Merchant Processing Agreement
Terms and Conditions

These Merchant Processing Agreement Terms and Conditions are an integral part of the Merchant Processing Agreement among Electronic Payment Services, Inc., a Nevada corporation, located at 500 N. Juniper Drive, Suite 100, Chandler, AZ 85226 (hereinafter "Processor"), Member Bank (as defined below), and the legal entity or sole proprietorship identified on Page 1 of the Merchant Processing Application (hereinafter "Member") for the sale of goods or services through the use of VISA, MasterCard, Discover or Other Network, Vendor may at its option incorporate into this Agreement by reference. Merchant agrees to fully comply with all of the terms and conditions in the then-current Bank Rules as changed or updated by Vendor from time to time at its sole discretion. Merchant agrees to participate in the Associations and Other Networks in compliance with the Bank Rules and subject to the Operating Regulations and/or all other rules, policies and procedures of such organizations (collectively "Operating Regulations"). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, and/or the Other Networks, including but not limited to the Payment Card Industry Data Security Standard ("PCI DSS") found at www.pcisecuritystandards.org, the VISA Cardholder Information Security Program ("CISP") found at www.visa.com/cisp, the MasterCard Site Data Protection Program ("SDP") found at www.mastercard.com/sdp, the American Express Data Security Operating Policy ("DSOP") found at www.americanexpress.com/merchant/ and any other program or requirement that may be published and/or mandated by the Associations and/or Other Networks. The Operating Regulations may prohibit Vendor from providing Merchant with a copy of the Operating Regulations and such prohibition shall not alter or limit Merchant’s obligation to comply with the Operating Regulations. Merchant may review the VISA and MasterCard websites for a copy of the Visa and MasterCard Operating Regulations. The websites are: http://usa.visa.com/merchants/ and http://www.mastercard.com/us/merchants/. Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with the Operating Regulations, regardless of whether Merchant has possession or knowledge of those provisions. Merchant shall take all steps necessary to review and obtain all publicly available information that relates to or references the Operating Regulations including, without limitation, all information available on the Networks’ internet sites, and to educate itself and its employees on all provisions thereof. In the event of a conflict between the Bank Rules and this Agreement, the Bank Rules shall prevail. For purposes of this Agreement, "VISA," "MasterCard," "Discover," or "Other Networks" (collectively, "Networks") have the meanings set forth in the Network’s Operating Regulations and/or all other rules, policies and procedures of such organizations. Merchant agrees to participate in the Associations and Other Networks and shall comply with any and all of such terms and conditions as may be modified from time to time.

1. Rules and Regulations. Merchant acknowledges receipt and review of the Bank Card Merchant Rules and Regulations ("Bank Rules") that are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and conditions in the then-current Bank Rules as changed or updated by Vendor from time to time at its sole discretion. Merchant agrees to participate in the Associations and Other Networks in compliance with the Bank Rules and subject to the Operating Regulations and/or all other rules, policies and procedures of such organizations (collectively "Operating Regulations"). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, and/or the Other Networks, including but not limited to the Payment Card Industry Data Security Standard ("PCI DSS") found at www.pcisecuritystandards.org, the VISA Cardholder Information Security Program ("CISP") found at www.visa.com/cisp, the MasterCard Site Data Protection Program ("SDP") found at www.mastercard.com/sdp, the American Express Data Security Operating Policy ("DSOP") found at www.americanexpress.com/merchant/ and any other program or requirement that may be published and/or mandated by the Associations and/or Other Networks. The Operating Regulations may prohibit Vendor from providing Merchant with a copy of the Operating Regulations and such prohibition shall not alter or limit Merchant’s obligation to comply with the Operating Regulations. Merchant may review the VISA and MasterCard websites for a copy of the Visa and MasterCard Operating Regulations. The websites are: http://usa.visa.com/merchants/ and http://www.mastercard.com/us/merchants/. Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with the Operating Regulations, regardless of whether Merchant has possession or knowledge of those provisions. Merchant shall take all steps necessary to review and obtain all publicly available information that relates to or references the Operating Regulations including, without limitation, all information available on the Networks’ internet sites, and to educate itself and its employees on all provisions thereof. In the event of a conflict between the Bank Rules and this Agreement, the Bank Rules shall prevail. For purposes of this Agreement, "VISA," "MasterCard," "Discover," or "Other Networks" (collectively, "Networks") have the meanings set forth in the Network’s Operating Regulations and/or all other rules, policies and procedures of such organizations. Merchant agrees to participate in the Associations and Other Networks and shall comply with any and all of such terms and conditions as may be modified from time to time.

2. Acceptance of Cards.

A. If appropriately indicated herein, Merchant may elect to accept only certain Visa and MasterCard card types as indicated on the Merchant Processing Application, or via later notification ("Limited Acceptance"). Merchant has no obligation to continue to accept those card types after the date set forth in the Operating Regulations and applicable law as they may relate to Limited Acceptance. Merchant’s obligations do not include policing card types at the point of sale. Merchant will be solely responsible for the implementation of the expenses for Limited Acceptance including, but not limited to, policing the type(s) of transactions at the point of sale submitted for processing by Merchant, responsibility for any Visa or MasterCard charges assessed as a result of Merchant’s Limited Acceptance, and any and all costs incurred by Vendor as a result of Merchant’s election. Should Merchant submit a transaction for processing for a card type it has indicated it does not wish to accept, Vendor may process that transaction and Merchant will pay the applicable fees, charges, and assessments associated with that transaction. For Merchant’s convenience, a general description of Visa and MasterCard card types are: (i) "Debit Card" – Visa or MasterCard cards issued by a U.S. bank and/or a non-U.S. bank, or a Visa or MasterCard card that accesses a consumer’s asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, or consumer check cards; (ii) "Other Card" – all Visa and MasterCard cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and Visa and MasterCard business debit cards. These acceptance options apply only to U.S.-Issued Cards and Merchant agrees to accept and settle Merchant’s card transactions. Merchant may at its option require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue to accept both debit and credit card products issued by non-U.S. members.

B. In the event Vendor for whatever reason is unable to obtain, or due to system delays chooses not to wait to obtain, authorization from VISA, MasterCard, Discover or Other Network, Vendor may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by Vendor, and Merchant remains responsible for such
sales transaction in accordance with this Agreement. Merchant shall note such a modification in the appropriate place on the sales record.

3. **Vendor’s Responsibilities.**
   
   A. Vendor will initiate payment to Merchant of the amount of each Card sales transaction acquired and accepted hereunder after Vendor receives payment for such transaction. Notwithstanding anything herein to the contrary, any such payment shall be subject to the terms and conditions of, and any modifications to, the Bank Rules, the Operating Regulations, and the Laws (as defined in Section 4.F. below). Unless otherwise agreed to in writing by Vendor, Merchant shall electronically deliver to Vendor, in a format acceptable to Vendor, all sales records and credit records within two business days after the transaction date for such record (or such shorter period as required by the Association or Other Network). Except (i) in the case of a delayed merchandise delivery, when the sales transaction record shall be delivered within two business days of the merchandise delivery or (ii) as specified otherwise in the Bank Rules, Merchant's Designated Account therefore, without notice, in any appropriate situation, including but not limited to those relating to such unexpected interruption in Association and/or Other Network access.
   
   B. Vendor may honor the request(s) or instruction(s) of any qualified representative, as determined by Vendor, of Merchant or its Agent at any time during the term of this Agreement, and Merchant may act in reliance upon such request(s) or instruction(s) in connection with Vendor's provision of the Services hereunder. Further, in the event Vendor receives returned mail intended for Merchant, Vendor may follow its standard operating procedures with respect to processing a replacement address, which will then be deemed the official address for notices.
   
   C. **Provisional Credit.** Notwithstanding the above, under no circumstance will Vendor be responsible for processing credits or adjustments related to sales transactions not originally processed by Vendor. All sales transactions and deposits are subject to audit and final checking by Vendor, and may be withheld and adjusted for inaccuracies. Vendor may, upon receipt of verbal or written instructions, from any Association and/or Other Network to which Vendor is providing access hereunder, immediately cease to provide to Merchant, including Merchant’s clients, access to such Association and/or Other Network. Vendor shall use reasonable efforts to promptly notify Merchant of such interruption in Association and/or Other Network access.

4. **Certain Merchant Responsibilities.**
   
   A. Merchant agrees not to alter, delete, and/or change any information provided by Merchant’s account to credit bureaus. Late payments, missed payments, or other defaults on Merchant’s account may be reflected in Merchant’s credit report.
   
   B. **Breach or Suspicious Activity.** If Merchant breaches this Agreement or if Vendor, in its sole discretion, identifies suspicious or irregular transaction, settlement or banking activity, Vendor may refuse to process Card transactions and/or may avail itself to all contractual remedies provided in this Agreement, including the retention of such transactions or other funds in the Reserve Account, pending the cure of such breach or resolution of such activity to Vendor’s satisfaction.

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investigate the asserted error. If Merchant notifies Processor that a Card sale or transaction has been processed, Vendor must at its option, attempt to reproduce such missing Card batches dated during the 90 day period immediately preceding the date Processor receives Merchant’s notice. Vendor shall bear no liability and have no obligations to correct any errors resulting from Merchant’s failure to comply with the duties and obligations of this section.

E. Upon Vendor request Merchant shall provide Vendor with audited quarterly and annual financial statements for Merchant’s business prepared according to generally accepted accounting principles consistently applied and such other financial information as Vendor may request, as soon as commercially practicable but in no event later than 15 business days following any request by Vendor.

F. Merchant agrees to comply with all applicable state, federal, and local laws, rules, and regulations (“Laws”) and to assist Vendor in complying in a complete and timely manner with all Laws and Operating Regulations applicable to any Card transaction or this Agreement. The Operating Regulations are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. Merchant agrees that, under no circumstance, will Merchant store Cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Merchant nor its “Agent” (as defined in Section 4.H. below) shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction. Merchant will execute and deliver to Vendor all instruments, agreements, and other documents pursuant to Merchant’s obligations hereunder. Merchant will be solely responsible for the quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the quality and delivery of such information. Merchant further warrants to Vendor that it will establish and maintain secure systems for transmitting information to Vendor. Merchant shall allow the auditors (third-party or internal) of Vendor, any Association, or any Other Network to review the documents, files, records, procedures, systems, controls, equipment, and physical assets related to the transactions contemplated herein at any reasonable time and upon reasonable notice to Merchant. Merchant will assist such auditors as may be necessary for them to complete their audit.

G. Unless otherwise agreed in writing by Vendor, all sales transaction, settlement and other data and information used in connection with the Services shall be provided to Vendor in Vendor’s then current data formats and by means of Vendor’s then current telecommunications configurations and protocols. Merchant shall comply with all time deadlines, equipment and software maintenance and upgrading requirements reasonably imposed on Merchant by Vendor from time to time.

H. Merchant may elect to use a third party as Merchant’s agent (“Agent”) to perform some of Merchant’s obligations under this Agreement. Agents include, but are not limited to, Merchant’s software providers and/or equipment providers. Merchant shall bear all risk and responsibility for ensuring Merchant’s due diligence regarding the identity, fitness of an Agent for a particular purpose and for determining the extent of an Agent’s compliance with the Bank Rules, the Operating Regulations, and the Laws. Merchant may approve or deny the use of an Agent in Vendor’s sole discretion and at any time. Merchant acknowledges and agrees that Merchant shall cause its Agent to complete any steps or certifications required by any Association (e.g., registrations, PABP, PCI, audits, etc.) If an Agent is designated a service provider under any applicable Operating Regulation, Merchant shall cause such Agent to cooperate with Vendor in completing any due diligence and/or steps required for registration and/or certification. Merchant is solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Merchant expressly agrees that Vendor shall in no event be liable to Merchant on behalf of any Agent or third party for any actions or inactions of any Agent used by Merchant (even if such Agent is introduced, recommended, or resold by Vendor), and Merchant hereby expressly assumes all such liability.

I. The use of any software application that has connectivity to the Internet or any external network poses an increased risk, and Merchant assumes all liability for such increased risks. If Merchant utilizes software or hardware with a connection to the Internet or an external network and such hardware or software interacts in any capacity with the provision of services contemplated pursuant to this Agreement, Merchant hereby acknowledges that Vendor will be liable without limitation for any and all consequences of such interaction.

J. Merchant may present Card transactions to Vendor only for the activities and in the volumes described on the Merchant Processing Application, including the percentage of mail order/telephone orders contemplated. Merchant agrees to provide Vendor with at least 30 days prior written notice of Merchant’s intent to change its business form or entity in any manner (e.g., change from a sole proprietorship to a corporation), and, if Merchant’s intent to sell its stock to another entity or to change any one or more of the terms and conditions of the Merchant Processing Agreement. Merchant will also notify Vendor of any judgment, writ, warrant of attachment, execution or levy against any substantial part (valued at 25% or more) of Merchant’s total assets not later than three days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution, or levy. If Vendor, at any time after the Effective Date, wishes to change or add additional locations for the receipt of the services contemplated herein, Merchant shall do so according to Vendor’s then-current standards and procedures. Merchant shall be responsible for all fees and expenses related to such change or addition shall be deemed a warranty and representation as to the quality and accuracy of such change or addition and Merchant agrees that Merchant will be obligated for such change or addition thereafter pursuant to the terms and conditions of this Agreement. Any Card transaction volume exceeding the volume indicated on the Merchant Processing Application by more than 25% must be approved in writing by Vendor’s authorized officer before Merchant submits Card transactions. Any variance in the stated average ticket size and monthly volume could result in increased fees, delayed and/or withheld settlement of funds, or termination of this Agreement. Merchant is liable to Vendor for all losses and expenses incurred by Vendor arising out of Merchant’s failure to report changes to Vendor. Vendor may immediately terminate this Agreement upon notification by Merchant to Vendor of the information in the Merchant Processing Application. Vendor retains the right to review Merchant’s processing activity for conformance to the information provided and to re-price or terminate any services provided to reflect any nonconformance.

K. Wireless Service Acknowledgement. Merchant is not responsible for verifying wireless service coverage for Merchant, and Vendor will not be held responsible if Merchant loses coverage in any particular area or if Merchant’s wireless coverage is terminated. By selecting wireless service and by executing this Agreement, Merchant acknowledges and understands that (1) wireless coverage is not guaranteed, (2) if the wireless service selected is lost in Merchant’s respective area, the equipment will not operate with another wireless carrier, and (3) Vendor has no control over the wireless service providers and the business decisions made by them. Merchant further acknowledges that Vendor would not be liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

L. Optional Services. From time to time and at Vendor’s sole discretion, Merchant may offer and Merchant may decide to utilize certain products and services provided by a third party, including but not limited to POS services (“Optional Services”). In such circumstances, Merchant acknowledges and agrees that the use of an Optional Service is at Merchant’s own risk and that Vendor shall have no liability whatsoever related to or arising out of Merchant’s election to use an Optional Service. Merchant acknowledges and agrees that all Optional Services are purchased and supported solely by the applicable third party provider (“Provider”) and not Vendor. Vendor is not a party to Merchant’s contracts with Providers and Vendor has no control over Merchant’s contractual relationship with those companies. Any and all statements and Merchant is responsible for notifying them of any discrepancies or errors. Merchant is not responsible or liable for any errors made in connection with establishing and maintaining such account relationships with Providers. Merchant is responsible for ensuring that all account numbers are correct. Merchant must notify the Providers of any changes, including but not limited to changes in ACH information, address and account information. Without limiting the generality of the foregoing, Vendor shall have no obligation to provide any specific type or level of support to Merchant with respect to the Optional Services, even if such Optional Services are referred or resold to Merchant by Vendor. Merchant shall be solely responsible and liable for the performance of the obligations described above and for any fees, fines, damages, losses or expenses related to any connection with Merchant, with respect to the Optional Service. Merchant shall bear all risk and responsibility for conducting Merchant’s own due diligence regarding the fitness of an Optional Service for a particular purpose and for determining the extent of an Optional Service’s compliance with the Bank Rules, the Operating Regulations, and the Laws. Merchant acknowledges that provision of any Optional Service to Merchant is subject to availability from the applicable Provider, and Vendor shall have no obligation to provide any Optional Service to Merchant. Merchant shall not acquire any property or any other right, claim or interest including any intellectual property or copyright interest in the Optional Service’s equipment, software, processes, programs or data utilized by a Provider in commercial use by Merchant. Merchant will be solely responsible for the quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the quality and delivery of such information. Merchant further acknowledges that Vendor would not be liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

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connection with such systems other than data and equipment supplied to Merchant in accordance with the terms of this Agreement, and with systems that a Provider's rights to use a Provider's systems and any equipment and software used in connection with an Optional Service shall not be assignable and Merchant's duties with respect to them shall not be delegable in any way without prior written consent of the applicable Provider. Each Provider shall have the right to require Merchant to enter into an agreement directly with the applicable Provider prior to the delivery of any software, equipment, or any documentation to such Merchant associated with an Optional Service. The agreement may set forth terms and conditions regarding the use of the software, equipment, and/or documentation by such Merchant which a Provider deems necessary in order to fully protect the proprietary rights of such Provider. Merchant shall observe complete confidentiality with regard to all Provider-owned software and documentation, whether supplied by a Provider directly or through Vendor, and Merchant shall not disclose or otherwise permit use of or access to it by any person or entity other than an employee of the Merchant with a need to know.

M. In no way limiting the provisions of the immediately preceding section, Merchant agrees to pay Vendor all fees and assessments of any nature as imposed by Providers in connection with Merchant's use of the Optional Services. Merchant acknowledges and agrees that: (i) the applicable Provider(s) receive written notice from Merchant of the cancellation of all Optional Services and Merchant has returned all equipment and software to the applicable Provider(s); (ii) Vendor receives written notice (pursuant to Section 5. below) from Merchant wherein Merchant represents and warrants that Merchant has ceased receiving all Optional Services, has notified the applicable Provider(s) of the same and has returned all equipment and software to the Providers; and (iii) the Providers no longer assess Vendor for Merchant's receipt of services or possession of equipment or software, Merchant shall be responsible for and pay all amounts assessed by Vendor to Merchant for the Optional Services. Until Vendor has determined that Merchant has satisfied all of the express conditions set forth in the immediately preceding sentence, Merchant agrees that it shall not, and Merchant hereby waives all rights to, contest, challenge or withhold payment for any fees assessed to Merchant by Vendor for Optional Services.

N. Merchant authorizes Vendor to contact Merchant's customers or their Card issuing bank if it determines that such contact is necessary to find out about any Card transaction between Merchant and the customer. Merchant may not contact a Discover Network Cardholder in connection with the Services except as authorized under this Agreement or the Operating Regulations or except as required by Law.

O. Bankruptcy. Merchant will immediately notify Vendor of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Vendor on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination of this Agreement, in addition to any other remedies available to Vendor under applicable Law or Order. Merchant acknowledges that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of Merchant, and, as such, cannot be assigned in the absence of Merchant's bankruptcy filings. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code § 362 to Vendor, Merchant must create or maintain the Reserve Account as required by Vendor, and Vendor will have the right to offset against the Reserve Account for any and all obligations which Merchant may owe to Vendor, without regard to whether the obligations relate to Card transactions initiated or created before or after the filing of the bankruptcy petition. Merchant agrees that this is a contract of recoupment and Vendor is not required to file a motion for relief from a bankruptcy automatic stay to realize on any of the Secured Assets (as defined in Section 7.F. below). Nevertheless, Merchant agrees not to contest or object to any motion for relief from automatic stay filed by Vendor. Merchant acknowledges and agrees to execute and deliver to Vendor such instruments and documents Vendor may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement.

5. Fees and Other Services.

A. Merchant will pay Vendor fees and charges for Services, forms, and/or equipment in accordance with the pricing detailed in this Agreement, which may be subject to cost escalations, assessments, registration expenses, certification expenses, and other amounts assessed by third parties (including but not limited to certain telecommunication expenses) incurred as a result of Merchant’s actions, omissions, or use of the services contemplated herein or incurred by Vendor on Merchant’s behalf pursuant to this Merchant Processing Agreement and the Operating Regulations. In the event that Merchant Processing Application does not state that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through to Merchant, the current VISA, MasterCard and Discover fees are included in the Discount Rate and Transaction Fee set forth on the Merchant Processing Application. Regardless of whether the VISA, MasterCard and Discover fees are assessed separately or incorporated into Merchant’s Discount Rate and Transaction Fee, the VISA, MasterCard and Discover Interchange fees and other fees assessed by the applicable Issuer, the Interchange rates, assessments and fees set by the VISA, MasterCard and Discover and are subject to change from time to time. Merchant acknowledges that whenever its transactions fail to qualify for any reduced fees, Vendor will process such transactions at the then current rates as set forth on the Merchant Processing Application. Merchant will pay the corresponding amount. Merchant acknowledges that to receive the lowest Discount Fee and Transaction Fee on a Card transaction, the Card transaction must exactly meet certain processing criteria or “qualify” for basic fees. Criteria for determining qualification will include, but not be limited to, whether (i) a Card transaction is: (1) hand entered (the required data is not electronically captured by a point-of-sale device reading the information encoded in or on a Card); (2) voice authorized; (3) not fraudulently (4) transmitted, (4) transmitted, and (5) submitted to Vendor, obtaining authorization, capturing all information encoded in or on a Card); (2) voice authorized; (3) not fraudulently (4) transmitted, (5) a Card transaction involving a Consumer Reward, Commercial Reward, Visa Signature, and MasterCard World Elite Card, or (6) deemed “Non-Qualifying” by the Operating Regulations, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement. For certain non-qualifying transactions, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement. For certain non-qualifying transactions, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement. For certain non-qualifying transactions, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement.

B. Merchant processing Application states that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through to Merchant, all such interchange fees, assessments and other fees will be passed through to Merchant in accordance with the Discount Rate, Transaction Fee and other fees set forth on the Merchant Processing Application. Certain of these fees are available on the VISA, MasterCard and Discover websites. Merchant expressly acknowledges and agrees that it is responsible to pay the Interchange fees, assessments and other fees whether Merchant has possession or knowledge of such fees. If the Merchant Processing Application does not state that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through separately to Merchant, the current VISA, MasterCard and Discover fees are included in the Discount Rate and Transaction Fee set forth on the Merchant Processing Application. Merchant agreements that this is a contract of recoupment and Vendor, without regard to whether the obligations relate to Card transactions submitted to Vendor for processing only partially qualify or do not at all qualify for the qualified discount rate quoted in accordance with the Merchant Processing Application and the Operating Regulations, Merchant may be assessed and agrees to pay an additional Mid-Qualified Exception Fee or Non-Qualified Exception Fee if set forth on the Merchant Processing Application. Further, Merchant will pay, in accordance with this Agreement, all fees, cost escalations, assessments, tariffs, penalties, fines or other items that may be charged, assessed or imposed under this Agreement and/or the Operating Regulations. Several factors affect the best rate Merchant may achieve on any given transaction, including but not limited to the type of card used in the transaction, the nature of the card used in the transaction, the number of times the transaction is entered and the result of the transaction. Merchant agrees to pay or refund any carriers, assessments, registration expenses, certification expenses, and other amounts assessed by third parties (including but not limited to certain telecommunication expenses) incurred as a result of Merchant’s actions, omissions, or use of the services contemplated herein or incurred by Vendor on Merchant’s behalf pursuant to this Merchant Processing Agreement and the Operating Regulations. In the event that Merchant Processing Application does not state that the VISA, MasterCard and Discover Interchange fees, assessments and other fees will be passed through to Merchant, the current VISA, MasterCard and Discover fees are included in the Discount Rate and Transaction Fee set forth on the Merchant Processing Application. Regardless of whether the VISA, MasterCard and Discover fees are assessed separately or incorporated into Merchant’s Discount Rate and Transaction Fee, the VISA, MasterCard and Discover Interchange fees, assessments and other fees assessed by the applicable Issuer, the Interchange rates, assessments and fees set by the VISA, MasterCard and Discover and are subject to change from time to time. Merchant acknowledges that whenever its transactions fail to qualify for any reduced fees, Vendor will process such transactions at the then current rates as set forth on the Merchant Processing Application. Merchant will pay the corresponding amount. Merchant acknowledges that to receive the lowest Discount Fee and Transaction Fee on a Card transaction, the Card transaction must exactly meet certain processing criteria or “qualify” for basic fees. Criteria for determining qualification will include, but not be limited to, whether (i) a Card transaction is: (1) hand entered (the required data is not electronically captured by a point-of-sale device reading the information encoded in or on a Card); (2) voice authorized; (3) not fraudulently (4) transmitted, (5) a Card transaction involving a Consumer Reward, Commercial Reward, Visa Signature, and MasterCard World Elite Card, or (6) deemed “Non-Qualifying” by the Operating Regulations, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement. For certain non-qualifying transactions, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards, or for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (ii) the sales drafts submitted are not as anticipated (e.g., Merchant's average ticket is different than that used by Vendor to calculate the discount rate, etc.) or (iv) sales drafts submitted without electronic transmission exceed 5% of the total monthly sales drafts processed under this Agreement.
taxes. Merchant shall immediately reimburse Vendor or Vendor may, at Vendor's sole option, charge Merchant's Designated Account for such amounts in Vendor's sole discretion.

D. Vendor will initially provide, in accordance with this Agreement the described products and services (the "Initial Services"). Merchant acknowledges and agrees that the Initial Services shall always include Services related to Association credit card transaction processing, and that Vendor shall be solely responsible for any use of such Services and that Vendor shall have no obligation to prevent Merchant from using such Services. If at any time Merchant utilizes any Services other than the Initial Services, such use of Services shall be provided according to Vendor's standard terms and conditions associated with such Services and, unless otherwise agreed to by Vendor, Merchant will pay Vendor its standard fees and charges for such Services in accordance with Vendor's then-current standards. Merchant's use of Services other than the Initial Services ("Additional Services") shall be deemed Merchant's acceptance of the fees and charges and the terms and conditions associated with such Services. Vendor may also charge Merchant for any non-specified service it provides Merchant or expense it incurs on behalf of Merchant (also deemed an Additional Service) in conjunction with Merchant's receipt of an Additional Service, and, unless otherwise agreed to by Vendor, Merchant agrees to pay the standard rate for the Additional Services in accordance with Vendor's then-current standards. Merchant shall not dispute, and shall be unconditionally obligated to pay for, any Additional Services for any non-specified service it has received. Services such as enhancement or customization of any standard services, customized reporting, or special requests will be provided at Vendor's option and on an "as-quoted" basis. Merchant acknowledges and agrees that it shall be solely responsible for all telecommunication lines, equipment, and any related items deemed necessary by Vendor in connection with the Initial Services and any Additional Services and for any and all fees, costs, or expenses related to the same, whether incurred by Merchant, Vendor, their affiliates, and/or agents. Such costs and/or expenses may include, but are not limited to, those associated with, circuits and their installation, software to support Merchant's operating environment, data transmissions, equipment, and software upgrades, modems, sharing devices, controllers, protocol conversion, router maintenance, maintenance other telecommunication equipment, etc. In the event Merchant uses Optional Services, Vendor may collect and Merchant agrees to pay all fees and charges associated with the Optional Services including but not limited to those assessed by third parties related to the use of an Optional Service.

E. If Vendor reasonably believes Merchant is not fully compliant with the Bank Rules, Operating Regulations (including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations), or any Laws, or in the event has received. Services such as enhancement or customization of any standard services, customized reporting, or special requests will be provided at Vendor's option and on an "as-quoted" basis. Merchant acknowledges and agrees that it shall be solely responsible for all telecommunication lines, equipment, and any related items deemed necessary by Vendor in connection with the Initial Services and any Additional Services and for any and all fees, costs, or expenses related to the same, whether incurred by Merchant, Vendor, their affiliates, and/or agents. Such costs and/or expenses may include, but are not limited to, those associated with, circuits and their installation, software to support Merchant's operating environment, data transmissions, equipment, and software upgrades, modems, sharing devices, controllers, protocol conversion, router maintenance, maintenance other telecommunication equipment, etc. In the event Merchant uses Optional Services, Vendor may collect and Merchant agrees to pay all fees and charges associated with the Optional Services including but not limited to those assessed by third parties related to the use of an Optional Service.

F. Transaction fees are fees charged on each sales draft and each credit draft regardless of the stated total. A Transaction Fee may be charged for any transaction activity that utilizes a point-of-sale ("POS") device for transmission or reception of data or information, including but not limited to, signature-based debit card transactions, PIN-based debit card transactions, batch closing, authorizations, and any other communication using the POS device.

G. Merchant agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Vendor, its affiliates and/or agents) in connection with and/or related to Merchant's conversion from Vendor's system to any other system used by Merchant and that Merchant shall pay to Vendor, a cost of funds associated with the Float Event (which Vendor may at its option assess as a transaction surcharge), the amount of which shall be determined by Vendor in its reasonable discretion, and which may be changed by Vendor from time to time, and such cost of funds shall be effective as of the start of the Float Event and shall be immediately payable by Merchant when assessed by Vendor.

I. Additional Provisions for Personal identification number (PIN) debit Cards. Vendor will charge the transaction fee for PIN debit Card transactions set forth on the Merchant Processing Application for each PIN debit Card transaction submitted regardless of whether such transaction is approved, declined, or determined invalid. In addition, Merchant will be assessed for each PIN debit Card transaction all debit network setup fees, chargeback fees and adjustment fees, including but not limited to, fees that may be imposed by the debit network merchant is served by, which may delegate to Vendor the authority to decide to which debit network a given PIN debit Card transaction will be routed.

J. Monthly recurring charges will be assessed upon approval of the Merchant Processing Application. Minimum Monthly Bill is calculated each month by adding the Minimum Bill amount described in this Agreement to the Merchant Processing Application, less actual charges for Visa, MasterCard and Discover Network. Minimum Monthly Bill shall never be a negative number (i.e. a credit). The Annual Fee or Semi-Annual Fee, as applicable, will not be prorated or refunded if this Agreement is cancelled or terminated for any reason. Merchant may assess the ACH/DBA Fee set forth on the Merchant Processing Application for administrative services, including, but not limited to, changing Merchant's Designated Account information or processing returned ACH items. MasterCard issuers may collect a handling fee for specific authorization chargebacks for certain Merchant Industry types.

6. Term and Termination.

A. This Agreement shall be binding upon Merchant upon the earlier of Merchant's execution of the Merchant Processing Application or Merchant's submitting a transaction to Vendor. This Agreement shall only be binding upon Merchant and its affiliates to the extent (i) Vendor accepts this Agreement by issuing Merchant a Merchant Identification Number or (ii) Vendor's processing of any transaction submitted by Merchant. The initial term of this Agreement shall be for the time period specified in the Merchant Processing Application, or elsewhere in this Agreement ("Initial Term"). In the event no Initial Term is indicated in the Merchant Processing Application or elsewhere in this Agreement, the Initial Term will be deemed to be 36 months. After the expiration of the Initial Term, this Agreement will automatically renew for successive two year terms, provided that if a different Renewal Term is set forth on the Merchant Processing Application, such Renewal Term will control (the "Renewal Term") unless terminated as set forth below; provided that if automatic renewal of this Agreement for such terms violates the provisions of applicable law, the Renewal Term will be 30 days, unless otherwise provided herein or unless either party gives written notice to the other party at least 30 days prior to the expiration of the then-current term. In addition, this Agreement may be terminated at any time by Vendor, without cause, on 15 days notice to Merchant. Termination of this Agreement does not terminate any chargebacks, adjustment fees, or any other provision(s) of this Agreement which continues to accrue, and, unless otherwise agreed to by Vendor, Merchant's Designated Account for such Services will be closed. If at any time Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or (ii) Merchant fails to comply with the Bank Rules, the Operating Regulations, and/or mandated by the Associations), or any Laws, or in the event that an Association identifies Merchant, or (viii) Vendor's reasonable determination that fraud is or may be occurring, or (ix) if Merchant's business name and/or the name of Merchant's principals are listed on the MATCH (Membership And Attack Control High Risk List) or any other standard fraud alert system, or (x) in the event that an Association identifies Merchant, its principals, or associated parties under a program designed to monitor merchants or otherwise instructs Vendor to close Merchant's account, or
(xii) Merchant's volume in any month in excess of 120% of the average Annual Volume indicated on the Merchant Processing Application, (xiii) Merchant has non-card present transactions in any month in excess of 120% of the MO/TO and Internet volume indicated on the Merchant Processing Application, (xiv) Merchant experiences excess returns greater than 3%, (xv) Merchant does not do business as specified in the Merchant Processing Application, (xvi) splitting tickets, (xvii) laundering tickets or (xviii) any other activity constituting Merchant's violation of the Agreement. Notwithstanding anything in this Agreement to the contrary, Merchant will remain liable for chargebacks or expense incurred by Vendor, including all past due, unpaid and/or future invoices for services rendered by Vendor in connection with this Agreement, or terminated or breached by Merchant, Merchant shall: (a) pay Vendor the Early Deconversion Fee for all transactions until the date of termination, multiplied by (b) the number of months remaining in the then current term of this Agreement, on a pro rata basis, or

thereafter; (xvi) Merchant shall also reimburse Vendor for any damage, loss or expense incurred by Vendor, including all past due, unpaid and/or future invoices for services rendered by Vendor in connection with this Agreement. Notwithstanding anything in this Agreement, Merchant will remain liable for chargebacks and other adjustments and for other fees, fines, penalties, charges or losses incurred by Vendor in connection with this Agreement. Merchant authorizes Vendor to debit Merchant's Designated Account for, or deduct from any settlement funds otherwise owed to Merchant, the Early Deconversion Fee, plus any and all losses (including costs, expenses and liabilities) incurred by Vendor in connection with termination. If Merchant's obligations to cover the Early Deconversion Fee and all such losses, Merchant agrees to pay Vendor such amounts immediately upon receipt of invoice. All amounts due pursuant to this section shall be immediately due and payable on demand and in such event Merchant shall not have the right to raise an objection, or to be relieved from the same fees and expenses incurred in connection with the collection of any delinquent amounts Merchant may owe Vendor.

D. Vendor may immediately cease providing services to Merchant without notice if (i) Merchant has failed to pay any amount to Vendor when due, (ii) in Vendor's opinion, provision of a service to Merchant may be a violation of the Operating Regulations, Bank Rules, or the Laws; or (iii) Vendor believes that Merchant has violated or is likely to violate the Operating Regulations, Bank Rules, or the Laws. E. Return of Equipment/Materials. Within 14 business days of the date of termination, Merchant must return all equipment owned by Vendor and immediately pay Vendor any amounts Merchant owes it for equipment costs. All promotional materials, advertising displays, emblems, sales drafts, credit memoranda and other forms supplied to Merchant and not consumed in use will remain the property of Vendor and will be immediately returned to Vendor upon termination of this Agreement. Merchant will be fully liable for any and all losses, costs, and expenses suffered or incurred by Vendor, arising out of any failure to return or destroy such materials following termination of this Agreement.

F. Remedies Cumulative. The rights conferred upon Vendor in this Section are not intended to be exclusive of each other and Vendor may exercise and enforce (in concert with and in addition to any other rights and remedies) Vendor's rights and remedies: (a) those provided for in Section 6.C. below, (b) those provided for in Section 6.F. below, (c) a liquidated damages fee will not exceed the maximum amount set forth by the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by Merchant to Vendor. (c) the liquidated damages fee set forth in Section 6.C. above, in effect after termination of this Agreement, and until Vendor has received written notice terminating this authorization and all Merchant's obligations to Vendor have been paid in full. If Merchant changes the Designated Account, this authorization will apply to the new account. Merchant's authority to debit or credit the Designated Account(s) shall remain in effect for a period of two calendar years following any termination of this Agreement, regardless of whether Merchant has notified Vendor of an Account Change as defined below. Merchant shall always maintain the Designated Account(s) with funds sufficient to satisfy Merchant's duties and obligations pursuant to this Agreement whether contingent or accrued. If Merchant desires to change or alter the Designated Account(s) (an "Account Change"), Merchant shall use reasonable efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Merchant actually makes such Account Change through Vendor's System. The Merchant should not close the old account until the new account receives the third deposit.

V. Authorization, Set-off, Reserve, and Security Interest. A. Merchant authorizes Vendor or its vendors or agents, and Providers, to initiate ACH credit/debit entries to or from the Designated Account, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of ACH, all in accordance with this Agreement and the Operating Regulations, Bank Rules, and the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by Merchant to Vendor. This ACH authorization will remain in effect after termination of this Agreement, and until Vendor has received written notice terminating this authorization and all Merchant's obligations to Vendor have been paid in full. If Merchant changes the Designated Account, this authorization will apply to the new account. Merchant's authority to debit or credit the Designated Account(s) shall remain in effect for a period of two calendar years following any termination of this Agreement, regardless of whether Merchant has notified Vendor of an Account Change as defined below. Merchant shall always maintain the Designated Account(s) with funds sufficient to satisfy Merchant's duties and obligations pursuant to this Agreement whether contingent or accrued. If Merchant desires to change or alter the Designated Account(s) (an "Account Change"), Merchant shall use reasonable efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Merchant actually makes such Account Change through Vendor's System. The Merchant should not close the old account until the new account receives the third deposit.

V. Authorization, Set-off, Reserve, and Security Interest. A. Merchant authorizes Vendor or its vendors or agents, and Providers, to initiate ACH credit/debit entries to or from the Designated Account, the Reserve Account or any other account maintained by Merchant at any institution that is a receiving member of ACH, all in accordance with this Agreement and the Operating Regulations, Bank Rules, and the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by Merchant to Vendor. This ACH authorization will remain in effect after termination of this Agreement, and until Vendor has received written notice terminating this authorization and all Merchant's obligations to Vendor have been paid in full. If Merchant changes the Designated Account, this authorization will apply to the new account. Merchant's authority to debit or credit the Designated Account(s) shall remain in effect for a period of two calendar years following any termination of this Agreement, regardless of whether Merchant has notified Vendor of an Account Change as defined below. Merchant shall always maintain the Designated Account(s) with funds sufficient to satisfy Merchant's duties and obligations pursuant to this Agreement whether contingent or accrued. If Merchant desires to change or alter the Designated Account(s) (an "Account Change"), Merchant shall use reasonable efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Merchant actually makes such Account Change through Vendor's System. The Merchant should not close the old account until the new account receives the third deposit.
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receipt of funds or errors in debit and credit entries caused by unauthorized third parties including but not limited to the Association or any third party. Other than Member Bank, the Designated Account shall not constitute a mutually agreed upon account other than Member Bank or any of its affiliates. In a format, with an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by Vendor, with a beneficiary designated by Vendor, and which are issued from a financial institution other than Member Bank or any of its affiliates, in a format, with an expiration date, and in an amount acceptable to Vendor in its sole reasonable discretion. Vendor may, at any time, require the amount of the letter of credit or the amount on deposit in the Reserve Account be increased. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in the name of the Merchant. Subject to the other terms of this Agreement, Vendor shall have the right and discretion to retain funds placed into the Reserve Account until requested by Merchant in writing following the later of (a) 270 days following the effective date of termination of this Agreement, or (b) 90 days of the last such date if either the Refund Request Date or the Remittance Date is applicable. If any time Vendor in its discretion should determine that (1) Merchant has engaged in illegal business activities, (2) Merchant is suspected of being or confirmed to be involved in a fraudulent transaction, (3) Merchant has laundered or aggregated illegal and/or brand damaging transactions, (4) the Merchant account was established as a result of Merchant's use of an Agent or any other third party processor or system, or Merchant's ability to connect to the Internet or an external network (x) any action or omission of any third party with which Merchant has contracted, (xii) any bankruptcy proceeding, (xii) any action Merchant institutes against any Association, Other Network or Card issuer following a chargeback or fine, or (xiii) any action Vendor takes against the Designated Account, Reserve Account, or any other account Merchant owns, pursuant to this Agreement. Merchant will also defend, indemnify and hold harmless the institution at which Merchant maintains the Designated Account for acting in accordance with any instruction from Vendor regarding any such account. This indemnification shall survive the termination of the Agreement.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, VENDOR DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Merchant hereby acknowledges that there are risks associated with the acceptance of cards, and Merchant assumes all such risks except as may be expressly set forth herein. Merchant shall not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages and expenses (including but not limited to any fines, fees, assessments, audit fees, card replacement cost, or penalties levied against Vendor by an Association, any Card issuer, or any Other Network, and attorneys' and collection fees and expenses) resulting from or otherwise arising out of (i) the Services, (ii) any breach of any term or condition of this Agreement, (iii) any misrepresentation by Merchant herein under this Agreement, (iv) Merchant's or Merchant's employees and agents acts or omissions in connection with the Services, (v) Merchant's processing activities and provision of goods and services to Cardholders, (vi) any violation of the Operating Regulations, the Bank Rules, or the Laws, (vii) any guarantees provided by Vendor to any third party for the benefit of Merchant, including without limitation any lease guarantees, or (viii) any inflation, hack, breach, or violation of the processing system resulting from, arising out of, or granting of any use related to Merchant's ability to access or sell to Merchant (including but not limited to Merchant's use of an Agent or any other third party processor or system, or Merchant's ability to connect to the Internet or an external network (x) any action or omission of any third party with which Merchant has contracted, (xii) any bankruptcy proceeding, (xii) any action Merchant institutes against any Association, Other Network or Card issuer following a chargeback or fine, or (xiii) any action Vendor takes against the Designated Account, Reserve Account, or any other account Merchant owns, pursuant to this Agreement. Merchant will also defend, indemnify and hold harmless the institution at which Merchant maintains the Designated Account for acting in accordance with any instruction from Vendor regarding any such account. This indemnification shall survive the termination of the Agreement.
believe that an Event of Default has occurred and is continuing, Vendor's liability related to the cost of such an event shall be set off against any amounts due hereunder. In the event of any return of funds related to Customer transactions, whether via direct return to Merchant or pursuant to any Customer chargeback, that return amount will be remitted to Merchant by a direct deposit to the bank account designated by Merchant in accordance with this Agreement. In the event of a return of funds, the return amount shall be treated as a reversal of a transaction for tax purposes and the Merchant agrees that Vendor shall have the right to deduct any applicable taxes from the return amount before remitting to the Merchant. Return amounts will be treated as a reversal of a transaction for tax purposes and the Merchant agrees that Vendor shall have the right to deduct any applicable taxes from the return amount before remitting to the Merchant. Return amounts will be treated as a reversal of a transaction for tax purposes and the Merchant agrees that Vendor shall have the right to deduct any applicable taxes from the return amount before remitting to the Merchant. Return amounts will be treated as a reversal of a transaction for tax purposes and the Merchant agrees that Vendor shall have the right to deduct any applicable taxes from the return amount before remitting to the Merchant. Return amounts will be treated as a reversal of a transaction for tax purposes and the Merchant agrees that Vendor shall have the right to deduct any applicable taxes from the return amount before remitting to the Merchant.

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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 deem necessary or appropriate to store (except for sales drafts maintained in accordance with this Agreement, Laws or Operating Regulations). If Merchant uses any third parties who will have access to Cardholder data ("Merchant Provider(s)"), Merchant must maintain records of their identity and the basis for allowing the Merchant Providers access to the Cardholder data for purposes that are authorized by the Operating Regulations, (ii) have proper security measures in place for the protection of Cardholder data, (iii) ensure that Merchant Providers comply with the following standards, scheduling, and procedures ("SOP’s") including but not limited to: (i) and unique (ii) verify the identity of each Merchant Provider providing service and (iii) Review all services rendered by the Merchant Providers. Any information provided in response to such investigation will (as between Merchant and Vendor) be considered Merchant's confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which such information is contained and regardless of whether Merchant processes transactions via Internet, mail, phone, face-to-face or any other method.

3. Confidentiality

3. Confidentiality

i. Merchant acknowledges that Vendor will be providing Merchant with certain confidential information, including but not limited to, this Agreement and information relating to the methods, techniques, programs, devices and operations of Vendor and/or Providers and/or Associations and/or Other Networks (collectively "Confidential Information"). Merchant shall not disclose Confidential Information to any person or entity (other than to those employees and agents of Merchant who participate directly in the performance of this Agreement and need access to such information). Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the Bank Rules, the Laws, and the Operating Regulations including but not limited to the Visa CISP found at www.visa.com/cisp, the MasterCard SDP, found at www.mastercard.com/sdp, and the American Express Operating Regulations. Merchant will, in its sole discretion, allow access to Vendor's data received by Merchant. The provisions of this Section are intended to supplement and not supersede any separate terms provided by Vendor to Provider.

10. For the purpose of inducing Vendor to provide to Merchant the Services contemplated in the preceding provisions of this Agreement, each Guarantor jointly and severally hereby absolutely and unconditionally guarantees the prompt and full payment to Vendor when and as the same becomes due and payable, whether by acceleration or otherwise, of all Obligations, as defined below.

11. The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities
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(including principal, interest, late charges, collection costs, attorneys' fees and the like) due and owing from Merchant to Vendor, either paid or credited to Merchant by Merchant alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, agreements of guaranty or otherwise, whether now existing or hereinafter arising, and any and all renewals, extensions of or substitutions therefor. The word "Obligations" shall include, but not be limited to, all obligations of payment, obligations of indemnification, and indebtedness owed by Merchant to Vendor arising from or related to the transactions or services contemplated in this Agreement.

Guarantor hereby promises that if one or more of the Obligations are not paid promptly when due, Guarantor will, upon request of Vendor, pay the Obligations to Vendor, irrespective of any action or lack of action on Vendor's part in connection with the acquisition, perfection, possession, enforcement or disposition of any or all Obligations or any or all security therefor or otherwise, and further irrespective of any invalidity in any or all Obligations, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor. Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against the Merchant or the Vendor, except payment or performance of the Obligations.

Guarantor waives notice of any and all acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest notice, notice of dishonor or other nonpayment of any and all Obligations and further waives notice of sale or other disposition of any collateral or security now held or hereafter acquired by Vendor. Guarantor agrees that no extension of time, whether one or more, nor any relaxation of or indulgence granted by Vendor to Merchant, or to Guarantor, or to any of them, and no omission or delay on Vendor's part in exercising any right against, or in taking any action to collect from or pursue any remedies against Merchant or Guarantor, or of any of them, will be release, discharge or modify the duties of Guarantor. Guarantor agrees that Vendor may, without notice to or further consent from Guarantor, release or modify any collateral, security or other guaranties, and no such action will release, discharge or modify the duties of Guarantor hereunder. This is a guaranty of payment and not of collection and the Vendor shall not be required to pursue any remedies, or attempt to collect from or pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations, or to pursue, exhaust or preserve any of its rights or remedies with respect to any collateral, security or other guaranties given to secure the Obligations, or to take any action of any sort, prior to demanding payment from, or pursuing any remedies against Guarantor. Guarantor hereby waives all defenses based upon suretyship or impairment of collateral. After any default by or on the part of Guarantor, Vendor may apply any set-off against any amount due to Guarantor hereunder against any deposits, account balances or other credits of Guarantor in the possession of or in transit to Vendor, and Guarantor hereby grants Vendor a security interest in all of the foregoing.

The obligations of the Guarantor hereunder, if more than one, shall be joint and several. This Continuing Unlimited Guaranty is evidencing a security interest in and to the Services, or prevent access to or use of the Services; or (v) attempt to perform any actions that would interfere with the proper working of the Services, or prevent access to or use of the Services; or (v) otherwise use the Services except as expressly allowed under this Agreement.

Notices.

A. All notices, requests, demands and other communications to be delivered by Merchant hereunder—unless otherwise specified—shall be in writing and shall be delivered to Vendor via certified mail, postage prepaid or reputable overnight courier to Vendor at the following address: Vantiv, LLC, Attention: General Counsel/Legal Department (EPS), 8500 Southpark Drive, Mailstop Y1Y1, Symmes Township, OH 45249-3384. Notices so delivered shall be deemed given upon Vendor’s actual receipt thereof.

B. All notices, requests, demands and other communications to be delivered by Vendor hereunder—unless otherwise specified—shall be delivered to Merchant via facsimile, ordinary mail, certified mail, return receipt requested, or reputable overnight courier, Notices, so delivered shall be deemed given: (i) for facsimile when transmission confirmation is obtained, (ii) for ordinary mail and certified mail, on the seventh calendar day following mailing, (iii) for reports when transmitted or otherwise made available by Vendor, and (iv) for reputable overnight courier, on the first business day following submission to the courier.

Requirements Contract.

This Agreement is a "requirements contract" which means that Vendor shall be Merchant’s exclusive provider for all services contemplated herein. Notwithstanding the foregoing, Vendor will not be obligated to process any Visa or MasterCard Card transactions beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card transaction outside the United States of America and other U.S. territories. Prior to any Merchant termination or non-renewal, Merchant warrants that before entering into any agreement with any thirdparty for the services contemplated herein, Vendor shall have the right of first refusal of entering into agreements with Merchant for all such services under the substantially similar terms and conditions (except for the length of the term) in lieu of Merchant entering into such an agreement with a third party.

Vendor Affiliate Accounts/Account Debiting Authorization.

In addition to any other rights or remedies that may be available to Vendor or any of its affiliates, by entering into this Agreement, Merchant expressly authorizes (i) Vendor to collect any amounts that are at any time due and owing from Merchant to Vendor under this Agreement by debiting any checking, savings or other deposit account that Merchant at any time maintains in any affiliate of Vendor (any such account, a “Vendor Affiliate Account”) and (ii) any affiliate of Vendor to collect any amounts that are at any time due and owing from Merchant to such affiliate by debiting any Vendor Affiliate Account or any checking, savings or other deposit account that Merchant maintains with Vendor.

Amendments.

Vendor may amend this Agreement, including without limitation, rates, rate descriptions, rate categories and other terms, at any time. Vendor will inform Merchant of a proposed change in a periodic statement or other notification method pursuant to the notification...
section of this Agreement. Merchant will be deemed to have agreed to any such amendment if Merchant continues to present transactions to Vendor after seven days following receipt (deemed or actual) of the notice. Notwithstanding the foregoing, in the event any Association or Other Network increases interchange, fees or assessments, Vendor may increase Merchant’s fees and charges to reflect such increases without notice to Merchant and Merchant’s business shall be permitted to continue arbitration in lieu of litigation or other court or administrative proceeding by either party. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON AN INDIVIDUAL BASIS, CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND MERCHANT IS WAIVING ITS RIGHTS TO HAVE ITS CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST PROCESSOR AND MEMBER BANK. The Federal Arbitration Act shall govern the interpretation and enforcement of this section and all arbitration proceedings which take place pursuant to this section. Any arbitration will be filed and take place in Cincinnati, Ohio and in accordance with and pursuant to the Commercial Arbitration Rules of the American Arbitration Association before a panel of three (3) arbitrators unless the amount of damages claimed by the filing party is $50,000.00 or less, in which event the arbitration shall be before one (1) arbitrator. The arbitrator(s) shall be experienced in the subject matter of this Agreement or the dispute and shall not have been previously an employee, consultant or counsel to either party. The arbitrators shall render their award in writing, sign the award, and state in writing the reasons supporting the award. Each party shall pay an equal share of the costs, fees and expenses of both the arbitration and the arbitrators. A party shall be entitled to the recovery of attorney’s fees and expenses to the extent as may be determined by the arbitrators. The arbitrator’s award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under this section and the commencement of any arbitration proceeding tolls such statute of limitations. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or equitable relief without regard to this section.

29. Waiver of Jury Trial and Covenant Not to Participate in a Class Action. MERCHANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY ACTION, LAWSUIT, CLAIM, COUNTERCLAIM OR OTHER ACTION RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION CONSIDERED BY THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, VOLUNTARILY AND INTENTIONALLY BY MERCHANT, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY IS ELECTED. WHETHER OR OTHERWISE. MERCHANT IS WAIVING ITS RIGHTS TO HAVE ITS CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST VENDOR BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT.

30. Heads and Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. In the event of an inconsistency between the Merchant Processing Application and these Merchant Processing Agreement Terms and Conditions, the terms of the Merchant Processing Application shall prevail. The event of a conflict between the Bank Rules and these Merchant Processing Agreement Terms and Conditions, the Bank Rules shall prevail.

31. Attorney’s Fees. Merchant will be liable for and will indemnify and reimburse Vendor for all attorneys’ fees and other costs and expenses paid or incurred by Vendor in enforcing this Agreement in defending its rights under this Agreement, or in collecting any amounts due from Merchant to Vendor or to any agent of Vendor, or resulting from any breach by Merchant of this Agreement.

32. Survival. Any and all provisions of this Agreement that impose or could be construed to impose an obligation, duty, or requirement upon Merchant including but not limited to liability for chargebacks/reversals and duties of indemnification and/or account
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33. Other Networks. Merchant’s election to receive Services from any Other Network may require the execution of an agreement (an “Other Merchant Agreement”) between an Other Network and Merchant. The parties acknowledge and agree that Other Merchant Agreement with any Other Network shall be deemed separate and independent agreements solely between such other Network and Merchant, and that Vendor shall not be responsible for any Other Network or Merchant breach of such Other Merchant Agreements. Vendor bears no liability whatsoever for terms and conditions of Other Merchant Agreements and Vendor’s liability for any reason with respect to an Other Merchant Agreement shall be limited both (i) as otherwise provided herein, and (ii) to the Services actually provided by Vendor. Vendor may, in its sole discretion, cease to provide any Services for Other Networks. If Merchant for any reason begins receiving any Services from any Other Network, Vendor may immediately: (i) stop providing Services for such Other Network, (ii) allocate any such fees, fines, assessments or penalties in such manner as it deems advisable in its sole discretion. Merchant agrees that it has or will, prior to commencing participation in each Other Network, obtain all necessary approvals and execute any applications and/or agreements necessary for, required by, or affecting the Merchant in such Other Network(s). In addition, Merchant shall obtain such other approvals or execute such other documents as may be required from time to time in connection with Merchant’s participation in such Other Networks. Merchant agrees to participate in other Network(s) in compliance with, and subject to, the Bank Rules and the Operating Regulations. Merchant agrees to pay all fees, fines, assessments and penalties as they are currently in effect or may be changed from time to time, imposed by the Other Network(s), which fees, fines, assessments or penalties shall be due to Merchant by such Other Network(s) or through Vendor or its affiliates or agents. Vendor may assess any such fees, fines, assessments or penalties in such manner as it deems advisable in its sole discretion. Merchant attests that all POS terminals are operating in conformance with unique keys as mandated by Other Networks.

34. Representations and Warranties. Merchant represents and warrants to Vendor at the time of execution and throughout the term of this Agreement the following:

A. Information. Merchant is a corporation, limited liability company, partnership, governmental agency or sole proprietorship validly existing and organized in the United States. All information contained in this Agreement or any other documents submitted to Vendor is true, complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. Merchant is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Merchant Processing Application, unless Merchant has obtained the prior written consent of Vendor.

B. Corporate Power. Merchant and the person signing this Agreement on behalf of Merchant have the power to execute and perform under this Agreement and Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions hereof, and that such person is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by Vendor now or in the future.

C. No Litigation. 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 has never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File except as disclosed in writing to Vendor.

D. Transactions. For all Card transactions submitted to Vendor: (i) the transaction must represent obligations of the person to whom the Card has been issued and/or the authorized Cardholder for the amounts in the transaction (including tax, but without any surcharge) and only for merchandise actually sold or rented or services actually rendered by Merchant (except for any delayed delivery or advance deposit authorized by the Rules and this Agreement) and must not involve any element of credit for any other purpose; (ii) the transaction must represent a bona fide sale/rental of merchandise and/or services not previously submitted and be a refinancing of any prior obligation; (iii) the price charged for the transaction must not be subject to any dispute, set off or counterclaim; (iv) Merchant must have no knowledge or notice of any fact, circumstances or defense which would indicate that the transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibility of the Cardholder’s obligation or relieve the Cardholder from liability for the transaction; (v) except as otherwise provided in the Rules, the transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to Merchant by a Cardholder, or arising from the dishonor of a personal check); and (vi) the transaction does not result from any sale outside of Merchant’s normal course of business, as described in the Merchant Processing Application.

E. Products and Services. (i) Merchant has the full power and authority to sell the products and services Merchant offers and to display the advertisements Merchant uses; (ii) no products or services offered by Merchant constitute a violation of any applicable law and Merchant will not sell or promote a Card for a purpose or in a manner which will fraudulently or deceptively imply a violation of any Cardholder’s rights or the right of the Cardholder to demand the return of money paid; (iii) the products and services offered by Merchant and the name of Merchant’s business do not infringe upon the rights of any other person, including, without limitation, trademark, copyright, confidentiality or patent rights; and (v) Merchant will not sell, market or display any products or services that would jeopardize Vendor’s reputation.

35. Regulatory and Compliance Program. The Regulatory and Compliance Fee is for reporting tools that will assist Merchant in reconciling on a monthly basis Merchant’s gross sales processed with Vendor to Merchant’s net sales. Vendor may assess this fee to each Merchant.

36. Debit & EBT Card Processing Services; Availability of Terminals. If so indicated on the Merchant Processing Application, Vendor will process PIN debit Card transactions and EBT Card transactions. If Merchant accepts EBT Cards, the terms set forth on Schedule VIII will apply. Vendor or third party banks with which Vendor has a relationship are members of certain PIN debit networks and are willing to sponsor Merchant as a participant in such debit networks. Debit networks may be added or removed from time to time. Vendor does not warrant the continuing availability of any debit network or EBT network. Merchant will take all reasonable steps necessary to ensure that point-of-sale devices and PIN pads will be available for use by the Cardholders for the Cardholders’ Card transactions and such devices and PIN pads will function in a reliable manner.

37. Alternate Funding. If Alternate Funding is selected on the Merchant Processing Application but Merchant is not approved by Vendor to receive Alternate Funding, Merchant will be set up with Premium ACH for Merchant’s deposit timeframe. If Alternate Funding is selected on the Merchant Processing Application and Merchant is approved for Alternate Funding, and Vendor has not placed Merchant’s account on hold, Vendor will generally initiate an ACH of settlement funds due to Merchant, subject to the terms of this Agreement, to the Designated Account the business day (which, for purposes herein, will mean any day on which the Federal Reserve is open for business, other than Saturdays or Federal holidays) after Vendor processes such transactions, provided that Vendor successfully receives the complete transaction data by the applicable cut off time. Notwithstanding the foregoing, Vendor will not be liable to Merchant if an ACH of Merchant’s settlement funds is not initiated within such business day timeframe. If the person is not placed on the Merchant’s deposit timeframe from Alternate Funding to Premium ACH at any time and without advance notice to Merchant. Vendor may, within its sole discretion, delay Merchant’s settlement payments for up to seven days, which period will begin after the settlement payments were received by Vendor. In this event, Merchant acknowledges that Vendor will, and Merchant expressly authorizes Vendor to, delay Merchant’s settlement payments for up to seven days. This delay of Merchant’s settlement funds does not preclude Vendor from exercising its right to establish a Reserve Account or to suspend payments pursuant to this Agreement. The settlement payments will begin to be credited to Merchant’s Designated Account, less any monies owed Vendor, on the next business day following expiration of this rolling delay period. This rolling delay of the settlement payments will be ongoing and continue as long as Vendor is providing Merchant’s processing services. In addition, Vendor has a right to delay, within its discretion, crediting the Designated Account with funds evidenced by submitted Card transactions. Merchant is responsible for verifying the amount of funds actually deposited to and available in Merchant’s Designated Account on a daily basis. Vendor is not responsible for the availability of funds represented by submitted Card transactions, or for any charges Merchant may incur for overdrawing the Designated Account.

Attachments to this Merchant Processing Agreement include:

- Exhibit A – Bank Rules
- Schedule I – Applicable and included if Merchant has additional locations to be included in the Merchant Processing Application for banks with which Vendor provides processing services
- Schedule II – Applicable and included if TransForm® Tokenization Service is selected on the Merchant Processing Application
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- Schedule III – Applicable and included if ACH Services are selected on the Merchant Processing Application
- Schedule IV – Applicable and included if Equipment is requested on the Merchant Processing Application
- Schedule V – Applicable and included if Authorize.Net services are selected
- Schedule VI – Applicable and included if wireless terminals using GPRS services or CDMA services are selected on the Merchant Processing Application
- Schedule VII – Applicable and included if Merchant is not preauthorizing lodging as indicated on the Merchant Processing Application
- Schedule VIII - Applicable and included if EBT is selected on the Merchant Processing Application
customer service, dispute resolution, and performance of the terms and conditions of the transaction. All Disputes between Merchant and any Cardholder arising to an account number will be settled between Merchant and the Cardholder. Neither Processor nor Member Bank bears any responsibility for such transactions. Merchant shall not require a Cardholder to waive his or her rights to dispute the transaction as a condition of the sale.

5. Employee Actions. Merchant is responsible for its employees’ actions while employed.

J. Prohibitions on Card Acceptance. Merchant may not do any of the following: (i) require a Cardholder to complete a postcard or similar device that includes the Cardholder’s card account number, or any other account-related data in plain view when mailed; (ii) add any tax to a transaction, unless applicable law expressly requires Merchant to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (iii) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Rules; (iv) disburse funds in the form of traveler’s checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (v) permit a Cardholder to purchase traveler’s checks, or other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (vi) use a Card to collect or refinance an existing debt that has been deemed uncollectible; (vii) enter into interchange a transaction that represents collection of a disputed check; (viii) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (ix) accept Cardholder payments for previous Card charges incurred at the Merchant location; (x) submit for payment into interchange any transaction that may in the sole discretion of a Card Organization, damage the good standing or public image of the Merchant or reflect negatively on a Card Organization’s brands; (xi) add any surcharge to a transaction; (xii) enter into interchange any transaction receipt for a transaction that was illegally obtained, or that the Merchant returned to the Cardholder, irrespective of Cardholder approval (Merchant may pursue payment from the customer outside of the Card Organization system); (xiii) accept a Card for the purchase of Scrip; or (xiv) accept a Visa Electron Card or a Visa TravelMoney Card for manual cash disbursement. Merchant may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Card Organizations. If/and/or interchange restrictions on any type of transaction does not exceed $10.00 (or any higher amount established by applicable law or the Rules). Unless otherwise set forth below or otherwise allowed by applicable law or the Rules, Merchant may not establish a maximum sale amount as a condition for honoring Cards, unless the Merchant establishes a maximum sale amount as a condition for honoring Cards if Merchant is a department, agency or instrumentality of the U.S. Government. Merchant is a corporation owned or controlled by the U.S. Government, or its primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum transaction amount does not differentiate between Card Organizations and/or issuers.

K. Security Features. Merchant is required to examine the Card security features prior to completing a sale. Merchant should examine the Card to be sure there has been no tampering to the signature panel. Specific Card security features are as follows:

i. Visa:  
- The “DOVE” hologram should appear to fly when tilted.
- All Visa account numbers begin with a “4” and can be up to 19 digits long.
- The first four digits of the embossed account number match the four digits printed on the account number of the Card.
- The “V” to the right of the expiration date should be a normal “V” and not rotated.

ii. MasterCard:  
- The MasterCard Global hologram or the Debit MasterCard hologram and the MasterCard brand mark stacked within a retaining line, or the MasterCard brand mark without a retaining line if the hologram is on the back.
- All MasterCard account numbers are 16 digits long.
- The first four digits of the embossed account number match the four digits printed on the account number of the Card. The last four digits of the account number are holographic.
- Discover Network: (certain valid devices (e.g., radio frequency enabled Cards, key fobs, contactless Cards, and JCB, CUP and DCI Cards) may not display the features described below.)
- Card numbers are up to 19 digits long.
- The word DISCOVER or DISCOVER NETWORK will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- An overprint on the signature panel reads Discover Network Card.
- The Discover Network hologram, composed of three-dimensional holograms, bearing a distinct circular shape and images of a globe pierced by an arrow, water and stars on a repetitive pattern background (the “Discover Network Hologram”) appears from the front of every Discover Network Card. The hologram reflects light and appears to move as the Card is rotated.

When an Electronic Cash Register or Electronic Draft Capture terminal reads the magnetic stripe on the Card, Merchant must check the account number displayed on the terminal and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card. 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 and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card.
they do not match, the sale must not be completed. Failure to follow these checks and procedures will expose Merchant to chargebacks. If the terminal is not in working order, the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

b. Advertising. Merchant must display Visa, MasterCard, Discover Card and any other applicable Card issuer, Debit Network and EBT Network decals and program marks on promotional materials that Processor furnishes, including, if applicable, the JCB, CUP, DCI and/or Electron symbol, in a clear, prominent manner near the terminal. These requirements are otherwise required by the Rules. Merchant’s use of the promotional materials of Visa, MasterCard, Discover Network or any other Association or State shall not indicate, directly or indirectly, that Visa, MasterCard, Discover Network or any other Association or State endorse any goods or services other than their own and Merchant may not refer to Visa, MasterCard, Discover Network or any other Association or State in stating eligibility for products or services.

c. Acceptance Procedures. Merchant may ask or incent customers to use alternative forms of payment other than a Visa or MasterCard. Discounts can be offered on alternate card brands, card types or payment types. Card brand or method preference can be promoted, as well as the ability to inform customers of the costs associated with accepting a particular card type or brand.

d. Promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form of payment; (e.g., traditional cards, prepaid cards, rewards cards) than the Card the consumer initially presents. Merchant may do so by methods that include, but are not limited to:

i. MasterCard Specific Requirements. Merchant may require or encourage a customer to use a payment card with an acceptance brand other than MasterCard or other form of payment or a Card of a different product type (e.g., traditional cards, prepaid cards, rewards cards) than the Card the customer initially presents. Merchant may do so by methods that include, but are not limited to:

a. offering the customer an immediate discount from Merchant list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment;

b. offering the customer an immediate discount from Merchant list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer initially presents a MasterCard, uses instead another payment card or another form of payment;

c. expressing a preference for the use of a particular payment card or form of payment;

d. promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that merchants will abide by the MasterCard trademark standards relating to the display of its marks); or

e. communicating to customers the reasonably estimated or actual costs incurred by Merchant when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

Merchant is free to engage in the POS practices that are described above, or any other substantially equivalent practices.

ii. Visa Specific Requirements. Merchant may steer customers to use a particular network brand, such as Visa or MasterCard; to a type of payment card, such as a "non-reward" credit card; or to another preferred form of payment. Merchant may also encourage or incent the customer to use a Visa card to use a payment card with a different network brand, a different type of payment card, or a different form of payment. Merchant may engage in any of the following steering activities: a. offering a cash discount or rebate, including an immediate discount or rebate at the point of sale;

b. offering a free or discounted product;

c. offering a free or discounted or enhanced service;

d. offering the customer an incentive, encouragement or benefit;

e. expressing a preference for the use of a particular brand or type of general purpose card or a particular form of payment;

f. promoting a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence or sequencing of payment choices, or through other communications to a customer;

g. communicating to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or

h. engaging in any other practices substantially equivalent to these.

Merchant is not required to display the Visa mark in a size as large as other payment marks. Merchant may promote acceptance brands other than Visa through the size, prominence, or sequencing of payment choices. However, Merchant must continue to respect a cardholder’s ultimate decision to pay with Visa. Merchant should have an obligation to accept payment properly presented Visa cards, including rewards cards. In addition, surcharging of Visa cards and steering among Visa cards based on the issuing bank are not permitted and Merchant must ensure that its steering practices are not performed in a confusing manner.

iii. American Express Specific Requirements. If Merchant accepts American Express cards, Merchant must comply with the American Express rules regarding card acceptance. Merchant should review its agreement with American Express for further details on the requirements for American Express acceptance.

2. Authorization. A. Required on all Transactions. Merchant will obtain a prior authorization via a card validation process for each transaction, including MO/TO transactions. Merchant will follow any instructions received during such authorization process. Upon receipt of authorization, Merchant may consummate only the transaction authorized and must note on the Authorization the authorization number. When Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder. If Merchant receives a negative authorization response, Merchant may not complete the sale and may be requested to reauthorize a Card. Merchant may complete the sale if authorization can be obtained by reasonable and peaceful means. If Merchant does recover the Card, Merchant should notify the voice authorization center and ask for further instructions. Transactions will be deemed invalid on Cards that are not further accepted. In the event of an electronic commerce transaction, Merchant must attempt to obtain the Card expiration date and forward it as part of the authorization request. Merchant may not, after having received a negative authorization response, request, sell, or refund 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.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction or a transaction involving the use of an expired Card. Obtaining an authorization will not validate the transaction for Merchant in a Card transaction. The fact that an authorization is obtained by Merchant will not affect Processor’s or Member Bank’s right thereafter to revoke the authorization of a Card transaction or to charge back the transaction amount. Merchant must still comply with the facts that an authorization has been obtained by Merchant be deemed to be Processor’s or Member Bank’s representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

C. Unreadable Magnetic Stripes. If Merchant authorizes and presents card transactions electronically and the terminal is unable to read the magnetic stripes on the Card, Merchant will obtain an imprint of the Card and the Cardholder’s signature on the imprinted draft before presenting the Sales Draft to Member Bank and Processor for processing.

D. Procedures. If 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. If the Merchant declines to do so, the sale must not be completed. Any of the following cases, Merchant shall obtain authorization from the voice authorization center, designated or approved by Processor or Member Bank, before completing a sales transaction:

i. paper Merchants whose sales exceed Merchants floor limit as established by Processor or Member Bank, or amended from time to time;

ii. an unsigned Card is presented;

iii. 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 wait further instructions;

iv. in any other circumstances established by Processor or Member Bank or stated in the Rules and/or this Agreement.

E. If Merchant is approved to utilize batch authorization by Processor, Merchant may obtain batch authorization for all electronic commerce transactions. However, if such sales have occurred provided, however, that authorization for each transaction is obtained by end of the calendar day upon which such sale was initiated and that Merchant does not present the batch by account number or BIN. Further, Merchant expressly agrees that it will be responsible for any fines, fees, changebacks, assessments, and declined or disputed transactions that may result from using a batch authorization process.

3. Sales Drafts. A. Forms. Merchant will use a Sales Draft to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant’s name, identification number, and city and state; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable. If Merchant fails to use an electronic terminal to print Sales Drafts, the account number must be truncated to the cardholder copy of the Sales Draft. This means that only the last 4 digits of the account number may appear. The entire expiration date must be suppressed on receipts provided to cardholders.

B. Signatures. Sales Drafts must be signed by the Cardholder. The requirements for the Cardholder’s signature on a Sales Draft shall only be waived if the Card transaction is a valid MO/TO or electronic commerce transaction, which fully complies with the requirements set forth in this Agreement, or if otherwise authorized by Processor. Merchant cannot use other Association or State endorse any goods or services other than their own and Merchant may not refer to Visa, MasterCard, Discover Network or any other Association or State in stating eligibility for products or services.

C. Delivery and Retention of Sales Drafts. Merchant will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. Merchant shall store all Sales Drafts and transaction records in a manner that satisfies all requirements set forth in this Agreement. If Merchant fails to comply with these requirements, Merchant will retain the Merchant copy of the Sales Draft or credit memorandum for at least 12 months following the date of completion of the transaction for Visa Card transactions, at least 38 months following the date of

Exhibit A
Bank Rules
xiii. the Card account number and the amount of sale is missing from Sales Draft or is illegible.

xi. the Sale Draft bears the imprint of a Card which to the Association is a counterfeit Card because the Card is not embossed in accordance with the standards set forth in the Rules, even if the sale was authorized.

6. Chargeback Monitoring Programs.

A. If Merchant exceeds a 1% chargeback to interchange ratio for all incoming chargebacks for a particular location Merchant is expected to exceed, Merchant may present a chargeback monitoring program to Processor. Merchant may present a chargeback monitoring program to Processor, which contains the policies and procedures for monitoring chargebacks. Merchant is responsible for monitoring its monthly chargeback percentage and developing chargeback reduction plans as required by the Card Organizations. Excessive chargeback activity for an unreasonable period of time may result in termination of this Agreement. Merchant must pay Member Bank or Processor for any fine or charge levied by the Associations on Member Bank, Processor or Merchant as a result of the chargeback activity. The action may be amended from time to time at the request of the Associations.

B. Other Monitoring Programs.

If Merchant is identified by certain Association monitoring programs as having an excessive chargeback ratio, Merchant's ability to reverse chargebacks may be severely restricted. Certain monitoring programs review the number of lost, stolen and counterfeit Cards accepted by Merchant in the normal course of business and the percentage of Cards sold for sales that were not read electronically by terminals or Electronic Cash Registers. The purpose of these programs is to reduce the use of lost, stolen, fraudulent, and counterfeit Cards. In the event that Merchant identified under these programs as having an excessive chargeback ratio, Merchant becomes liable for chargebacks and sales on lost, stolen, or counterfeit Cards regardless of the Card acceptance procedures followed, and this Agreement may be terminated by Processor or Member Bank and/or Processor or Member Bank may immediately cease providing services to Merchant without notice.

C. Excessive Activity. Merchant's presentation to Processor of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. Excess activity may be determined in the normal course of business and the percentage of Cards used for sales that were not read electronically by terminals or Electronic Cash Registers. Merchant is responsible for resubmitting a Batch Out or ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. Merchant is not liable for Merchant for amounts it did not collect, including but not limited to amounts collected by Third Party Service Providers.

4. Chargebacks. Failure to comply with the Rules will reduce Processor or Member Bank's ability to reverse chargebacks and increase the likelihood of Merchant receiving a chargeback. Merchant may be subject to a chargeback or sales for a minimum period of 180 days from the date the sale was entered into the Association's processing system. Processor or Member Bank will mail the Merchant a Notice of Chargeback, chargeback or sales for a minimum period of 180 days from the date Merchant's last chargeback. Merchant or Processor or Member Bank may immediately cease providing services to Merchant without notice.

A. Credit Memoranda. Merchant will issue a credit memorandum, instead of processing a chargeback, within 30 days of the effective date of termination of this Agreement or 180 days from the date of the Merchant's last chargeback. Merchant will submit to Processor or Member Bank a legible copy of a Sales Draft if the request is for a Sales Draft not originally submitted to Processor. Merchant will, within the time period specified by applicable law, provide Processor with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction. Merchant may only limit the acceptance of returned merchandise to items which documentation must be maintained in a secure manner in accordance with the Merchant obligations under Section 12 of the Merchant Processing Agreement. Merchant will submit to Processor or Member Bank a legible copy of a Sales Draft if any Card issuer requests such retrieval. The Merchant deadline for providing Processor or Member Bank a legible copy of the requested Sales Draft will be ten (10) days after the date of the Card issuer's request. Merchant's last chargeback. Merchant shall not disclose a Cardholder's account number or any other personal information to third parties other than its agents for the purpose of completing the transaction or as specifically required by the Rules or by the Rules. Merchant shall not disclose a Cardholder's account number or any other personal information to third parties other than its agents for the purpose of completing the transaction or as specifically required by the Rules or by the Rules.

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the obligations under this Agreement. Merchant will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. In addition, by executing this Agreement, Member, Member Bank, and Bank or Processor have previously given such consent, Merchant represents and warrants to Member Bank and Processor that Merchant will not rely on any proceeds or credit resulting from any such transaction to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date independent of any proceeds or credit resulting from Sales Drafts or other payments taken in connection with future delivery transactions.

F. Electronic Commerce Transactions.
   i. Electronic Commerce. Merchant must obtain the consent of Processor to engage in EC transactions. Merchant may process such transactions only if the transactions comply with the Payment Card Industry Security Standard requirements set forth below.
   ii. If Merchant submits EC transactions without Processor's consent, Processor may immediately terminate this Agreement. Merchant understands that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. A Merchant must not refuse to contract with a Merchant because the Cardholder does not have a digital certificate or other secured protocol. Merchant is liable for all chargebacks and losses related to EC transactions when either: a) EC transactions have been encrypted and/or b) Merchant has obtained the consent of Processor to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction. Merchant is responsible for contracting with a third party payment engine, payment gateway or other Internet service provider. All communication costs related to EC transactions are Merchant's responsibility. Merchant understands that Processor will not manage the EC transactions, and that Merchant is responsible for arranging and maintaining the link that all EC transactions will be settled by Member Bank into a depository institution of the United States in U.S. currency.
   iii. Requirements. For goods to be shipped on EC transactions, Merchant must follow all of the following requirements: a) complete description of the goods or services offered, b) returned merchandise and returns policy, c) customer service contact, including electronic mail address and telephone number, d) transaction database, Merchant must follow Association guidelines on securing such data.
   iv. i. Cardholder Information Security Program. If Merchant accepts EC transactions, Merchant's website must include the physical address of Merchant's permanent establishment, along with the country of domicile, either: 1) On the same screen as the checkout screen used to present the total purchase amount, or 2) Within the sequence of web pages the Cardholder accesses during the checkout process.

v. Merchants acknowledges and agrees that Merchant will only submit Electronic Commerce Card transactions in U.S. Dollars that is processed by a Merchant's purchase order via the Internet. If software is to be purchased by Merchant, Merchant must be responsible for sublicensing fees and all other fees for software and the software program utilized by Merchant that enables Merchant to connect to and maintain communication with Member, the Internet and Processor. Merchant is responsible for maintaining a policy that addressed security systems and processes, maintain a policy that addressed information security for employees and contractors, and restrict physical access to Cardholder information.

v. If Merchant accepts EC transactions, Merchant's website must include the physical address of Merchant's permanent establishment, along with the country of domicile, either:
   • On the same screen as the checkout screen used to present the total purchase amount, or
   • Within the sequence of web pages the Cardholder accesses during the checkout process.

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   • On the same screen as the checkout screen used to present the total purchase amount, or
   • Within the sequence of web pages the Cardholder accesses during the checkout process.

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of the fees applicable to Third Party Service Provider transactions. Third Party Service Providers separately invoice Merchants for their services, and payments due to Merchants (not necessarily including any transaction fee for any transaction until that point in time when Processor receives data about the transaction).

B. Use of Terminals Provided by Others. Merchant will notify Processor immediately if Merchant decides to use electronic authorization or data capture terminals or software provided by any entity other than Processor or its authorized designee ("third party terminals") to process transactions. If Merchant decides to use third party terminals, Merchant agrees that the third party providing the terminals will be Merchant's agent in the delivery of Card transactions to Member Bank via a data processing network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member Bank nor Processor will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a third party terminal.

11. Vehicle Rental Authorization Terms

A. Estimate. 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 deductible when Cardholder waives insurance at time of rental.

B. Procedures. Special terminal downloads may be required in order to qualify for certain rates on Vehicle Rental transactions. Merchant shall record on the Sales Draft the date, amount, and all authorization approvals obtained. Merchant shall charge the Cardholder the amount authorized at the time of rental. Subsequent Authorization:

i. If no authorization was obtained at the time of rental and Merchant, based upon Cardholder's actual charges, later estimates that the transaction amount will exceed the applicable floor limit, Merchant may obtain an Authorization Approval code for the new estimated amount.

ii. Merchant may obtain authorization for additional amounts (above any amount not authorized) on the car rental pickup 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 15% of the sum of the authorized amounts.

12. Paper Processing Merchants

Paper processing merchants shall authorize by using the established floor limits. Any Merchant that fails to obtain a sale or transaction that is under the established floor limits and that is not authorized, is liable for the resulting chargebacks from those Card numbers listed on the Electronic Exception File. In the case of a Merchant depositing paper drafts, such drafts shall be deposited with Processor or Member Bank within 5 days of the sale date.

13. Travel and Entertainment ("T&E") Merchants

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. 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.

14. T&E Services

A. Services. T&E Merchants may participate in any of the following Visa T&E Services:

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<tr>
<th>Service</th>
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<tr>
<td>T&amp;E Cash Disbursement Service</td>
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<tr>
<td>Visa Reserve Service</td>
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B. Visa Priority CheckOut Service

Merchant agrees to:

i. accept all Visa Cards in accordance with this Agreement;
ii. have Cardholder complete, sign, and return a Priority CheckOut Agreement ("PCO Agreement") which includes the Cardholder's mailing address;
iii. complete a Sales Draft which includes the total sales amount and the words "Priority CheckOut" on the signature line;
iv. review the completed PCO Agreement and ensure the account number matches the account number on the Sales Draft if applicable;
v. comply with normal authorization and deposit requirements;
vi. at the Cardholder's request, Merchant must mail the Sales Draft copy, the itemized bill, and the signed PCO Agreement to the Cardholder within 5 days of the sale date; and
vii. Merchant must retain the itemized bill and signed PCO Agreement for a minimum of 6 months after the transaction date.

C. T&E Advance Deposit Service

Merchant agrees to:

i. accept all Visa Cards in accordance with this Agreement;
ii. obtain the Cardholder's 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;
iii. determine the advance deposit amount, which is the cost of the intended length of stay or, if the cost of the intended term of rental, not to exceed 14 days;
iv. apply the deposit amount to the total obligation;
vi. provide: (1) reservation confirmation code to the Cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
vi. advise the Cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;

vii. advise the Cardholder that Merchant will retain the deposit amount if the Cardholder has not canceled the reservation within the specified time frames;

viii. Merchant must not charge for a no show transaction;

ix. complete the Sales Draft including advance deposit amount, Cardholder name, mailing address, telephone number, account number, expiration date, the words “Advance Deposit” for a Cruise Line Merchant, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and Merchant’s location; and

x. for a Lodging Merchant, if the reserved accommodations are unavailable, Merchant must provide the Cardholder the following services: (1) one night’s hotel residence, (2) a request for the services to be charged to the Cardholder’s account, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) two reasonable out-of-pocket expenses incurred by the Cardholder, (5) message forwarding to the alternate establishment, (6) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and Merchant’s location; and

xi. for a Cruise Line Merchant if the reserved accommodations are unavailable, Merchant must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, (2) a request for the services to be charged to the Cardholder’s account, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) two reasonable out-of-pocket expenses incurred by the Cardholder, (5) message forwarding to the alternate establishment, (6) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and Merchant’s location; and

xii. for a Car Rental Merchant if unreserved vehicle is unavailable, Merchant must provide the Cardholder the following services without charge: (1) refund the entire deposit amount, (2) a request for the services to be charged to the Cardholder’s account, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 days or until the reserved vehicle becomes available.

xiii. for a Cruise Line Merchant if the reserved accommodations are unavailable, and no comparable accommodations are available on the ship, the Merchant may offer: (1) a comparable cruise within the same approximate sailing dates and number of sailing days specified in the reservation, (2) any extra nights’ accommodations or air fare to a different port city necessitated by the Cardholder’s acceptance of the reserved or alternate accommodations. The Merchant must refund the entire T&E deposit amount, if comparable accommodations are not available or the Merchant does not accept the offered accommodations. The Merchant must provide a credit receipt to the Cardholder and the Merchant must provide all of the following without charge, (1) one night’s hotel accommodation, if required, (2) transportation to the hotel as well as the airport, (3) Airline transportation to the airport nearest the Cardholder’s residence, (4) reasonable out-of-pocket expenses incurred by the Cardholder because the guaranteed accommodations were not available.

D. T&E Cash Disbursement Service. Merchant may make cash disbursement to a registered Visa Gold or Platinum Cardholder under the following conditions:

i. Cardholder indicates at registration the intent to pay for services with a Visa Card;

ii. Before disbursement, Merchant will review positive identification, and, if permitted by applicable law, record type and number on the Sales Draft;

iii. Merchant completes an 80 column Cash Disbursement Sales Draft or a 51 column Cash Disbursement T&E Sales Draft that includes the Cardholder’s positive identification or a Cash Disbursement Record;

iv. Merchant does not disburse more than $250.00 during the Cardholder’s stay. Cash availability may limit cash disbursements; and

v. Merchant must not charge any additional fees or charges except taxes, surcharges imposed by law on the transaction amount.

F. Visa Reservation Service: Any merchant who accepts Cards to guarantee reservations must do so in accordance with the following requirements:

i. Merchant must accept all Visa Cards in accordance with this Agreement;

ii. Merchant must 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’s 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 completed, the Cardholder will be charged for one night’s lodging plus applicable taxes. If requested, 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 service provisions.

iii. Merchant must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notice prior to the scheduled arrival date; and

iv. Merchant must provide the following services without charge: (1) refund the entire deposit amount, (2) a request for the services to be charged to the Cardholder’s account, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and Merchant’s location; and

v. If the reservation is properly canceled, Merchant must provide a cancellation code and advise the Cardholder to retain it. If requested, Merchant must make a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;

vi. 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 service provisions relating to the Cardholder’s acceptance of unavailable, and no comparable accommodations are available on the ship, the Merchant may then complete a Sales Draft for 1 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;

vii. If guaranteed accommodations are unavailable, Merchant must provide comparable accommodations as described in Section 14.C.xiv above. These services shall be provided at no cost to Cardholder.

15. Preauthorized Health Care Transactions

A. Order Form. Merchants accepting Preauthorized Health Care Transactions must have the Cardholder complete an order form containing the following:

i. a request for the services to be charged to the Cardholder’s account;

ii. assignment of insurance benefits to Merchant;

iii. authorization for Merchant to charge the Cardholder’s account for only that portion of the bill subsequent to Merchant’s receipt of any applicable insurance payment;

iv. duration of time, not to exceed 1 year, for which permission is granted;

v. if the Preauthorized Health Care Transaction is renewed, the Cardholder must provide an updated order form.

B. Procedures. Merchants accepting Preauthorized Health Care Transactions must:

i. retain a copy of the order form during the period it is in effect;

ii. provide a copy of the order form upon Processor or Member Bank’s request; and

iii. type or print the words “Preauthorized Health Care” on the signature line of the Sales Draft; and

iv. submit a Sales Draft within 90 days of the service date and request authorization for the amount due upon receipt of notice of adjudication from Cardholder’s insurance company.

C. Cancellation. Merchant must not complete a Preauthorized Health Care Transaction without authorization from Cardholder, Processor or Member Bank.

16. Visa Supermarket Program

A merchant that wishes to participate in the Visa Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement with Processor or Member Bank.

17. Reserved

18. Automated Fuel Dispenser

A. Procedures.

i. When an Automated Fuel Dispenser (“AFD”) transaction takes place, the card must be presented 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.

ii. The Merchant name, city, state, and zip code of the station location where the transaction took place must be included in any authorization and clearing message.

iii. A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

iv. Merchant must obtain an authorization for the exact amount of the transaction or use the status check procedure, which requires Merchant to request an authorization for no more than $1.00.

v. Merchant must use the status check procedure if the floor limit is zero and the actual transaction amount is no more than the maximum set by Visa and MasterCard, which amounts are currently $125.00 for Visa transactions and $100.00 for MasterCard transactions.

vi. Merchant must have an established self-service terminal operating plan on file with Processor or Member Bank and must establish a velocity check program that monitors the volume and frequency of account transactions.

vii. The transaction ratio of chargebacks to total Visa Interchange for Merchant must not exceed an average of 0.30% for the previous 6 months.

viii. The transaction ratio of fraud to total Visa Interchange for Merchant must not exceed an average of 0.40% for the previous 6 months.

ix. Under no circumstances should Merchant use an arbitrary estimate of the transaction amount to obtain an authorization.

x. An AFD must not dispense more than $1.00.

xi. Terminals at automated fuel dispensers do not qualify for the Qualified Rate set forth on the Merchant Application. In order to qualify for the Automated Fuel Dispenser Transaction Rate the authorization must be completed within 1 day of the transaction date and the sale must be for less than than the maximum amount set by Visa and MasterCard, currently $125.00 for Visa transactions and $100.00 for MasterCard transactions.
B. Programming. Processor is not responsible for programming or reprogramming of fuel dispensers.

19. Equipment. Merchant prohibited from using the Discover Network Program Marks, as follows:

1. Discover Network Marks.

2. Merchant agrees to properly protect the Merchant’s Equipment, including, but not limited to, providing security for equipment, such as POS devices, installed by and/or operated by any third party. Merchant should contact the third party service for this equipment. Merchant shall not use the Discover Network Program Marks by using them on any equipment set forth on the Merchant Application based upon Merchant’s own allegations regarding the use of the Discover Network Program Marks. Merchant’s authority to use the Discover Network Program Marks will terminate immediately upon notice from Processor, in writing. Merchant will not at any time do, or cause to be done, any act or deed contrary to the terms and conditions of the lease or rental agreement. Neither Processor nor Member Bank is a party to such leases and neither is affiliated with the third party institutions. Such leases are typically non-cancelable 48-month leases. Termination of Merchant’s Merchant Processing Agreement with Processor does not automatically terminate Merchant’s equipment lease, it only terminates its processing agreement with Member Bank with respect to Card Organization processing. Any other equipment transactions are settled through the Member Bank as designated on Merchant’s monthly statement from the Member Bank. Its acknowledges that Merchant has selected the equipment set forth on the Merchant Application based upon Merchant’s own allegations regarding the use of the Discover Network Program Marks. Merchant shall not be liable for any failure of such third party provider to comply with the Rules. Merchant will not at any time do, or cause to be done, any act or deed contrary to the terms and conditions of the lease or rental agreement. Merchant is responsible for any failure of such third party provider to comply with the Rules. The third party provider is the source for information regarding authorizations and reversals that may be required by Processor or Member Bank.

20. Imprinters. Merchant must be in possession of a working imprinter, a supply of blank Sales Drafts and an accurate imprinter plate showing its DBA name, city, state, and Merchant Identification Number. If Merchant is not in possession of the above equipment, Merchant must contact Processor to obtain such equipment. Failure to safeguard the equipment and supplied imprinter will result in liability for chargebacks. Merchant must obtain an imprint of a Card when a Card will not swipe. Obtaining an imprint of a Card will greatly reduce the chance of a chargeback.

21. Merchant Identification Number. Merchant is responsible for ensuring that its Merchant Identification Number (“MID”) is kept confidential. When a change to its Merchant Account is required, Merchant must disclose its MID to the Processor representative as confirmation that the person requesting the change has authority to do so. If the person requesting the change discloses the proper MID, Processor or Member Bank, as the case may be, shall assume that person has proper authority to make the change. Merchant will be fully liable for any changes to its Merchant Account after disclosure of the MID. Processor or Member Bank may request from Merchant additional information to further verify Merchant’s identity.

22. Use of Card Time Limits and (or) Sequence Numbers. If Merchant elects to use the terminal of a third party provider of software (such as POS or Accounting System vendors) to capture and transmit to Processor or Member Bank, Merchant will assume full responsibility and liability for any failure of such third party provider to comply with the Rules. The third party provider is the source for information regarding authorizations and reversals that may be required by Processor or Member Bank. Certain reversals require authorization information to reverse. Merchant is responsible for obtaining this information from the third party provider. Processor and Member Bank are not liable for sales that were not received by them. In addition, Processor will not be liable for third party software or clearing of Association transactions.

THE FOLLOWING RULES APPLY ONLY IF PROCESSOR SETTLES MERCHANT’S DISCOVER NETWORK CARD TRANSACTIONS

1. Discover Network Program Marks. Merchant prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by Processor. “Discover Network Program Marks” mean the brands, emblems, trademarks, and/or logos that identify Discover Network cards. Additionally, Merchant shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to Merchant by Processor pursuant to this Agreement or otherwise approved in advance in writing by Processor. Merchant may use the Discover Network Program Marks only to the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in writing by Processor. Merchant shall not assign to any third party its discover network program marks. Merchant’s authority to use the Discover Network Program Marks will terminate immediately upon notice from Processor, Member Bank, or Discover Network.

2. Priority Check-Out Service. 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 sale; (ii) require the Merchant to process transactions for all charges, and to obtain an authorization for the estimated amount of the accommodations at check-in; (iii) issue a Sales Draft at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, transportation charges, and any other items charged to the Cardholder’s account; (iv) require the Cardholder to enter the PIN and use the magnetic stripe reader. Merchant may not require or request the Cardholder’s signature or any other representation of the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to sign the registration card before concluding a sale involving use of a PIN-Debit Card (“PIN-Debit Sales Draft”). The PIN-Debit Sales Draft must comply with the Rules and Laws. The following information must be included on the PIN-Debit Sales Draft: (i) the PIN-Debit Card account number; (ii) Merchant’s DBA name; (iii) Merchant’s city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. Merchant may not request or require the Cardholder to provide or disclose their PIN in any oral or written manner to the Merchant. Merchant shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of Processor or Member Bank. If surcharging is approved by Processor, it must be a separate line item on the PIN-Debit Sales Draft and must be in compliance with all Debit Networks’ rules and federal and state laws and regulations. Merchant shall not process any sale if an authorization code is not received through the electronic terminal. When a denial to an authorization request is received, the POS transaction shall not be completed unless completed as a store and forward transaction or resubmission transaction. A sale shall not be completed if Merchant knows or should know that the sale is fraudulent or not authorized by the Cardholder.

B. Reversal. 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 processed. To reverse or void a sale, Merchant must: (i) present the PIN on the PIN-Debit Sales Draft at which the original sale was initiated, or (ii) transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversed or voided at the same Merchant identified on the PIN-Debit Sales Draft at which the original sale was initiated, but it need not be initiated at the same POS terminal.

C. Returns. All returns shall be processed in accordance with 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 Debit Network Rules. Any sale known by Merchant to be erroneous should be canceled and re-billed in the Cardholder’s presence.

D. Balance Inquiry. Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder’s signature or any other representation of the Cardholder at a Cardholder-operated terminal. Merchant shall not at any time do, or cause to be done, any act or deed contrary to the terms of the Merchant Agreement.

3. Distribution and Storage of Information. 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 providing services required by the Rules. Merchant shall store in a limited access area for at least 1 year after the date of sales, all transaction records and Merchant shall make and retain for at least 2 years the original or legible copy of all telephone orders and promotions. Prior to termination of Merchant’s Merchant Processing Agreement with Processor, Merchant shall destroy or make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. Merchant may not store the Cardholder’s right, title and interest in and to its respective protected marks.
5. Reversals. Merchant agrees to pay Processor or Member Bank for any Debit Network fees, fines or charges imposed on Merchant, Processor or Member Bank. Such reimbursement will be accomplished by the debit of the sum(s) involved from its Merchant Account. If Processor or Member Bank elects, at its discretion, to take action on reversals after the Debit Network time limits have expired, such action shall be done at additional cost. Upon request of a Debit Network, processor, Processor, or Member Bank, Merchant will retrieve and forward to Processor or Member Bank, within the time frame required, 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 Debit Network such information from such transaction records as it requests by telephone. Merchant will, on request of the Debit Network, cooperate fully with the Debit Network and the Card issuing participant in order that the participant may comply with the error resolution procedures. 

6. Merchant’s Name and Address. All forms submitted to Processor or Member Bank must bear both its corporate and “Doing Business As” (“DBA”) name.

7. Equipment.
   A. Use. Merchant shall take all necessary steps to ensure that all POS Terminals and PIN Entry Devices operated in all of its locations:
      i. are placed in an area accessible by all Cardholders;
      ii. are available for use whenever Merchant is open for business;
      iii. will function with minimal error, meeting all applicable technical specifications and security regulations; and
      iv. will require the Cardholder to enter the Cardholder’s PIN at or near the check out location when initiating a POS transaction.
   B. Standards. A PIN Entry Device must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released. A PIN Entry Device must comply with the PCI DSS requirements for POS and PED equipment. Terminals must have a magnetic stripe reader capable of reading Track 2 on the PIN-Debit Cards. PINs used in conjunction with any store and forward transaction or resubmission must be encrypted and stored within a tamper-resistant security module. If Merchant’s authorization system is capable of store and forward, it must comply with the Debit Networks’ rules and regulations regarding this capability. Processor or Member Bank, the Issuer and the Debit Networks shall not be liable for any losses suffered by Merchant arising from the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

8. Supply of Information. Merchant must submit all information requested by the Debit Networks, Processor or Member Bank, including but not limited to lists and mailing addresses of terminals. Merchant shall not sell, purchase, provide, or exchange account number information in any form, including but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, to any third party other than to Merchant’s agents for the purpose of assisting Merchant in its business, or to the Debit Networks, Processor or Member Bank, or pursuant to a government request.

9. Lost PIN-Debit Cards. PIN-Debit Cards that are inadvertently left at Merchant’s location must be held under dual control during the time they are retained. PIN-Debit Cards inadvertently left at Merchant’s location may be returned to the Cardholder by Merchant under the following conditions: (A) the Card was inadvertently left by the Cardholder at an on-premise location, (B) the Cardholder requests the Card within 1 business day, and (C) the Cardholder provides 2 forms of current identification, at least 1 of which is a photo identification. If the Cardholder has not requested the Card within 1 business day, the Card should be destroyed by cutting it in half through the stripe.