

TERMS AND CONDITIONS

Subject to the requirements of applicable Card Association rules, ISO and Bank may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Bank may jointly or individually assert or exercise the rights or remedies provided to the Bank hereunder. For purpose of this Agreement, unless expressly stated to the contrary, Bank and ISO are collectively referred to hereinafter as the "Bank". The Bank and Merchant agree as follows:

ARTICLE I - DEFINITIONS

- 1.01. "Account" means a commercial checking or demand deposit account maintained by Merchant (and referred to in the Section hereof entitled "Deposit Account") for the crediting of collected funds and the debiting of fees and charges under this Agreement.
- 1.02. "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
- 1.03. "Agreement" means these terms and conditions, any supplementary documents referenced herein, and all schedules and amendments to the foregoing.
- 1.04. "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.05. "Bankcard" means a Visa, MasterCard and Discover® branded card.
- 1.06. "Card" means a valid credit card in the form issued under license from (i) Visa U.S.A., Inc., Visa International, Inc. (collectively with Visa U.S.A., Inc., "Visa"), or from MasterCard International, Inc. or MasterCard Worldwide, Inc. (collectively with MasterCard International, Inc., "MasterCard") or from Discover ("Discover") or (ii) any other valid credit card accepted by Merchant by agreement with Bank.
- 1.07. "Card Association" means Visa, MasterCard or any other brand in conjunction with which Card Issuers provide Cards accepted by Merchant by agreement with Bank.
- 1.08. "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
- 1.09. "Card Not Present (CNP)" means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.10. "Cardholder" means the person whose name is embossed upon the face of the Card, or other authorized users of the Card.
- 1.11. "Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other bank account number.
- 1.12. "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.13. "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.14. "Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.15. "Mid or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant's standard card industry code.
- 1.16. "Qualifying Transaction" means any sale Transaction that is not a Mid or Non-Qualifying Transaction.
- 1.17. "Representative" means any employee, service provider, subcontractor or agent of Merchant.
- 1.18. "Retrieval" means responding to requests for documentation relating to a Transaction.
- 1.19. "Sales Draft" means the paper form, whether electronically or manually imprinted, evidencing a Transaction.
- 1.20. "Scrip" means any substitute for currency which is not legal tender.
- 1.21. "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment or receives credit through the use of any Card and which is presented to Bank for collection or payment.
- 1.22. "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE II - CARD ACCEPTANCE

- 2.01. Honoring Cards. Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Association rules requiring Merchant to elect whether to accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. Merchant may not require any Cardholder to pay any part of any discount rate or other charge imposed upon Merchant by this Agreement, whether through imposition of a price increase not imposed on cash paying customers or through imposition of any charges not imposed on cash paying customers. However, nothing herein shall prevent Merchant from offering discounts to customers for cash purchases. Merchant may not engage in a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
- 2.02. Advertising. Merchant will prominently display the promotional materials provided by Bank in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the Bank's direction and to the Card Association rules. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to Bank upon termination thereof. Merchant may not use any promotional materials or Marks associated with Visa, MasterCard, or Discover in any way which suggests or implies that either endorses any goods or services other than Bank Card services.
- 2.03. Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Bank for accepting Cards and will: (a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; and (f) offer the Sales Draft to Bank (but not ISO) for purchase according to Bank's procedures and the terms of this Agreement.
- 2.04. Authorization. Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the Authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain Authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Bank may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization code or approval code has been recorded on the Sales Draft; (b) if Bank determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Bank has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Bank, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.
- 2.05. Retention of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this section do not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 2.06. Multiple Transaction Records: Partial Consideration. Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by Card Association rules for travel and entertainment merchants and Transactions.
- 2.07. Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Bank to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Bank determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation or mail order or through other means that do not create a Sales Draft that bears the Card imprint and Cardholder's signature, Bank may immediately terminate this Agreement, debit back to Merchant all such unapproved Card Transactions from the first day of processing hereunder and exercise all other rights hereunder to protect against loss, including but not limited to, withholding funds, establishing a Reserve Account, demanding other security, foreclosing on security interests and exercising all rights triggered by the termination of this Agreement. Unless approved by Bank, this Agreement does not contemplate acceptance of Cards for preauthorized orders or for orders generated by mail, internet or telephone. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO", "IO", or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargebacks.
- 2.08. Lodging and Vehicle Rental Transactions. Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 2.09. Returns and Adjustments; Credit Vouchers. Merchant's policy for exchange or return of goods sold and for adjustments for services rendered will be established and posted in accordance with the applicable Card Association's operating regulations. Merchant will disclose to a Cardholder before a Card sale is made, if applicable; (i) that if merchandise is returned, (a) no refund, or less than a full refund, will be given, (b) returned merchandise will only be exchanged for similar merchandise of comparable value, or (c) only a credit toward purchases will be given, and (ii) that special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, restocking fees, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given upon the Cardholder's request. The above disclosures must be made on all copies of Sales Drafts or invoices in each case in letters approximately 1/4" high and, with respect to all Sales Drafts and all invoices requiring a signature, in close proximity to the space provided for the Cardholder's signature. Any change in Merchant's return, cancellation or adjustment policies must be submitted in writing to Bank not less than 14 days prior to the change and approved by Bank, which approval shall not be unreasonably withheld. Bank may refuse to process any Sales Draft made subject to a revised return, cancellation or adjustment policy which Bank had not approved.
- 2.10. Cash Payments. Merchant may not receive any payment from a Cardholder for charges included in any Transaction nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a credit to the Cardholder's Card account.

2.11. Cash Advances; Scrip Purchases. Merchant may not (i) present to Bank for collection any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and (ii) accept any Card at a Scrip terminal. Violation of either clause of this Section is grounds for Bank's immediate termination of this Agreement.

2.12. Duplicate Transactions. Merchant may not present to Bank for collection duplicate Transactions. Bank may debit Merchant for any duplicate Transaction adjustments and Merchant is liable for any Chargebacks resulting therefrom.

2.13. Presentment of Fraudulent Transactions. Merchant may not accept or present to Bank for collection any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, Transactions originated with any other merchant or any other source. Merchant may accept only Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant presents to Bank for collection any prohibited Transaction, Bank may: (a) immediately terminate this Agreement; (b) withhold funds and establish a Reserve Account as provided herein; and (c) report Merchant to Visa, MasterCard and Discover's MATCH file. Merchant's employees' actions are chargeable to Merchant under this Agreement.

2.14. Collection of Pre-existing Debt. Merchant may not prepare and present to Bank for collection any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

2.15. Data Security Personal/Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Bank or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.

(a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (a) insure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with applicable federal and state laws, rules, regulations and guidance.

(b) Compliance with Card Association Data Security Rules. Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Association bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI"), MasterCard's Site Data Protection Program ("SDP") and Visa's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP and CISP requirements at all times. Merchant will report any non-compliance immediately to Bank. To help accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.

(c) Annual Certification. Merchant will provide annual certification to Bank (in a form acceptable to Bank) certifying its and its service providers', subcontractors, and agents' compliance with the data security provisions of this Agreement, including compliance with applicable Card Association requirements such as PCI, SDP and CISP.

(d) Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Bank's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to enable Bank to provide the services described in this Agreement provided that such individuals or entities have agreed in writing to be bound by the confidentiality obligations and data security provisions herein, including compliance with Card Association rules, regulations and bylaws and by applicable federal and state laws, rules, regulations and guidance.

(e) Response to Unauthorized Access. Merchant will immediately notify Bank of its knowledge or suspicion of any breach in security resulting in unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence, compiling information to enable Bank and the issuing bank(s) or the Card Associations to investigate the incident and providing assistance and cooperation to facilitate the ability of the issuing bank(s) to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear all costs associated therewith, including but not limited to the cost of notifying the affected Cardholder(s).

(f) Miscellaneous. Merchant may not make a claim against Bank or hold Bank liable for the acts or omissions of others, including but not limited to merchants, service providers, Card Associations, and financial institutions. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner Card read data, including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Association Rules.

2.16. Compliance with Card Association Rules. Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association rules and regulations as such rule and regulations may be amended from time to time whether or not Merchant has been informed of any such amendment. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). With respect to Visa, MasterCard or Discover, Merchant may not: (a) accept Cardholder payments, cash or otherwise, for previous Card charges incurred at the Merchant location; (b) establish a minimum or minimum transaction amount as a condition for honoring a Card; (c) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (d) add any surcharge to Transactions; (e) add any tax to Transactions, unless applicable law expressly requires that Merchant impose such tax (and, in such cases, such tax must be included in the transaction amount and not collected separately); (f) enter into interchange any Sales Draft or Credit Voucher for a Transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system); (g) request or use an account number of any purpose other than as payment for its goods or services; (h) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (i) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder. (ii) Merchant is dispensing funds in the form of travelers cheques or foreign currency, or (iii) Merchant is participating in a Card Association cash back service; (j) accept a Card for the purchase of Scrip; (k) accept a Card for manual cash disbursement; (l) accept a Card to collect or refinance existing debt; or (m) enter into a Transaction that represents collection of a dishonored check; (n) accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

2.17. Merchant's Business. Merchant will notify Bank immediately if it intends to (a) transfer or sell a substantial part of its assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average ticket, or maximum ticket; or (f) changes its return policies or fulfillment house from those identified in the Merchant Application. Merchant will immediately notify Bank in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Bank's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Bank may immediately terminate this Agreement. Merchant further acknowledges and agrees that Bank may withhold funds (settlement or otherwise) or temporarily suspend processing under this Agreement if Bank, in its sole discretion, determines that such withholding or suspension is required to protect Bank from potential losses or if there exist material variances from the disclosures on the Merchant application in (i) the nature of Merchant's business, (ii) the type or composition of Card processing conducted, or (iii) the actual average ticket size or actual monthly volume amount. If (A) such variances exist, (B) Merchant does not swipe credit card through POS terminals, (C) Merchant does not receive authorization for transactions, (D) Bank receives excessive Retrieval requests against Merchant's prior activity, or (E) excessive Chargebacks are debited against Merchant's prior activity, then Bank may delay or withhold settlement of funds for a period not less than 180 days or until Bank is reasonably certain fraud or other activity detrimental to Bank has not occurred. Bank's right to withhold settlement funds as set forth herein survives termination of this agreement. Merchant must immediately contact Bank if material variances from the average ticket size or monthly volume occur. For purposes hereof, Bank's determination of materiality shall be binding upon Merchant.

2.18. Merchant's Warranties. Merchant represents and covenants that (a) all information contained in the Merchant Application or any other documents delivered to Bank in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners and officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right or ability to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being presented on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the applicable Cardholder in connection with each Card Transaction; (h) Merchant has complied with Bank's procedures for accepting Cards, and each Card Transaction itself does not involve any element of credit for any purpose other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 U.S.C. §1600) or any other relevant state or federal statutes or regulations; and (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

3.01. Acceptance. Bank (but not ISO) will accept from Merchant all Sales Drafts presented under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated and via electronic data transmission in accordance with Bank's formats and procedures. All presentment and assignment of Sales Drafts, collection thereof and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Association. Bank (but not ISO) will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch presentments and items for which Bank did not receive final payment.

3.02. Endorsement. By presenting Sales Drafts to Bank for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each such Sales Draft and constitutes an endorsement by Merchant to Bank of such Sales Drafts. Bank may supply such endorsement on Merchant's behalf.

3.03. Prohibited Payments. Bank may receive payment of any Sales Draft presented by Merchant unless and until there is a Chargeback. Unless specifically authorized in writing by Bank, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Bank and promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.

3.04. Chargebacks. Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Association regulations, or a Card issuer or Bank determines that Merchant has in any way failed to comply with Card Association regulations or Bank's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase.

Notwithstanding any other provision herein, Bank may chargeback the amount of a Card sale disputed by the Cardholder if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on **Schedule A**.

3.05. **Reserve Account.** Notwithstanding anything to the contrary in this Agreement, Bank may establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing reserve account (the "Reserve Account") or demand other security. The Reserve Account may be established at any time or for any or no reason and funds therein may be commingled with other Bank funds. Bank may establish a Reserve Account if, for example: (a) Merchant engages in any processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Association rule or applicable law; (d) Merchant's application is in any way inaccurate or becomes inaccurate subsequent to Bank's approval of the application; (e) Merchant changes its type of business without Bank's prior written approval; (f) Merchant engages in fraud, processes an unauthorized charge, or engages in other action that violates Bank's applicable risk management standards or is likely to cause a loss; (g) the ratio of Chargebacks to Bankcard Transactions completed during any 30 calendar day period exceeds the lesser of one half of one percent (0.5%) or a percentage that violates a then applicable Card Association rule or the ratio of aggregate dollars charged back to the aggregate Bankcard dollar sales volume during any 30 calendar day period exceeds the lesser of one half of one percent (0.5%) or a percentage that violates a then applicable Card Association rule; (h) Bank receives an excessive numbers of requests from consumers or issuing banks to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminates this Agreement. Once the Reserve Account is established, collected funds will be placed in the Reserve Account until the balance is sufficient, in the discretion of the Bank, to address the applicable risk. Before releasing funds from the Reserve Account after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding challenges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank may require Merchant to deposit additional amounts into the Reserve Account based upon Merchant's processing history and/or anticipated risk of loss to Bank. Once established, unless Bank determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable period thereafter during which Cardholder disputes may remain valid under applicable Card Association rules. The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank, in its discretion, terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all of Bank's other expenses, losses and damages have been paid will be disbursed to Merchant.

ARTICLE IV - TERM, TERMINATION, EFFECT OF TERMINATION AND EXCLUSIVITY

4.01. **Term.** This Agreement will be effective once Bank accepts it and, unless otherwise terminated, will continue for three years with automatic two-year renewals thereafter until Merchant provides written notice of non-renewal given not less than 90 days before the end of the then current term.

4.02. **Termination.**

(a) **Without Cause.** Bank may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant.

(b) **For Cause.** Bank may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Bank reasonably determines either that any of the conditions enumerated as a reason for the establishment of a Reserve Account exist or that any of the following conditions exist: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's business, operations, financial condition, assets or prospects; (iii) any case or proceeding is commenced by or against Merchant under any federal or state law related to insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Bank, including Application information, was false, incomplete or misleading when received; (v) any information which Merchant provided to Bank, including Application information, has thereafter become false, incomplete or misleading; (vi) an overdraft in the Account exists for more than three days; (vii) Bank believes that Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent, criminal, suspicious or otherwise unauthorized Transactions; (viii) Merchant or will be unable or unwilling to perform its obligations under this Agreement or applicable law; (ix) Merchant has failed to timely pay Bank any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under the Account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given or has thereafter become untrue; (xii) Merchant has defaulted on any agreement it has with the Bank; (xiii) Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Association rules are violated, amended in any way so that the continued existence of this Agreement would cause Bank to be in breach of those rules or any Card Association no longer permits Merchant to participate in its Card program; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association; (xvii) termination is necessary to prevent loss to Bank or Card Issuers; (xviii) Merchant's type of business indicated on the Application or as conducted by Merchant could endanger the Bank's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with the Bank and that relationship is terminated, (xx) Merchant appears on any Card Association's security reporting; (xxi) Bank's security for repayment becomes impaired; (xxii) an event of default under any other indebtedness of Merchant shall have occurred the effect of which is to permit the holder thereof to accelerate the due date of all or part of such indebtedness; or (xxiii) one or more judgments shall have been entered against Merchant which judgment or judgments shall have remained unsatisfied for a period of 45 days from entry thereof. Merchant shall notify Bank in writing immediately upon becoming aware of the occurrence of an Event of Default, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default.

4.03. **Effect of Bankruptcy.** Any account or security held by Bank will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Bank will be excused from performance hereunder.

4.04. **Effect of Termination.** When termination becomes effective, the parties' rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Bank may withhold and discontinue the disbursement for all Transactions in the process of being collected and deposited and Bank may, without notice to Merchant, refuse to accept or revoke acceptance any Sales Draft or Credit Voucher or the electronic transmission thereof, if applicable, received by Bank on or anytime after the occurrence of any Event of Default. If Merchant is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by Visa, MasterCard and Discover. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring or permitting listing on the MATCH file. Merchant waives and will hold harmless Bank from any claims that Merchant may raise as a result of Bank's MATCH file reporting. If Merchant is terminated for cause, Bank may, without prior notice to Merchant, debit Merchant's Account and Reserve Account in an amount equal to the amount then owed to Bank, increase the fees payable by Merchant hereunder, require Merchant to deposit, as cash collateral, such amount as Bank may require to secure Merchant's obligations hereunder, and report to one or more credit reporting agencies any outstanding indebtedness of Merchant (or any guarantor of merchant's obligations under this Agreement). Merchant will immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, immediately upon termination Merchant will return all Bank property, forms, or equipment. All obligations for Transactions prior to and after termination (including payment for Chargebacks and Bank's expenses relating to Chargebacks) survive termination. Bank is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request, provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Bank will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank. The parties agree that if this Agreement is terminated before completion of the initial term or any renewal term of this Agreement for any reason other than a material uncured breach by Bank, Merchant will pay Bank damages equal to the greater of (a) \$350 per Merchant outlet or location or (b) if the Agreement is terminated during the first six months of the initial term, then the processing fees Bank would have received during such term based upon Merchant's volume representations set forth on Schedule A or, if the Agreement is terminated thereafter, the amount equal to the product of the aggregate number of months remaining in the then current term of this Agreement and any renewal term to which the parties have committed multiplied by the average monthly processing fees earned hereunder plus, with respect to both clauses (a) and (b), Bank's costs and attorneys' fees incurred in connection with collecting such damages. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's rights of termination are non-cumulative.

4.05. **Exclusivity.** During the term of this Agreement Bank shall be the exclusive provider of the services offered hereunder for Merchant and for all of Merchant's affiliates and divisions. Such exclusivity extends to all product and business lines of Merchant and its affiliates and divisions and Merchant will not, and will cause its affiliates and divisions not to, retain or otherwise allow any other person or entity to provide such services or perform any such services for itself.

ARTICLE V - MISCELLANEOUS

5.01. **Monitoring.** Merchant acknowledges that Bank may monitor Merchant's daily presentment activity. Bank may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual presentment activity. Bank will make good faith efforts to notify Merchant promptly following suspension. Bank is not liable to Merchant for any loss, either direct or indirect, attributable to any suspension of funds disbursement. In order to maintain quality service, telephone communications with Merchant may be monitored and recorded without further notice or disclosure.

5.02. **Forms.** Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Bank, and Merchant may not use such forms other than in connection with Card Transactions.

5.03. **Indemnification.** Merchant will defend, indemnify and hold Bank and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs ("Damages"), asserted against or incurred by Bank arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of any system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security obligations herein, by Merchant, or by any of Merchant's Representatives; (c) the negligence, gross negligence or willful misconduct of Merchant or any of its Representatives in the performance of their obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable federal and state laws, rules, regulations and guidance and Card Association rules by Merchant or any of its Representatives; (e) matters for which Merchant provides indemnification pursuant to the terms hereof; and (e) all third party claims arising from the foregoing or asserted against Bank as a result of Bank entering into this Agreement. Notwithstanding the preceding, Merchant is not liable to Bank if Damages are caused by, related to or arise out of Bank's gross negligence or willful misconduct, or Bank's material breach of this Agreement. Merchant will promptly reimburse Bank for any assessments, fines, fees or penalties imposed by the Card Association in connection with this Agreement, including the data security provisions, and authorizes Bank to deduct any such sums from amounts to be cleared and settled with Merchant.

5.04. **Records.** In addition to any records Merchant routinely furnishes to Bank under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written Authorization of the Cardholder for at least two years after the date Merchant presents the Transaction to Bank.

5.05. **Requests for Copies.** Immediately after Merchant receives a request by Bank, Merchant will provide to Bank either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Bank reasonably requests to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

5.06. **Compliance with Law: Taxes.** Merchant will comply with all laws applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations. Merchant shall be liable for all taxes, except Bank's income taxes, required to be paid or collected as a result of this Agreement.

5.07. **Fees and Charges.**

(a) Merchant will pay to Bank the fees and charges set forth on Schedule A. Bank may adjust all charges set forth on Schedule A to reflect changes in, or additions to, (i) Association fees (including but limited to interchange, assessments, and all other Association fees, costs or charges) or (ii) pricing of third party vendor goods or services used in connection with the provision of services hereunder. All such adjustments will be effective as of the date such changes or additions are imposed on Bank. Amounts due from Merchant hereunder, including but not limited to all fees, charges, amounts required, in Bank's sole discretion, to fund the Reserve Account and adjustments incurred by Merchant will be debited through ACH from Merchant's Account or withheld from daily payments to Merchant. The fees and charges herein are based upon Merchant's representations regarding annual anticipated Transaction volume, amount and type, all as set forth on Schedule A. To the extent that any such representations are not as anticipated, Bank may adjust the fees and charges hereunder to fees and charges appropriate for the actual, as opposed to anticipated, Transaction volume, amount and type. Bank may add fees for additional services utilized by Merchant upon 30 days written notice to Merchant.

(b) The Qualification Fees set forth on Schedule A are based on the assumption that each Transaction is a Qualifying Transaction. If any Transaction is a Mid or Non-Qualifying Transaction then Merchant will be charged Mid-Qualifying or Non-Qualifying fees (as applicable and as set forth on Schedule A). Mid-Qualifying and Non-Qualifying fees include increased Association interchange rates and fees as well as a Bank surcharge. Information concerning Visa, MasterCard, and Discover interchange rates is available on the company websites.

5.08. Security Interest. To secure payment of Merchant's obligations under this Agreement, Merchant grants to Bank a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Bank for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with the Bank or any institution other than Bank, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Bank or any institution other than Bank, including the Reserve Account; (e) all deposits and all other property and funds presented by Merchant to Bank or withheld by Bank, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. If Bank reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future Card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Bank (whether because this Agreement has been terminated or for any other reason), Bank may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable laws, including the Utah Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Bank may require Merchant to furnish such other and different security as Bank deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Bank or financial institutions other than Bank, pending Bank's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this paragraph, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's written consent before it grants a lien or security interest in that pledged collateral to any other person.

5.09. Modifications to Agreement. This Agreement is subject to amendment required to conform with Card Association regulations, as amended from time to time, and Merchant expressly acknowledges that any election by Bank regarding means to comply with either Card Association Rules or applicable law or regulation will not diminish or otherwise impact any of Bank's rights hereunder. From time to time Bank may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least 30 days prior to the effective date of the amendment, and the amendment will become effective unless Bank receives Merchant's written notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision. If there is any conflict between a part of this Agreement and any present or future Association Regulation or applicable federal, state or local law or regulation, only the part of this Agreement that is affected shall be modified and that modification shall be limited to the minimum necessary to bring this Agreement within the requirements of the Association Regulation, law or regulation. In addition, Bank may from time to time amend the provisions of this Agreement by amending these terms and conditions online. As such, the Merchant is advised to periodically check these terms and conditions for additional changes. Merchants continued use of Bank's services hereunder after any such change to this agreement shall be deemed as Merchant's agreement to such changes.

5.10. Warranty Disclaimer. BANK MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE, SYSTEMS, OR THIRD PARTY PROCESSORS UTILIZED IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND BANK EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

5.11. Limitation of Liability. Notwithstanding any other provision herein, (i) Bank's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges and (ii) Bank's aggregate liability shall not, under any circumstance, exceed the fees paid to Bank under Schedule A (net of interchange, assessments and all other Card Association and third party fees imposed on Bank) during the twelve month period immediately preceding the event upon which such liability is based. Bank is not liable for any special, incidental, indirect, punitive or consequential damages whatsoever (whether any such claim alleges breach of contract, tort or any other theory of liability. Merchant waives all claims against Bank for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Bank of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Bank harmless from any claim relating to or arising out of (i) any Sales Draft or Credit Voucher presented to Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action (including but not limited to disputes concerning the quality, fitness or delivery of merchandise or the performance or quality of services) or (ii) damages or losses that Bank may incur as a result of (a) Merchant's breach of this Agreement or (b) presentation by Merchant of acceptance or rejection by Bank of any Sales Draft or Credit Voucher, provided however that, with respect to clause (b), such indemnification shall not apply in the event of Bank's gross negligence. Further, Merchant will reimburse Bank for all expenses and costs, including attorneys' fees, with regard thereto.

5.12. Waiver. Bank's failure to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.

5.13. Written Notices. All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile and the sender obtains a fax confirmation receipt, and five days after mailing when sent first class mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to Bank:
Merrick Bank Corporation, 10705 South Jordan Gateway,
Suite 200, South Jordan, UT 84095,
Attn: David Herzfeld

AND

CardWorks Acquiring, 101 Crossways Park West, Woodbury NY 11797,
Attn: Daniel F. Doyle

(b) If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.

5.14. Choice of Law; Jurisdiction. Utah law (without regard to its choice of law provisions) governs this Agreement. Any claim or cause of action arising out of this Agreement against Bank must be initiated and maintained exclusively in the state or federal courts located in Salt Lake County, Utah and Merchant waives any claim that such forum is an inconvenient forum.

5.15. Entire Agreement; Interpretation; Assignability. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Bank and Merchant. This Agreement may not be assigned by Merchant, directly or by operation of law, without Bank's prior written consent. Bank may assign its rights and obligations under this Agreement only upon receiving the written consent of ISO. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns. This Agreement shall not be construed more strongly against any party, regardless of which party was more responsible for its preparation.

5.16. Deposit Account. Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Bank with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Bank. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts and Merchant shall immediately deposit into the Deposit Account an amount sufficient to cover any overdraft and any related service charges or fees. All credits and debits to the Deposit Account made hereunder are subject to review, verification and acceptance by Bank. In the event of error, Merchant authorizes Bank to make correcting credits or debits, as the case may be, without notice to Merchant. Merchant hereby grants to Bank a security interest in the Account to the extent of any and all fees, payments, Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Bank to protect its security interests therein.

5.17. Credit and Financial Inquiries; Additional Locations; Inspection. Bank may make, at any time, any credit inquiry which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's ability to perform its obligations hereunder, or its Sales Draft presentation and Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal background check of the business including its proprietor, partners, principal owners, shareholders or officers. Upon Bank's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Bank. Additional locations may be added subject to Bank's approval. Bank may delete any location by providing notice as provided herein. Merchant will permit Bank, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. Bank, its internal and external auditors, and its regulators may audit compliance with (i) this Agreement, (ii) federal and state laws, rules, regulations (iii) Card Association rules and regulations and (iv) guidance applicable to the services, Card acceptance, Transaction processing, and data security provisions hereof. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.

5.18. Marketing of Non-Bankcard Services. From time to time, Bank may offer to Merchant certain additional products and services which may or may not be related to the acceptance or processing of Card Transactions. If such an offer is made, Merchant may decline the offer or, based on Merchant's actions or inactions, be deemed to have accepted the offer and be liable for payment associated with such acceptance.

5.19. Force Majeure. The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion, governmental regulation or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or any other similar cause beyond either party's reasonable control.

5.20. No Third Party Beneficiary; No Partnership. No person or entity may be deemed a third party beneficiary of this Agreement. Nothing in this Agreement shall be deemed to create a partnership, joint venture or any agency relationship between the parties.