

Merchant Processing Agreement Terms and Conditions

**Merchant Processing Agreement Terms and Conditions
Bank Rules**

Provided By



Fifth Third Bank
Member Bank for Visa, Inc. and MasterCard International, Inc.

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Merchant Processing Agreement Terms and Conditions

These Merchant Processing Agreement Terms and Conditions are an integral part of the Merchant Processing Agreement among Element 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 "Merchant") having its principal office at the address specified on Page 1 of the Merchant Processing Application. These Merchant Processing Agreement Terms and Conditions together with the Merchant Processing Application and any and all addenda, schedules, exhibits and other documents that are made a part of the Merchant Processing Agreement by attachment, incorporation by reference or otherwise, (including without limitation, the Bank Rules and the Operating Regulations) are collectively referred to in these Merchant Processing Agreement Terms and Conditions as the "Merchant Processing Agreement" or "Agreement". The Processor and Member Bank are collectively referred to as "Vendor," and may jointly or individually assert or exercise any rights or remedies provided to Vendor hereunder. Processor and Member Bank reserve the right to allocate Vendor's duties and obligations amongst themselves, as they deem appropriate in their sole discretion. "Member Bank" shall mean a member of VISA®, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located at 38 Fountain Square Plaza, Cincinnati, OH 45263. The Member Bank may delegate certain or all of its duties to an affiliate of the Member Bank at any time, without notice to Merchant. The Member Bank may be changed, and its rights and obligations assigned to another party by Vendor at any time without notice to Merchant. Processor is an agent of Member Bank in connection with Visa and MasterCard transactions. Merchant acknowledges that Processor may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable Association Operating Regulations. ISO/MSP is an independent contractor and not an agent of Processor. ISO/MSP has no authority to execute the Agreement on Processor's or Member Bank's behalf or to alter the terms hereof without Vendor's prior written approval. Approval of the Merchant Processing Application does not constitute a guarantee to process any transactions on Merchant's behalf. This Agreement is binding on Merchant as of the earlier of the date signed by Vendor, the date of the first electronic transaction processed under this Agreement, or the date Vendor approves the Merchant Processing Application. If Vendor has approved the Merchant Processing Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that Merchant signed the Merchant Processing Application (the "Effective Date").

This Agreement constitutes the entire agreement between the parties with regard to the services provided by Vendor under this Agreement, and all prior or other agreements or representations, written or oral, are merged in and superseded by this Agreement. As an integral part of the Agreement, Vendor and Merchant hereby agree as follows:

Vendor participates in programs affiliated with MasterCard International Inc. ("MasterCard"), VISA, Inc. ("VISA"), DFS Services LLC d/b/a Discover Network ("Discover") (including any card issuer of payment cards processed and settled through the Discover network, which may include Japanese Credit Bureau ("JCB"), China Union Pay ("CUP"), Diners Club International ("DCI") and certain similar entities (collectively, "Associations") including but not limited to those appearing on the Merchant Processing Application and/or the pricing section of this Agreement, and any other network than those defined above, which is supported by Vendor, including, without limitation, debit networks (collectively, "Other Networks") that enable holders of Association and Other Networks cards (collectively, "Cards") to purchase goods and services from selected merchants via use of their Cards. Discover Cards include any valid payment card in the form issued under license from Discover and any other valid payment card processed and settled through the Discover network, which may include JCB, CUP and DCI. Notwithstanding the foregoing, if Discover classifies Merchant as a retained Discover Merchant, Vendor will not process or settle Merchant's Discover cards, Vendor will have no liability to Merchant for the processing and settlement of Discover cards, and Discover cards will not be included in the definition of Cards.

Merchant wishes to participate in the Association and Other Networks systems in connection with the provision of goods and services to any person authorized to use the Cards or the accounts established in connection with the Cards (collectively "Cardholders" or individually "Cardholder") for the sale of goods and services through the use of Cards.

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, and subject to, the by-laws, 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/merchant/>. Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of 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, "Service" or "Services" shall mean any and all services described herein, and/or provided by Vendor pursuant to this Agreement. Other defined terms and Services applicable to this Agreement may be contained in addenda, exhibits, schedules, or amendments (collectively, "General Addenda") to this Agreement, as may be modified from time to time by Vendor. The parties agree that such General Addenda shall be incorporated into and made part of this Agreement.

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"). Vendor has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to Limited Acceptance. Vendor's obligations do not include policing card types at the point of sale. Merchant will be solely responsible for the implementation of its decision for Limited Acceptance including, but not limited to, policing the card type(s) of transactions at the point of sale submitted for processing by Vendor, 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. The Visa and MasterCard Operating Regulations 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

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sales transaction in accordance with this Agreement. Merchant shall note each authorization obtained 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 this Agreement, 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 Associations or Other Networks), 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 agrees that it shall deliver sales records to Vendor at least once every business day. The preparation and delivery to Vendor by Merchant of sales records constitutes an endorsement by Merchant to Vendor of each sales transaction evidenced thereby, and Merchant authorizes Vendor or its representative to place Merchant's endorsement on any such sales transaction at any time. Vendor may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Merchant pursuant to this Agreement, if it had acquired the sales transaction or claim. Merchant waives notice of dispute related to any individual sales transaction. The Services shall be provided in accordance with Vendor's then current systems, standards, and procedures and Vendor shall not be required to perform any special programming, to provide any special hardware or software, or to implement any other system, program, or procedure for Merchant.

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 Vendor 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 procuring 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.

D. Vendor may report information about 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.

E. 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.

4. Certain Merchant Responsibilities.

A. Merchant agrees to reacquire and pay Vendor the amount of any sales transaction, and Vendor shall have the right at any time to charge Merchant's Designated Account therefore, without notice, in any appropriate situation, including but not limited to those relating to such sales transaction where: (i) merchandise is returned, whether or not a credit voucher is delivered to Vendor; or (ii) any sales transaction without a valid authorization response; or (iii) the sales transaction is alleged to have been drawn, accepted, or endorsed improperly or without Cardholder's authority; or (iv) the sales transaction record is illegible; or (v) the Cardholder disputes the sale, quality, or delivery of merchandise or the performance or quality of services covered by the sales transaction; or (vi) the sales transaction was drawn by, or depository credit given to, Merchant in circumstances constituting a breach of any term, condition, representation, warranty, or duty of Merchant hereunder; or (vii) the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, state, local, or otherwise; or (viii) Vendor has not received payment for any sales transaction, notwithstanding

Vendor's prior payment to Merchant for such sales transaction; or (ix) there is an alleged failure of Merchant to comply with the Operating Regulations, the Bank Rules, or the Laws; or (x) any other Association or Other Network action including but not limited to chargebacks, compliance cases, or otherwise; (xi) as the result of any claims, damages, or losses incurred by Vendor as a result of claims asserted by Card issuers. Without limiting the foregoing, Merchant is fully liable to Vendor for all transactions returned to Vendor for any reason, otherwise known as "chargebacks" (or, for PIN debit Card transactions, "reversals"). Merchant will pay Vendor on demand the value of all chargebacks/reversals. It is Merchant's obligation to monitor any and all chargeback-related notices and reports provided by Vendor, including but not limited to reports or notices provided via Vendor's online reporting tool and/or to Merchant's Designated Account. Merchant's failure to respond to a chargeback within the applicable deadline may forfeit Merchant's chargeback rights. Merchant authorizes Vendor to offset from incoming transactions or to debit the Designated Account, the Reserve Account, or any other account of Merchant the amount of all chargebacks/reversals. Merchant will fully cooperate with Vendor in complying with the Rules regarding chargebacks/reversals. Any operational and/or other Services performed on behalf of Merchant, including but not limited to, responses to compliance cases, transaction stand-in, and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentences. Merchant is solely responsible for the defense of any allegation of non-compliance with the Operation Regulations made by any Association, any Card issuer, or any Other Network and Vendor shall have no duty to Merchant in accordance therewith.

B. Merchant acknowledges and agrees that all information provided in the Agreement is true and correct and that the name and tax identification number (TIN) on the Merchant Processing Application matches the name and TIN used to file Merchant's tax returns. Merchant shall immediately provide Vendor with any updates to the name or TIN used to file Merchant's tax returns. Merchant also acknowledges that Vendor may be required to report certain information regarding Merchant, including, but not limited to, Merchant's TIN, entity name, DBA, processing volume, and principal's social security number to governmental agencies such as the Internal Revenue Service (IRS). Merchant agrees to fulfill any request from Vendor for additional information which may be required or requested by any government agency. Notwithstanding the foregoing, Merchant understands that Vendor may be required to withhold processing funds and forward such funds to the IRS as a result of incorrect information provided by Merchant or at the direction of a government agency or as otherwise required by the Laws. Merchant expressly agrees and releases Vendor from any and all liability hereunder resulting from incorrect information being submitted to any government agency and/or the withholding of funds. Merchant is responsible for any fines or penalties which may be assessed to Merchant and/or Vendor.

C. Merchant shall not sell, purchase, provide, or exchange Cardholder name, address, account number, or other information to any third party other than to Vendor, Associations or Other Networks for the purpose of completing a sales transaction. Without limiting the foregoing, Merchant shall not provide any such information to its "Agent" (as defined in Section 4.H., below).

D. Each day Merchant will balance and reconcile the Designated Account and Reserve Account to ensure that all funds due Merchant have been deposited into the Designated Account, and to ensure that no funds have been improperly withheld or withdrawn from the Designated Account. Further, Merchant must review all reports, notices, and invoices prepared by Vendor or its agent and made available to Merchant, including but not limited to reports, notices, and invoices provided via Vendor's online reporting tool. Vendor reserves the right to send some or all of the reports and/or invoices via electronic transmission (e.g., via e-mail) which Vendor may change from time to time without notice. Further, Merchant agrees to verify Merchant has received all statements and promptly examine all statements relating to the Designated Account and to immediately notify Vendor in writing of any errors. Merchant's failure to reject any report, notice, or invoice in writing within 30 business days from the date the report, notice, or invoice is made available to Merchant shall constitute Merchant's acceptance of the same. If Merchant believes that 1) Vendor has failed in any way to provide the Services, 2) any error exists in a report provided to Merchant, or 3) any error exists in an amount billed or paid to Merchant, Merchant agrees to provide Vendor with written notice, specifically detailing any alleged failure, within 30 days of the date on which the alleged failure or error first occurred; failure to so provide notice shall be deemed an acceptance by Merchant and a waiver of any and all rights to dispute such failure or error. Merchant may not make any claim against Vendor for any loss or expense relating to any asserted error for 60 days immediately following Processor's receipt of Merchant's written notice. During that 60 day period, Processor will be entitled to

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investigate the asserted error. If Merchant notifies Processor that a Card sales batch has not processed, Vendor may, at its option, attempt to represent 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 the preceding sentence.

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 Vendor deems necessary 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 data. Merchant warrants to Vendor that it has implemented and will 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 conducting Merchant's own due diligence regarding the 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. Vendor 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 or any 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 is solely 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 order/Internet order transactions. 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., a change from a sole

proprietorship to a corporation), and/or of Merchant's intent to sell its stock or assets to another entity, and/or any changes to the information on the Merchant Processing Application. 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. In addition, should Merchant, at any time after the Effective Date, wish 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's receipt of any Services after 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 of a change to 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. Vendor 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 understand 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, Vendor 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 supplied 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. Providers will provide their own statements and Merchant is responsible for notifying them of any discrepancies or errors. Vendor 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 service 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 arising in connection with Merchant's possession and/or use of an 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. Vendor's decision to offer an Optional Service shall in no way limit Merchant's duties and obligations contained in this paragraph. In conformance therewith, Merchant agrees to indemnify and hold Vendor harmless for any damage, loss, claim, or liability arising in connection with Merchant's possession and/or use of any Optional Service. 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 patent right or copyright interest in any Providers' systems or in any of the equipment, software, processes, programs or data utilized by a Provider in

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connection with such systems other than data and equipment supplied to Merchant for use in connection with such systems. Merchant's right 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 until: (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 18.A. 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 continue to 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 information 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 or any other action available to Vendor under applicable Rules or Law. 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 assumed or assigned in the event of Merchant's bankruptcy. 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 action 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 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, any schedules, exhibits, or addenda incorporated or referenced herein, and Vendor's then-current standards. Such fees and charges will be calculated and debited from the account(s) designated by Merchant (a "Designated Account"). Fees and charges will be assessed to Merchant by Vendor on a daily, monthly and/or other periodic basis with such period initially and prospectively determined in Vendor's sole discretion. Vendor reserves the right to assess some or all of the fees and charges via a separate or combined Services invoice(s) for Merchant's

use of the Services. Vendor will charge Merchant for any and all fines, fees, penalties, loss allocations, 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 the Operating Regulations, the Bank Rules, and the Laws.

B. If the 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 addition to 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. 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 are based on the current 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 applicable rate as set forth on the Merchant Processing Application, and 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 authorized; (4) transmitted for processing within 24 hours of the Card transaction; (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 (ii) for any reason the VISA, MasterCard or Discover transactions submitted by electronic transmission do not qualify for the lowest electronic interchange fee, or (iii) 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, Vendor assesses a surcharge of a certain percent of the transaction amount as set forth in the Merchant Processing Application on all sales transactions that do not qualify at Merchant's base rate. In the event that 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/or 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, the number of days between the sale and the date Merchant submits the transaction to Vendor, obtaining authorization, capturing all transaction data, submitting the transaction in the correct format, and proper functioning of Merchant's point of sale terminal, software, and communications lines. Further, the Associations change the transaction qualification criteria from time to time, and Merchant's terminal or software may not meet the new criteria. Vendor makes no representation or warranty that Merchant's transactions qualify for any given rate, and Vendor disclaims all responsibility and liability for a transaction's failure to so qualify. Merchant will release and hold Vendor harmless from any loss, cost or damage, including legal fees and court costs, resulting from transactions' failure to qualify for a particular rate. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

C. Merchant shall pay all taxes and other charges imposed by any governmental authority on the Services. In the event Vendor pays such

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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 Merchant 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 Service charges for any such Additional Service that Merchant 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 fees, 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 converters, routers, 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 Merchant fails to prove such compliance upon request from Vendor, Vendor reserves the right to charge Merchant a reasonable fee until Merchant proves compliance with the Bank Rules, Operating Regulations, and Laws, and Merchant shall pay such amount to Vendor. This fee will be in addition to any other amounts due under the Agreement, including but not limited to all fines, fees, penalties, loss allocations, assessments, registration expenses, certification expenses, and other amounts assessed by third parties.

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 at the termination of this Agreement and/or related to any conversion or programming effort affecting the Services after Merchant's initial conversion to Vendor.

H. If Vendor for any reason advances settlement or any amounts and/or delays the assessment of any fees (individually or collectively a "**Float Event**"), Vendor reserves the right to assess to Merchant, and 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 Interchange fees and other fees, sponsorship, switch and gateway fees. In addition to the charges set forth on the Merchant Processing Application, Merchant agrees to pay for all PIN debit network setup fees, chargeback fees and adjustment fees, including but not limited to, late fees that may be imposed by the debit networks. Merchant hereby delegates 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 taking the Minimum Bill fee as described on 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. Vendor 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 Vendor as of the earliest of (i) the date that 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 Merchant's equipment lease, which may be non-cancelable, it only terminates Merchant's agreement with Vendor with respect to Card processing and any other electronic transactions that are settled through the Member Bank as designated on Merchant's monthly statement from Vendor.

B. Default Event. Merchant shall be in default under this Agreement ("**Event of Default**") if: (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or 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, or applicable Law; or (iii) Merchant is in breach of any other terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or (iv) in the event of irregular card sales or any other circumstances, which, in the Vendor's discretion, may increase the Vendor's exposure for chargebacks or other financial, reputation, or security risk(s); or (v) Vendor reasonably believes that there has been a material deterioration in Merchant's financial condition; or (vi) any standby letter of credit, if and as may be required pursuant to this Agreement, will be cancelled, will not be renewed, or is not in full force and effect; or (vii) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than 10% of either the legal or beneficial ownership of 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 Alert To Control High Risk Merchants) System and/or other security/credit alert systems, 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

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(xi) for any circumstances that could cause harm or loss of goodwill to the Associations and/or Other Networks systems or Merchant no longer meets the eligibility requirements of an Association or Other Network, 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 action constituting Merchant fraud. Upon the occurrence of an Event of Default, Vendor automatically, and without notice, shall be entitled to exercise and enforce (in concert with and in addition to any other rights or remedies granted to it herein) any and all of the following rights and remedies: (a) those provided for in Section 6.C. below, (b) cease providing any or all Services to Merchant, (c) establish a Reserve Account, and/or (d) otherwise proceed to collect amounts that are due and owing from Merchant under this Agreement by means of setoff, recoupment, or any other means authorized by applicable Laws. Vendor will also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity or an Event of Default. Vendor will not have any liability to Merchant for any losses, either direct or indirect, which Merchant may suffer as a result of any such suspension of funds disbursement or failure to pay for transactions connected with an Event of Default. If Merchant accepts or processes transactions in connection with an Event of Default, processing funds may be held and subject to a per month fraudulent transaction fee equal to 15% of the dollar volume held by Vendor. In addition, if Merchant has engaged in an Improper Transaction (as defined in Section 7.D. below), Merchant agrees Vendor may retain all amounts in the Reserve Account as liquidated damages. The determination of the existence of an Event of Default or Improper Transaction shall be made by Vendor and shall be conclusive unless Merchant contests such determination in writing to Vendor within one year of the determination. In addition, upon the occurrence of an Event of Default, Vendor may terminate this Agreement by giving Merchant written notice thereof. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Vendor.

C. Early Deconversion Fee/Liquidated Damages. If, prior to the date on which the then current term of this Agreement is scheduled to expire, either this Agreement is terminated by Vendor as specifically permitted by this Agreement, or terminated or breached by Merchant, Merchant shall:

i. Pay Vendor the Early Deconversion Fee set forth on the Merchant Processing Application for each Merchant identification number and Merchant location for certain costs, such as but not limited to, costs and expenses to provide certain routine services following termination of the Agreement, including processing Chargebacks, and restocking of equipment, deletion of Merchant numbers related to Merchant's deconversion, etc., and

ii. pay Vendor, upon demand, the following amount for liquidated damages in accordance with the following:

1) if the Merchant Processing Application states that all Card Organization fees will be passed through to Merchant, an amount equal to (a) the average monthly fees paid by Merchant to Vendor under this Agreement (excluding Card Organization interchange and assessment fees) for either (i) the three calendar months in which such revenue was the highest during the preceding 12 calendar months, or (ii) the three (or less if term is less than three months) highest revenue calendar months of the term if this Agreement has not been in effect for 12 months, multiplied by (b) the number of months remaining in the then current term of this Agreement, on a pro rata basis, or

2) if Merchant is not a pass through merchant governed by a. above, an amount equal to (a) the average monthly fees paid by Merchant to Vendor under this Agreement for the three calendar months in which such revenue was the highest during the preceding 12 calendar months, or such shorter period if this Agreement has not been in effect for 12 months, less (b) 2% of the average monthly sales dollar volume during the three calendar month review period, multiplied by (c) the number of months remaining in the then current term of this Agreement, on a pro rata basis.

iii. Notwithstanding the foregoing, the Early Deconversion Fee and liquidated damages fee will not exceed the maximum amount set forth by applicable law. Merchant acknowledges and agrees the liquidated damages are fair and reasonable because it is difficult or impossible to estimate Vendor's damages resulting from any breach or improper termination. 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 to the contrary, however, after termination, 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 settlement funds or the balance in the Designated Account is insufficient 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 by Merchant without notice or demand. Merchant will be responsible for all collection and legal fees and expenses Vendor incurs in 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 owe 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 or of any other rights and remedies of Vendor under this Agreement, at law or in equity. Rather, each and every right of Vendor at law or in equity will be cumulative and concurrent and in addition to every other right.

G. Terminated Merchant File. Merchant acknowledges that Vendor is required to report Merchant's business name and the name of Merchant's principals to the Associations, including the MATCH (Membership Alert to control High Risk Merchants) System, the Discover Network Consortium Negative File and other security/credit alert systems, when Merchant is terminated due to the reasons listed in the Operating Regulations, which include, but are not limited to violation of the Operating Regulations, breach of this Agreement, and Fraudulent Transactions. Merchant expressly agrees and consents to such reporting and will waive, indemnify and hold harmless Vendor for all claims and liabilities Merchant may raise as a result of such reporting.

7. 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. Merchant hereby agrees to be bound 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. 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. Vendor'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"), Vendor shall use reasonable efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Vendor actually makes such Account Change on Vendor's system. The Merchant should not close the old account until the new account receives the third deposit. Vendor shall not be responsible for checking the accuracy of any Account Change submitted by any purported representative (whether authorized or unauthorized) of Merchant and Vendor shall not incur any liability associated with any Account Change unless such change is the result of Vendor's gross negligence or willful misconduct. Merchant shall be solely liable for all fees and charges assessed by Merchant's financial institution, including all overdraft and NSF charges, and Merchant irrevocably releases Vendor and holds Vendor harmless from the same fees and charges, regardless of cause. Vendor is not liable for any delays in

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receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to the Associations, Other Networks, a clearing house or Merchant's financial institution. All sales and credits accepted by Vendor are subject to audit and verification by Vendor. Merchant agrees that Vendor may debit or credit Merchant's Designated Account for any inaccuracies.

B. All amounts due Vendor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date Vendor originates an ACH debit transaction record to Merchant's Designated Account. Any fees not collected from Merchant by Vendor when due shall bear interest at highest rate permitted by the Laws. Merchant agrees that Vendor may set off any amounts due to Vendor from amounts due to Merchant, including but not limited to demand deposit accounts and any other amounts due to Merchant from Vendor and/or any of its affiliate(s).

C. The acceptance by Member Bank, Member Bank's affiliate or other financial institution of Merchant's closing (or termination of) its Designated Account shall not constitute a mutually agreed upon termination of this Agreement.

D. As a specifically bargained for inducement for Vendor to enter into this Agreement with Merchant, Vendor shall have the right, exercisable at its option at any time either before or after an Event of Default has occurred, to (i) establish from amounts that otherwise would be payable by Vendor to Merchant including but not limited to demand deposit accounts and any other amounts due to Merchant from Vendor and/or any of its affiliate(s) whether or not such amounts are related to this Agreement, or to cause Merchant to prepay to Vendor, a reserve of funds, in an amount satisfactory to Vendor (a "Reserve Account"), to cover any and all amounts which are, or reasonably are anticipated by Vendor to become, due to Vendor from Merchant, including without limitation amounts arising from or otherwise relating to existing or anticipated chargebacks, fees, fines, returns, monetary awards or other charges and assessments imposed or anticipated to be imposed by an Association or Other Network under the Operating Regulations, or liquidated damages as provided for in Section 6.C. above, or (ii) require Merchant to establish 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 that 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) 180 days from the date of the last chargeback (the latter of such dates shall be referred to as the "Refund Request Date"). If at 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 collusive fraudulent transaction with a Cardholder, (3) Merchant has laundered or aggregated illegal and/or brand damaging transactions, (4) the Merchant account was established as a result of identity theft, and/or (5) the Merchant has engaged in any other action constituting Merchant fraud (each an "Improper Transaction") Merchant shall be provided notice of the same, and balances in the Reserve Account shall become the property of Vendor and shall otherwise be forfeited in the nature of liquidated damages without prejudice to Vendor's other continuing contractual remedies. If Merchant fails to provide written notice and objection within 90 days of either the Refund Request Date or notification by Vendor of an Improper Transaction event, as the case may be, Merchant agrees that it shall be deemed to have voluntarily waived contractual rights, claims and all interest in any subject Reserve Account balances, if any.

E. Vendor may monitor Merchant's daily credit card transaction activity and may, upon reasonable grounds as determined by Vendor in its sole discretion, divert into a Reserve Account the disbursement of Merchant's funds and/or temporarily suspend processing under this Agreement. If Merchant's funds are diverted by Vendor or Vendor has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by Vendor to fully investigate Merchant's account activity and resolve, to its sole satisfaction, Merchant's subject transaction or activity. Upon completion of such investigation, Vendor may maintain the suspended funds in the Reserve Account to be held in accordance with Section 7.D. Vendor will not have liability for any losses, either direct or indirect, which

Merchant may attribute to any diversion of funds, or suspension of processing.

F. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant grants to Vendor a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds, (ii) all funds at any time in the Reserve Account, regardless of the source of such funds, (iii) any amount which may be due to Merchant under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement, and (iv) the proceeds thereof (collectively, the "Secured Assets"), to secure all of Merchant's obligations under this Agreement. With respect to any Secured Assets maintained by Member Bank, Merchant authorizes Member Bank to comply with all demands made by EPS with respect to the Secured Assets without further consent or direction from Merchant, and Member Bank agrees to comply with the same. As such, EPS has control and a perfected security interest in the Secured Assets with Member Bank. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Vendor has control over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Vendor will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Vendor written consent prior to granting a security interest of any kind in the Secured Assets to a third party. In addition to the security interest in the Secured Assets, Vendor shall have a contractual right of setoff against the Secured Assets. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action by Vendor or notation in the Vendor's records, although Vendor may enter such set off on its books and records at a later time.

8. Indemnification and Limitation of Liability.

A. Merchant shall indemnify and hold harmless Vendor, and its directors, officers, employees, affiliates, and agents from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including but not limited to, any fines, fees, assessments, audit fees, card replacement cost, or penalties levied against the 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 infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to Merchant's ability to use the Services 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 (ix) any action or omission of any third party with which Merchant has contracted, (x) any bankruptcy proceeding, (xi) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card, (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, NON-INFRINGEMENT 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. Vendor shall not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by Vendor) suffered by Merchant, its customers or any third party in connection with the Services. In no event shall Vendor be liable for any damages or losses that are wholly or partially caused by the Merchant, or Merchant's employees or agents. In no event shall Vendor be liable for any damages or losses that Merchant may sustain as a result of Vendor's exercise of any post-default rights or remedies authorized under this Agreement, so long as Vendor, at the time of exercising such rights or remedies, has a good faith reasonable basis to

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believe that an Event of Default has occurred and is continuing. Vendor's liability related to or arising out of this Agreement shall in no event exceed fees paid to Vendor for the particular Services in question for the calendar month immediately preceding the date on which any act or omission of Vendor for which Merchant alleges liability on the part of Vendor. The parties acknowledge that the limitations set forth in this section are integral to the amount of fees charged by Vendor for the Services, and recognize that if Vendor were to assume any further liability beyond that set forth in this section, such fees would be substantially higher. Except as otherwise set forth in this Section 8, Merchant's exclusive remedy for any and all claims against Vendor arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. Vendor shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from errors in data provided by Merchant or others, or any event beyond Vendor's reasonable control including but not limited to international, domestic, or economic terrorism. Should Vendor be required to defend a claim brought by Merchant and Vendor prevails, Vendor will be entitled to reimbursement from Merchant, and Merchant agrees to pay all costs, attorneys' fees and any other expenses incurred in connection with those proceedings.

C. Vendor shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from a Force Majeure Event. For purposes herein, a "Force Majeure Event" shall mean errors in data provided by Merchant or others, labor disputes, fire, weather, acts of God, public enemy, or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond Vendor's reasonable control.

D. Except for an action related to Merchant's failure to pay any amount due hereunder, no cause of action shall be brought by either party more than one year after the cause of action accrued.

9. 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 DSOP, found at www.americanexpress.com/merchant/ and any similar program requirement of the Associations, or Other Network. Notwithstanding anything to the contrary in any privacy notice/policy or this Agreement, Vendor may use, disclose, share, and retain any information provided by Merchant and/or arising out of the Services, during the term and thereafter: (i) with Merchant's franchisor, Merchant's franchisee(s), association(s) to which Merchant belongs and/or belonged as of the commencement of this Agreement; (ii) with any affiliate of Merchant; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable laws or regulations; (vi) with Vendor's affiliates, partners and agents; (vii) to Associations and Other Networks and their designees, (viii) to Providers and their designees; (ix) to any other referral source or vendor, including, without limitation, the applicable referrer, ISO/MSP, or independent sales office; (x) to perform analytic services for Merchant, Vendor and/or others including but not limited to analyzing, tracking, and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Vendor's products and services; and/or (xi) to offer or provide the Services hereunder. Merchant acknowledges and agrees that Vendor may make public the execution of this Agreement by Merchant and/or any of Merchant's affiliates, and/or the Services that may be or have been provided under the Agreement. Merchant agrees that Vendor may include Merchant's name and logo on a list of Vendor's customers, which may be made public. Merchant agrees that, upon Vendor's request, Merchant will provide testimonial information related to the Services received by Merchant hereunder.

ii. Merchant must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to

anyone other than Merchant's authorized personnel. Merchant must destroy in a manner that will render the data unreadable all such media that Merchant no longer 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 notify Vendor of their identity. In addition, Merchant must (i) only allow 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 have proper security measures in place for the protection of Cardholder data, (iv) comply with and assure that Merchant Providers comply with the PCI DSS, and (v) have written agreements with Merchant Providers requiring the compliance set forth herein. Merchant will immediately notify Vendor of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. Merchant is responsible for demonstrating Merchant's and Merchant Providers' compliance with the PCI DSS programs, and providing reasonable access to Merchant's locations and ensuring Merchant Providers provide reasonable access to their locations to verify Merchant's and their ability to prevent future security violations. Any fees, fines or penalties from non-compliance will be passed through to Merchant. Merchant agrees to indemnify Vendor against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, Merchant agrees, at Merchant's cost, to provide all information requested by Vendor, an Association, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation, including without limitation, any forensic investigation. Any information provided in response to such investigation will (as between Merchant and Vendor) be considered Vendor's confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether Merchant processes transactions via Internet, mail, phone, face-to-face or any other method.

iii. Vendor will, in its sole discretion, allow access to Vendor's proprietary and confidential online Merchant reporting portal service (collectively "Direct Services"). Merchant must maintain the confidentiality of any user passwords to Direct Services. Direct Services provide reporting detail of Merchant's use of the Services. Direct Services are subject to change without notice and are solely controlled by Vendor. Vendor's only obligation will be to make the Direct Services available on Vendor's system in accordance with Vendor's then-current timeframes, standards, scheduling, and procedures ("SOP's") including but not limited to SOP's for set-up, account access, and suspension of Direct Services. Vendor reserves the right to suspend access to Direct Services without notice if Vendor reasonably believes that a violation of the SOP's has occurred, is likely to occur, or for any reason that may present a risk to Vendor or Merchant. Merchant shall provide Vendor with prompt written notice of all user IDs that are no longer active, should be deleted, and/or should otherwise be changed. Merchant shall be solely responsible for any unauthorized access to Direct Services, and Merchant's data therein including but not limited to unauthorized Merchant employee or agent access, action taken on behalf of Merchant or at the request of any of Merchant's employees or agents (even if not authorized) and/or failure to notify Vendor in writing and independently verify suspension of a password on a user ID or inactivation and/or deletion of a User ID. If Merchant accesses Direct Services through a third party (e.g., through the internet, a third party provider, etc.), Vendor shall have no responsibility or liability whatsoever for any actions or inactions of such third parties, including but not limited to inability to (i) access the Direct Services, (ii) interruption in access to Direct Services, or (iii) errors or inaccuracies in data received by Merchant. The provisions of this Section are intended to supplement and not supersede any separate terms provided by Vendor to Merchant that are specific to the Direct Services ("Direct Services Terms"), provided however that these provisions shall control in the event of any conflict between these provisions and the Direct Services Terms.

CONTINUING UNLIMITED GUARANTY. The provisions contained in Sections 10 through 16 below (collectively, "Continuing Unlimited Guaranty") apply to each person who signs this Agreement as a Guarantor (each such person, a "Guarantor").

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 due, 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) of Merchant to Vendor, either created 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 of, extensions of or substitutes 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.

12. 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.

13. Guarantor waives notice of any and all acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and 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 other indulgence granted by Vendor to Merchant, or to Guarantor, or 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 Vendor's remedies against Merchant or Guarantor, or any of them, will 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 or obligated, as a condition of the Guarantor's liability, to make any demand upon or to pursue any of its rights against the Merchant, or to 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 its remedies against Guarantor. Guarantor hereby waives all defenses based upon suretyship or impairment of collateral. After any default hereunder, Vendor may apply and/or set off against amounts due it hereunder 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.

14. The obligations of the Guarantor hereunder, if more than one, shall be joint and several. This Continuing Unlimited Guaranty is secured by the property described in any collateral security documents that the Guarantor executes and delivers to the Vendor and by such other collateral as previously may have been or may in the future be granted to the Vendor to secure any obligations of the Guarantor to the Vendor. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. Each Guarantor expressly authorizes (i) Vendor to collect any amounts that are at any time due and owing from Guarantor to Vendor under this Continuing Unlimited Guaranty by debiting any checking, savings or other deposit account that Guarantor at any time maintains with Vendor or with any affiliate of Vendor (any such account, a "Guarantor Account") and (ii) any affiliate of Vendor to collect any amounts that are at any time due and owing from Grantor to such affiliate by debiting any Guarantor Account.

15. This Continuing Unlimited Guaranty shall be interpreted and construed in accordance with and governed by the laws of the State of Ohio. Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this Continuing Unlimited Guaranty may be instituted in a state or federal court of appropriate subject matter jurisdiction in the State of Ohio; waives any objection which he may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding; provided, however, that nothing contained herein shall prevent Vendor from bringing any action or exercising any rights under this Continuing Unlimited Guaranty within any other state or country. Guarantor agrees that service of process may be made, and personal

jurisdiction over Guarantor obtained, by serving a copy of the Summons and Complaint upon Guarantor at its address set forth in the Agreement in accordance with the applicable laws of the State of Ohio.

16. **GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS CONTINUING UNLIMITED GUARANTY.**

MISCELLANEOUS TERMS AND CONDITIONS. The following terms and conditions shall also apply.

17. **Title to the Services.** Merchant agrees the Services are licensed not sold and that it is acquiring only a nontransferable, revocable, non-exclusive right to use the Services during the term of the Agreement and solely for the purposes of accepting payments and managing the payments Merchant receives. Vendor shall at all times retain all rights, title, and interest in and to the Services, including without limitation, all rights to any materials delivered to Merchant hereunder and any invention, development, product, trade name, trademark, service mark, software program, or derivative thereof, developed or used in connection with providing the Services. Merchant agrees that it shall not: (i) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material or information from Vendor; (ii) permit any third party to use and benefit from the Services via a rental, lease, timesharing, service bureau or other arrangement; (iii) work around, bypass, or circumvent any of the technical limitations of the Services, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble or otherwise reverse engineer the Services, except to the extent that such restriction is expressly prohibited by law; (iv) perform or 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.

18. 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 Governors Hill Drive, Mailedrop 1GH1Y1, Symmes Township, OH 45249-1384. 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, reports, 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.

19. **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 third party 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 agreement with a third party.

20. **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.

21. **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

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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 shall pay such increased fees and charges. Merchant may elect to terminate this Agreement without penalty within 60 days of the date of notice of an amendment to the fees, rates, rate descriptions or rate categories, except for any changes resulting from a change by the Associations, Other Network or a telecommunications vendor. If Merchant is a participant in a third party program including but not limited to agent bank and association programs, and Merchant subsequently terminates its agreement and/or relationship with such third party, Vendor may terminate this Agreement or amend the fees, in which case Merchant will not have the right to terminate this Agreement.

22. Assignment. This Agreement may be assigned by Vendor without the consent of the Merchant or prior notice, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Vendor. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. If Merchant assigns this Agreement without Vendor's consent, the Agreement will be binding on the assignee. If Merchant sells its business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners. Merchant shall not assign transfer or encumber its present or future payment rights under this Agreement or connected with a Reserve Account, if any; nor shall Vendor be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless Vendor consents in writing.

23. Independent Contractors. Vendor and Merchant will be deemed independent contractors and none will be considered an agent, joint venturer or partner of the other.

24. No Third-Party Beneficiary. This Agreement is for the benefit of, and may be enforced only by, Vendor and Merchant and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

25. Employee and Agent Actions. Merchant is responsible for the acts or omissions of its employees and agents including but not limited to such acts or omissions as such relate to the use of the Services provided by Vendor.

26. Severability and Non-Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Vendor to exercise, or partially exercise, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement.

27. Signature. Merchant's signature, a facsimile copy of signature, a digitally stored image of signature, or a unique digital signature on or captured within (as applicable) the Merchant Processing Application serves as the signature for this Agreement. The parties expressly acknowledge and agree that the parties may choose to contract via electronic means and that such contracts shall have the same force and effect as if conducted via conventional form. The parties also expressly acknowledge and agree that any duplicate original (whether digital, photographic, or otherwise) or electronic record of this Agreement shall have the same force and effect as the original form of this Agreement.

28. Governing Law and Arbitration. This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. Subject to and without waiver of the Arbitration provision in this Section, Merchant irrevocably agrees to all of the following: (i) that any legal suit, action or proceeding arising out of, in any way relating to this Agreement, or pertaining in any way to the relationship between Merchant and Vendor shall be exclusively instituted in a state or federal court of appropriate subject matter jurisdiction in Hamilton, County, Ohio; and (ii) a waiver of any objection which Merchant may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Notwithstanding the foregoing, nothing contained herein shall prevent Vendor from bringing any action or exercising any rights under this Agreement within any other state or country. Merchant irrevocably agrees that service of process may be made, and personal jurisdiction over Merchant obtained, by serving a copy of the Summons and Complaint upon Merchant at its address set forth in this Agreement in accordance with the applicable laws of the State of Ohio. In the event that Merchant has a claim against Member Bank in

connection with the Services, Merchant shall proceed against Processor (subject to the limitations and restrictions herein), and not against Member Bank, unless otherwise specifically required by the Rules. The parties agree that any dispute, controversy or claim between the parties of whatever type or manner, including, without limitation, any claim arising out of or relating to this Agreement, that is not resolved in the ordinary course of business shall be submitted to binding arbitration in lieu of litigation or other court or administrative proceeding by either party. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE ONLY BE ON A 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, agent, 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, costs and expenses 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 GOVERNED 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 WOULD OTHERWISE BE AVAILABLE. VENDOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MERCHANT. MERCHANT ALSO COVENANTS NOT TO PARTICIPATE IN ANY CLASS ACTION AGAINST VENDOR BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT.

30. Headings 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 (unless left blank) will control. In 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 the enforcement of this Agreement, or 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 a continuing 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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maintenance shall survive the expiration or termination, for any reason, of the Agreement.

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 Services subject 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 in connection with any Other Network, Vendor may route Other Network transactions according to its standards and at 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 Merchant's participation 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), whether billed directly to Merchant by such Other Network(s) or through Vendor or its affiliates or agents. Vendor may allocate 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 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 document submitted to Vendor is true and 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 obtains 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 of this Agreement, 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 may not represent 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 collectability 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 accept a Card for any illegal transaction; (iii) Merchant will prominently and unequivocally inform each Cardholder of Merchant's identity at all points of the interaction between the Cardholder and Merchant so that the Cardholder can readily distinguish Merchant from any other party such as a supplier of goods or services to Merchant; (iv) 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 unique Taxpayer Identification Number (TIN).

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 all 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 Sundays or State 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 one business day time period. Vendor may change Merchant's deposit time frame 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
- Schedule II – Applicable and included if TransForm® Tokenization Service is selected on the Merchant Processing Application

Merchant Processing Agreement Terms and Conditions

- 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

Exhibit A Bank Rules

All capitalized terms not defined below will have the meanings ascribed in the Merchant Processing Agreement.

Good Business Practices That Will Help Reduce Processing Costs

- Use an imprinted sales ticket with signature for all "key entered" transactions. This will assist with issues such as chargebacks.
- Close and settle sales transactions daily. This will help reduce those instances where "Mid-Qualified" or "Non-Qualified" discount rates are assessed.
- Balance the Merchant Account, processing statements from Processor, Member Bank, Associations, and Third Party Service Providers, and sales slips to assure that anticipated funds are received in a timely fashion, as more fully described below. Because of the number of parties involved in the processing of credit card and other electronic transactions, the only way to ensure that all funds are received is by balancing each day's sales tickets against daily ACH deposits.
- Respond within the acceptable time frame to retrievals and/or chargebacks in order to assure the most favorable outcome possible.
- Do not call the voice authorization center for services other than authorization.
- Settle disputes with customers before they reach "chargeback" status. A chargeback is like a returned check, it is expensive and time consuming.
- Read the Merchant Processing Agreement and these Bank Rules closely and thoroughly.
- Shipping products overseas without a card present should be closely monitored. Merchant has little ability to prevent a chargeback in this type of situation.
- Merchant should carefully reconcile sales tickets against deposits daily, particularly in the following situations: installation of new equipment, new downloads, adding new products to the terminal, power outages, changes in its Merchant Account.

1. Honoring Cards

A. Merchant shall honor all Cards when presented in accordance with these Rules for the purchase of goods or services or in processing a request for credit resulting from such a transaction, by an authorized holder of a Card without imposing any special conditions not required by any Rules. However, if Merchant does not deal with the public at large (for example, if business is a private club), Merchant is required to honor a valid Card only if presented by a cardholder who has purchasing privileges or a membership.

B. Cardholder Identification. Merchant will identify the Cardholder and check the expiration date and signature on each Card. Merchant will not honor any Card if: (i) the Card has expired; (ii) the signature on the Sales Draft does not correspond with the signature on the Card; or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. Unless permitted under the Laws and Rules, Merchant will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number, as a condition for honoring a Card.

C. Responsibility for Transactions. Merchant is responsible for ensuring that the Cardholder understands that the Merchant is responsible for the transaction, including goods or services that are the subject of the transaction, and for related customer service, dispute resolution, and performance of the terms and conditions of the transaction. A Merchant must prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction so that the Cardholder readily can distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

D. Card Recovery. Merchant will use reasonable, best efforts to recover any Card: (i) on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if Merchant is advised by Member Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it; (iii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and/or encoded account number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face. This obligation upon Merchant in no way authorizes a breach of the peace or any injury to persons or property, and Merchant will hold Processor or Member Bank harmless from any claim arising from any injury to person or property or other breach of peace.

E. Surcharges. Merchant will not add any amount to the posted price of goods or services it offers as a condition of paying with a Card, consistent with the Laws and the Rules. Provided Merchant is in compliance with the Rules, this paragraph does not prohibit Merchant from offering a discount to induce a person to pay by cash, check or similar means rather than by using a Card.

F. Return Policy. Merchant will properly disclose to the Cardholder, at the time of the transaction and in accordance with the Rules, any limitation Merchant has on accepting returned merchandise.

G. No Claim Against Cardholder. Merchant will not have any claim against, or right to receive payment from a Cardholder unless Member Bank or Processor refuses to accept the Sales Draft or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). Merchant will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if Merchant receives such payment, Merchant will promptly remit them to Member Bank. Merchant may not reimburse a Cardholder in cash or check for any transaction.

H. Disputes With Cardholders. Merchant must ensure that the Cardholder understands that Merchant is responsible for the transaction, for any related

customer service, dispute resolution, and performance of the terms and conditions of the transaction. All Disputes between Merchant and any Cardholder relating to any transaction 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.

I. 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 account number, expiration, signature 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 travelers' cheques, if the sole purpose is to allow cardholder to make a cash purchase of goods or services from Merchant, (v) permit a Cardholder to purchase travelers' cheques, 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) accept 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 dishonored 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 goodwill of such Card Organization 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 previously charged back to Member Bank and subsequently returned to Merchant, 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 and/or issuers and the minimum transaction amount 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 maximum sale amount as a condition for honoring Cards. Merchant may establish 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:

- a. The "DOVE" hologram should appear to fly when tilted.
- b. All Visa account numbers begin with a "4" and can be up to 19 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card.
- d. The "V" to the right of the expiration date should be a special letter (a "Flying V" not a normal "V").

ii. MasterCard:

- a. 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.

b. All MasterCard account numbers are 16 digits long.

- c. 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 embossed over the hologram.

iii. 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).

- a. Card numbers are at least 16 digits embossed on the front of the Card.
- b. 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.

c. An overprint on the signature panel reads Discover Network.

- d. The Discover Network three-dimensional hologram, 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 on the front of certain Discover Network Cards. 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 Card account number on the terminal (if displayed) against the account number embossed on the Card or follow such other security check as is mandated by Processor from time to time. If the Card is read with a terminal that displays the Card number and the Sales Draft is printed, Merchant shall verify that the account number displayed on the terminal and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card. In the event that

Exhibit A Bank Rules

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 programmed to require Merchant to key the last 4 or more digits of each Card used for a sale, and the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

L. Advertising. Merchant must display Visa, MasterCard, Discover Network 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 equal prominence near the point-of-sale devices and as otherwise required by the Rules. Merchant's use of the promotional materials of Visa, MasterCard, Discover Network or any other Association or State will 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.

M. 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 payment 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.

i. MasterCard Specific Requirements. Merchant may request 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, premium cards, rewards cards) than the Card the consumer 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, who 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 a customer who initially presents 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 customer a 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 still has an obligation to accept for 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 card acceptance.

2. Authorization.

A. Required on all Transactions. Merchant will obtain a prior authorization via electronic terminal or similar device before completing any 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 Sales Draft the authorization number. Where 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 recover the Card, if Merchant can do so 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 expired, whether or not an authorization has been obtained. For electronic commerce transactions, Merchant must attempt to obtain the Card expiration date and forward it as part of the authorization request. Merchant may not, after receiving a negative response or decline on an authorization request, split the sale amount into multiple transactions in order to obtain a valid authorization for each one so that the separate transactions total the original dollar amount of the sale.

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 assure payment to Merchant for 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 to Merchant. In no event will the fact that an authorization is 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 stripe 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 Cardholder refuses to do so, the sale must not be completed. In 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 await further instruction; or

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 certain sales after 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 presort the batch by account number or BIN. Further, Merchant explicitly agrees that it will be responsible for any fines, fees, chargebacks, 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 uses an electronic terminal to print Sales Drafts, the account number must be truncated on 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 requirement for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid MO/TO or electronic commerce card transaction, which fully complies with the requirements set forth in this Agreement, or if otherwise permitted by the Rules.

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 limited access area for at least 1 year after the date of sales. 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 18 months following the date of

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completion of the transaction for MasterCard Card transactions and at least 3 years following the date of completion of the transaction for Discover Network Card transactions (or such longer period as the Rules may require), 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 retrieval request, as specified in the notice from Processor or Member Bank. Unless specifically permitted by Processor, goods and services purchased must be delivered to Cardholder at the time of sale. Merchant shall not disclose a Cardholder's account information 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 Laws or by the Rules.

D. Electronic Transmission. If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet Processor's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to Processor or its agent in the form Processor from time to time specifies or as required under the Laws or Rules. If Member Bank or Processor requests a copy of a Sales Draft, credit voucher, or other transaction evidence, Merchant will provide it within 3 business days following the request. If the terminal cannot successfully read the magnetic stripe, Merchant must imprint the Card, even if it is a key entered transaction. Merchant must imprint the Card on the same Sales Draft containing the remainder of the transaction information and the Cardholder signature. Failure to obtain a signed and imprinted Sales Draft when a transaction is not captured by swiping through a magnetic stripe reader will expose Merchant to chargeback regardless of the authorization that may or may not be received. Failure to read the magnetic stripe on the Card may result in a discount rate tier downgrade.

E. Daily Settlement of Transactions. Merchant must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process in which all transactions are totaled and settled, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to Processor. In all cases, Merchant must present the record within 3 business days (2 business days for Electron Cards) after the transaction date, unless otherwise permitted by the Rules. Transactions contained in an untimely Batch Out may be refused, held for a 180 day period, become subject to chargeback or be transferred to a Reserve Account and held in accordance with the terms of Section 5. 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. Processor is not liable to 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 on sales for a minimum period of 180 days from the date the sale was entered into the Association's processing system. Processor may hold funds from Merchant's account to cover any chargebacks for the later of 270 days following the effective date of termination of this Agreement or 180 days from the date of Merchant's last chargeback. Processor or Member Bank will mail all chargeback documentation to the address provided by Merchant. Merchant agrees to respond promptly to all chargebacks. If Processor or Member Bank elects, at its discretion, to take action on chargebacks after the Association time limits have expired, such action shall be done at additional cost. Merchant will not redeposit sales that have been previously charged back and not represented. This restriction applies whether or not the Cardholder consents to such activity. If Merchant receives a chargeback for an international Cardholder, Merchant is responsible for any currency conversion differences in the dollar amount. Merchant will be charged the fee indicated on the Merchant Application for each chargeback.

5. Chargeback Reasons.

A. Summary. The summary of reasons for chargebacks include, but are not limited to, any one of the following:

- i. an invalid Card account number submitted by Merchant;
- ii. neither the Cardholder nor a person authorized by the Cardholder received the goods or services requested;
- iii. the Cardholder received the good or services but disputes the quality;
- iv. the Cardholder never received credit for a returned item or a canceled order;
- v. the Cardholder was charged incorrectly;
- vi. the amount of the sale exceeded the floor limit and an authorization was not obtained or was denied;
- vii. the sale was authorized but not for the correct amount;
- viii. the authorization code provided is invalid;
- ix. the Card was expired at the time of the sale or had not reached its effective date;
- x. the Sales Draft was not signed. An exception will be made where MO/TO sales are permitted by Processor;
- xi. the Card issuer has information that a Merchant fraud has occurred;

xii. the Card account number and the amount of sale is missing from Sales Draft or is illegible;

xiii. the Sales Draft bears the imprint of a Card which to the Associations is a counterfeit Card because the Card is not embossed in accordance with the standards set forth in the 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 considered an excessive chargeback merchant and may be subject to a Card Organization's monitoring programs. 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. This section may be amended from time to time as a result of action by the Associations.

B. Other Monitoring Programs. If Merchant is identified by certain Association monitoring programs, Processor or Member Bank'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 used 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 exceeding the acceptable threshold value of such Cards, Merchant may become liable for chargebacks and sales on lost, stolen, or counterfeit Cards regardless of the Card acceptance procedures followed, and 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. "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or Merchant Identification Numbers, chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. Merchant authorizes, upon the occurrence of Excessive Activity, Member Bank and Processor to take additional actions as either of them may deem necessary, including but not limited to suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

7. Credits.

A. Credit Memoranda. Merchant will issue a credit memorandum, instead of making a cash advance, a disbursement or a cash refund on any Card transaction. Member Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to Processor. Merchant will not submit a credit relating to any Sales Draft not originally submitted to Processor, nor will Merchant submit a credit that exceeds the amount of the original Sales Draft. 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.

B. Revocation of Credit. Member Bank or Processor may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (i) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws and the Rules; (ii) the Cardholder disputes his/her liability to Member Bank for any reason, including but not limited to those chargeback rights enumerated in the Rules; or (iii) the transaction giving rise to the Sales Draft was not directly between Merchant and the Cardholder. Merchant will pay Member Bank or Processor, as appropriate, any amount previously credited to Merchant for a Sales Draft not accepted by Member Bank or Processor or, where accepted, is subsequently revoked.

C. Returns. If Merchant agrees to credit a Cardholder for any merchandise or service that was the subject of a sale, Merchant must provide a Credit Transaction Receipt using the same Card as in the original sale. Such credit shall not exceed the original sale amount. Merchant shall not make any cash refund on sales. Merchant may limit the acceptance of returned merchandise or establish a policy to make price adjustments for any sale provided proper disclosure is made and purchased goods and services are delivered to the Cardholder at the time of the sale. Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the Sales Draft prior to obtaining the Cardholder's signature on the Sales Draft. Merchant may stipulate other special circumstances or terms of the sale on the Sales Draft. For each credit transaction, Merchant must be able to provide Processor or Member Bank with evidence of the original purchase.

D. Fraud and Factoring. Merchant agrees that, except as otherwise contemplated herein or otherwise permitted by Processor, Merchant will use the services provided by Processor only for its own internal and proper business purposes and will not resell, directly or indirectly, any of the services or any portion thereof to any third party. Merchant will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between Merchant and a Cardholder or any transaction Merchant knew or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of Fraudulent Transactions will be referred to law enforcement officials. Merchant will not sell or disclose to third parties Card account information other than in the course of performing

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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 to Processor's and Member Bank's ability to establish and maintain a Reserve Account, Merchant agrees that Processor may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Upon completion of Processor's investigation, Processor may transfer such Sales Draft funds into a Reserve Account. Processor and Member Bank will have no liability for any losses Merchant may attribute to any suspension of funds disbursement. Merchant further agrees that engaging in the aforementioned activity may result in the incurrence of research fees and may be grounds for termination of this Agreement.

8. Other Types of Transactions.

A. Mail Order and Telephone Order. Merchant may not solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("MO/TO") without prior written authorization from Processor. MO/TO transactions completed without prior written consent of Processor or Member Bank will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws and the Rules. Merchant may be required to use an address verification service ("AVS") on MO/TO transactions and are encouraged to use AVS even if not required. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a Fraudulent Transaction. Merchant will obtain the expiration date of the Card for a MO/TO transaction and submit the expiration date when obtaining authorization of the Card transaction. For MO/TO transactions, Merchant will type or print legibly on the signature line of the Sales Draft the following applicable words or letters: mail order or "MO" or telephone order or "TO". If Merchant is specifically authorized by Processor or Member Bank to accept MO/TO sales, no sale shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the Cardholder. If Merchant will supply goods and/or services under a preauthorization order, Merchant shall not charge a Cardholder for goods after receiving notice from a Cardholder that the authorization for goods or services is canceled. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even Cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code. Merchant assumes the risk associated with accepting MO/TO sales transactions.

B. Recurring/Quasi Cash Transactions. Merchant may not accept transactions where the goods or services are performed periodically without Processor's consent. If Merchant receives such consent, Merchant must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder, (ii) notice from Processor or Member Bank indicating that Merchant may not accept such transaction, or (iii) a response that the Card is not to be honored. Merchant must print legibly on the Sales Draft the words "Recurring Transaction". Merchant shall not accept sales for processing that are classified as "QuasiCash Transactions" including but not limited to the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip. Merchant shall not accept a Card or use a Visa and MasterCard processing terminal to issue script exchangeable for cash, products, or services as a result of a sale. Merchant must not submit for payment into interchange any transaction that represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible, or that arises from the dishonor of a Cardholder's personal check.

C. Multiple Sales Drafts. Merchant will include a description and total amount of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless: (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. If the total amount of both Sales Drafts exceeds the floor limit, authorization must be obtained. The use of multiple Cards for one purchase is permissible as long as an individual Sales Draft is used for each Card. The use of multiple sales on one Card, for one purchase, is not permitted.

D. Deposits.

i. Prior Consent. Merchant will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws or Rules.

ii. Acceptance. If Merchant has obtained prior written consent, then Merchant will complete such Card transactions in accordance with this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. Merchant will note upon the Sales Draft the words "deposit" or "balance" as appropriate. Merchant will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or Merchant has fully performed the services.

E. Future Delivery. Merchant will not present any Sales Draft or other memorandum to Member Bank or Processor for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor's prior written authorization. If Member

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 such transactions 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 credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce Transactions.

i. Electronic Commerce. Merchant must obtain the consent of Processor to process electronic commerce ("EC") transactions, and Merchant may process such transactions only if the transactions comply with the Payment Card Industry Security Standard requirements set forth below. 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 complete an EC transaction using a MasterCard card solely 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, whether or not: 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. Merchant must ensure that such third parties transmit Sales Drafts to Processor and Member Bank in an acceptable format and in compliance with the Rules, including but not limited to PCI DSS. All communication costs related to EC transactions are Merchant's responsibility. Merchant understands that Processor will not manage the EC telecommunications link and that it is Merchant's responsibility to manage that link. All EC transactions will be settled by Member Bank into a depository institution of the United States in U.S. currency.

ii. Requirements. For goods to be shipped on EC transactions, Merchant may obtain authorization up to 7 calendar days prior to the shipment date. Merchant need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount provided that the additional amount represents shipping costs. Further, Merchant's website must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, and f) delivery policy. If Merchant store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, Merchant must follow Association guidelines on securing such data.

iii. Cardholder Information Security Program. If Merchant accepts EC transactions, Merchant must: install and maintain a working network firewall to protect data accessible via the Internet, keep security patches up-to-date, encrypt stored data and data sent over open networks, use and update anti-virus software, restrict access to data by business "need-to-know", assign a unique ID to each person with computer access to data, not use vendor-supplied defaults for system passwords and other security parameters, track access to data by unique ID, regularly test security systems and processes, maintain a policy that addressed information security for employees and contractors, and restrict physical access to Cardholder information.

iv. Physical Address. 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 view 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.

v. Merchant acknowledges and agrees that Merchant will only submit Electronic Commerce Card transactions in U.S. Dollars that arise from a Cardholder's purchase over the Internet. If software is to be purchased by Merchant, Merchant will 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 between Merchant, the Internet and Processor. Merchant will, at all times, maintain in effect a sublicense agreement for any such software. Merchant agrees to use any such software and the software program properly and for the purposes for which it was intended.

G. Third Party Service Provider Transactions.

i. Authorization. Upon Merchant's request, Processor will provide access to authorization and/or data capture services for Third Party Service Provider transactions, such as American Express if Merchant is not placed in and approved for the American Express OnePoint program, and all settlement and chargeback obligations and similar financial responsibilities arising from Merchant's transactions involving Third Party Service Providers will be governed exclusively by its agreement with such Third Party Service Providers. Merchant must enter into a separate agreement with such Third Party Service Providers and must abide by the terms and conditions of such Third Party Service Providers. Neither Processor nor Member Bank are responsible for funding such transactions. The terms of this Agreement will apply to Third Party Service Providers. Processor may notify Merchant in writing

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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 their fees are not necessarily included in this Agreement (including the Merchant Application). Any applicable fees and charges for third party services will be disclosed by the applicable Third Party Service Provider and may be subject to adjustment in accordance with the Third Party Service Provider's terms and conditions. Additionally, Processor charges a transaction fee for such transactions in addition to those fees charged by Third Party Service Providers (see the Merchant Application). Merchant's acceptance of cards, bearing the symbols of organizations other than the Debit Networks or the Card Organizations, such as American Express if Merchant is not placed in and approved for the American Express OnePoint program, and transmission of such card transactions to Processor will constitute Merchant's agreement to the terms of this Agreement with regard to such cards. Termination of Merchant's Agreement with Processor does not automatically terminate its agreement with Third Party Service Providers.

ii. Information. Processor and Member Bank reserve the right and Merchant agrees and consents to allow Processor and Member Bank to share Merchant's credit report and credit history with all Third Party Service Providers. Changes made to this Agreement, such as address or ACH changes, do not automatically make the same changes for the Third Party Service Provider. Merchant must contact the Third Party Service Provider to make the changes. Processor is neither liable nor responsible for such changes. If false data is provided to Processor or the Merchant Account has had any suspected fraudulent activity, Processor reserves the right to share such false or suspected fraudulent information with other financial entities and processors.

iii. Statements. Merchant must reconcile its sales tickets for each Third Party Service Provider's transactions against deposits to Merchant's bank account daily. Each Third Party Service Provider provides its own statement, and Merchant is responsible for reviewing each statement and resolving all issues regarding the transactions directly with that Third Party Service Provider. Each Third Party Service Provider sets its own rates and fees for its services, and may adjust such rates and fees in accordance with Merchant's agreement with such Third Party Service Provider. Processor and Member Bank are not liable or responsible for these transactions and have no legal access to such transactions.

iv. JCB. The following special provisions apply (notwithstanding any contrary provision in this Agreement) to Merchant's JCB Card transactions: (i) Merchant must retain original sales drafts and credit vouchers for at least 120 days after the transaction and must retain microfilm or legible copies of sales drafts and credit vouchers for at least three (3) years after the transaction; (ii) for purposes of Merchant's chargeback liability with respect to JCB Card transactions, an Authorization obtained on a transaction does not override any chargeback reason which may apply to the item; (iii) if Merchant processes JCB Card transaction data electronically, the Merchant's account number must be included in the JCB Card transaction data transmitted to us, in addition to the other information required to be included on each sales draft or credit voucher; (iv) if Merchant is a lodging merchant, JCB Cardholders must be allowed to cancel reservations at resort establishments until 4:00 p.m. on the scheduled arrival date; and (v) by contracting for JCB settlement services, Merchant authorizes JCB to publish its name, address and telephone number in JCB solicitation materials.

H. Age Restricted Products. If Merchant is engaged in the sale of age restricted products such as alcoholic beverages, tobacco products, weapons and/or any other applicable age-restricted products or services, Merchant must comply fully with all local, state and federal laws governing the distribution of age-related products. Merchant will certify herein that Merchant will implement age verification procedures governing the sale of such products, including age verification of each customer against an official government records database before entering certain transactions into the credit card payment system. For face-to-face sales, Merchant will require the signature of the Cardholder. To verify legal age, Merchant will also require the Cardholder to present a valid, government-issued photo identification card in the same name and address as the Cardholder. For sales made via mail, telephone and/or the Internet, Merchant will (1) only deliver age-restricted products to the name and address listed as belonging to the Cardholder, and (2) require, without exception, the signature of the Cardholder, as well as presentation of a valid, government-issued photo identification card in the same name and address as the card holder to verify legal age upon delivery of the merchandise. Failure to abide by all applicable age verification laws may result in fines and/or loss of credit card merchant charge privileges, as well as termination of Merchant's account with Processor and Member Bank.

9. Cash Transactions.

Merchant shall not receive money from a Cardholder and subsequently prepare a credit voucher for the purpose of depositing to the Cardholder's account. Cash disbursement by Merchant to a Cardholder is not permitted. Additionally, Merchant shall not make any cash advance to an employee, principal, or family member of Merchant, who is a Cardholder. Merchant will not accept sales from Cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

10. Third Parties.

A. Services. Merchant may be using special services or software provided by a third party to assist Merchant in processing transactions, including authorizations and settlements, or accounting functions. Merchant is

responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure Merchant has and will comply with any software updates. Processor has no responsibility 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 elects to use third party terminals, Merchant agrees (i) 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 Procedures.

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 disclose to 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 wishes to accept a sales 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:

- Priority CheckOut Service
- T&E Advance Deposit Service
- T&E Cash Disbursement Service
- Visa Reservation Service

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 3 business days of the Cardholder's departure; 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 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, cost of the cruise, or cost of the intended term of rental, not to exceed 14 days;

iv. apply the deposit amount to the total obligation;

v. provide: (1) reservation confirmation code to the Cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;

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- 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" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- x. follow normal authorization procedures;
- xi. mail a Sales Draft copy and cancellation policy to the Cardholder within 3 business days of the sales date;
- xii. accept all Cardholder cancellations within the time limits specified by Merchant;
- xiii. upon cancellation, Merchant shall complete a Credit Transaction Receipt with the information set out in (ix) above and include the cancellation code. Merchant must deposit the Credit Transaction Receipt within 5 days of the transaction date and mail a copy to the Cardholder within 3 days of the transaction date of the Credit Transaction Receipt;
- xiv. for a Lodging 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 copy of the Credit Transaction Receipt to the Cardholder, (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 three-minute telephone calls, (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
- xv. for a Car Rental Merchant if the reserved vehicle is unavailable, Merchant must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, and (2) provide a comparable vehicle for the number of days specified in the reservation, not to exceed 14 days or until the reserved vehicle becomes available.
- xvi. 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 alternate accommodations. The Merchant must refund the entire T&E deposit amount, if comparable accommodations are not available or the Cardholder 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 include any additional fees or charges except taxes or charges imposed by law on the transaction amount.
- E. 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 properly canceled, the Cardholder will be billed 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 reservation details;
 - iii. Merchant must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notification prior to the scheduled arrival date. But, if the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If Merchant requires that the Cardholder cancel before 6:00 p.m. on

- the arrival date, Merchant must mail the cancellation policy to the Cardholder;
- iv. If the reservation is properly canceled, Merchant must provide a cancellation code and advise the Cardholder to retain it. If requested, Merchant must mail a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
- v. If Cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. Merchant may then complete a Sales Draft for 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;
- vi. If guaranteed accommodations are unavailable, Merchant must provide Cardholder with 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; and
 - 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 after receiving a decline response or a notice of cancellation 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 estimation of the transaction amount to obtain an authorization. An AFD must not dispense scrip.
 - 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 obtained within 1 day of the transaction date and the sale must be for less than the maximum amount set by Visa and MasterCard, currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

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B. Programming. Processor is not responsible for programming or reprogramming of fuel dispensers.

19. Equipment

If Merchant enters into a lease or rental agreement for the use of credit card processing equipment, Merchant understands that such agreement is separate and apart from the Merchant Processing Agreement and is subject 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 and any other electronic transactions that 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 independent evaluation and Merchant is not relying upon any warranty or representation of any third party, including but not limited to the representations of a sales representative, regarding the equipment. Processor is not responsible for and is not able to provide customer service for equipment, such as POS devices, installed by and/or operated by any third party. Merchant should contact the third party for service of this equipment. Merchant shall not allow any third party to install, remove, or modify any terminal software application of Processor or Member Bank without the express written consent of 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 use the equipment and supplies listed above will seriously increase Merchant's 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 shall assume that person has the proper authority to make the change. Merchant shall 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 Third Party Terminals and/or Software.

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 needed 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 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 promote 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 advance by Processor in writing. Merchant shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by Merchant is sponsored or guaranteed by the owners of the Discover Network Program Marks. Merchant recognizes that Merchant have no ownership rights in the Discover Network Program Marks. Merchant shall not assign to any third party any of the rights to use the 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 check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a Sales Draft at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the Cardholder signature line of the Sales Draft; (iv) obtain a final authorization code for any additional amounts

from the check-in estimate to equal the total amount to be billed to the Cardholder by following the normal authorization procedures; and (v) mail (at the address shown on the registration card) or otherwise deliver a copy of the Sales Draft and the itemized lodging bill (portfolio) to the Cardholder within seven (7) calendar days of check-out.

3. Card Checks.

Card checks are frequently issued to Cardholders by Discover Network. Merchant agrees to accept card checks on a basis consistent with the terms of its policy applicable to acceptance of other payment card checks. Merchant should handle these card checks like any other personal check drawn upon a bank in the United States.

THE FOLLOWING RULES APPLY TO PIN-DEBIT CARD TRANSACTIONS ONLY; CARD ACCEPTANCE PROCEDURES

1. Honoring PIN-Debit Cards. Merchant shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required by the Rules. Merchant may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. Merchant shall place the PIN Entry Device in an area accessible by all Cardholders and that will reasonably prevent others, including Merchant employees, from observing the PIN. Any penalties incurred by Merchant for failure to comply with Debit Network Rules will be Merchant's responsibility. Merchant assumes exclusive responsibility for the consequences of any oral or written instructions Merchant may give to Processor and/or Member Bank, for its failure to properly access the services in the manner prescribed by Processor or Member Bank, and for its failure to supply accurate input information. Merchant will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying Processor of any errors in the foregoing after receipt of the applicable report from Processor or Member Bank. Merchant will reject all incorrect reports or output within two (2) business days after receipt of the reports or output. Note, also, that neither Processor nor Member Bank warrant the continuing availability of any Debit Network.

2. PIN-Debit Card Sales Drafts.

A. Procedures. Merchant shall deliver to the Cardholder at the time of a sale a true and completed copy of the Sales Draft evidencing a sale involving use of a 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 require or request 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 known that the sale is fraudulent or not authorized by the Cardholder.

B. Reversals. A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect a reversal or void, Cardholder must reenter the PIN, the magnetic stripe reader must read the card, and Merchant must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the 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 to enter the PIN and use the magnetic stripe reader.

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 as specifically required by law or 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 microfilm copies of both sides of all transaction records. Prior to discarding, 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 PIN in any manner.

4. Promotional Materials. Merchant will adequately display promotional materials to inform the public that PIN-Debit Cards will be honored by Merchant. All uses by Merchant of decals, signs, printed and broadcast materials and other promotional materials must be in conformity with the requirements of the Debit Networks, Processor and Member Bank. Merchant will not at any time do, or cause to be done, any act or deed in any way impairing or intended to impair Processor or Member Bank's exclusive right, title and interest in and to its respective protected marks.

Exhibit A **Bank Rules**

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. Left 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.