard and/or HMS and is not classified by HMS to be a QT, MQT, or NQT. RT credit transactions will be charged an additional percentage over the credit Qualified Discount Rate.
- n) "Sales Draft" and "Credit Voucher" mean the respective forms supplied by FNBN and HMS, or Merchant's own forms if approved by FNBN and HMS, for the purpose of consummating sales or credits/refunds to be charged or credited to the Bankcard account of a Purchaser on the basis of a Bankcard properly honored by Merchant pursuant to the terms hereof. Sales Drafts and Credit Vouchers shall be transmitted to FNBN and HMS electronically by Merchant and shall be in a medium and form approved in advance by FNBN and HMS. All references in this Agreement to "Sales Drafts" and "Credit Vouchers" shall include, as applicable, all authorized forms of Sales Drafts and Credit Vouchers, whether electronically transmitted, on magnetic tape or original paper format.
- o) "Settlement Account" (hereinafter "Account") means a demand deposit account established at a financial institution capable of receiving credits and debits from the Automated Clearing House ("ACH") system operated by the U.S. Federal Reserve Bank for the limited purposes of debiting or crediting Merchant for Bankcard activity pursuant to this Agreement.

Other capitalized terms set forth in this Agreement have the meanings ascribed to them in the rules and regulations of Visa or Master-Card, as applicable.

# 2.MERCHANT WARRANTIES AND ACKNOWLEDGEMENTS

Merchant warrants to FNBN and HMS all of the following: a) That all representations and statements in this Merchant Bankcard Application and Agreement, or in any other document relating hereto, made by Merchant or on Merchant's behalf are true, accurate, and complete in all material respects. Merchant hereby authorizes FNBN and HMS to investigate and confirm any information related hereto which is provided at any time by Merchant. For this purpose, FNBN and HMS may utilize credit bureau/reporting agencies and/or their own agents. Upon Merchant's request, FNBN and HMS will provide Merchant with a copy of the results of such investigation.

- b) That Merchant is engaged in the lawful business shown on the Merchant Bankcard Application, which includes the sale of merchandise and/or services, and is duly licensed to conduct such business under the laws of the State, County, and City in which Merchant is located, and, further, that Merchant will not process Bankcard transactions for any other type of business.
- c) That Merchant has not been terminated from settlement of Bank-card transactions by any financial institution or determined to be in violation of any of the rules and/or regulations of Visa or MasterCard except as specifically disclosed in the Merchant Bankcard Application. Merchant acknowledges that the signature of the representative on the Merchant Bankcard Application and/or this Agreement only constitutes a conditional offer made on behalf of, and is contingent upon the final approval of, FNBN and HMS and that this Agreement is not binding until approved by FNBN and HMS.
- d) That Merchant has the authority to enter into this Agreement and that the person(s) signing for, or on behalf of, Merchant is/are specifically authorized and directed to do so by Merchant.
- e) That all of Merchant's sales locations engage in the same or substantially similar business activity as that listed on the Merchant Bankcard Application.
- f) That as to each transaction presented to FNBN and HMS for payment: i) the Sales Draft is valid in form and has been completed with all applicable requirements; ii) the goods or services described on the Sales Draft have been delivered or completed in accordance with Merchant's agreement with the Cardholder; iii) the Cardholder has no defense, right of setoff, or counterclaim against Merchant in connection with the purchase of the goods or services; iv) the transaction was placed by the Cardholder or other authorized user of the Bankcard; and v) the transaction was not previously charged back or declined.
- g) Merchant acknowledges that all transactions are subject to all rules and regulations of Visa and MasterCard and agrees to comply with and be subject to, all such rules and regulations as they may exist from time to time, including but not limited to chargeback procedures and the resolution of any disputes relating thereto. Visa and MasterCard rules and regulations, as presently in effect and as they may be amended from time to time, are hereby incorporated by reference herein, and made a part hereof, as though fully set forth herein. Any violation of Visa and MasterCard rules and regulations by Merchant shall constitute a breach of this Agreement and may, at the option of FNBN and HMS, be grounds for terminating this Agreement. h) Insofar as Merchant represents that it reasonably anticipates a monthly Bankcard sales volume based upon an average ticket amount as set forth in the Merchant Bankcard Application, Merchant acknowledges that any monthly Bankcard volume in excess of approved Bankcard volume will cause the Merchant account to be reviewed and may result in the possible interruption of service, and/or the delay of transmission of funds and/or the diversion of funds into a Reserve Account. Merchant hereby indemnifies and holds FNBN and HMS harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

i) Merchant is responsible for its employees' actions while employed by Merchant.

#### 3. ADVERTISING

- a) Merchant shall prominently display any advertising or promotional materials provided or required by FNBN and HMS to inform the public that Visa and MasterCard Bankcards will be honored at Merchant's place of business. Such displays, however, are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by Visa or MasterCard, as applicable. b) In no event will Merchant advertise or display any promotional material containing the name or symbol of FNBN, HMS, Visa, or MasterCard, which states or implies that only Bankcards issued by FNBN will be honored by Merchant. Additionally, Merchant shall not indicate or imply that FNBN, HMS, Visa, or MasterCard endorses Merchant's products or services.
- c) Nothing herein is intended to restrict Merchant from honoring other cards or from entering into any other transaction with a Purchaser. Merchant may display and advertise any other credit card or credit plan. Visual parity shall be maintained between the Visa and Master-Card symbols and any local/regional acceptance mark also displayed. d) All advertising media and displays supplied to Merchant by FNBN and HMS are the property of FNBN and HMS, and upon termination of this Agreement, Merchant will return them to FNBN and HMS. Merchant shall have the right to use and display the proprietary Visa and MasterCard names and symbols only while this Agreement is in effect or until Merchant is notified by FNBN, HMS, Visa, or MasterCard to cease such usage, and then only in compliance with applicable Visa and MasterCard rules and regulations concerning such usage.
- e) Merchant shall have no right to use the proprietary name and/or symbol of FNBN or HMS unless the materials containing such are provided to Merchant by, and/or are approved in advance by, FNBN and HMS.

### 4. HONORING BANKCARDS

- a) Merchant shall honor without discrimination all valid Bankcards when properly presented as payment for a transaction from a Cardholder, and only in connection with a bona fide, legal business transaction. Merchant will maintain a policy which will not discriminate among Purchasers seeking to make purchases through the use of a Bankcard. If Merchant does not deal with the public at large (e.g., a private club), Merchant will be deemed to have complied with this rule if it honors valid Bankcards of Purchasers who have purchasing privileges with Merchant.
- b) Merchant shall use due diligence and verify that Cardholder is authorized to use the Bankcard presented and that such Bankcard is not counterfeit. If the Bankcard is present at the time of the transaction, Merchant shall examine the Bankcard's security features (such as a hologram and signature panel) before accepting the Bankcard. Merchant shall obtain an authorization on each transaction in advance of each transaction.
- c) Merchant shall not establish minimum or maximum transaction amounts as a condition for honoring Bankcards.
- d) Merchant shall not impose any surcharge on Bankcard transactions
- e) Any tax required to be collected by Merchant must be included in the total transaction amount and not collected separately.
- f) Merchant shall not accept any foreign Bankcards not valid outside

the country of issuance.

g) Merchant shall not submit for payment any transaction that represents an existing cardholder debt that is deemed uncollectible regardless of the terms and conditions of any written preauthorization between Merchant and the Cardholder.

### 5. ELECTRONIC COMMERCE MERCHANTS

Electronic Commerce Merchants are required to post their consumer privacy policy and method of transaction security on their website. Furthermore, Merchant is required to display its full permanent address immediately prior to the cardholder's payment instructions.

### 6. USE OF SALES DRAFTS/CREDIT VOUCHERS

Each Bankcard transaction made by Merchant will be evidenced by a Sales Draft or Credit Voucher drawn by Merchant or the Purchaser in favor of the issuing Member Bank, and all such drafts shall be on the appropriate form which has been approved by FNBN and HMS. If the Bankcard is present at the time of the transaction, Merchant shall deliver to the Cardholder a true and completed copy of the Sales Draft or Credit Voucher, as the case may be.

### 7. TRANSACTION REQUIREMENTS

- a) In effecting a Bankcard transaction, Merchant shall, subject to the other provisions of this Paragraph 7 and Paragraphs 8, 9, and 10 herein, complete the Sales Draft or Credit Voucher in the following manner:
- i) If the Bankcard is present at the time of the transaction (a "Card Present Transaction"), imprint or swipe through an electronic terminal, with a suitable imprinter or electric printer, all data embossed on the face of the Bankcard and the Merchant's imprinter plate, or legibly type such data thereon; Merchant shall notify FNBN and HMS in the event that the information on the Merchant's plate is changed. Whenever the Bankcard's magnetic stripe cannot be read by the electronic terminal, Merchant shall manually imprint the Bankcard. Failure to do so will constitute a waiver by Merchant of any right to dispute chargebacks arising from the transaction. Each Merchant outlet is required to have its own processing software or terminal, and its own printer and manual imprinter with an accurate Merchant plate for use when its electronic printer is not functional or when the Bankcard's magnetic stripe cannot be read by the electronic terminal. Merchant understands that sales completed at one location may not be processed through a terminal at another location.
- ii) Legibly fill in the appropriate spaces thereof showing; (1) the date of the sale; (2) the Sales Draft amount which includes applicable tax for all charges purchased in the same transaction; (3) a brief description of the services in sufficient detail to identify same; (4) the Cardholder's Bankcard number truncated to bear no more than the last four (4) digits of the Bankcard number; (5) the Cardholder's name; (6) the authorization number; and (7) Merchant's name and unique Merchant I.D. number.
- iii) For a Card Present Transaction, require the Purchaser to sign the Sales Draft in Merchant's presence. Merchant should retain Bankcard while Purchaser is signing in order to perform signature verification.
- iv) Obtain authorization pursuant to Paragraph 15 prior to consummating the sale and indicate the authorization code in the appropriate space. THE FLOOR LIMIT ON ALL TRANSACTIONS IS

- **ALWAYS ZERO.** Merchant understands that authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence, nor shall it validate a transaction which would otherwise be invalid. Merchant shall remain fully liable for all chargebacks and fees related to an invalid or disputed transaction whether or not prior authorization was obtained.
- v) For a Card Present Transaction, complete the transaction only if the signature on the Sales Draft appears to be the same as the authorized signature on the Bankcard and the Bankcard account number read from the magnetic stripe is the same as that embossed on the front of the Bankcard. If such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Bankcard, Merchant shall contact FNBN's and HMS's authorization center for instructions. Except in the case of a Telephone Order ("TO"), Mail Order ("MO"), Electronic Commerce ("EC"), Preauthorization Order ("PO"), or Recurring Transaction, no sale may be completed if the Purchaser fails to present his or her Bankcard. Furthermore, Merchant shall be liable for all chargebacks for magnetically altered or counterfeit cards.
- vi) For Card Present Transactions, if the signature panel on the Card is blank, in addition to requesting authorization, Merchant must do all of the following (a signature panel bearing the words "See I.D." or equivalent language shall be deemed to be blank):
- (1) Review positive identification to determine that the user is the Cardholder. Such identification must consist of a current, official government identification document (such as a passport or driver's license) that bears the Cardholder's signature; (2) Indicate such positive identification (including any serial number and expiration date) on the Sales Draft; and (3) Require the Cardholder to sign the signature panel of the Bankcard prior to completing the transaction.
- b) In effecting a Bankcard sale, Merchant shall not permit sales through the use of a Bankcard:
- i) Which is not yet in effect, according to the effective dates thereon, if any.
- ii) Which is an expired Bankcard.
- iii) Which is contained in the latest Combined VISA and MasterCard Electronic Warning Bulletin.
- c) Merchant agrees not to:
- Alter the total amount of a Sales Draft after the transaction has been completed and the Sales Draft has been signed by the Purchaser.
- ii) Present Sales Drafts or Credit Vouchers which it knows, or should have known, to be fraudulent or not authorized by the Purchaser.
- iii) Divide a single transaction between two (2) or more Sales Drafts.
- iv) Attempt multiple authorizations on a single Bankcard.
- v) Submit to FNBN and HMS any Sales Drafts or Credit Vouchers using Bankcard accounts affiliated with Merchant, its principals or its guarantors.
- vi) Utilize the credit available on any Bankcard to provide cash advances to Cardholders.
- vii) Force authorizations.

Any of the actions set forth in this subparagraph 7c immediately above will be grounds for immediate termination of this Agreement and all funds of Merchant, including any funds in other Merchant/ Guarantor accounts, may be garnered by FNBN and placed on hold pursuant to the provisions of Paragraph 13 below.

# 8. MAIL, ELECTRONIC COMMERCE, TELEPHONE AND PREAUTHORIZED ORDER

Upon electing to make a Bankcard sale pursuant to an MO, EC, TO, or PO,

### **Merchant Will:**

- a) Complete the Sales Draft as provided in Paragraph 7 of this Agreement and mark it MO, EC, TO, or PO, as the case may be, on the signature line of the Sales Draft, obtain the expiration date of the Bankcard and forward the expiration date of the Bankcard as part of the authorization request.
- b) Assume all responsibility for identification of the Purchaser and the validity of the Bankcard information.
- c) Obtain prior authorization not to exceed seven days prior to goods being shipped or services being performed.
- d) Not present a draft for payment until the goods are delivered or the services rendered.
- e) Assume responsibility for chargeback if the Cardholder refuses to pay for any reason.
- f) For PO transactions, not deliver goods or perform services after receiving notification that the preauthorization is canceled or that the Bankcard covered by the preauthorization is not to be honored.
- g) For PO transactions, retain and make available to FNBN or HMS, upon request, the customer's written request to Merchant for pre-authorization.
- h) For MO, EC, and TO transactions, perform an AVS inquiry on Purchaser and provide an order number and the appropriate MO, TO, or EC indicator in the electronic transaction record. Failure to do so will result in the transaction being downgraded to an NQT. (Merchant understands that performing AVS and providing an order number does not, by itself, guarantee a QT). Obtaining an Address Verification Service (AVS) and/or a Cardholder Verification Value (CVV2)/Card Validation Code (CVC2) validation does not guarantee Cardholder authentication or chargeback protection. These services are risk management tools designed to assist merchants in mitigating risk
- i) For EC transactions, include the Electronic Commerce Indicator ("ECI") within the authorization record and settlement record.
- j) Regardless of the terms and conditions of any written preauthorization agreement between Merchant and Cardholder, the Sales Draft amount of any lodging or vehicle rental transaction which has been preauthorized shall include only that portion of the transaction amount, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to Cardholder, and shall not include any consequential charges. Delayed or amended charges may be processed as a separate Sales Draft within 90 calendar days of the check-out, disembarkation, or car return date as long as the Cardholder's signature is on file and is indicated as such on the Sales Draft. A copy of the Sales Draft must be sent to the Cardholder at the address on the preauthorization agreement. In situations where a parking ticket or moving violation occurred, the charges are to be processed within 90 days of notification from the authority to merchant. Travel & Entertainment delayed or amended charges may include food or beverage charges, taxes, mileage, fuel, insurance, rental fees, parking tickets, and/or other traffic violations. If Merchant violates this provision, it does so at its own risk and waives any right to dispute chargebacks arising therefrom. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization agreement through means other than a Bankcard transaction.

### 9. RECURRING TRANSACTIONS

If Merchant agrees to accept a Recurring Transaction from a Cardholder for the purchase of goods or services which are to be delivered or performed periodically, the Cardholder shall complete and deliver to Merchant a written request for such goods or services to be charged to the Cardholder's account periodically. Each of the following provisions shall apply to all Recurring Transactions:

- a) The Cardholder's written authorization must be retained for the duration of the recurring charges and provided promptly in response to a Cardholder's request for copy.
- b) Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, FNBN, HMS, or any Member Bank.
- c) Merchant shall type or print legibly, on the signature line of the Sales Draft for Recurring Transactions, the words "Recurring Transaction"
- d) The Cardholder's written authorization must include the amount of the transaction, frequency of charge, and the duration of time for which Cardholder's permission is granted.
- e) If the Cardholder elects to renew a Recurring Transaction, the Cardholder must complete and deliver to Merchant a new written Recurring Transaction request.
- f) Merchant must perform an AVS inquiry for at least the first transaction and then annually thereafter, if applicable.
- g) Merchant must provide both an order number and the appropriate "Recurring Transaction" indicator with the transaction.
- h) Merchant must obtain a valid authorization for each recurring transaction.

# 10.MULTIPLE SALES SLIPS AND PARTIAL CONSIDERATION

Merchant shall include all items of goods and services purchased in a single transaction in one total amount on a single Sales Draft, except: (i) in the case of purchases in separate departments of a multiple department store; or (ii) in a partial payment, delayed delivery, or advanced deposit situation described in this Paragraph 10. Merchant may only effect a transaction with only part of the amount due included on a single Sales Draft:

- a) When the balance of the amount due is paid by the Purchaser at the time of sale in cash, by check, or both, or
- b) When the Purchaser executes two separate Sales Drafts in a delayed delivery sale. In such case, a deposit is made by completion of one Sales Draft and payment of the balance is tendered by completion of a second Sales Draft, the latter Sales Draft being conditioned upon delivery of merchandise or performance of services. Authorization is required for both Sales Drafts and Merchant shall note on the Sales Draft the words "deposit" or "balance," as appropriate. The Sales Draft labeled "balance" shall not be presented until the goods are delivered or services performed.

### 11. RECOVERY OF CARDS

Merchant will use its best efforts to recover any Bankcard and return it to FNBN if Merchant is directed by FNBN's and HMS's authorization center or any Member Bank to retain it. Reasonable and peaceful means are to be used in retrieving any such card. Nothing in this Paragraph 11 or elsewhere in this Agreement shall be construed to create a duty of physical confrontation or risk of harm in order to retrieve a Bankcard. Merchant agrees not to commit any breach of the peace or to cause any injury to persons and/or property, and hereby

indemnifies FNBN and HMS against any claim or injury arising as a result of any attempt to retain a Bankcard.

# 12. PRESENTMENT, ACCEPTANCE, AND PAYMENT OF SALES DRAFTS

Merchant shall present each Sales Draft to FNBN and HMS within one (1) business day after the date of the transaction, except that Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed, and Merchant has otherwise performed all of its principal obligations to the Purchaser in connection with the transaction. Merchant may not present directly or indirectly any draft which was not originated as a result of an act between the Purchaser and Merchant. Upon such delivery to FNBN and HMS of a Sales Draft and subject to the provisions of any warranties of Merchant hereunder and of any chargeback rights, FNBN and HMS will give Merchant provisional credit for the face amount of such Sales Draft. Such credit may be given by credit to Merchant's Account. A service charge, based on the rate specified in Paragraph 25, and any applicable additional fees provided for in this Agreement will be imposed on the daily total of Sales Drafts and Credit Vouchers presented by Merchant to FNBN and HMS. Merchant hereby authorizes FNBN and HMS to charge the Account for all such amounts. If FNBN and HMS reasonably believe that a chargeback or credit is likely with respect to any transaction or Sales Draft FNBN or HMS have accepted, FNBN and HMS may withhold payments due Merchant under this Agreement until such time that: a) FNBN and HMS are charged back by the issuing bank. In such event, FNBN and HMS shall retain the funds.

- b) The period of time by which the Cardholder may dispute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or
- c) FNBN and HMS determine that a chargeback on the Sales Draft will not occur.

Merchant is required to close any open batches with at least a daily frequency (except on days when Merchant's place of business may be closed); Merchant may close batches more frequently if desired. Merchant understands that transactions are not transmitted to FNBN and HMS until the Merchant closes the batch. Furthermore, Merchant acknowledges that open batches of transactions that are not properly closed and transmitted to FNBN and HMS within forty-five (45) days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant shall indemnify and hold FNBN and HMS harmless for any and all loss sustained by Merchant for said purged transactions. It is Merchant's responsibility to close, balance, and reconcile batches daily, and to detect discrepancies between transactions processed by FNBN, HMS, and transactions supposedly submitted by Merchant. Merchant understands that minor discrepancies do occur in the normal course of business and that FNBN and HMS will use their best efforts to correct discrepancies once notified by Merchant. It is the Merchant's responsibility to monitor and reconcile its Settlement Account vigilantly in order to detect discrepancies in a timely manner. Merchant understands that FNBN and HMS have no ability to detect discrepancies. Merchant agrees that, upon termination of this Agreement, FNBN and HMS may withhold payments to Merchant for such period of time necessary to establish a reserve to cover any chargebacks, credits, and/or uncollected discounts or fees.

### 13. SECURITY RESERVE

by Merchant, Merchant hereby authorizes FNBN to establish a security reserve account (the "Reserve Account"), with or without prior notice to Merchant, at any time prior to, at, or after termination of this Agreement, to ensure FNBN's recovery of any liabilities, of whatever nature, owed it, or reasonably anticipated to be owed it, by Merchant pursuant to this Agreement. FNBN may establish a Reserve Account whenever FNBN or HMS, in their sole discretion, believes recovery of such liabilities may be in jeopardy. MERCHANT HEREBY GRANTS TO FNBN A POSSESSORY SECURITY INTEREST IN ANY RESERVE ACCOUNT SO **ESTABLISHED.** FNBN may enforce its security interest in the Reserve Account without notice or demand by debiting therefrom any liability found to be owing to FNBN and HMS by Merchant. FNBN's and HMS's right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. FNBN's rights with respect to the Reserve Account, including its security interest therein, shall survive the termination of this Agreement. The Reserve Account may be held by FNBN up to six (6) months after the later of: (i) the date of the last transaction or chargeback; or (ii) the expiration date of the chargeback liability arising from the Merchant's product or service pursuant to this Agreement, and/or Visa and MasterCard rules and regulations, and/or applicable law. Merchant agrees that FNBN may also enforce its security interest against an established Reserve Account of Merchant if Merchant exceeds the approved monthly processing limit and/or approved average ticket amount set forth on the Merchant Bankcard Application, in addition to assessing Merchant an overlimit fee. FNBN will use commercially reasonable efforts to return any funds held in the Reserve Account to Merchant after all amounts owed to FNBN and HMS have been collected and after the expiration of all applicable time periods. Upon termination of this Agreement, FNBN and HMS will charge Merchant's Reserve Account \$5.00 per month until any funds held in the Reserve Account are claimed or escheated to the State.

In addition to the chargeback rights granted to FNBN and HMS

### 14. CHARGEBACKS

FNBN and HMS shall have the right to charge back to Merchant's Account the full amount of any Sales Draft, if, but not limited to, any of the following occur:

- a) The Sales Draft or any material information on the Sales Draft, such as, without limitation, the account number and/or expiration date of the Bankcard, Merchant description, transaction amount or date, is illegible or incomplete, or is not delivered to FNBN and HMS within the required time limits.
- b) The Cardholder's account number was listed on the then current Electronic Combined Warning Bulletin and Merchant did not reject the transaction or receive prior authorization for the transaction.
- c) Except in the case of an MO, EC, TO, or PO Transaction described in Paragraph 8, the Sales Draft does not contain the imprint of a Bankcard that was valid, effective and unexpired on the transaction date, or the signature of the Purchaser.
- d) The transaction was one for which prior credit authorization was not obtained or improperly obtained, or a valid authorization number is not correctly and legibly printed on the Sales Draft.
- e) The Sales Draft is a duplicate of an item previously submitted or is one of two or more Sales Drafts generated in a single transaction in violation of Paragraph 10.

- f) The Purchaser disputes the execution of the Sales Draft, the sale, delivery, quality, or performance of the merchandise or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Purchaser's account.
- g) The price of the merchandise or services shown on the Sales Draft differs from the amount shown on the copy of the Sales Draft delivered to the Purchaser at the time of the transaction.
- h) FNBN and HMS reasonably determine that Merchant has violated any term, condition, covenant, warranty, or other provision of this Agreement in connection with the Sales Draft or the transaction to which it relates.
- i) FNBN and HMS reasonably determine that the Sales Draft is fraudulent or that the related transaction is not a bona fide transaction in Merchant's ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including, without limitation, negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees.
- j) The Sales Draft or Credit Voucher was not received by FNBN and HMS in a timely manner. Merchant may not deliver to FNBN and HMS Sales Drafts which have been previously delivered and charged back to Merchant.

### 15. AUTHORIZATION

Merchant shall obtain authorization before completing any sale transaction. In the event that the Point of Sale device or software fails, Merchant must obtain authorization through a voice back-up and, for Card Present Transactions, manually imprint the Bankcard. If the Purchaser presents an unsigned card, Merchant shall request a "Code 10" authorization which indicates a suspicious transaction. Merchant shall request a "Code 10" authorization when there is substantial belief that the Bankcard may be counterfeit or stolen or the transaction is in some manner suspicious. Obtaining an authorization will not validate a transaction that would otherwise be invalid and therefore does not guarantee that a Sales Draft will not be charged back to Merchant. Authorization must be obtained from FNBN's and HMS's authorization center or from an authorizing agent acceptable to FNBN, HMS, and Merchant. The first authorization response received is the only valid response.

# 16. RETURN MERCHANDISE AND ADJUSTMENTS: CREDIT VOUCHERS

Merchant understands that every Credit Voucher issued will be subject on a daily basis to a transaction authorization fee and discount fee and there will be no refund of any fees or charges associated with the original transaction. Merchant shall submit all Credit Vouchers to FNBN and HMS within one (1) calendar day after the credit transaction date. Merchant shall sign and date each Credit Voucher and include thereon a brief description of the goods returned, services terminated, canceled or refunded, or adjustment made, together with the amount of credit in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each Credit Voucher, the embossed data from the Bankcard. Merchant shall deliver to the Cardholder a true and completed copy of the Credit Voucher. No Credit Voucher amount shall exceed the amount of the originating Sales Voucher. If Merchant maintains a policy of permitting refunds, exchanges, returns, or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases using a

Bankcard. Merchant may restrict its refund or return policy as to any Bankcard transaction, provided that Merchant discloses its policy at the time of the transaction. Face-to-face merchants must print an appropriate notice (such as "No Refunds or Exchanges") on all copies of the Sales Draft in close proximity to the space provided for the Customer's signature. Electronic Commerce merchants must provide appropriate notice of refund, exchange and/or cancellation information on the check out page where the Purchaser enters the credit card information or as a click through confirmation of the specific refund, exchange and/or cancellation policy. Merchant understands that regardless of proper disclosure of refund policy restrictions, such restrictions are unenforceable if Cardholder initiates a dispute under appropriate Federal, State or Local laws. If Merchant accepts any goods for return, or any services are terminated or canceled, or Merchant allows any price adjustment on a sale which was originally consummated using a Bankcard, then Merchant must effect such refund using a Credit Voucher with the same Bankcard account used on the original Sales Draft. Merchant may not effect credit to a Purchaser using cash or check. In conjunction with each Credit Voucher submitted to FNBN and HMS. Merchant shall have sufficient funds available in Merchant's Settlement Account or sufficient Sales Drafts in the same batch, to cover the total amount of Credit Vouchers plus any related fees. Merchant understands that a batch consisting solely of Credit Vouchers, or a batch where the total amount of Credit Vouchers exceeds the total amount of Sales Drafts, will result in a debit to its Settlement Account.

### 17. CONFIDENTIALITY OF INFORMATION

- a) Merchant shall not, without the Cardholder's prior express consent in writing, sell, purchase, provide, or otherwise disclose Cardholder's account information or other Cardholder personal information to any third party other than Merchant's agents and processing organizers for the purpose of assisting Merchant in its business or as required by law, or otherwise use any such information. Merchant and any agent or processing organizer of Merchant must keep all systems and media containing Cardholder account or transaction information (whether physical or electronic, including, but not limited to, account numbers, card imprints and Cardholder's information) in a secure manner such as will, to the extent commercially reasonably possible, prevent access by, or disclosure to, anyone other than Merchant's authorized personnel, FNBN, HMS, or agent. Merchant shall store in an area limited to selected personnel, and, prior to discarding, shall destroy in a manner rendering data unreadable, all material containing Cardholder account numbers or Bankcard imprints, including, but not limited to, Sales Drafts, Credit Vouchers, and carbons. Merchant shall comply with the cardholder information security requirements outlined in Visa's Cardholder Information Security Program (CISP) available at www.visa.com, and MasterCard's Site Data Protection Program (SDP) available at www. mastercardmerchant.com. As a part of these requirements, Merchant agrees not to store any magnetic stripe information or CVV2/CVC2 data. Failure to comply with these requirements may result in fines imposed by either Visa or MasterCard, for which Merchant remains liable. Merchant is required to notify HMS in writing of any Agents being utilized that have access to cardholder data on Merchant's be-
- b) FNBN and HMS agree to hold in confidence and not disclose strategic marketing plans, development and/or financial reports or plans, inventions, product plans and/or costs, business and/or tech-

nology plans, and/or prices to non-affiliates of FNBN and HMS, except as may be required by: (i) appropriate government authority or law; or (ii) FNBN or HMS to their agents or other third parties to administer or service Merchant's account.

# 18. RESTRICTIONS ON CASH PAYMENTS OR DEPOSITS

- a) Merchant shall not accept any cash payment from a Purchaser for merchandise or services if any part of such cash payment is included on a Sales Draft resulting from the use of a Bankcard.
- b) No cash advance or withdrawal may be made by Merchant to a Purchaser.
- c) Merchant shall not accept cash or other monetary instrument from a Purchaser and subsequently process a Credit Voucher for the purpose of effecting a credit to the Purchaser's Bankcard account.

### 19. GENERAL

#### **Merchant Will:**

- a) Preserve all records pertaining to a Bankcard transaction, Sales Draft, or Credit Voucher as may be required by law, and in no event less than eighteen (18) months from the date thereof, sorted in such manner as to be able to produce any such documents to FNBN and HMS upon request as set forth below, and permit FNBN and HMS to examine, verify, and copy the same at any reasonable time.
- b) Fully comply with all requirements of applicable consumer credit laws and regulations, as may pertain to Merchant, and with all laws and MasterCard and Visa regulations applicable to each Bankcard transaction.
- c) Execute, file, and record such statements, notices and certificates as FNBN and HMS may reasonably request to preserve and protect FNBN's and HMS's interests.
- d) Provide FNBN and HMS a copy of any requested Sales Draft, Credit Voucher or other transaction memorandum no later than three (3) calendar days from the date of request.

**Merchant Will Not** change its type of business as indicated on the Merchant Bankcard Application without the express written consent of FNBN and HMS.

Notices: Any notice, request, demand or other communication required or permitted to be given hereunder must be given in writing by depositing such notice in the United States Mail, first class postage prepaid: (i) if to FNBN and/or HMS, to P.O. Box 1479, Eureka, CA 95502; and (ii) if to Merchant, to the address stated on the attached Merchant Bankcard Application, or to such other address as is communicated to the other party pursuant to this subparagraph. Merchant has the responsibility of assuring that its address in FNBN's and HMS's records is current and accurate. Notice may be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant to FNBN and HMS, the original of any such communication shall be mailed to FNBN and HMS on the date of the electronic transmission and it shall not be deemed served until the United States Mail copy is received and confirmed by FNBN and HMS. If FNBN and HMS give notice by facsimile or other electronic communication to Merchant, service is deemed to have been duly given on the day of transmission.

**Construction/Severability:** The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement, nor shall this Agreement be deemed to have originated with any party. If any part of this Agreement is held unenforceable or

invalid or prohibited by law, that part shall be deemed stricken herefrom and this Agreement shall be read and interpreted as though said part did not exist.

Waiver: Neither the failure nor any delay on the part of FNBN and HMS to exercise any right, remedy, power, or privilege hereunder shall operate as a waiver or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

EFFECTIVE DATE: MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY FNBN AND HMS AND A MERCHANT IDENTIFICATION NUMBER HAS BEEN ISSUED. ANY ALTERATION, STRIKEOVER OR MODIFICATION TO THE PREPRINTED TEXT OR LINE ENTRIES ON THIS AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER AND, AT FNBN'S AND HMS'S SOLE DISCRETION, MAY RENDER THIS AGREEMENT INVALID.

### 20. ENTIRE AGREEMENT/AMENDMENT

This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated her getField("Next Field").setFocus(); ein by reference, constitute the entire agreement between Merchant and FNBN and HMS. This Agreement may be amended by FNBN and HMS by written notice to Merchant of not less than ten (10) days prior to the effective date of such amendment, except for service fee or other fee increases which may only be made upon thirty (30) days notice. In each case acceptance thereof by Merchant will be effected either in writing or by Merchant's failure to give FNBN and HMS written objection thereto prior to the effective date of the amendment. Unless otherwise stated in the amendment notice, amendments not relating to fee increases shall apply to both previous and future transactions submitted by Merchant; amendments relating to fee increases shall apply only to future transactions.

### 21. TERM AND TERMINATION

The initial term of this Agreement shall be for one (1) calendar year, commencing from the date of execution by HMS and FNBN (hereinafter referred to as the "Anniversary Date"), and shall automatically renew thereafter on each subsequent Anniversary Date unless sooner terminated in accordance with the provisions of this Agreement. This Agreement may be terminated by either party at any time for any reason upon written notice; provided that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to any Sales Draft which is actually delivered to FNBN and HMS by Merchant and not returned to Merchant prior to FNBN's and HMS's extending credit therefor. The right of Merchant to make sales as specified in this Agreement and to use advertising displays, Sales Drafts, Credit Vouchers, and other items and materials developed for use under this Agreement shall cease upon termination of this Agreement. Merchant expressly acknowledges that a Terminated Merchant File ("MATCH System") is maintained by MasterCard containing the business name, names, and identification of principals of merchants which have been terminated for one or more of the

reasons specified in Visa or MasterCard operating regulations. Examples would be, but are not limited to, processing transactions for a business not indicated on the Merchant Bankcard Application, fraud, counterfeit drafts, unauthorized transactions, excessive chargebacks and retrieval requests, laundering, or where a high security risk exists. Merchant acknowledges that should FNBN or HMS suspect any of the above, FNBN may establish a Security Reserve in accordance with Paragraph 13. Merchant acknowledges that FNBN is required to report the business name of Merchant and the names and identification of its principals to the MATCH System when Merchant is terminated because of one or more of the reasons specified in Visa or MasterCard Regulations. Furthermore, if Merchant fails to fulfill its obligations arising from this Agreement, FNBN may submit a derogatory report on Merchant and its principals to a consumer and/or business credit reporting agency. Merchant expressly agrees and consents to such reporting by FNBN and HMS.

### 22. MERCHANT INDEMNITY

Merchant will indemnify, protect, defend, and hold FNBN and HMS, their affiliates, subsidiaries, and all of their officers, agents and/or employees, harmless from, and against, any and all claims, losses, demands, actions, expenses, damages, liability, and/or causes of action, including (without limitation) attorney's fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:

- a) Any breach of this Agreement or of any warranty or representation made to FNBN and HMS by Merchant;
- b) Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees, agents or other representatives;
- c) Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard and/or Visa rule or regulation; or
- d) Any claim for injury, direct or indirect, to persons or property from any alleged or actual tort or breach of the peace in connection with Merchant's attempted and/or actual recovery of any Bankcard. The indemnifications provided for in this Paragraph 22 shall survive any termination of this Agreement.

### 23. ASSIGNMENT

Merchant may not assign any rights or duties created by this Agreement without FNBN's and HMS's express prior written consent. A transfer of control of majority interest in Merchant's commercial enterprise shall be deemed to be such an assignment. Changes, by way of example only, in business name, business telephone and/or address, or any banking information, alone shall not be deemed to be an assignment but shall be submitted, in writing, to FNBN and HMS by Merchant within ten (10) business days of any such change. FNBN may assign this Agreement at any time upon written notification to Merchant.

# 24. AUTHORIZATION FOR ACH AND RIGHT OF SETOFF

Merchant hereby authorizes FNBN and HMS to initiate debit and credit entries to Merchant's depository account number set forth on the Merchant Bankcard Application and which may also be shown on the voided check provided to FNBN and HMS therewith (and as that number may be changed, to any new account provided to FNBN and HMS). Under normal circumstances, and unless deemed necessary by FNBN or HMS, FNBN will ACH credit or debit Merchant's depository account the next business day after receipt of funds by FNBN. To the extent permitted by applicable law, HMS and FNBN reserve a right of setoff in all of Merchant's accounts with HMS, FNBN, or their affiliates (whether checking, savings, reserve, or some other account). Merchant acknowledges that all transaction settlements are provisional subject to: (i) the Cardholder's rights under the rules and regulations of Visa and/or MasterCard; (ii) applicable Federal, State and local law relating to disputing Bankcard transactions; and (iii) FNBN's and HMS's rights under this Agreement. This authority shall remain in full force and effect until FNBN and HMS has received written notification from Merchant of its revocation in such time and manner as to afford FNBN and HMS a reasonable opportunity to act upon it.