

## Merchant Processing Agreement Terms and Conditions

These Merchant Processing Agreement Terms and Conditions are an integral part of the Merchant Processing Agreement among National Processing Company, a Nebraska corporation, located at 5100 Interchange Way, Louisville, KY 40229 (hereinafter "**Processor**"), Member Bank, and the legal entity or sole proprietorship identified on Page 1 of the Merchant Processing Agreement/Application (hereinafter "**Merchant**") having its principal office at the address specified on Page 1 of the Merchant Processing Agreement/Application. 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 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 Application. If Vendor has approved the Merchant Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that Merchant signed the Merchant Application (the "**Effective Date**").

The Merchant Processing Agreement, together with the 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 Terms and Conditions as "**the Agreement**" or "**this Agreement**." 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**") and Diners Club International ("**DCI**"), and American Express Travel Related Services Company, Inc. ("**American Express**") and certain similar entities (collectively, "**Associations**") including but not limited to those appearing on the 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. Further, if Merchant is not placed in the American Express OnePoint program or if at any time American Express declines Merchant for participation in the American Express OnePoint program, Vendor will not process or settle Merchant's American Express cards, Vendor will have no liability to Merchant for the processing and/or settlement of American Express cards, and American Express 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, 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 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, MasterCard, and American Express websites for a copy of the Visa, MasterCard and American Express Operating Regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.americanexpress.com/merchantpolicy>. 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 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, American Express or Other Network, Vendor may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by Vendor, and Merchant remains responsible for such sales transaction in accordance with this Agreement. Merchant shall note 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. 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 (2) 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 (2) 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.

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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 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.

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 thirty (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 thirty (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 investigate the asserted error. If Merchant notify Processor that a Card sales batch has not processed, Vendor may, at its option, attempt to re-present 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. 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 fifteen (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 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

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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 Application, including the percentage of mail order/telephone order/Internet order transactions. Merchant agrees to provide Vendor with at least thirty (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 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 (3) 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 hereunder 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 Application by more than twenty five percent (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 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 understands that (1) wireless coverage is not guaranteed, (2) if the wireless service selected is lost in Merchant's respective area, the equipment will not operate with another wireless carrier, and (3) Vendor has no control over the wireless service providers and the business decisions made by them. Merchant further acknowledges that Vendor would not be liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

L. **Optional Services.** From time to time and at Vendor's sole discretion, 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 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 (including a copy to Vantiv Counsel) 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. **End-to-End Encryption.** If available, Merchant may utilize end-to-end encryption products and services as provided wholly or partially by a third party with the support of Vendor ("E2EE Service"). The E2EE Service is designed to: (i) encrypt (make unreadable) card data information at the origin of the payment transaction, which is a point-of-sale (POS) terminal that has licensed application software which supports the E2EE Service; and, (ii) decrypt card data information at the destination of the transaction, which are the Vendor's processing systems. Card data information protected by the E2EE Service may include Track 1 or Track 2 data (Magnetic Stripe Data obtained through a magnetic card swipe read) or PAN Data (Manually Entered Personal Account Number (card data) as appropriate to the type of transaction processed on the terminal. The terminal application software supporting the E2EE Service is designed to generate encryption keys which are used in conjunction with the terminal application to encrypt card data during transmission of the transaction authorization request from the point of sale terminal. The E2EE Service applies only to transactions sent from the terminal to Vendor's authorization and settlement systems pursuant to this Agreement. The service supports transactions associated with credit (signature), debit (signature), debit (PIN), and specifically excludes Visa POS Check transactions, gift card transactions, and transactions originated from terminal application software installed in the terminal that is provided by a third party. Merchant bears all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of E2EE Service for a particular purpose and for determining compliance with the Bank Rules, the Operating Regulations, and the Laws. Accordingly, Merchant's use of E2EE Service is at Merchant's own risk. Vendor's sole responsibility to Merchant in connection with E2EE Service will be to communicate service or other issues to the applicable licensed encryption software provider as documented by Merchant in writing to Vendor. Vendor's decision to offer E2EE Service shall not limit Merchant's duties and obligations contained in this provision or the Agreement. Merchant acknowledges that provision of E2EE Service to Merchant is subject to several factors, including, without limitation, the availability of the licensed encryption software from the applicable third party provider and Merchant's compliance with the terms of this paragraph and the Agreement. Merchant acknowledges that the receipt of E2EE Service may require the use or upgrading of certain terminals and/or equipment (which shall be at Merchant's sole expense) and may not be supported on all terminals/equipment. Vendor does not warrant or guaranty that use of the E2EE Service, in itself, will: (i) result in Merchant's compliance with Bank Rules, Operating Regulations, and/or Laws; (ii) prevent any and all unauthorized breaches of Merchant's terminals, systems or facilities; or, (iii) be uninterrupted or error-free. Merchant agrees that it shall not acquire any interest in (ownership, intellectual property or otherwise) any of the third party provider software used to provide the E2EE Service. Merchant shall not, and shall have no right to, own, copy, distribute, sub-lease, sub-license, assign or otherwise transfer any portion of such third party provider software used to provide the E2EE Service or any materials provided by Vendor or to modify, decompile, or reverse engineer any such software, materials,

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or the Services. Merchant acknowledges and agrees that Vendor has no obligation to provide E2EE Services and Vendor has no liability for any failure to make the E2EE Services available to Merchant.

O. 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 provided under this Agreement except as authorized under this Agreement or the Operating Regulations or except as required by Law.

P. 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. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the 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 herein. 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 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 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 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 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. For American Express Card transactions, all American Express interchange fees, assessments and other fees will be passed through to Merchant in addition to the Authorization Transaction Fee and other fees set forth on the Application. 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 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 twenty-four (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 five percent (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 Agreement/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 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 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 provided under this Agreement. In the event Vendor pays such 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

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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 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 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 Application. Minimum Monthly Bill is calculated each month by taking the Minimum Bill fee as described on the Merchant Application, less actual charges for Visa, MasterCard, Discover Network and, if Merchant were placed in and approved for the American Express OnePoint program, American Express, net discount rate and gross transaction fees for such month's processing. 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 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 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 Agreement/Application, or elsewhere in this Agreement ("**Initial Term**"). In the event no Initial Term is indicated in the Merchant Processing Agreement/Application or elsewhere in this Agreement, the Initial Term will be deemed to be thirty-six (36) months. After the expiration of the Initial Term, this Agreement will automatically renew for successive 2 year terms, provided that if a different Renewal Term is set forth on the Merchant Processing Agreement/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 thirty (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 fifteen (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 ten percent (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 (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 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 Application, (xiv) Merchant experiences excess returns greater than 3%, (xv) Merchant does not do business as specified in the Merchant 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, 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 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 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 the three calendar months in which such revenue was the highest during the preceding twelve calendar months, or such shorter period if this Agreement has not been in effect for twelve 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 twelve calendar months, or such shorter period if this Agreement has not been in effect for twelve months, less (b) two percent (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

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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 acknowledge 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 (2) 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 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 Vantiv with respect to the Secured Assets without further consent or direction from Merchant, and Member Bank agrees to comply with the same. As such, Vantiv 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

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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 in this Agreement, (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 provided pursuant to this Agreement, (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 provided herein 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 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 provided hereunder. 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 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 provided hereunder, 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 (1) 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 Cardholder Information Security Program ("**CISP**") found at [www.visa.com/cisp](http://www.visa.com/cisp), the MasterCard Site Data Protection Program ("**SDP**") found at [www.mastercard.com/sdp](http://www.mastercard.com/sdp), and the

American Express Data Security Operating Policy ("**DSOP**"), found at [www.americanexpress.com/merchant/](http://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; (vix) 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 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 herein. 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.

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**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 (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, 8500 Governors Hill Drive, Maildrop 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 or American Express 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 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 (7) 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.



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**22. Assignment.** This Agreement may be assigned by Vendor, 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 herein.

**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 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 provided under this Agreement, 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 Application and this Merchant Processing Agreement, the terms of the Application (unless left blank) will control. In the event of a conflict between the Bank Rules and this Merchant Processing Agreement, 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 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 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

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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 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. NPC PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). Processor has developed a PCI DSS program (the "PCI Program") to assist merchants with PCI DSS validation. Member Bank is not a party to or liable for the PCI Program. If the Merchant Application contains a fee for the PCI Program, then Merchant are enrolled in the PCI Program. If the Merchant Application does not contain a fee for the PCI Program, then Merchant is not currently enrolled in the PCI Program and the provisions of this Section 35 will only apply if Merchant subsequently enrolls in the PCI Program or utilizes the benefits of the PCI Program.

A. Benefits of the PCI Program. Upon enrollment in the PCI Program, Merchant is eligible to receive:

(i) Access to an online PCI certificate validation system, where Merchant can complete Merchant's Self-Assessment Questionnaire (SAQ);

(ii) Access to remote scanning services provided by Trustwave (or such certified security assessor selected by Processor), which includes monthly vulnerability scanning for up to five (5) of Merchant's computer website (IP) addresses (additional fees apply if Merchant has more than 5 IPs). This applies to PC/IP merchants only; and

(iii) Access to MyNPCdata.net.

B. PCI Compliance Validation Process

(i) Validation Requirement. In order to take full advantage of the PCI Program, Merchant must validate Merchant's compliance with the PCI DSS on an annual basis or as otherwise required by Processor or a Card Organization as more fully set forth herein. To validate Merchant's compliance with the PCI DSS, Merchant must successfully complete a SAQ and, if applicable, a vulnerability scan as provided below.

(ii) Self-Assessment Questionnaire (SAQ). A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC"). There are 5 SAQ versions covering different types of merchants (the "SAQ Classifications"):

1. SAQ A Merchants who process credit card transactions via payment gateways.

2. SAQ B Merchants who process credit card transactions via stand-alone dial terminals.

3. SAQ C Merchants who process credit card transactions via PC software systems or through an IP enabled terminal located in their merchant locations. These merchants do not store cardholder information electronically at their merchant locations.

4. SAQ D Merchants who process credit card transactions electronically and do store cardholder information electronically at their merchant locations.

5. SAQ-VT Merchants who process credit card transactions using only web-based virtual terminals and who do not store cardholder information electronically.

Please review the five (5) SAQ Classifications above and confirm that Merchant completes the appropriate SAQ. Merchant may go to [www.NPC.net](http://www.NPC.net) to print the desired SAQ or call Processor merchant services at 877.479.6649. To successfully complete a SAQ, Merchant must answer each control statement in the affirmative and sign the merchant attestation on the SAQ. For SAQ C and SAQ D Merchants, Merchant must also successfully pass quarterly vulnerability scans, performed by an Approved Scanning Processor (ASV).

(iii) Once Merchant has the appropriate SAQ, there are a number of ways to complete it:

1. Go to [www.NPC.net](http://www.NPC.net), select Online Tools under the Merchant tab, and then select PCI. Enter Merchant's MID (merchant identification number) as the login name and Merchant's Tax ID as Merchant's password. Merchant's MID is Merchant's merchant identification number assigned to Merchant upon becoming a customer of Processor.

2. Email a PDF copy of the completed SAQ to Processor at [PCIconpliance@npc.net](mailto:PCIconpliance@npc.net).

3. Fax the completed SAQ to Processor at 877.283.0630.

4. Mail the completed SAQ to Processor, Attn: PCI Department at 5100 Interchange Way, Louisville, KY 40229.

(iv) Vulnerability Scans. A vulnerability scan ("Scan") is necessary for PC, IP enabled terminal, or integrated ECR merchants (SAQ C or SAQ D Merchants). Here are the steps to receive Merchant's Scan:

1. Once Merchant has completed Merchant's SAQ, the system will guide Merchant to the scanning site to schedule Merchant's Scan, if applicable.

2. The Scan will identify vulnerabilities or gaps that may allow unauthorized or malicious users to gain access to Merchant's network and potentially compromise cardholder data. The Scan does not require Merchant to install any software, and no denial-of-service attacks will be performed.

3. Upon completion of the Scan, Merchant will receive a link to Merchant's full compliance report with TrustKeeper. If Merchant fails TrustKeeper's network vulnerability review, this means that the Scan discovered areas of severe vulnerability. The TrustKeeper report describes the issues found and provides Merchant with recommendations for resources to begin fixing the problems. The tool will guide Merchant to remediate the failed Scan and work toward achieving compliance. Once Merchant has addressed the vulnerabilities, simply schedule a follow-up Scan to ensure Merchant's remediation of the problem meets the PCI DSS requirements.

(v) Certificate of Validation. Upon successful completion of the SAQ and vulnerability scan, if applicable, Merchant's Certificate of Validation will be issued. Merchant can print Merchant's Certificate through Processor's online portal or, if Merchant completed a paper version of the SAQ, Merchant's Certificate will be mailed to Merchant.

(vi) Re-Validation. Merchant must maintain a current, successfully completed SAQ and timely pass quarterly vulnerability scans, if applicable, in order to take full advantage of the PCI Program. A SAQ is no longer current if the Certificate of Validation issued by Processor to Merchant is more than one (1) year old. Merchant is also required to re-validate by completing a new SAQ and passing vulnerability scans, if applicable, when Merchant makes a change in Merchant's processing environment or if Merchant fails to timely complete a required quarterly scan.

1. A change in Merchant's processing environment requiring re-validation occurs when Merchant transitions from one card-processing environment to another such that Merchant's SAQ Classification changes, necessitating re-validation under a new SAQ. With respect to a revalidation required due to a change in Merchant's processing environment, Merchant must complete the re-validation process within twenty-four (24) hours of such change in order to maintain Merchant's validation of compliance with the PCI DSS.

2. With respect to a re-validation required due to Merchant's failure to complete a required quarterly Scan, Processor will deem Merchant's failure to complete a Scan within ten (10) days of the end of the preceding quarter to require re-validation under the PCI Compliance Validation Process, in order to maintain Merchant's validation of compliance with the PCI DSS.

3. With respect to a re-validation required due to the expiration of the annual SAQ or any other reason for which Re-Validation is required, Merchant will have five (5) days to complete the PCI Compliance Validation Process, in order to maintain Merchant's validation of compliance with the PCI DSS.

Once Merchant has successfully completed the re-validation of Merchant's PCI DSS compliance, Processor will issue Merchant a new Certificate of Validation for the current validation period.

C. Waiver; Limitations on Waiver. Upon Merchant's successful validation of compliance with the PCI DSS under the PCI Program, Processor agrees to waive Merchant's liability to Processor, up to \$50,000, for the following fees and costs incurred as a result of a verified compromise of cardholder data that are otherwise

## Merchant Processing Agreement Terms and Conditions

Merchant's liability under this Agreement: (1) fees and costs associated with a required forensic audit conducted by an approved Qualified Incident Response Assessor (QIRA); (2) fines or assessments levied by a Card Organization as a result of the required forensic audit; and (3) fees and costs associated with the production and distribution of replacement credit cards for compromised card numbers (the "Waiver").

The Waiver provided under this subsection C. is also subject to the following:

(i) Processor's agreement to waive Merchant's liability to Processor for the fees and costs described in this subsection C. is only effective upon: (1) Merchant's continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) Merchant's successful completion of the PCI Compliance Validation Process described in section B. above; provided, however, that there is no change in Merchant's business practices regarding Card acceptance. Merchant's continuing qualification for the PCI Program is premised upon initial validation of Merchant's compliance with the PCI DSS as described in subsection B. above and timely re-validation of Merchant's compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.

(ii) If Merchant is in compliance with the requirements of subsection (i) above, Processor agrees to waive up to \$50,000 in fees and costs described in this subsection C. for each unique Merchant Identification Number (MID). If Merchant has multiple MIDs that have the same federal tax identification number (or in the case of a sole proprietorship, the same social security number), then the maximum aggregate Waiver amount for those MIDs is limited to \$100,000. In addition, if a MID is one of a group of MIDs that are eligible for and receive a multi-merchant discount for the PCI Program fees, the aggregate Waiver for all MIDs in such group is \$100,000.

(iii) Merchant's validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate Merchant's compliance, Merchant must successfully complete the PCI Compliance Validation Process described in subsection B. of this Section 35, including any required re-validation of Merchant's compliance with the PCI DSS as described in subsection B. Merchant will not be eligible for the Waiver if Merchant's SAQ is not current, if Merchant has not timely completed Merchant's quarterly vulnerability scans, or if Merchant has otherwise failed to maintain compliance with the PCI DSS through the PCI Program.

(iv) Processor's Waiver of up to \$50,000 of the costs and fees described in this subsection C. is limited to one (1) compromise of cardholder data incident per Program year. Any subsequent incidents occurring during the same Program year are not eligible for the Waiver, and any costs and fees associated with such incident(s) remain Merchant's liability under this Agreement. Chargebacks and reversals are not eligible for the Waiver under any circumstances.

(v) To report a possible compromise of cardholder data, Merchant should immediately contact Processor at [compliance@npc.net](mailto:compliance@npc.net). Merchant will need to provide Merchant's name, MID, contact information and a brief summary of the incident in this communication, but do not include cardholder numbers or other sensitive information.

### D. Costs.

(i) If Merchant's costs for the PCI Program are set forth on the Merchant Application, the terms of this subparagraph (i) will apply. Merchant's cost for the PCI Program is assessed either per MID per PCI Program year or per MID per month as set forth on the Merchant Application. If the PCI Program fees are assessed yearly, Merchant will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of Processor's acceptance of this Agreement and will be assessed the PCI Program fee in the same month in each year thereafter. If Merchant are charged monthly, Merchant will initially be assessed the fees for the PCI Program in Merchant's first monthly statement and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program set forth on the Merchant Application is based on Merchant's representation of Merchant's processing environment. If Processor determines, at any time, that the PCI Program fee that Merchant is being assessed does not accurately reflect Merchant's processing environment, Processor may adjust Merchant's fee for the PCI Program to the PCI Program fee applicable to Merchant's current processing environment.

(ii) If the Merchant Application does not contain a cost for the PCI Program, the terms of this subparagraph (ii) will apply. Merchant's cost for the PCI Program will be provided to Merchant by Processor upon Merchant's enrollment in the PCI Program or will be Processor's standard rates if Merchant utilize the benefits of the PCI Program prior to Merchant's enrollment. Such cost is assessed either per MID per PCI Program year or per MID per month. If the PCI Program fees are assessed yearly, Merchant will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of Merchant's enrollment in the PCI Program and will be assessed the PCI Program fee in the same month in each year thereafter. If Merchant are charged monthly, Merchant will initially be assessed the fees for the PCI Program in Merchant's first monthly statement after Merchant's enrollment in the PCI Program and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program is based on Merchant's representation of Merchant's processing environment. If Processor determines, at any time, that the PCI Program fee that Merchant is being assessed does not accurately reflect Merchant's processing environment,

Processor may adjust Merchant's fee for the PCI Program to the PCI Program fee applicable to Merchant's current processing environment.

(iii) NPC may assess Merchant a non-compliance fee if Merchant does not validate its compliance with the PCI DSS.

E. Security Policy. As part of PCI DSS, the Card Organizations require that each Merchant has a security policy that covers the security of credit card information. Merchant may obtain a sample policy by visiting [www.NPC.net](http://www.NPC.net) and selecting PCI under the other payment processing services tab. Processor will provide Merchant with a sample policy for Merchant's convenience only. If Merchant does not already have a security policy in place, Merchant may use the sample policy as a starting point. However, Merchant will need to modify it to fit Merchant's processing environment and needs. If Merchant already has a security policy in place, Merchant may want to compare it to the sample policy to verify that Merchant's security policy contains the required items

F. Amendment. The PCI Program is subject to change from time to time by Processor. Any changes to the Program will be effective fifteen (15) days following the date notice of such change is sent to Merchant, even if it was not received by Merchant.

G. Further Information. To speak with a Processor customer service representative, please call Processor at 877.479.6649. Merchant may also visit [www.npc.net](http://www.npc.net) for more information regarding the PCI Program.

**36. Regulatory Accounting Assistance Program.** The Regulatory Accounting Assistance Program Fee is for an online and paper reporting tool 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).

**37. Debit & EBT Card Processing Services; Availability of Terminals.** If so indicated on the Merchant Application, Vendor will process PIN debit Card transactions and EBT Card transactions. If Merchant accepts EBT Cards, the terms set forth on Schedule IV 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.

**38. Alternate Funding.** If Alternate Funding is selected on the Merchant 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 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 (7) 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 (7) 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
- Exhibit B – Agreement for American Express® OnePoint® Program
- Schedule I – Applicable and included if Services Packages are selected on the Merchant Application
- Schedule II – Applicable and included if NPC Check Services are selected on the Merchant Application
- Schedule III – Applicable and included if Voyager Fleet Card is selected on the applicable Merchant Addendum
- Schedule IV – Applicable and included if EBT is selected on the applicable Merchant Addendum
- Schedule V – Applicable and included if wireless terminals using GPRS services or CDMA services are selected on the Merchant Application

**EXHIBIT A**  
*Operating 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 Operating 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 a 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 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 incentivize 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 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 a 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

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 scrip 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 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;



- 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.iv 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.
- x. 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.

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 acknowledgment 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 know that the sale is fraudulent or not authorized by the Cardholder.

B. Reversal. A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was 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.

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.

**EXHIBIT B**  
Agreement for American Express® OnePoint® Program

The provisions of this Exhibit B only apply if American Express Travel Related Services Company, Inc. (“**American Express**”) approves the Merchant’s application for the American Express OnePoint program. Neither Member Bank nor Processor is a party to the Agreement for American Express® Card Acceptance American Express OnePoint® Program set forth in this Exhibit B. Merchant acknowledges and agrees that neither Member Bank nor Processor are in any way responsible for the actions, inactions, performance or nonperformance of American Express, or for disputes or resolving disputes of any kind arising from the agreement set forth in this Exhibit B. A termination of or modification to the terms of the Agreement for American Express® Card Acceptance American Express OnePoint® Program will not affect the terms of the Agreement to which this Exhibit B is attached.

**Agreement for American Express® Card Acceptance American Express OnePoint® Program**

The Agreement is by and between American Express Travel Related Services Company, Inc., a New York corporation, and you, the Merchant. By accepting the American Express® Card, you agree to be bound by the Agreement. **Please read the American Express Privacy Statement at <http://www.americanexpress.com/privacy> to learn more about how American Express protects your privacy and how American Express uses your information. I understand that I may opt out of marketing communications by visiting this website or contacting American Express at 1-(800)-528-5200.**

**General Provisions**

**1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS**

a **Scope of the Agreement.** The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent National Processing Company (“Processor”), among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you alone. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b **Other Parts of the Agreement.**

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of “Merchant Regulations” or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent Processor (telephone: 1-888-208-7231). We may charge you a fee for each copy that you request.

ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

c. **Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

- *Affiliate* means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute “control” of the Entity.
- *Agreement* means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.
- *American Express Card* and *Card* mean (i) any card, account access device, or payment device or service bearing our or our Affiliates’ Marks and issued by an Issuer or (ii) a Card Number.
- *Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.
- *Charge* means a payment or purchase made on the Card.
- *Chargeback* (sometimes called “full recourse” or “Full Recourse” in our materials), *when used as a verb*, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.
- *Claim* means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom.
- *Credit* means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.
- *Discount* means an amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).
- *Disputed Charge* means a Charge about which a claim, complaint, or question has been brought.
- *Entity* means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.
- *Establishments* means any or all of your and your Affiliates’ locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.
- *General Provisions* means the provisions set out in the Agreement other than the provisions in any accompanying schedule or exhibit hereto.
- *Marks* mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
- *Merchant Number* (sometimes called the “Merchant ID” or “Establishment” or “SE” number in our materials) means a unique number we assign to your Establishment.
- *Merchant Regulations* means the American Express Merchant Regulations — U.S., which are available from our agent.
- *Other Agreement* means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.
- *Other Payment Products* mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.
- *Reserve* means a fund established and/or collateral held by us as security for your or any of your Affiliates’ obligations to us or any of our Affiliates under

the Agreement or any Other Agreement.

- *We, our, and us* mean American Express Travel Related Services Company, Inc.
- *You and your* (sometimes called the “Merchant”, “Service Establishment,” or “SE” in our materials) mean the Entity accepting the Card under the Agreement, and (as applicable) its Affiliates conducting business in the same industry.

d. **List of Affiliates.** You must provide to our agent a complete list of your Affiliates conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

## 2. ACCEPTING THE CARD

a. **Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember’s choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishment of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

b. **Transaction.** Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

- Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations or otherwise provided by our agent. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.
- Authorization.** For every Charge, you must obtain from and submit to us an Authorization Approval code. Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.
- Submitting Charges and Credits.** Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.
- Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may charge any other amount we charge you for accepting the Card.
- Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our or our agent’s failure to demand payment does not waive our Chargeback rights.
- Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

## 3. PROTECTIVE ACTIONS

a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in Section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event.

b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of Section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. **Application of Reserve.** We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys’ fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys’ fees and our cost of handling Disputed Charges.

d. **Other Protections.** We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges.

e. **Providing Information.** You must provide to us promptly, upon request, information about you and your Affiliates’ finances, creditworthiness, and operations, including the most recent certified financial statements. You must notify us immediately of the occurrence of any event described in Section 3.b.viii of the General Provisions.

## 4. NOTICES

a. **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

b. **Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at: American Express Travel Related Services Company, Inc. c/o

National Processing Company  
5100 Interchange Way  
Louisville, Kentucky 40229

c. **Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

## 5. INDEMNIFICATION AND LIMITATION OF LIABILITY

a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.

b. **Limitation of Liability.** IN NO EVENT SHALL WE OR OUR AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE (AND OUR AGENT) WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT OUR (AND OUR AGENT'S) RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## 6. TERM AND TERMINATION

a. **Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 4.a of the General Provisions.

b. **Grounds for Termination.** In addition to our rights in sections 3.c and 6.a. of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

c. **Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.

d. **Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## 7. DISPUTE RESOLUTION

a. **Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 7 rather than by litigation.

b. **Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 7 and any rule or procedure of the arbitration organization, this section 7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.adrforum.com](http://www.adrforum.com)
- American Arbitration Association (AAA): 1633 Broadway, New York, NY 10019; (800) 778-7879; [www.adr.org](http://www.adr.org)
- JAMS (JAMS): 1920 Main Street, Suite 300, Irvine CA 92614; (949) 224-1810; [www.jamsadr.com](http://www.jamsadr.com)

In addition to the arbitration organizations listed above, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization or arbitrators appointed pursuant to section of the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA) provided that the arbitration organization and arbitrators enforce the terms of sections 7.c and 7.d below.

c. **Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF, AAA, OR JAMS, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 7.c OR OF SECTION 7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

d. **Individually Named Parties Only.** All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class-action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so. This prohibition is intended to, and does, preclude your from participating in any action by any trade association or other organization against us. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

e. **Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 1 and 2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

f. **Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 7, nor to determine any matter or make any award except as provided in this section 7.

g. **Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of these General Provisions is not subject to the requirements of this section 7. This section 7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

h. **Governing Law/Appeal/Entry of Judgment.** This section 7 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF, AAA, or JAMS as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

i. **Confidential Proceedings.** The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.

j. **Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 7.c. above, if any portion of this section 7 (other than section 7.c. or d.) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

k. **Costs of Arbitration Proceedings.** You will be responsible of paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Arbitration Rules, to the extent such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in a state or federal court that would have jurisdiction over the Claim located in the federal judicial district where your headquarters is located. We will be responsible for paying the remainder of any arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

## 8. MISCELLANEOUS

a. **Confidentiality.** You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

b. **Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

c. **Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement, and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, or encumbrances other than ordinary sales taxes; (viii) all information that you provided in connection with the Agreement is true, accurate, and complete; and (ix) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. **Compliance with Laws.** You shall comply with all applicable laws, and government regulations and rules.

e. **Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consent to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

f. **Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vii) any reference to a website or URL (or both) refers to its successor website or URL; (viii) all captions, headings, and similar terms are for reference only; and (ix) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

g. **Assignment.** You shall not assign the Agreement, or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

h. **Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

i. **Savings Clause.** Other than as set forth in the last sentence of section 7.c of these General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

j. **Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail does not constitute such a signed writing.

(1) **Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:

- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
- a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the

Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

(2) **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

k. **Entire Agreement.** The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

l. **Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

m. **No Third-Party Beneficiaries.** The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

n. **Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

o. **Independent Contractors.** You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By:

Kim C. Goodman  
President  
Merchant Services, Americas



**Schedule A to Exhibit B**  
**Other Important Provisions for Card Acceptance American Express OnePoint® Program**

**1. OVERVIEW OF AMERICAN EXPRESS ONE POINT PROGRAM**

- a. **Eligibility; Transition to Our Standard Card Acceptance Program.** Our American Express one point Program provides integrated Card acceptance services to eligible Entities through our agents, including National Processing Company. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to so be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.
- b. **Program Services.** We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms "we," "our," or "us" also may refer to our agent above, as the context requires. Please direct all inquiries and notices under the American Express OnePoint Program to our agent:

National Processing Company  
5100 Interchange Way  
Louisville, KY 40229  
1-888-208-7231

- c. **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for, or certain fees or assessments do not apply in, the American Express OnePoint Program, references in the Merchant Regulations to those industries, fees or assessments may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about its application under the program.

**2. DOING BUSINESS WITH AMERICAN EXPRESS**

- a. **Certain American Express Terms Not Applicable.** Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with oursystems and you must not provide Payment Services or otherwise act as a Payment Service Provider.
- b. **Merchant Number; Your Merchant Information.** Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

**3. AUTHORIZATION**

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

**4. SUBMISSION**

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or Credit originated. You must not submit Charges and Credits on paper.

**5. SETTLEMENT**

- a. **Settlement Amount.** Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions, rejections, and withholdings, from this payment to you (or debit your Bank Account), but if it cannot, then you must pay it promptly upon demand.
- b. **Discount.** Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.
- c. **Payment Plan.** During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Bank Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Bank Account.

**6. PROTECTING CARDMEMBER INFORMATION**

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

**7. RISK EVALUATION**

- a. **Prohibited/High Risk Merchants and Activities.** Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.
- b. **Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising Chargeback under any of our Chargeback programs, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and set-off against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our Agent immediately of the occurrence of any event described in Section 3.b.vii of the General Provisions.

**8. INQUIRIES AND CHARGEBACKS**

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or setting-off against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

**SCHEDULE I**  
*Service Packages*

**Member Bank is not a party to or liable for the Service Packages. If Merchant elects to receive the Service Package or Gold Service Package on the Merchant Application, the following terms and conditions shall apply:**

**Service Package**

With the purchase of this service package, Merchant will enjoy the convenience of receiving all its paper and ribbon supplies, at no additional cost. Processor supplies printer receipt paper and sales draft paper for the bankcard processing equipment that it supports.

To order paper and ribbon supplies, simply call Processor's toll-free merchant support number at 800-683-2289. Orders placed in the morning of any business day are normally shipped out that afternoon.

**Gold Service Package**

With the purchase of this service package, Merchant will enjoy the convenience of receiving equipment replacement and paper supplies, at no additional cost.

Processor realizes how important it is that the Merchant's equipment works properly. The goal is to get the Merchant's terminal up and running as soon as possible. That's why, with the Gold Service Package, Merchant receives a warranty good for broken or defective credit card terminals and/or electronic printers as long as Merchant processes with Processor.

To request a replacement, simply call Processor's Technical Support Department at 800-683-2289 to report any problem. This department is open 24-hours a day, seven days a week and will answer all of Merchant's questions. NPC realizes that Merchant needs the equipment promptly, and that's why orders placed in the morning of any business day are normally shipped out that afternoon.

Processor Warranty Terms:

- 1) Replacement of equipment rendered inoperable due to neglect, careless handling or electrical damage, and equipment rendered obsolete are not covered under the above program.
- 2) A \$600.00 per piece fee for terminals and printers, \$350.00 for PIN Entry Devices, and \$1,200.00 for wireless terminals will be incurred if non-functional equipment is not returned within 15 days of receiving replacement equipment. If equipment is returned after this fee is assessed, a \$125.00 restocking fee will be offset to any refund request. In addition, a \$25.00 processing fee will be charged. Return freight charges will also apply.
- 3) If a Merchant does not purchase new equipment when transferring processing to Processor, there is a 60 day qualifying period for use of the equipment replacement portion of this service package.

## SCHEDULE II Check/ACH Services

Global e-Telecom, Inc. or a successor service provider as agreed upon by Processor shall be the Service Provider for all check/ACH services, except for Check Recovery Services.

### CONVERSION WITH OR WITHOUT GUARANTEE SERVICE AGREEMENT

#### TERMS AND CONDITIONS

This Agreement (the "Agreement") is entered into by and between E Telecom, Inc., d/b/a Global eTelecom, Inc., a Florida corporation ("GETI") and the undersigned ("Merchant").

#### DEFINITIONS

"ACH" means the Automated Clearing House.

"Application" means the Application executed Processor and Merchant.

"Conversion with Guarantee" means that GETI, subject to the limitations set forth in this Agreement and subject to Merchant's compliance with the terms and conditions of this Agreement, will provide Conversion and Verification services and will Guarantee reimbursement of losses sustained by Merchant in accepting checks for electronic processing. In addition to the provisions set forth in this Agreement and notwithstanding any provisions to the contrary, GETI has established a per check guarantee limit ("Guarantee Limit"), which is set forth in the Welcome Letter. Each month Merchant shall have access to an itemized summary of electronic check deposits. GETI shall process up to the Guarantee Limit established for Merchant, but will not be responsible for reimbursement of checks exceeding the Merchant's approved Guarantee Limit. Conversion with Guarantee shall cover, subject to the Guarantee Limit, Merchant losses due to: (1) Insufficient Funds, (2) Account Closed, (3) No Account/Unable to Locate Account, (4) Invalid Account Number, (5) Uncollected Funds, (6) Customer Advises Not Authorized/Item is Ineligible, Notice Not Provided, Signatures Not Genuine, or Item Altered, (7) File Record Edit Criteria, (8) Non-Transaction Account, (9) Corporate Customer Advises Not Authorized, (10) Branch sold to another DFI, (11) account holder deceased and (12) beneficiary deceased.

"Conversion" or "Conversion without Guarantee" means that once the dollar amount of the sale has been calculated, the cashier feeds the consumer's check in a Magnetic Ink Character Recognition (MICR) reader. The cashier is then prompted by the attached POS device to enter the check amount, including cash back if applicable. The POS terminal connects to GETI's host network. GETI then creates a transaction file to be delivered to the ACH, debiting the customer's bank account electronically and crediting the Merchant's account. Each day, GETI shall create a transaction file for settlement through the ACH. Merchant shall be funded within 72 hours of the time of confirmed batchout. GETI is given notification, under NACHA rules, within 72 hours on returned items. GETI shall re-submit NSF items electronically.

"Electronic Check Debit Entry" means an electronic entry to the record of an account to represent the transfer or removal of funds from the account.

"Entries" or "Entry" means an electronic item representing the transfer of funds in the ACH.

"Equipment" shall have the meaning set forth in Section 6 of this Agreement.

"Guarantee" shall mean payment to the Merchant for checks that have been returned.

"GETI Services" means the services the Merchant has elected to purchase from GETI in the Application.

"MICR" means the magnetic ink character recognition inscription at the bottom of a paper check.

"NACHA Rules" means the rules, industry standards and procedures governing the exchange of commercial ACH payments by depository financial institutions promulgated by the National Automated Clearing House Association.

"POS" means a point-of-sale debit entry initiated at an electronic terminal to affect a transfer of funds.

"Processor" means National Processing Company.

"Transaction Fee" means the transaction fee set forth in the Application.

"Verification" means a service accessing customer and/or account databases through a point of sale system and/or by phone to verify or authorize that the check writer and/or checking account information is valid and/or in good standing.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the NACHA Rules

#### TERMS AND CONDITIONS

**1. GETI's Obligations.** GETI hereby agrees to provide the GETI Services selected by Merchant on the Application, subject to the terms and conditions of this Agreement.

**1.1 24 Hour Service.** GETI will accept entries via check reader hardware on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by Merchant to originate its entries in the ACH. Merchant understands and agrees that GETI may reject Merchant's entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At Merchant's written request, GETI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

**1.2 Customer Service.** GETI shall provide, at no additional expense to Merchant, toll-free call-back telephone customer support Monday through Friday between the hours of 8:00 am and 7:00pm Central Standard or Central Daylight Savings time, as applicable. That support shall be provided by trained customer service representatives of GETI.

**1.3 Monthly Statement.** By the 12th day of the following month, GETI will send Merchant a statement reflecting the transactions with GETI during the prior month. Such statement shall be in the same form as the standard statement that GETI provides to its other customers.

**2. Merchant's Obligations.** As a condition precedent to GETI being obligated to perform the GETI Services, the Merchant shall be obligated to:

**2.1 Exclusive Relationship with GETI.** While this Agreement is in effect, Merchant agrees to process all of its check processing transactions through GETI.

**2.2 Merchant's Public Disclosure Responsibilities.** GETI shall provide signage to be displayed at the POS, which informs customers of the Merchant's use of the GETI Services. Merchant agrees to display these materials in the best visible and unobstructed location so as to inform the public that Merchant will, if this service has been selected, honor electronic check processing service by GETI. From time to time, GETI may design educational and promotional materials and send such to Merchant for Merchant to distribute to customers. Merchant further agrees to immediately remove and properly dispose of GETI's stale promotional materials and to display the most current materials upon receipt of such from GETI. Merchant will discontinue the use of all of GETI's promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event of suspension, Merchant shall redisplay appropriate materials upon receipt of written verification of resumption of service by GETI. In the event of termination, Merchant shall immediately discard all promotional materials related to GETI services at Merchant's expense.

**2.3 Restrictions On Use Of Promotional Materials And Representations Concerning GETI's Services.** Merchant shall make no use of GETI's promotional materials or marks, other than as set forth in paragraph 2.2 above, without GETI's prior written consent. In no way shall the Merchant indicate that GETI's services are an endorsement of the Merchant, its business or its business practices.

**2.4 Requirements For Processing Electronic Checks.** Merchant shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by GETI from time to time. Merchant shall accept only the following checks as source documents to initiate ACH debit entries through GETI: (a) All demand deposit account checks must be drawn on or payable through a federally insured depository financial institution and be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check; (b) Merchant shall obtain proper identification from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to GETI for authorization; (c) Merchant shall obtain a customer authorization in the form of a signed sales receipt for each check transaction submitted for electronic processing ("Electronic Check Authorization Receipt"); (d) Merchant shall scan each check through its POS terminal to initiate electronic processing and Merchant shall use an electronic printer connected to a POS terminal to generate and print all electronic check sales receipts; (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (f) At the time Merchant initiates authorization with GETI, Merchant warrants that the person presenting the check has been properly identified; (g) Following GETI's authorization of the transaction, Merchant shall ensure that the customer that presented the check signs the receipt and legibly prints his/her correct full name and telephone number by hand. Merchant shall also ensure that the sales receipt contains the following correct information: (w) the customer's bank account number and the check number from the MICR data; (x) Merchant's name and business address; (y) the date of the transaction; and (z) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes) or the amount to be charged if a partial payment is made in cash or by credit card or the amount to be charged as the remaining balance owing after the deposit has been made. After customer signs the receipt, Merchant shall deliver to the person presenting the check a true and completed copy of the sales receipt. No check may be altered after GETI authorizes acceptance of the check. Merchant may not resubmit a check electronically or deposit it by any means, once GETI authorizes a transaction. Merchant shall also write (i) the authorization number from the transaction on the face of the check for each transaction and (ii) the current phone number of the customer on the face of the check. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of Guarantee for all transactions), subject Merchant to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of GETI by Merchant pursuant to this Agreement. YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE ELECTRONIC CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A \$10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF CHECK (S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION(S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.

**2.5 Customer's Authorization Initiates Debit Entry.** Merchant acknowledges that the customer's authorization allows Merchant to instruct GETI to initiate an Entry for Merchant against customer. It further permits GETI to reinitiate an Entry where the original Entry is returned and to assess a collection fee against customer. Any collection fees received by GETI in collecting returned checks shall be the sole property of GETI. GETI shall present the Entry no more than three times. GETI, for those Merchants who do not have Conversion with Guarantee service, shall be entitled to assess a transaction fee as set forth in the Application against Merchant for each re-presentation. If a check is returned unpaid after the third presentation, GETI shall be entitled to debit the Merchant's account for the amount of the check, if Merchant does not have the Conversion with Guarantee service.

**2.6 Unacceptable Transactions.** In addition to any other restrictions set forth in this Agreement, the following transactions are unacceptable for electronic processing, and Merchant agrees not to submit any of the following transactions to GETI for electronic processing: (a) Merchant shall not process any temporary checks or checks that do not have the customer's current name, address and phone number preprinted on its face, (b) Merchant shall not electronically process any checks drawn on the personal checking account of Merchant or any of its agents or employees, (c) Merchant shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (d) Merchant shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (e) Merchant shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to Merchant, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the Merchant, (f) Merchant shall not submit a transaction for processing which represents an attempt to collect a chargeback, (g) Merchant shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (h) Merchant shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of transaction, or for goods or services provided to a third party, (i) Merchant shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (j) Merchant shall not knowingly submit a check on an account which GETI previously denied authorization. Merchant's submission of any of the above transactions for electronic processing may subject the Merchant to immediate suspension or termination, and all funds of Merchant, including those in Merchant's account, may be placed on hold. This will also remove the Guarantee coverage from all checks submitted by Merchant currently in the GETI system.

**2.7. Surcharges And Taxes.** Merchant shall not impose any surcharge on any electronically processed check transaction. Merchant shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by GETI and must be reflected in the face amount of the check. In any event, Merchant shall not collect any required taxes separately in cash, or otherwise. Merchant is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

**2.8. Confidentiality Of Customer Information.** Merchant further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to GETI, Processor or Merchant's agents approved by GETI for the purpose of assisting Merchant in its business to GETI, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarded and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. Merchant will not disclose and will keep confidential the terms and conditions of this Agreement.

**2.9. Changes In Merchant's Business.** Merchant will not transfer, sell, merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to GETI and providing GETI with the opportunity to terminate this Agreement.

**2.10. GETI's Right To Audit.** Merchant agrees to permit GETI to audit Merchant upon reasonable notice.

**2.11. Outstanding Amounts Due GETI.** Merchant agrees that any outstanding amount(s) owed to GETI shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

**2.12. Indemnification.** Merchant agrees to indemnify GETI for any cost, expense, damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

**3. Merchant's Authority To Enter Into This Agreement.** Merchant specifically warrants to GETI that Merchant has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of Merchant is authorized to do so by Merchant. Merchant acknowledges that this Agreement constitutes the legal, valid and binding obligation of Merchant, enforceable in accordance with its terms.

**4. Check Collection.** Merchant authorizes GETI to represent all return items forwarded to GETI and to originate an electronic entry for the amount of any allowable recovery fee. Merchant agrees to complete a return item authorization form and forward it to Merchant's bank. GETI shall have sixty (60) days from the date of receipt of a return check item to complete their electronic re-presentment process. If this Agreement is terminated for any reason, GETI will retain the right to complete their electronic re-presentment process for all return check items forwarded to GETI prior to said termination.

**5. Restrictions On Acceptance Of Checks For Electronic Processing.** Merchant agrees to take reasonable security precautions to prevent the unauthorized use of the GETI Services by the Merchant, its employees, agents and customers. From time to time, GETI shall establish necessary security and identification procedures for presentment of checks for electronic processing pursuant to the NACHA Rules and applicable law. These procedures will include the use of identification numbers and passwords, which shall be assigned to Merchant and validated by GETI, in order to access the GETI Services from Merchant's terminal(s). Merchant agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. Merchant further agrees to inform GETI immediately of any changes in business activities, rules or regulations, which may affect the GETI Services. Merchant shall scan each check submitted for processing through no more than one POS terminal. Merchant agrees that sales completed at one location cannot be processed through a terminal at another location. In no event is Merchant allowed to process checks manually by keying in the MICR number.

**6. Equipment.** Merchant shall furnish each outlet, retail location, or business entity with a POS terminal, electronic printer and a check reader (collectively the "Equipment"). Merchant agrees to utilize only Equipment approved by GETI and that transmits information in a format and medium of transmission acceptable to GETI. GETI shall assign each Merchant's POS terminal an identification and password number. In connection with the GETI Services and the Equipment, Merchant (a) is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the Equipment; (b) shall maintain the Equipment in good working order at Merchant's expense; (c) shall advise GETI immediately in the event of a breakdown of the Equipment or of any other system failure; and (d) acknowledges that GETI is not responsible for the Equipment or related systems. Moreover, GETI's approval of the Equipment does not constitute an express or implied warranty, representation or endorsement of the Equipment.

**7. Daily Settlement Of Transactions.** Merchant agrees to Batch Out on a daily basis each POS terminal used by Merchant. "Batch Out" shall mean that Merchant totals and settles all of the transactions on each POS terminal used by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the Batch Out to GETI. GETI, in its sole discretion, may assess a \$50.00 fee per day for each terminal on which Merchant fails to transmit a timely Batch Out. In addition, any transactions contained in an untimely Batch Out may be refused, become subject to chargeback or be held until after a sixty day period for consumer chargebacks by GETI. If Merchant has selected Conversion with Guarantee, then checks contained in an untimely Batch Out will not be guaranteed. Merchant acknowledges that failure to Batch Out on a timely basis may be grounds for suspension or termination of the GETI Services at GETI's sole discretion. Merchant acknowledges that failure to Batch Out will delay funds being deposited and will result in the loss of guarantee coverage on those checks.

**8. Request for Electronic Check Authorization Receipt Or Other Documentation.** If requested by GETI, Merchant is obligated to deliver the signed Electronic Check Authorization Receipt to GETI's designated location within 48 hours from the date of such request. Additionally, if a Merchant has selected the Conversion with Guarantee, then upon GETI's request, Merchant will deliver all documents related to a guaranteed transaction to GETI's designated location within 48 hours. If a Merchant, which has selected the Conversion with Guarantee service, fails to provide the requested receipt or documentation within this time period, GETI, in its sole discretion, may elect not to guarantee that check.

**9. Netting Of Transactions.** Merchant acknowledges that all transactions between GETI and Merchant under this Agreement, except assessment and calculation of fees, shall be treated as a single transaction for purposes of daily settlement between Merchant and GETI.

**10. Provisional Settlements.** Merchant acknowledges that all settlements between GETI and Merchant are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting electronic checks to GETI, Merchant endorses and assigns to GETI all right, title and interest to such checks with rights of endorsement. Merchant acknowledges that GETI has the right to receive payment on all electronically processed checks acquired from Merchant and Merchant will not attempt to collect on any such transactions. If any payment is tendered to Merchant, Merchant will notify GETI by telephone of the payment, endorse the check, sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, Merchant shall reimburse GETI by Merchant's check. Merchant agrees to provide GETI notice of any such payments in accordance with the terms of this Agreement.

**11. Payment To Merchant By GETI.** Merchant acknowledges that this Agreement provides for the provisional settlement of Merchant's transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to Merchant under this Agreement shall be made by GETI through the ACH and shall normally be electronically transmitted directly to Merchant's designated account. However, GETI cannot guarantee the timeliness with which any payment may be credited by Merchant's bank. Merchant understands that due to the nature of the ACH and the electronic networks involved, and the fact that not all banks belong to an ACH, payment to Merchant can be delayed through no fault of GETI. In such cases, Merchant agrees to work with GETI to help resolve any problems in crediting Merchant's designated account. In the event that a payment is rejected by Merchant's bank or fails to arrive within three (3) days from the date of the confirmed Batch Out due to problems beyond GETI's control, GETI may periodically wire transfer all funds due Merchant until the problem is corrected, at Merchant's expense. All payments to Merchant shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which Merchant is responsible pursuant to this Agreement. At GETI's sole discretion, said charges and fees shall be deducted from incoming transactions or may be debited through the ACH against Merchant's designated account, without further notice or demand.

**11.1 Authorization To Access Merchant's Account.** Merchant hereby authorizes GETI to initiate debit and credit entries to Merchant's designated account, which is identified in the Application. Merchant's authorization shall continue in effect for at least 180 days after termination of this Agreement, or for such longer period as determined by GETI, in its sole discretion, to be necessary to properly terminate business.

**11.2 Timing of Payment To Merchant.** Unless a reserve or delay is placed on the Merchant's account, GETI will transmit settlement to Merchant's bank within seventy-two (72) hours of the time when Merchant Batches Out the applicable transaction. GETI may hold back certain amounts where GETI is investigating a transaction for breach of warranty or transactional requirements by Merchant or for other reasons.

**11.3 GETI's Right To Monitor Transactional Activity.** GETI shall have the right to monitor Merchant's transactional activity and Merchant agrees that GETI may divert funds for a reasonable period to investigate account activity. GETI will attempt, but is not required, to notify Merchant of any such investigation, but GETI shall have no liability to Merchant, or any other party, for any such actions taken by GETI. Merchant agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on Merchant's financial condition. GETI will not be liable for any dishonor of any item as a result of actions taken hereunder. GETI may return any item to Merchant for correction or proper processing.

**12. Returns And Credits.** Merchant shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, Merchant shall be responsible for making all cash or check refunds to customer after a transaction has been Batched Out for settlement. Merchant must initiate a credit receipt for the same amount as the debit entry to effect voids, which occur the same day as the day of authorization and prior to Batching Out. Merchant must use the Equipment to transmit the credit. Merchant shall obtain proper written authorization from the customer whose name is printed on the face of the check, or the customer's authorized representative, prior to crediting customer's account. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and credit entry shall constitute a separate transaction for which a Transaction Fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, Merchant shall request in writing to GETI to initiate such reversal. Merchant shall give GETI enough information to create such reversal. A fee of no more than twenty dollars (\$20.00) for each transaction reversal may be charged by GETI.

**13. Warranties By Merchant.** Merchant warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to customer protection. Merchant also warrants not to change the nature of its business as indicated on the Application or to modify the ownership of the business without the prior written consent of GETI. With each transaction presented to GETI by Merchant for authorization, Merchant specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account; (b) that each debit or credit is for an amount agreed to by the customer; (c) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (d) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (e) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (f) Merchant has delivered the goods or completed the services identified in the authorized sales receipt draft; (g) each sales receipt represents a bona fide direct sales transaction, in the ordinary course of Merchant's business, between the Merchant and the person presenting the check; (h) the person presenting the check has no claim, defense, right of offset, or dispute against Merchant in connection with the purchase of the goods or services and Merchant will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (i) Merchant has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law (the foregoing shall not prohibit Merchant from extending discounts to customers paying by cash or by any means other than electronic check processing); (j) all of Merchant's business locations engage in the business activities listed on the Application; (k) neither Merchant, nor any of its employees, have submitted checks drawn from their personal checking accounts on the Merchant's Equipment; (l) Merchant uses only the name and address shown on the front of the Agreement on all its sales drafts; (m) Merchant has not submitted duplicates of any transaction; (n) the banking information for the check on the printed sales receipt is correct; and (o) no transaction submitted for authorization to GETI is with or through an entity other than Merchant.

**14. Limitation Of Liability And Merchant's Waiver Of Damages.** GETI shall be responsible for performance of the GETI Services as a third-party provider in accordance with the terms of this Agreement. GETI shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as GETI's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. IN NO EVENT SHALL GETI BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

**15. Force Majeure.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tsunamis, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

**16. Chargebacks And Returns.** Merchant shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except that a Merchant which has purchased Conversion with Guarantee, shall not be liable for any returns or chargebacks covered by the Guarantee provided with that service. For Merchant's who have purchased Conversion without Guarantee, GETI shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in GETI's direct or indirect control and to chargeback such transactions to Merchant including, but not limited to, any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by Merchant; (b) where the purchaser and/or merchant breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the Application or approved in advance by GETI; (d) where the amount shown on the sales receipt differs from the copy given to the customer; (e) where a customer disputes in writing with GETI, or the customer's financial institution named on the check, that: (1) goods or services were received; (2) goods or services received conform to the description on the sales receipt; (3) goods or services were not defective; (f) where the customer has a claim, dispute or defense to payment related to the transaction, including a claim or defense authorized by a relevant statute or regulation, (g) where a Electronic Check Authorization Receipt was not received by GETI as required hereunder or is subject to chargeback by the customer's financial institution when acting on the customer's behalf; (h) where the transaction was generated through the use of an account that was not valid (as in, but not limited to, R03, R04 return codes) or effective (as in, but not limited to, R02 return code) on the transaction date; (i) where the transaction was made on an altered or counterfeit check authorization document; (j) where Merchant had notice not to honor the transaction and failed to reject the transaction; (k) code on the transaction date; (l) where the transaction was made on an altered or counterfeit check authorization document; (m) where Merchant had notice not to honor the transaction and failed to reject the transaction; (n) where Merchant disregarded any denial of authorization; (o) where no signature of the customer to the transaction appears on the Electronic Check Authorization Receipt; (p) where Merchant failed to obtain specific authorization in advance from GETI to complete the transaction and/or a valid authorization number was not on the Electronic Check Authorization Receipt; (q) where the customer has certified in writing to GETI or his financial institution on that no authorized user made or authorized the transaction; (r) where security procedures were not followed; (s) where the customer's financial institution or GETI has information that Merchant fraud occurred at the time of the transaction(s); (t) where the transaction is not a sale by Merchant, whether or not such transaction(s) was authorized by the customer; (u) where the check authorization was executed or a credit was given to Merchant in circumstances constituting a breach of any representation or warranty of Merchant or in violation of applicable law; (v) where Merchant has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (w) where a sales receipt was charged back and re-presented, whether or not the customer knows or consents to this re-presentment;

and (x) where Merchant does not provide copy of the signed authorization receipt as requested by GETI within forty-eight (48) hours from the time of such request. For those Merchant's who have purchased Conversion with Guarantee, GETI shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in GETI's direct or indirect control and to chargeback such transactions to Merchant only for those items set forth in (a) through (x) above that are not covered by the Guarantee. If, with respect to any one of Merchant's outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI, Merchant may be charged back for all transactions, this Agreement may be terminated immediately without notice, and Merchant's funds, including but not limited to those in incoming transactions and in Merchant's designated account, shall be held pursuant to the provisions herein. GETI shall retain any Discount Fee or Transaction Fee related to a chargeback transaction. Merchant agrees that GETI will assess up to twenty-five dollars (\$25.00) for each chargeback, or such increased or additional charges as may be established by GETI from time to time. Additionally, GETI shall have the same rights to debit Merchant's designated account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction, subject to the condition that if the Merchant has purchased the Conversion with Guarantee, GETI shall not have the right to debit the Merchant's designated account for items covered by that guarantee.

**17. Chargeback And Returns Reserve Account.** Notwithstanding any other language to the contrary contained in this Agreement, GETI reserves the right to establish, without notice to Merchant, and Merchant agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon GETI's reasonable determination of the occurrence of any of the following: (a) Merchant engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) Failure by Merchant to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customer; (c) Failure by Merchant to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of Merchant for processing through GETI; (d) Failure by Merchant to fully disclose the true ownership of Merchant's business entity or evidence of fraud; (e) Processing by Merchant of unauthorized charges or any other action which violates applicable risk management standards of GETI or is likely to cause loss; (f) Any misrepresentation made by Merchant in completion of the Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by GETI; (g) Merchant has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by Merchant in any thirty (30) calendar day period; (h) Excessive number of requests from customers or issuing banks for retrieval of documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by GETI, for all obligations on the part of Merchant to GETI under this Agreement, Merchant may request GETI to disburse to Merchant any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to Merchant until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify Merchant of such fact and GETI will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

**18. Collections.** Merchant acknowledges and agrees that when collection services are required, GETI may utilize an appropriately licensed third party to perform such collection services. Merchant further authorizes GETI to continue collection efforts for Merchant. If collections are unsuccessful, GETI shall be absolved of all responsibility. Any collection of checks after electronic presentment(s) shall be paid to the Merchant at percentage of the collected amount as set forth by GETI, fees excluded.

**19. Merchant Shall Pay To GETI.** A "Discount Fee" shall be paid on each electronic inquiry to the database under the Conversion with Guarantee service. The Discount Fee for a check shall be calculated by multiplying the Discount Rate, as set forth in the Application, times the amount of the check. To the extent that the aggregate Discount Fees for a month does not exceed the Minimum Monthly Discount as set forth in the Application, then Merchant shall be obligated to pay the Minimum Monthly Discount less any Discount Fees already paid to GETI during the applicable month. The Transaction Fee shall be equal to the amount set forth in the Application. A Transaction Fee shall be charged for each (a) network access, (b) ACH deposit, (c) electronic inquiry to the database that does not result in an electronic transfer of funds, and (d) Batch-Out. Merchant shall pay each month a Service Fee as set forth in the Application. Additionally, a fee up to twenty dollars (\$20.00) may be assessed for each reversal request by Merchant at GETI's sole discretion. Merchant shall also pay an Annual Subscription Fee of \$59.95 each year. Merchant must promptly notify GETI in writing of any dispute regarding fees under this Agreement. Merchant's written notice must include: (i) Merchant name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by Merchant or charged to Merchant's account by GETI. Merchant's failure to so notify GETI will waive and bar the dispute.

**19.1 Change In Pricing.** GETI shall have the right to change any of the above mentioned rates, including the Discount Fee, Transaction Fee, Minimum Monthly Discount and Statement Fee, by giving Merchant written notice of such changes at least thirty (30) days before such new rates take effect.

**20. Assignment Of Checks.** By subscribing to the Conversion with Guarantee service, Merchant shall be deemed to have assigned to GETI, without recourse, all of Merchant's right, title and interest in any and all checks, including any rights to treble or punitive damages, permitted under applicable law. Merchant shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI's rights and shall do nothing to prejudice those rights. Merchant shall cooperate with GETI in pursuing GETI's rights, including suing or prosecution of the customer under all applicable laws.

**21. Compliance And Disclosure Of Information.** Merchant shall provide such information and certifications as GETI may reasonably require from time to time to determine Merchant's compliance with the terms and conditions of this Agreement and applicable law. Merchant further agrees to produce and make available for inspection by GETI or its officers, agents, attorneys, accountants, or representatives, such books and records of Merchant as GETI may deem reasonably necessary to be adequately informed of the business and financial condition of Merchant, or the ability of Merchant to observe or perform its obligations to GETI pursuant to this Agreement. Merchant further agrees to provide to GETI from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as GETI may request. Merchant grants to GETI continuing authority to conduct credit checks and background investigations and inquiries concerning Merchant and Merchant's owner(s) including, but not limited to, character and business references and the financial condition of Merchant and Merchant's owner(s). Merchant expressly authorizes GETI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of Merchant.

**22. Data Retention.** Merchant shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two (2) years following the date of the transaction. According to GETI's current policy, Merchant shall hand the check back to the check writer. If check is handed back to check writer then Merchant acknowledges that GETI will not be able to provide any check collection services beyond the third electronic presentment of the check (unless an imaging check reader is used and GETI receives that image in a usable fashion). Failure to provide the signed Electronic Check Authorization Receipt to GETI will result in cessation of collection efforts, and GETI will be entitled to immediately debit Merchant's account for any previously processed and returned transactions.

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

**24. Assignment.** Merchant may not assign or transfer any rights under this Agreement without the prior written consent of GETI.

**25. Termination.** This Agreement shall continue indefinitely unless and until terminated by any party. Merchant or GETI may terminate this Agreement for any reason upon sixty (60) days written notice to the other party. Monthly minimum and subscription fees will continue in effect for this time. If a Merchant terminates this service within the first three (3) years of the contract, a one-time termination fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from the Merchant's designated account.

**26. Application Fee.** Any application fee paid to GETI is non-refundable whether or not Merchant and this Agreement are accepted by GETI.

**27. Entire Agreement.** This Agreement, including any attached Schedules, together with the Application, is the complete and exclusive statement of the agreement between GETI and the Merchant with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI and the Merchant with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Application, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which GETI, the Originating Depository Financial Institution (ODFI) or Merchant is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and GETI, the ODFI and Merchant shall incur no liability as a result of such changes except as provided in the following paragraph.

**28. Amendments.** As stated in Section 27, GETI, the ODFI or Merchant may amend operations or processing procedures in order to conform to and comply with any changes in the NACHA Rules or applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the NACHA Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the ACH services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

**29. Binding Agreement; Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against GETI.

**30. Attorneys' Fees.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from Merchant, GETI shall be entitled to recover its reasonable attorneys' fees, costs and disbursements related to such dispute from Merchant.

**31. Choice Of Law.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the NACHA Rules. In the event of a conflict between the NACHA Rules and applicable local, state or federal law, the NACHA Rules shall prevail unless otherwise prohibited by law. To the extent Merchant does not have a copy of the NACHA Rules, GETI will provide Merchant with a copy upon receipt of a written request. To the extent that an issue arises which is not covered by the NACHA Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that, to the extent permitted by law, venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. Merchant acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by GETI.

**32. Severability.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

**33. Headings.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

**34. Effective Date.** This Agreement shall be effective only upon acceptance by GETI.

## **CHECK GUARANTEE AGREEMENT** **TERMS AND CONDITIONS**

This Agreement is entered into by and between E Telecom, Inc., d/b/a Global eTelecom, Inc., a Florida corporation ("GETI") and the undersigned ("Merchant").

**1. TERM.** This Agreement shall continue indefinitely unless and until terminated by any party. Merchant may terminate this Agreement upon sixty (60) days written notice to GETI. Monthly minimum and subscription fees will continue in effect for this time. If Merchant terminates this contract within the first three (3) years of the contract of this contract, a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from Merchants account. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to Merchant.

**2. PRICING.** GETI shall charge and Merchant shall pay to GETI the Guarantee Fees and the Transaction Fees as stated in the Application for services with GETI. Merchant shall also pay a minimum monthly fee which shall be equal to the difference between the minimum monthly fee as set forth in the Application and the total Guarantee Fees paid by the Merchant for the applicable month. The Guarantee Fee for each check submitted shall be equal to the Discount Rate set forth in the Application multiplied by the face value of each personal check (hereinafter referred to as "Instrument") presented through the Merchant's Point of Sale Electronic device. A Transaction Fee shall be charged for each attempt at authorization of a check. Merchant shall also pay to GETI a Service Fee in the amount set forth in the Application. GETI reserves the right to increase any fee under this Paragraph 2. Merchant will be given written notice of any fee increase. Merchant shall also pay an Annual Subscription Fee of \$59.95 each year. Merchant must promptly notify GETI in writing of any dispute regarding fees under this Agreement. Merchant's written notice must include: (i) Merchant name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by Merchant or charged to Merchant's account by GETI. Merchant's failure to so notify GETI will waive and bar the dispute.

**3. LIMITS.** During the term of this Agreement, GETI shall purchase up to the assigned check limit amount of any authorized Instrument which is properly presented for purchase as a Qualified Instrument pursuant to Paragraphs 4, 5 and 6 of this Agreement. Merchant acknowledges that GETI may, at its sole discretion, increase or decrease the Check Limit with written notice.

**4. AUTHORIZED INSTRUMENT.** To be authorized, an Instrument must meet the following criteria at the time of presentation for authorization:

- The name of the person or entity presenting the Instrument ("Presenter") is commercially imprinted thereon. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee;
- Merchant shall require the person presenting the Instrument to produce a valid driver's license or non-driver's State-issued identification card and to write the State of Issue and the identification number contained thereon on the face of the Instrument;
- The address of the person upon whose account the Instrument is drawn is shown on the face of the Instrument. Merchant will verify that the address on the instrument matches that of the drivers license address submitted by the Presenter. Merchant will then input any corrected information on the instrument. If not commercially imprinted, Merchant will write this information. Post Office Boxes are not acceptable addresses for this purpose;
- The Instrument is not a two party check, or a GETI check or a temporary check. The check has not been declined by GETI through its authorization process.

**5. QUALIFIED INSTRUMENT.** For any Instrument to qualify for purchase by GETI it must be an Authorized Instrument as defined by the terms of Paragraph 4 and meet the following criteria:

- The authorization number issued by GETI for the Instrument and the identification used for authorization is written on the face thereof;
- The Instrument is payable to Merchant, and was issued in exchange for goods delivered or services rendered at the time of the Instrument's issuance by presenter;

- c. The Instrument has been signed by the person presenting same and has been endorsed by Merchant;
- d. The Instrument has not been altered;
- e. The Instrument was not tendered, in whole or in part, in exchange for cash. Merchant has not received value in full or in part on the dishonored instrument through cash, credit, service, exchange, or repossession.
- f. The Instrument was not presented as partial payment for a transaction, as payment for debt due the Merchant previous to the date of authorization, or as one of multiple payments in a single transaction;
- g. The Instrument was not authorized under a state driver's license or identification number different than the one appearing on the Instrument;
- h. The State ID code or the name of the issuing state must appear on the face of the Instrument being processed;
- i. Merchant did not subsequently receive value, in full or in part, for the dishonored Instrument from the presenter thereof in the form of payment, credit, services, return, exchange or repossession;
- j. The Instrument was not dishonored as a result of a "stop payment" order issued by the presenter to his financial institution which is based upon a dispute against the Merchant by the presenter, unless Merchant has selected coverage for this contingency;
- k. The authorization for the Instrument was not secured by Merchant, its agents or employees under fraudulent pretenses. Merchant, its agents or employees has not submitted an Instrument for authorization with prior knowledge of the likelihood of the check being dishonored or the ID was forged, stolen or otherwise did not belong to the check writer or that was knowingly illegal, void, or invalid.
- l. The date of the Instrument must be no more than one (1) day from the date on which the Instrument was authorized by GETI. The check number and the dollar amount of the instrument being authorized must be the same check number and dollar amount given at the time authorization is attempted.
- m. The Instrument was not previously denied by GETI based on the same or a different driver's license number presented for authorization by Merchant;
- n. The presenter's name, address and home and work telephone number must appear on the Instrument
- o. Merchant must have followed instructions contained in GETI's Merchant Quick Reference Guide or other authorized, current published instructions;
- p. GETI may change any of these procedures upon written notice to Merchant

**6. CLAIM AND PURCHASE PROCEDURE.** GETI shall purchase Qualified Instruments, subject to the Check Limit, for each Instrument presented by Merchant under the following Claim Procedure:

- a. Merchant agrees to require its depository bank to forward dishonored Instruments directly to GETI at its designated address
- b. Merchant shall submit all authorized Instruments to GETI for purchase within thirty (30) days from the date of authorization of said Instrument. For the purposes of determining time frames, the United States Postal Service postmark shall control
- c. GETI shall make payments to Merchant on properly presented Qualified Instruments within thirty (30) days from the receipt of the same.

**7. COLLECTION OF INSTRUMENTS.** In consideration of GETI's purchase of the Qualified Instrument from Merchant, Merchant assigns all right, title and interest in and to the Instrument purchased by GETI. Merchant further agrees to provide GETI with any additional testimony or information reasonably requested by GETI to aid GETI in the collection or enforcement of said Instrument. Merchant agrees that GETI shall be entitled to all interest, collection, costs, damages and fees allowed by applicable law in addition to any amount received in collection or enforcement of the instrument.

**8. NOTIFICATION OF RECEIPT OF PAYMENT.** Merchant agrees to promptly notify GETI of any payments on an Instrument which has been forwarded to GETI pursuant to the Claim Procedure recited herein. In the event the Instrument has been purchased by GETI, Merchant agrees to promptly forward payment of the amount received by Merchant to GETI with sufficient information to allow GETI to identify the Instrument to which the payment is to be credited.

**9. NOTICES.** All notices required pursuant to the Agreement shall be in writing and shall be deemed to have been properly given twenty-four (24) hours after being deposited, with proper postage prepaid, in a facility of the United States Postal Service. Notices shall be sent to the respective addresses of the parties as recited in the Agreement. Each party warrants to the other that it will immediately inform the other party of any change in address.

**10. GOVERNING LAW, JURISDICTION AND VENUE.** Merchant agrees that the provisions of this Agreement shall be governed by the laws of the State of Florida, the First Judicial Circuit Court or the United States District Court for the Northern District of Florida. The parties agree that these forums constitute the sole proper jurisdiction and venue for any litigation arising under this Agreement. Merchant agrees to comply with all laws and regulations governing use of the services contemplated by this Agreement.

**11. TERMINATION FOR CAUSE.** GETI shall have the right to terminate its obligations under this Agreement at its sole discretion or in the event of Merchant's default under this Agreement. Merchant is in default of this Agreement if Merchant fails to pay the fees imposed by the contract between Merchant and Global eTelecom, Inc. hereunder within thirty (30) days of demand or unsuccessful ACH debit attempt by GETI or Merchant commits any act with an intent to defraud GETI in the authorization of Instruments, qualification of Instruments or claim procedures. GETI may withhold any funds due Merchant in satisfaction of unpaid Merchant charges.

**12. CONFIDENTIALITY.** Merchant agrees to take all actions reasonably necessary to protect the confidential information secured by Merchant from person presenting Instruments to Merchant. Confidential information shall include, but shall not be limited to, the bank account number, the telephone number, state issued identification number or any other item of information unique to the person submitting the Instrument. Merchant agrees to take those actions reasonably necessary to prevent disclosure of confidential information to any entity other than GETI.

**13. PAYMENT.** Merchant agrees to permit GETI to debit Merchant's account for check guarantee service charges according to the terms of the Agreement between Merchant and GETI.

**14. ACKNOWLEDGEMENTS.** Merchant acknowledges that it has read and understands the Terms and Conditions of this Agreement contained on this page. No alteration, addition, deletion, or modification may be made by any Sales Representative. This Agreement represents the entire agreement between GETI and the Merchant. Any previous or extraneous agreements, whether written or oral, are void and of no effect.

**MERCHANT RIGHTS AND RESPONSIBILITIES CHECK 21 PLUS- REMOTE CHECK DEPOSIT SERVICES TERMS AND CONDITIONS**

The Remote Check Deposit (Check 21 Plus) Terms and Conditions agreement is entered into by and between Global eTelecom, Inc. ("GETI") and the MERCHANT, whose name and address are identified on the Merchant Agreement as MERCHANT ("MERCHANT") to which this Remote Check Deposit (Check 21 Plus) Terms and Conditions is attached. GETI and MERCHANT will be referred to collectively as the "Parties" and interchangeably as the "Party." This Remote Check Deposit (Check 21 Plus) Service Terms and Conditions, and all signed addendums are collectively referred to as the "Agreement." WHEREAS, GETI provides electronic transaction processing, Remote Check Deposit (Check 21 Plus), return check processing, and similar services (the "Services"). NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows: IF MERCHANT has not requested Remote Check Deposit (Check 21) with Guarantee service, or if GETI has not accepted the MERCHANT application for Remote Check Deposit (Check 21) with Guarantee service, GETI will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

**1.1 MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to GETI that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.

**1.2 REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** If MERCHANT has marked the REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee box on the application form of this Agreement then MERCHANT wishes GETI also to provide check guarantee and collection services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged GETI to provide for each check: verification and Remote Check Deposit service without any guarantee. As of the date of this Agreement and by subscribing to REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee, MERCHANT shall be deemed to have assigned to GETI, without recourse, all of MERCHANT's right, title and interest in any and all checks, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, papers, and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI's rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI's rights, including suing or prosecution of the customer under all applicable laws.

**1.3 REMOTE CHECK DEPOSIT (CHECK 21 Plus)-REMOTE (Consumer Not Present Transactions).** If MERCHANT has marked the Remote Check Deposit (Check 21 Plus) Remote with or without Guarantee box on the application form of this Agreement and GETI approves such Agreement, then GETI agrees to waive certain requirements for processing as stated in sections 3.1, 11.1, and 11.2. In exchange for such waiver and higher risk of said transactions, GETI will charge a higher discount rate for the Consumer Not Present Transaction Program (see schedule.) GETI reserves the right to remove Guarantee coverage on any check transaction in such cases where there is not sufficient information on the check face to contact or locate the customer for collection efforts in the event the check is returned by the customer's bank. At a minimum, the check account number must be verified and approved by our front end host and all checks must be preprinted with the check writer's information, contain at least one phone number, and must not be a starter check. Failure to comply with the minimum standards as explained in this section may result in Merchant's loss of guarantee.

**1.4 CHECK COLLECTION.** MERCHANT authorizes GETI to represent all items that are returned to GETI and to originate an electronic entry for the amount of any allowable recovery fee. GETI shall have sixty (60) days from the date of a return check to complete the representation process. If this Agreement is terminated for any reason, GETI will retain the right to complete the representation process for all return check items prior to said termination. **Any collection fees received by GETI in collecting returned checks shall be the sole property of GETI.** GETI shall present the ENTRY no more than two times. GETI, for non-guarantee service, shall be entitled to assess a transaction fee (as set forth in the schedule of fees) from MERCHANT for each representation. If a check is returned unpaid after the second presentation, GETI shall be entitled to debit the MERCHANT'S account or offset such return amount from the next scheduled merchant settlement for the amount of the check (non-guarantee service only).

**1.5 MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** GETI shall provide signage to be displayed at the point of purchase (POP) or payment collection site, which informs customers of the electronic debit for the amount of any state allowable NSF or recovery fee as stated in 1.4 CHECK COLLECTION. MERCHANT agrees to display these materials in the best visible and unhindered location so as to inform the public of such electronic debit entry. From time to time, GETI may establish required educational and promotional materials and send such to MERCHANT for MERCHANT to distribute to customers. MERCHANT further agrees to immediately remove and properly dispose of GETI's state promotional materials and to display the most current materials upon receipt of such from GETI. MERCHANT will discontinue the use of all of GETI's promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event Merchants' account is reinstated by GETI, MERCHANT shall redisplay all appropriate materials.

**2.1 RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING GETI'S SERVICES.** MERCHANT shall make no use of GETI's promotional materials or marks, other than as set forth in paragraph 1.5 above, without GETI's prior written consent. In no way shall the MERCHANT indicate that GETI's services are an endorsement of the MERCHANT, its business or its business practices.

**3.1 REQUIREMENTS FOR PROCESSING REMOTE CHECK DEPOSIT (CHECK 21 Plus).** MERCHANT shall comply with the following conditions when accepting checks for Remote Check Deposit (Check 21 Plus) and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established and/or revised by GETI from time to time. MERCHANT shall accept only the following checks as source documents to initiate Remote Check Deposit entries through GETI: (a) All instruments must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than or equal to the approved check limit assigned by GETI. (b) MERCHANT shall obtain proper identification, in the form of a valid driver's license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to GETI for authorization. (c) MERCHANT shall scan each check through a GETI approved imaging device and/or an approved software vehicle to initiate Remote Check Deposit (Check 21 Plus) processing. (d) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (e) At the time MERCHANT initiates authorization with GETI, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. (f) Once GETI authorizes the transaction, MERCHANT shall retain and store the check in a secure location for a minimum period of ninety (90) days. Refer to "Check Retention" and "Image Requirements" below. (g) MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt. (h) No check may be altered after GETI authorizes acceptance of the check. Once GETI authorizes a transaction, MERCHANT may not resubmit a check electronically or deposit it by any means, unless instructed by GETI to do so in such case where the image quality does not meet the required standards to process the check via Remote Check Deposit. In addition, MERCHANT shall write the current phone number and driver's license number of the customer on the face of the check prior to scanning the check through the check reader. Failure to comply with the above minimum requirements will result in loss of guarantee (if Remote Check Deposit (Check 21 Plus) with Guarantee Service is selected on application) on ALL transactions, subject MERCHANT to chargebacks or withholding of funds, and may be grounds for immediate suspension/termination of services and indemnification of GETI by MERCHANT pursuant to this Agreement.

**3.2 RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR PROCESSING.** From time to time, GETI shall establish necessary security and identification procedures for presentation of checks for Remote Check Deposit (Check 21 Plus) pursuant to the rules and procedural guidelines established by the Federal Trade Commission ("FTC") and Regulation E (Reg E) and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for Remote Check Deposit (Check 21 Plus) processing. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by GETI. GETI shall also establish the number of checks, which may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide GETI with any and all information needed to establish such limitations. MERCHANT further agrees to inform GETI immediately of any changes in business activities, rules or regulations, which may affect these limitations. MERCHANT further agrees to abide by these limitations as a condition to GETI processing any check. MERCHANT shall scan each check submitted for processing through no more than one GETI approved imaging device for any given transaction. MERCHANT agrees that sales completed at one location cannot be processed through a check imaging device at another location. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY IMPRISONMENT. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION INITIATED AS AN UNAUTHORIZED ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR DEPOSIT OF CHECK (S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.**

### **3.3 SECTION OMITTED**

**3.4 UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for Remote Check Deposit (Check 21 Plus) processing, and MERCHANT agrees not to submit any of the following transactions to GETI for processing: (a) MERCHANT shall not process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (b) MERCHANT shall not accept any third party items for Remote Check Deposit (Check 21 Plus) processing or checks made payable to "cash" or "bearer", (c) MERCHANT shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to MERCHANT, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (d) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (e) MERCHANT shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (f) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (g) MERCHANT shall not knowingly submit a check on an account which GETI previously denied authorization. MERCHANT's submission of any of the above transactions for electronic processing may subject the MERCHANT to immediate suspension or termination, and all funds of MERCHANT, including those in MERCHANT'S account, may be placed on hold. This will also remove the Guarantee coverage from ALL checks.

**3.5 SURCHARGES AND TAXES.** MERCHANT shall not impose any surcharge on any Remote Check Deposit (Check 21 Plus) processed check transaction. MERCHANT shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by GETI and must be reflected in the face amount of the check. In any event, MERCHANT shall not collect any required taxes separately in cash, or otherwise. MERCHANT is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

**4.1 EQUIPMENT.** MERCHANT shall furnish each outlet, retail location, or business entity with a GETI approved check imaging device that captures the front and back of the check and/ or other GETI approved software. GETI shall assign each MERCHANT's check imaging device an identification number. MERCHANT is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the software or the check imaging device. MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT's expense. MERCHANT shall advise GETI immediately in the event of a breakdown of a GETI approved imaging device, software, or of any other system failure. MERCHANT acknowledges that GETI is not responsible for any equipment or software problems. Moreover, GETI's approval of such equipment does not constitute nor express an implied warranty, representation or endorsement of such equipment. Refer to Image Requirements and Virtual Terminal (if applicable).

**4.2 USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by GETI for the processing of checks and in a format and medium of transmission acceptable to GETI.

**4.3 VIRTUAL TERMINAL.** If MERCHANT has marked the Virtual Terminal option box on the application form of this Agreement then MERCHANT wishes to use the GETI Virtual Terminal in place of a traditional credit card terminal. GETI's Virtual Terminal performs the basic functions of a traditional credit card terminal including check processing, and transaction voids. **Remote Check Deposit (Check 21 Plus) Services requires use of a GETI compatible two-sided check imaging device connected to the PC.** MERCHANT may utilize a compatible credit card terminal 3.5 inch printer or standard PC printer to print receipts. If a compatible two-sided check imaging device is not used, then MERCHANT understands that GETI will only provide Verification Services, and there will be no transactions processed via Remote Check Deposit (Check 21 Plus). The GETI Virtual Terminal requires Internet Explorer 6.0 or higher. Supported Operating Systems: Windows XP®, Windows Vista®. Merchant is responsible for all telecommunication fees and charges, including but not limited to telephone fees associated with and related to the use of the GETI Virtual Terminal Software.

**4.4 IMAGE REQUIREMENTS.** In order for a check to be processed via Remote Check Deposit (Check 21 Plus) the check image must meet the following guidelines: (a) The check imaging device must capture the front and back of the check and be of minimum required size; (b) The image must not be too dark, too light, or too bright; (c) The check MICR information must be machine-readable and contain the bank routing number, account number, and check serial number printed on the check; (d) The MICR "on us" field value must contain valid data; (e) Check image cannot be missing or incomplete; (f) The check must be filled out in its' entirety for the check to be processed and/or guaranteed. Any check not meeting these standards will need to be manually deposited by merchant and cannot be processed via Remote Capture Deposit. Refer to section 13.1 regarding Check Retention.

**4.5 SOFTWARE.** GETI may select software and related user materials ("Software") for use in GETI's electronic check deposit services and the processing of Transactions. From time to time, modifications or updates to the Software may be available. Customer agrees to adopt such updates or modifications as they become available. MERCHANT acknowledges that any Software supplied by GETI for use in Transactions, including, but not limited to, any Software created or modified by GETI to be specific to MERCHANT'S environment is the property of GETI or a third party from whom GETI may have licensed rights in Software and that GETI claims and reserves all rights and benefits therein afforded under copyright and other laws. MERCHANT'S license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to MERCHANT'S own use of such Software for the purpose of processing Transactions as set forth in this Agreement. GETI'S Software may not be used to process transactions with or through any other party without the express written consent of GETI, and may not be exported in contravention of U.S. or foreign export laws. MERCHANT further acknowledges that GETI'S Software contains confidential information and trade secrets, which GETI has entrusted to MERCHANT in confidence. MERCHANT shall protect GETI's property and its interest in the trade secrets contained in the Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of GETI to examine, alter, attach, add, to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, MERCHANT specifically agrees that it will not delete, mask or obscure any proprietary notices, which GETI places on any Software.

**4.6 OWNERSHIP OF NEW INTELLECTUAL PROPERTY.** All rights and title to all inventions, derivative works, improvements and/or discoveries, including software, know-how, copyright, patent, technology, data, trade secrets, and other intellectual property arising directly or indirectly from the Solutions ("New Intellectual Property Rights") during the Term of this Agreement shall belong to GETI. To the extent that such New Intellectual Property Rights do not automatically vest in GETI, MERCHANT hereby assigns and transfers over such rights to GETI, grants GETI power of attorney to accomplish all such assignments and transfers and agrees to take any and all actions that GETI or its counsel deem necessary to transfer and vest good title in such rights in GETI.

**4.7 AUTHORIZED TRANSACTIONS.** Under any of the following circumstances, GETI shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, MERCHANT: (a) if the Transactions and the electronic transmission of a file are made by MERCHANT or its actual or apparent agent, or (b) if GETI reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of MERCHANT, or (c) if MERCHANT utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of MERCHANT and GETI reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of MERCHANT.

**5.1 DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees to "batch out" each check imaging device that is used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the batch out to GETI. MERCHANT agrees to upload images from the check imaging device daily and acknowledges that GETI cannot process any transactions where the image has not been made available by MERCHANT. In addition, any transactions contained in an untimely batch out may be refused or become subject to chargeback or held until after a sixty-day period for consumer chargebacks by GETI. If MERCHANT account is Remote Check Deposit (Check 21 Plus) with Guarantee then checks contained in an untimely batch out are not covered under the Guarantee program. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at GETI's sole discretion. **MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks and GETI may apply a \$25.00 fee for each terminal daily on which MERCHANT fails to transmit a timely batch out.**

**5.2 NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between GETI and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and GETI.

**5.3 PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between GETI and MERCHANT are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting Remote Check Deposit (Check 21 Plus) checks to GETI, MERCHANT endorses and assigns to GETI all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that GETI has the right to receive payment on all Remote Check Deposit (Check 21 Plus) processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify GETI by telephone of the payment, endorse the check, sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, MERCHANT shall reimburse GETI by MERCHANT'S check. In addition, MERCHANT acknowledges that GETI will have no responsibility for the delayed return of a Substitute Check that includes any message text or other information added by MERCHANT or MERCHANT'S third party designee in the depository financial institution endorsement area. Any credit or consideration given by GETI to MERCHANT with respect to any Transactions shall be deemed provisional, and GETI shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to GETI for any reason.

**5.4 PAYMENT.** MERCHANT acknowledges that this Agreement provides for the provisional settlement of MERCHANT'S transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to MERCHANT for legitimate and authorized transactions shall be made by GETI through the ACH (Automated Clearing House) Network and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, GETI cannot guarantee the timeliness with which any payment may be credited by MERCHANT'S bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with GETI to help resolve any problems in crediting MERCHANT'S designated account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the date of settlement due to problems beyond GETI'S control, GETI may periodically wire transfer all funds due MERCHANT until the problem is corrected, at MERCHANT'S EXPENSE. All payments to MERCHANT shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which MERCHANT is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against MERCHANT'S designated Account at GETI'S sole discretion, without any further notice or demand.

**5.5 AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes GETI to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 180 days after termination of this Agreement, or for a longer period as determined necessary by GETI in the exercise of its sole discretion in order to properly terminate business. Unless a reserve or delay is placed on the MERCHANT'S account, GETI will transmit settlement to MERCHANT'S bank by the fourth bank business day following the day MERCHANT batches out a GETI approved check imaging device's transactions. Returns received after a transaction has been settled may be deducted from current outstanding funds due to MERCHANT, or returns may be charged back to MERCHANT'S account at GETI'S discretion. MERCHANT specifically authorizes GETI to debit MERCHANT'S account via Automated Clearing House (ACH) transfer for any previously funded transaction that is returned, and MERCHANT warrants to GETI that MERCHANT will maintain a sufficient balance to cover return entries and to promptly notify GETI of any changes to MERCHANT'S accounts. In addition, GETI may require additional monetary sums for the reserve account from MERCHANT, and GETI reserves the right to hold additional monies as necessary to reduce any risk associated with the daily processing of checks, as requested by MERCHANT. In the event of processing termination, GETI may hold outstanding funds due to MERCHANT for up to one-hundred-eighty (180) days from the transaction date if GETI determines that the return history reasonably justifies the holding of funds. GETI may hold back certain amounts where GETI is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. GETI shall monitor MERCHANT'S transactional activity and MERCHANT agrees that GETI may delay funds for a reasonable period to investigate account activity. GETI will attempt to notify MERCHANT of any investigation, but GETI shall have no liability to MERCHANT or any other party, for any such actions taken by GETI. MERCHANT agrees that GETI may hold, set off or retain funds to protect against amounts owed GETI or based on MERCHANT'S financial condition. GETI will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by GETI. GETI may return any item to MERCHANT for correction or proper processing.

**5.6 RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. Unless MERCHANT has been approved by GETI in advance to initiate credit entries for a lesser amount than the original check entry, MERCHANT must initiate a credit receipt for the same amount as the original check entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer's authorized representative prior to crediting Customer. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and void entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to GETI to initiate such reversal. MERCHANT shall give GETI enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by GETI.

**6.1 WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of GETI. As to the Transactions transmitted to GETI, MERCHANT represents and warrants to GETI that: (a) MERCHANT'S customer has authorized MERCHANT to endorse all checks and other cash items for collection; (b) the preparation and presentation of the Transactions comply with the terms and conditions set forth in this Services Agreement; (c) the digital image of the check transmitted to GETI is a sufficient copy that is a true, correct, and accurate image that represents all the information on the front and back of the original check at the time the original check was truncated so that a Substitute Check created from the image will satisfy legal equivalence requirements and the image has not been altered in any manner by MERCHANT or any third party acting on behalf of MERCHANT; (d) MERCHANT, or any third party acting on behalf of MERCHANT, has reviewed and confirmed that the transmission of MICR line information is identical in all respects to the original check and that the encoded check amount is accurate, (e) MERCHANT understands that any message text or other information MERCHANT elects to add to the check image transmitted to GETI may cause the depository bank's endorsement not to be legible which may result in the delayed return of the Substitute Check or electronic representation if it is not paid, (f) the original check, or a paper or electronic representation, has not previously been deposited for collection with any financial institution, and no depository bank, drawer, drawee, or endorser will be asked to pay a check that it already has paid, (g) MERCHANT will retain the original check, or in the event MERCHANT utilizes the lockbox services of a third party or other similar services that MERCHANT'S third party designee will retain the original check, until final settlement of the Transaction and for such additional period as may be required in the event of a disputed truncated or Substitute Check, including claims that the Substitute Check or electronic representation does not satisfy legal equivalence requirements, so that the original check can be processed for collection, and that MERCHANT or MERCHANT'S third party designee will take reasonable efforts to safeguard any original checks until they are destroyed, (h) MERCHANT understands that the appearance of the original check and the use of certain background colors, decorative images, and choices in ink on the original check may affect the ability to produce a readable digital image of the check or the creation of a Substitute Check that meets legal equivalence requirements which may require the original check to be processed for collection (i) MERCHANT has no knowledge or notice of information to indicate that the transaction is fraudulent; (j) that each check is for an amount agreed to by the customer; (k) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (l) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt; (m) each check represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT'S ordinary course of business and that the amount of the check evidences the customer's total indebtedness for the transaction involved; (n) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (o) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by

cash or by any means other than Remote Check Deposit (Check 21 Plus) check processing; (p) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (q) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (r) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (s) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT'S GETI approved check imaging device; (t) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (u) MERCHANT warrants that no transaction submitted for authorization to GETI is with or through an entity other than MERCHANT; MERCHANT further acknowledges that if for any reason funds are credited to MERCHANT in excess of the amount that MERCHANT is entitled to receive under this Agreement, MERCHANT shall return all such excess funds to GETI upon demand by GETI. Such excess funds may be collected by GETI by a debit to MERCHANT'S designated account initiated by GETI as provided in this Agreement. If for any reason such account does not have sufficient funds, then MERCHANT shall promptly remit the excess funds to GETI. Until the return of such funds to GETI, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of GETI.

**7.1 LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** GETI shall be responsible for performance of the Remote Check Deposit (Check 21 Plus) services as a third-party provider in accordance with the terms of this Agreement. GETI shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as GETI's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. **IN NO EVENT SHALL GETI BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

**7.2 FORCE MAJEURE.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

**8.1 CONFIDENTIALITY OF CUSTOMER INFORMATION.** MERCHANT further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to GETI, MERCHANT'S agents approved by GETI for the purpose of assisting MERCHANT in its business to GETI, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. MERCHANT will not disclose and will keep confidential the terms and conditions of this Agreement.

**9.1 CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, or any other type of returns, except as set forth in the Remote Deposit Capture (Check 21 Plus) with Guarantee provisions below (provided that MERCHANT has purchased and GETI agreed to provide Guarantee service). GETI shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in GETI's direct or indirect control by reason of GETI's security interest granted to GETI by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for Remote Deposit Capture (Check 21 Plus) processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the MERCHANT application or approved in advance by GETI or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to GETI, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation, (e) where a check is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03 return code) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where MERCHANT failed to obtain specific authorization in advance from GETI to complete the transaction and/or a valid authorization number was not on the sales receipt (h) where security procedures were not followed; (i) where the customer's financial institution or GETI has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) in any other situation where the check authorization was executed or a credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of applicable law or where MERCHANT has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (k) a sales receipt was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI; MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. GETI shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that GETI will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by GETI from time to time. **Additionally, GETI shall have the same rights to debit MERCHANT'S account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction. If MERCHANT has requested the Guarantee service, and GETI has accepted the application for Guarantee service, certain transactions are guaranteed, as listed in the Remote Check Deposit (Check 21 Plus) with Guarantee provisions below.**

**9.2 CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, GETI reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon GETI's reasonable determination of the occurrence of any of the following: (a) MERCHANT engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) **Failure by MERCHANT to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customers;** (c) **Failure by MERCHANT to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of MERCHANT for processing through GETI;** (d) Failure by MERCHANT to fully disclose the true ownership of MERCHANT'S business entity or evidence of fraud; (e) Processing by MERCHANT of unauthorized charges or any other action which violates applicable risk management standards of GETI or is likely to cause loss; (f) **Any misrepresentation made by MERCHANT in completion of the MERCHANT Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by GETI;** (g) MERCHANT has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by MERCHANT in any thirty (30) calendar day period; (h) MERCHANT'S financial stability is in question or MERCHANT ceases doing business; or (i) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by GETI, for all obligations on the part of MERCHANT to GETI under this Agreement, MERCHANT may request GETI to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to MERCHANT until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify MERCHANT of such fact and GETI will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

**9.3 COLLECTIONS.** MERCHANT acknowledges and agrees that when collection services are required, GETI may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes GETI to continue collection efforts for MERCHANT. If collections are successful after sixty (60) days, GETI shall discontinue collections and be absolved of all responsibility.

**10.1 REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** The Remote Check Deposit (Check 21 Plus) with Guarantee provisions are operational only if MERCHANT has marked the Check 21 Plus with Guarantee box on the application form of the Agreement. If so marked, MERCHANT wishes GETI to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for Remote Check Deposit (Check 21 Plus) processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, GETI has established a per account Guarantee Limit, as per the Schedule (located in the Application Approval Box), based on a percentage of the face amount of any and all checks (and a local access [Transaction Fee] fee) as set forth in the pricing section of the agreement presented at MERCHANT'S place of business or at other locations which are listed in any attachments to this Agreement, subject to the terms and conditions set forth in this Agreement. GETI shall reimburse MERCHANT per Schedule, up to the Guarantee Limit, as measured from the date of verification of non-payment, subject to MERCHANT'S compliance with all of the terms and conditions contained in this Agreement or any of GETI'S other published instructions. GETI shall have the right to adjust MERCHANT'S rate including Remote Check Deposit (Check 21 Plus) with Guarantee rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of Remote Check Deposit (Check 21 Plus) check deposits. GETI shall process up to the check limit established for MERCHANT, but will not be responsible for reimbursement of checks exceeding the MERCHANT'S approved guarantee limit. The following transaction types are not included in the Remote Check Deposit (Check 21 Plus) with Guarantee service, and GETI assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data reads, unable to locate account or invalid account number returns, customer chargebacks or customer revocations of any transaction. **Guarantee reimbursement shall only serve to cover MERCHANT losses due to, NSF returns, and Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.**

**10.2 MERCHANT SHALL PAY.** A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks required to the database during the month. As per schedule: a Monthly Check 21 Access Fee, a Monthly Minimum fee and service fee to be paid each month, a transaction fee for each ACH deposit, and a transaction fee for each Remote Check Deposit (Check 21 Plus) inquiry to the database that does not result in a transaction approval and a "batch out" fee equal to the transaction fee, and a Return Fee. A fee of no more than twenty-five dollars may be charged per transaction return. An annual subscription fee of \$59.95 may be debited each year. If MERCHANT terminates this agreement within the first three (3) years of the contract, a one-time termination fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from the MERCHANT'S account for administrative processing. MERCHANT must promptly notify GETI in writing of any dispute regarding fees under this agreement. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by GETI. MERCHANT'S failure to so notify GETI will waive and bar the dispute.

**10.3 CHECK PROCESSING.** MERCHANT shall submit all documentation related to the guaranteed transactions to GETI within forty-eight hours of GETI'S request, including but not limited to sales receipts, invoices, or other documentation related to the transaction.

**10.4 ASSIGNMENT OF CHECKS.** As of the date of this Agreement and by subscribing to Remote Check Deposit (Check 21 Plus) with Guarantee, MERCHANT shall be deemed to have assigned to GETI, without recourse, all of MERCHANT'S right, title and interest in any and all checks, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI'S rights, including suing or prosecution of the customer under all applicable laws.

**10.5 NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify GETI pursuant to the provision set forth in Section 5.3

**11.1 CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, GETI shall have no obligation to reimburse MERCHANT for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by MERCHANT or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by GETI; (d) Lost, stolen, altered or counterfeit, and GETI has reason to believe that MERCHANT failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which MERCHANT has accepted full or partial payment; (f) One of multiple checks presented to MERCHANT in a single transaction for Remote Check Deposit (Check 21 Plus) processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by MERCHANT or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, the closing of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which MERCHANT returns cash back to the customer, unless MERCHANT is approved in writing by GETI for such cash back; (j) Checks for which GETI previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns. In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, not a post office box, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. MERCHANT shall ensure that this identifying information is legibly printed on the check prior to imaging the check.

**11.2 QUALIFIED INSTRUMENTS FOR REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** GETI has set the following guidelines that each instrument must meet to qualify for reimbursement under the Remote Check Deposit (Check 21 Plus) with Guarantee option: (a) At the time of authorization, the individual name or business name must be commercially imprinted on the instrument. In the case of a business entity, the instrument must have the business name and current business address and phone number (as listed with information) commercially imprinted on the check. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee. Drafts will not qualify for check guarantee; (b) Checks drawn on a United States Government entity or account, Cashier's Checks, Certified Checks, Money Orders, Traveler's Check will not qualify for check guarantee; (c) Checks written by one person for goods or services provided to a 3<sup>rd</sup> party do not qualify for guarantee. (d) An instrument must be authorized with a driver's license presented by the consumer to Merchant and viewed by Merchant at the time of authorization; (e) The customer's valid driver's license and the state code found on the "Quick Reference Guide" or if the guide is not available the abbreviation of the state that issued the identification card must be noted on the instrument at the time of authorization; (f) The authorization number received through the GETI approved check imaging device and/or software vehicle must be noted on the instrument at the time of authorization prior to MERCHANT storing the check; (g) A street address must be commercially imprinted on the check. If the current street address is not the one imprinted on the instrument at the time of the authorization, it must be crossed out and the most current address should be written on the check prior to scanning the check through the imaging device. Post Office (PO) Boxes only are not acceptable addresses; (h) If the phone number is not imprinted on the instrument, Merchant must note the phone numbers (home phone and business phone) on the instrument at the time of authorization prior to scanning the check through the imaging device; (i) The date of the instrument must be the date on which the instrument was authorized by GETI (no post-dated or held checks) if merchant was approved for Face to Face Check 21+ POS program; The date of the instrument must be no more than 14 days prior to the date the instrument was authorized by GETI if merchant was approved for Consumer Not Present Check 21+ Remote program; (j) The instrument must be payable to the Merchant's business (checks written to "cash" or "bearer", or to a 3rd party do not qualify for guarantee). (k) The amount authorized and the amount shown in words and figures on the check must agree; (l) The check number of the instrument being authorized must be the same check number given at the time authorization is attempted. No represented check is guaranteed unless the instrument was authorized with the same dollar amount as when the instrument was originally authorized; (m) In the event of a personal instrument, the signature on the check must be the same as the commercially imprinted name on the check and drivers license provided at the time of authorization; (n) The instrument has been filled out completely by the customer, has not been altered, or has not been tendered in whole or in



part in exchange for cash, or was not payment for a prior debt due or a financed obligation; (o) The Merchant did not subsequently receive value in full or in part for the dishonored instrument from the presenter in the form of cash payment, credit, service, exchange or repossession; (p) The instrument was not dishonored as a result of a "stop payment" order issued by the presenter to the financial institution; (q) The instrument was not previously denied by GETI based on the same or different driver's license number, which was previously presented for authorization by Merchant. The instrument must be authorized by entering the correct ID number into the GETI approved check imaging device and/or an approved software vehicle at the time of authorization; (r) The instrument was not one of multiple instruments or payment methods presented to Merchant for sales made that day (no splitting of checks); (s) GETI reserves the right and Merchant acknowledges that a receipt for the products and services provided to the check writer may be requested. The delivery of this receipt must be postmarked or faxed within 48 hours of the request and its acceptance by GETI will be required to qualify the claim for payment; (t) Merchant must have followed instructions contained in GETI's Merchant Quick Reference Guide or other authorized, current published instructions; (u) Merchant acknowledges that first time check writers may have a lesser check limit than those of frequent check writers and check limits are based on not only dollar amount, but number of checks written in a period of time to be determined solely by GETI; (v) The instrument was not issued in connection with a transaction described herein. Merchant must comply with the terms and conditions of this agreement, including but not limited to, the requirements described herein; (w) The Merchant, or its agents, and employees must not accept any instrument with prior knowledge that the instrument is likely to be dishonored or that the identification used was forged, stolen, or otherwise did not belong to the check writer, or that the transaction for which the instrument was tendered is illegal, void, or invalid.

**11.3. STOP PAYMENT COVERAGE.** GETI agrees to waive section 11.2 (n) and to guarantee Stop Payment instruments up to the limit which was approved by GETI's underwriting department at the time of acceptance, provided that Merchant shall have performed all of his obligations related to the issuance of said qualified instrument and is compliant with Section 11.1 and 11.2. At GETI's request, Merchant shall provide written information regarding any claim for reimbursement of a Stop Payment instrument. Stop Payment Coverage must be indicated (separate addendum) by Merchant upon the initial acceptance by GETI and must be approved and accepted by GETI in addition to this agreement. Stop Payment Coverage does not cover business account checks, only personal accounts. This coverage is not available to all business types and GETI reserves the right to determine which business types will be eligible for Stop Payment Coverage.

**11.4. PAYROLL CHECK CASHING COVERAGE.** GETI agrees to waive section 11.1 (i) and 11.2 (j) and to guarantee Payroll Checks cashed by MERCHANT up to the limit which was approved by GETI's underwriting department at the time of acceptance (maximum \$500.00 limit unless approved in writing by GETI in advance), provided that Merchant shall have performed all of his obligations related to the issuance of said qualified instrument and is compliant with all other requirements of Sections 11.1 and 11.2. Payroll Check Cashing Coverage must be indicated by marking the Payroll Guarantee section on the front of this Agreement upon the initial acceptance by GETI and must be approved and accepted by GETI in addition to this agreement. Merchant agrees that Payroll Checks will be funded on a different schedule than Sale transactions and will usually be made available in Merchant's account within 8 banking days. Payroll Check Guarantee does not cover checks drawn on personal accounts or any check payable to "cash", only valid business payroll checks drawn on a valid business account. Payroll check must contain a preprinted business address on the face of the check and the work phone number for the employee cashing the check must be hand written on the face of the check prior to imaging the check in order to qualify for guarantee reimbursement. Merchant is required to have payee place their thumbprint on the check prior to imaging the check. Merchant must carefully inspect the employee's valid photo driver's license to insure that the photo and descriptive information correctly identifies the person whom the check is made payable to; payee must be the same person attempting to cash the check. GETI will assign Merchant's equipment or software a separate Terminal ID specifically for Payroll Check cashing. Merchant must process all Payroll Checks under the GETI assigned terminal ID labeled "Paycheck". Additionally, if prompted by the terminal, Payroll Checks must be processed by selecting Payroll/Business check type on the GETI approved check imaging device. Merchant shall be charged an additional discount for all checks processed as Payroll/Business if Payroll Check Cashing Coverage is in effect. This coverage is not available to all business types and GETI reserves the right to determine which business types will be eligible for Payroll Check Cashing Coverage.

**12.1. COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT agrees to comply with all applicable state or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to rules and procedural guidelines established by the Federal Trade Commission ("FTC") and Regulation E. MERCHANT is solely responsible for any and all losses incurred by MERCHANT or GETI in the event MERCHANT initiates any transaction prohibited by Regulation E Rules or other rules or laws of the United States of America ("USA") or in breach of this Agreement. MERCHANT shall provide such information and certifications as GETI may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by GETI or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as GETI may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to GETI pursuant to this Agreement. MERCHANT further agrees to provide to GETI from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as GETI may request. MERCHANT grants to GETI continuing authority to conduct credit checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes GETI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. GETI may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to GETI and provide GETI with the opportunity to terminate this Agreement.

**13.1. CHECK RETENTION.** GETI requires that MERCHANT retain and store the original check in a secure location for the period of at least ninety (90) days. In the event a Remote Capture Deposit (Check 21 Plus) transaction cannot be processed due to a poor quality check image, MERCHANT shall be notified by GETI in writing (and/or by phone, fax, or email) to manually deposit the check. Once notification has been received, MERCHANT is to deposit the check at their bank within 48 hours. Failure to deposit the check in Merchant's bank account within 48 hours may result in a loss of guarantee. If the manually deposited check is subsequently returned by the check writers bank, MERCHANT shall mail the check to GETI (P.O. Box 6867, Destin, FL 32550) to submit for a claim for reimbursement (if merchant selected the Remote Check Deposit (Check 21) with Guarantee program on the front of this application). In any event, the instrument must be received by GETI within 45 days of GETI's initial authorization of the instrument (if guarantee service is selected). **If original check was not returned or was lost by merchant then MERCHANT acknowledges that GETI will not be able to process the Remote Check Deposit (Check 21 Plus) transaction, provide any sort of guarantee, or provide check collection services.** Refer to section 4.4 regarding Image Requirements.

**14.1. ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit GETI to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to GETI shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

**15.1. ADDITIONAL GETI RESPONSIBILITIES.** GETI will accept double sided check images from a GETI approved check imager/software vehicle on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by MERCHANT to originate its entries in the Remote Check Deposit (Check 21 Plus) network. MERCHANT understands and agrees that GETI may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At MERCHANT'S written request, GETI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

**16.1. INDEMNIFICATION.** MERCHANT agrees to indemnify GETI for any cost, expense, and damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

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

**18.1. ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of GETI. GETI may freely assign this Agreement, its rights, benefits and duties hereunder.

**18.2. TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT must provide sixty (60) days written notice to GETI of termination and monthly minimum and subscription fees will continue in effect for this time. If Merchant terminates this agreement within the first three (3) years of the contract, a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from MERCHANT'S account. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT.

**19.1. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

**20.1. SCHEDULE OF FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Discount Fee, Transaction Fees, Return Fee per returned item, Minimum Monthly Discount Fee, Subscription Fee, Monthly Check 21 Access Fee, Batch Out Fee, Termination Fee and other terms and conditions in effect on the commencement date of this Agreement. GETI reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to MERCHANT.

**20.2. APPLICATION FEE.** Any application fee paid to GETI is non-refundable whether or not MERCHANT and this Agreement are accepted by GETI.

**21.1. ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between GETI and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI and the MERCHANT with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which GETI, the Originating Depository Financial Institution (ODFI) or MERCHANT is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and GETI, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.

**22.1. AMENDMENTS.** As stated in paragraph 21.1, GETI, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the Remote Check Deposit (Check 21 Plus) services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

**23.1. BINDING AGREEMENT-BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against GETI.

**24.1. ATTORNEYS' FEES.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT GETI shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

**25.1. CHOICE OF LAW, VENUE & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the Federal Trade Commission and Regulation E Rules. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. To the extent that an issue arises which is not covered by the Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. MERCHANT acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by GETI.

**26.1. SEVERABILITY.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

**27.1. HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

**28.1. EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by GETI.

**29.1. IN WITNESS WHEREOF.** The parties hereto have caused this Agreement to be executed by their duly authorized officers.

**Check Resultz, LLC, or a successor service provider as agreed upon by Processor shall be the Service Provider for all Check Recovery Services.**

#### **SPECIFIC TERMS FOR CHECK RECOVERY SERVICES**

Check Resultz, LLC, an Indiana corporation, or such other service provider as otherwise designated by Processor shall be the Service Provider for all check recovery services.

1. Merchant authorizes Check Resultz, LLC an Indiana Limited Liability company, or such other service provider designated by Processor (any such service provider, "Check Recovery Provider"), to act as its processor to re-present, in accordance with the RCK rules of National Automated Clearing House Association (NACHA), all returned check items forwarded to Check Recovery Provider by Merchant. Merchant understands that Check Recovery Provider is acting as a 3rd party processor of ACH transactions and NOT in the capacity of a collection agency. Check Recovery Provider agrees to perform all services hereunder in a good and professional manner, and agrees to keep all information about Merchant, its affiliates and its customers confidential.
2. In addition to re-presentation of returned checks, Merchant authorizes Check Recovery Provider to originate separate electronic debits for return fees in an amount posted by the Merchant and authorized by the check writer as described in the Merchant application. Returned item fees must not exceed the maximum allowed by State law(s).
3. Merchant agrees to display check writer notices as reasonably required by Check Recovery Provider at all point of sale locations.
4. Merchant agrees to complete and forward a Return Item Release Authorization to the bank(s) utilized by Merchant instructing the bank to forward all returned items to Check Recovery Provider after first presentation.
5. In the event Check Recovery Provider overpays Merchant due to miscalculation, Merchant agrees to return excess funds to Check Recovery Provider. Thus, if Check Recovery Provider deposits in error, an amount to Merchant less the face value of check, Check Recovery Provider agrees to remit correct payment to Merchant up to face value of check.

6. Check Recovery Provider will notify Merchant of new returned items every 1 day(s) and will deposit collected items to the Merchant's account via ACH credit or a paper check after successful electronic re-presentation of the item. These payments will be made via check \_7\_ day(s) after recovery or via ACH to account.
7. Merchant understands that Check Recovery Provider is debiting items on Merchant's behalf and that Check Recovery Provider will charge a transaction fee to the check writer equal to an amount equal to or less than allowed by the applicable state where the Merchant is located for each item successfully processed, with the maximum number of \_2\_ attempts per item. Check Recovery Provider does not guarantee successful electronic re-presentation or payment of any return item presented to Check Recovery Provider.
8. Check Recovery Provider retains the right to refuse to process any transactions not properly submitted by Merchant. Merchant must agree to obtain proper authorization for any return fee to be charged before submitting return.
9. Any dispute between Merchant and check writer relating to a check transaction shall be settled between Merchant and check writer. Unless due to Check Recovery Provider negligence or willful misconduct, Merchant agrees to indemnify and hold Check Recovery Provider harmless from any claim, liability, loss or expenditure resulting from Merchant's actions, including but not limited to failing to obtain written authorizations or post check writer notices as required by NACHA and this agreement.
10. Where applicable, all transactions covered by this Agreement are governed by NACHA's Operating Rules, Regulation E established by the Federal Reserve Board, UCC Article 4, The Electronic Funds Transfer Act and other applicable laws and regulations. Otherwise, the laws of the State of Indiana shall govern this Agreement.
11. In the event the Merchant's bank has not forwarded to Check Recovery Provider any returned check items for any preceding six (6) month period, Check Recovery Provider shall have the right to assess Merchant a \$5 per month inactivity fee ("Inactivity Fee").
12. If either party fails to comply with any term of this Agreement or any applicable laws or regulations cited in this Agreement, after 30 days written notice and opportunity to cure, the non-defaulting party may terminate this Agreement by giving notice to the defaulting party. If this Agreement is terminated for any reason, Check Recovery Provider will continue to process any and all returned check items currently in the electronic re-presentation process.
13. Either party may terminate this Agreement without any cancellation fee by giving the other party thirty (30) days written notice of termination. Termination will have no effect on items already in the electronic re-presentation process.

**SCHEDULE III**  
*Voyager Fleet Card Terms and Conditions*

If Merchant elects to accept Voyager Fleet Cards, the following terms and conditions shall apply. Capitalized terms used but not defined in these Terms and Conditions shall have the means ascribed to them in the Agreement.

**1. GENERAL.**

- A. Processor and Voyager Fleet Systems, Inc. (“VFSI”) each have adopted rules and regulations relating to all aspects of acceptance and processing of Voyager Fleet Cards (“Voyager Cards”). Such rules and regulations, as amended from time to time, are incorporated into these Terms and Conditions by reference and shall be referred to as the “Voyager Rules”. The current Voyager Rules are set forth in Section 5 of these Terms and Conditions.
- B. As a result of Merchant submitting transactions resulting from acceptance of Voyager Cards (“Voyager Sales”) for processing to Processor, Processor will process such Voyager Sales and credit or debit Merchant’s Merchant Account with the resulting proceeds. In addition, when a disputed transaction or chargeback occurs, Merchant agrees to provide all requested information to Processor and Processor agrees to forward such information to VFSI in accordance with the Voyager Rules. Processor is not responsible for the outcome of any chargeback.
- C. Merchant agrees that these Terms and Conditions are confidential and will not disclose them to any third party without the prior written consent of Processor.
- D. Merchant shall comply with the Voyager Rules as amended from time to time. Processor may amend the Voyager Rules at any time. Submission by Merchant of Voyager Sales any time after 7 days from the date of distribution of amended Voyager Rules to Merchant’s address, shall be evidence that Merchant has received the amended Voyager Rules and has agreed to abide by them.

**2. PROCESSING RESTRICTIONS DUE TO THIRD PARTY PROVIDERS.**

Processor can only process Voyager Sales received by Processor, and Merchant is responsible for ensuring Voyager Sales are formatted and transmitted to Processor in accordance with the then current requirements of Processor and VFSI. Processor may increase processing fees if a third party presents Voyager Sales transactions not in accordance with the then current requirements. Merchant assumes full responsibility and liability for a Third Party Service Providers’ failure to comply with the Voyager Rules. Merchant is responsible for obtaining from the Third Party Service Provider any information needed by Processor. Merchant understands that disputes involving a Third Party Service Provider must be dealt with independently from Processor. If disputes are unresolved and relate to these Terms and Conditions, Merchant shall notify Processor at the address set forth below. Merchant must pay Processor pursuant to the Agreement and these Terms and Conditions regardless of any disputes Merchant has with any Third Party Service Provider.

**3. TAX CALCULATION, PAYMENT AND INDEMNITIES.**

- A. Tax Liability. Merchant shall be liable for the reporting, calculating, remittance or payment of tax, interest and penalties associated with the use of Voyager Cards at its location(s). Processor shall not be liable for and Merchant agrees to indemnify and hold harmless Processor, its parent, their subsidiaries and affiliates, and all of the foregoing entities’ respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of tax associated with the use of the Voyager Card at Merchant location(s). Processor may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify Processor for reasonable attorney’s fees or any other necessary expenses incurred by Processor by reason of such defense.
- B. Registration Form. For tax calculation purposes, Merchant shall be required to sign the Registration Form attached hereto and fully incorporated by this reference. Receipt of the signed registration form must be received by Processor prior to acceptance of any Voyager Cards by Merchant.

**4. VOYAGER DISCOUNT PROGRAM AND DISCOUNT PAYMENT.**

- A. Participation in Voyager Discount Program. Merchant shall immediately notify Processor in writing if Merchant is participating in a Voyager Discount Program. Processor will begin processing the discount 60 days from the date Processor receives written notice of participation.
- B. Liability Related to Discount Program. Merchant shall be liable for the reporting, calculating, remittance or payment of the discount. Processor shall not be liable for and MERCHANT agrees to indemnify and hold harmless Processor, its parent, their subsidiaries and affiliates, and all of the foregoing entities’ respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of the discount. Processor may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify Processor for reasonable attorney’s fees or any other necessary expenses incurred by Processor by reason of such defense.

**5. RULES**

- A. Merchant shall honor all valid Voyager Cards for purchases pursuant to the Agreement. Merchant shall check the expiration date and any printed restrictions for both electronic and manual transactions.
- B. Merchant shall obtain a valid authorization for each transaction. Merchant shall bear all risks of accepting a Voyager Card without obtaining a valid authorization. If Merchant receives a decline, the Voyager Card shall not be used to complete the Voyager Sale. There shall be a \$0.00 floor limit for all electronic transactions.
- C. For customer-activated terminals, Merchant shall pre-authorize the Voyager Card to VFSI with values indicating that the Voyager Sale is a customer-activated sale. Upon approval, Merchant shall insure that the fuel dispenser authorizes for up to \$150.00. It is the responsibility of Merchant to find a third party processor or system integrator that is certified by VFSI to process Voyager transactions.
- D. Merchant shall insure that all cashier-assisted electronic sales drafts and credit vouchers shall be completed to include POS terminal print showing the Voyager Card account name encoded in the mag-strip (if POS function is applicable), account number (if permitted by Law), sub number, expiration date of the Voyager Card, the signature of the authorized user, the transaction date and time, type of fuel sold, a description of the service rendered (if requested), odometer reading (as permitted by the electronic POS device), total Voyager Sale price, and the authorization number.
- E. Merchant shall not process manually prepared sales drafts.
- F. If there is a time-out or response message on the POS device indicating that the authorization system is unavailable, Merchant must telephone VFSI for authorization.
- G. If an electronic authorization cannot be achieved at a card-activated POS device due to technical difficulties, the Voyager cardholder shall be referred to the station attendant if during Merchant’s open business hours.
- H. Merchant shall establish a fair policy for the exchange and return of merchandise. Merchant shall promptly submit credits for any returns that are to be credited to the Voyager cardholder account.
- I. Merchant shall not give any cash refunds to any Voyager cardholder in connection with a Voyager Sale.

## Schedule IV EBT Transactions

Capitalized terms that are used herein but not defined herein will have the meaning as set forth in the Agreement.

If elected by Merchant on the Application, Merchant wishes to purchase from Processor and Member Bank and Processor and Member Bank wish to sell to Merchant certain services necessary for the authorization, processing and settlement of point of sale EBT transactions submitted to the EBT Networks and which transactions are initiated through Merchant in connection with the authorization, providing and/or issuance of United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and/or Temporary Assistance to Needed Families ("TANF") benefits and/or other government delivered cash assistance benefits ("Cash Benefits" with FS Benefits, "Benefits") to benefit recipients in the EBT Project areas ("Recipients") supported by Processor and Member Bank through the applicable gateway through the use of a State-issued Benefit Security Card ("EBT Card") issued by a state participating in the EBT Project and benefit recipients of other states not within the Project area ("Other Recipients"). Merchant agrees to provide and/or issue Benefits at each of its locations to the Recipient as hereinafter provided and in accordance with the procedures specified by Processor and/or Member Bank, the applicable EBT Network or State's EBT rules and regulations as amended from time to time and all applicable laws governing the issuance and/or provision of Benefits. Merchant will provide each Recipient a receipt for each Benefit issuance transaction undertaken by Merchant. Merchant will be solely responsible for the issuance of Benefits other than in accordance with authorizations received from us.

Merchant will provide Processor, upon execution of this Agreement, with a complete list of all of its locations in the continental United States where Merchant desires to accept EBT Cards, with correct and complete mailing addresses and complete telephone numbers, in location number order. Merchant will provide an updated list at Processor's request or as changes occur. All locations from which Merchant accepts EBT Cards will be subject to this Agreement and will be included on the lists provided from time to time by Merchant.

Merchant will honor any valid EBT Card properly tendered for use when it is presented with a valid personal identification number (PIN). Merchant will not engage in acceptance practices or procedures that discourage the use of any valid EBT Card. Merchant will not complete any point-of-sale EBT Card transaction that has not been authorized. Merchant will ensure that if Recipient enters a valid PIN, Merchant will not require another form of identification from Recipient unless Merchant has grounds to suspect fraud.

Merchant will provide and/or issue Benefits to Recipients, in accordance with the policies and Rules in the amount authorized through Merchant's point-of-sale terminal, with PIN Pad and printer ("Equipment"), upon presentation by Recipient of an EBT Card and Recipient entry of a valid PIN. Merchant agrees that in the event of failure of the Equipment to print Benefit issuance information as approved and validated as a legitimate transaction, Merchant will comply with Processor's and Member Bank's procedures and rules for authorization of Benefits in such instance.

If Merchant has agreed to Cash Benefits, Merchant agrees to maintain adequate cash on hand to issue and/or provide confirmed Cash Benefits and will issue and/or provide Cash Benefits to Recipients in the same manner and to the same extent cash is provided to Merchant's other customers. Merchant will not require, and will not in the advertising suggest, that any Recipient must purchase goods or services at its facilities as a condition to the issuance and/or provision of Cash Benefits to such Recipient, unless such condition applies to other customers as well. Merchant will not designate special checkout lanes restricted to use by Recipients, provided that if Merchant designates special checkout lanes for electronic debit, or credit cards and/or other payment methods such as checks or other than cash, Recipients may be directed to such lanes so long as other customers are directed there as well.

If Merchant supports the issuance and/or provision of FS Benefits through manual benefit issuance procedures during the period of time when manual benefit issuance is not possible, then the following limitations will apply to manual issuance and/or provision of FS Benefits by Merchant.

- (i) Merchant must receive an authorization number for the amount of the purchase via telephone at the time of sale.
- (ii) Specified Recipient, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft form.
- (iii) The manual sales draft must be submitted to the applicable EBT Network for processing within ten (10) calendar days following the date of authorization or any such earlier period of time specified in any applicable Rules or regulations.
- (iv) Except as otherwise specifically provided by any applicable Rules or laws, Merchant will not be reimbursed and will be solely responsible for all manual transactions when Merchant fails to obtain an authorization number at the time of sale or otherwise fail to process the manual transactions in accordance with any applicable Rules or laws.
- (v) Except as otherwise specifically provided by any applicable Rules or laws, Merchant may not "resubmit" a manual sales draft for payment if insufficient funds exist at the time that the manual sales draft is presented for processing and payment.

Merchant agrees to comply with all applicable laws and Rules in the performance of its obligations under this Schedule V and the Agreement, including without limitation, laws pertaining to delivery of goods and services to Benefit Recipients and Benefit Recipient confidentiality, and the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with

Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture pertaining to Food Stamp Program regulation.

Merchant agrees to comply with Quest Operating Rules issued by the National Automated Clearing House Association ("NACHA") as approved by FNS or the Federal Reserve Bank and such other Rules and regulations as may be applicable to the providing and/or issuance of Benefits by Merchant hereunder. Merchant agrees to comply with all additional procedures specified by the State or EBT Networks, regarding lost EBT Cards, forgotten PINs, discrepancies in Benefits authorized and similar matters.

Merchant will not accept any EBT Card for any purpose other than the providing and/or issuance of Benefits, including without limitation as security for repayment of any Recipient obligation to Merchant. In the event of any violation of this provision, Merchant will be obligated to reimburse the State for any Benefits unlawfully received by either Recipient or Merchant.

Merchant agrees to separately maintain records of EBT transactions as may be reasonably requested or required by the State or its designated agent and to promptly make such records available for audit upon request to representatives of the State or its designated agent, or other authorized State or Federal government agency during normal business hours.

To assure compliance with this Agreement, the State, its designated agent, or other authorized State or Federal governmental agency, will at all times have the right to enter, during normal business hours, Merchant's premise to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by Merchant or otherwise related to this Schedule V or the Agreement.

Merchant agrees to maintain and preserve all financial records or documentation arising hereunder during the course of this Agreement and for a period of three (3) years following Benefit provision and/or issuance, or for such additional period as applicable regulations or law may require. Records involving matters in litigation will be kept for a period of not less than five (5) years following the termination of the litigation.

If Merchant provides or issues FS Benefits under this Agreement, Merchant represents and warrants to Processor and Member Bank that Merchant is a FNS authorized retailer and Merchant is not currently disqualified or withdrawn from redeeming food stamps or otherwise disqualified or withdrawn by FNS. Merchant agrees to secure and maintain at its own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the providing and/or issuance and distribution of Benefits under this Schedule V and the Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that Merchant will not issue Benefits at any time during which Merchant is not in compliance with the requirements of any applicable law.

Merchant's authority to issue Benefits may be suspended or terminated by the State or its agents or contractors, in their sole discretion, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of Processor's or Member Bank's ability to provide EBT processing services, or (ii) failure by Merchant, upon not less than thirty (30) days prior written notice, to cure any breach by Merchant of the provisions of these terms and conditions, including without limitation, Merchant's (a) failure to support the issuance of Benefits during its normal business hours consistent with Merchant's normal business practices, (b) failure to comply with issuance procedures, (c) impermissible acceptance of an EBT card, or (d) disqualification or withdrawal of the FS program. Processor and/or Member Bank may terminate this Schedule V if Merchant is disqualified or withdrawn from the Benefit issuance program(s) indicated on the Merchant Application.

If Merchant provides and/or issue EBT Benefits in more than one State pursuant to this Schedule V and the Agreement, the laws of the State in which the Benefits were issued will apply to information arising out of that transaction.

Processor and Member Bank will charge Merchant a fee for each EBT Card transaction as set forth on the Merchant Application regardless of whether said transaction is approved, declined or determined invalid. Merchant acknowledges that the fees set forth on the Merchant Application are based upon certain EBT Network, State, gateway and access fees currently in effect, and upon certain sponsorship arrangements made by us with an EBT Network for Merchant's sponsorship needed to participate in the EBT project and to certain other States not within the EBT Project area. Merchant agrees that should any State or U.S. government entity or any of a State's or U.S. government's designated agents charge a fee or assess any charges or increase any fees on or in connection with EBT Card transactions, then Processor and Member Bank will have the right to adjust its fees. Merchant agrees to pay for all gateway and access fees, EBT Network fees, setup, adjustment or chargeback fees which may be imposed by Processor or Member Bank, an EBT Network or a State participating in the EBT Project. Processor and Member Bank will charge Merchant the daily/monthly fees as set forth on the Merchant Application for the services to be provided pursuant to this Schedule V and such amounts will be payable as provided for in Section 6. Said fees may be collected hereunder in accordance with the terms and provisions of this Schedule V, the Agreement and the Merchant Application.

**Schedule V  
Wireless Terminals**

**If Merchant elects to use wireless terminals and receive wireless services from the carriers noted below, the following terms and conditions shall apply:**

Capitalized terms that are used herein but not defined herein will have the meaning as set forth in the Agreement.

1. If Merchant (the "End User") has a wireless terminal that uses the **GPRS Services** of **AT&T** ("Wireless Service Carrier" or "Underlying Carrier"), the following terms and conditions apply.
  - (a) END USER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE CARRIER AND END USER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TRANSACTION NETWORK SERVICES, INC. AND UNDERLYING CARRIER. END USER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO END USER. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, END USER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR THE SERVICES DURING THE TWO (2)-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE.
  - (b) END USER SHALL INDEMNIFY AND HOLD HARMLESS THE UNDERLYING WIRELESS SERVICE CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.
  - (c) END USER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.
  - (d) END USER UNDERSTANDS THAT TRANSACTION NETWORK SERVICES, INC. AND THE UNDERLYING CARRIER CANNOT GUARANTY THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES.
2. If Merchant (the "End User") has a wireless terminal that uses the **CDMA Services** of **Verizon** or **Sprint** ("Wireless Service Carrier" or "Underlying Carrier"), the following terms and conditions apply.
  - (a) END USER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE CARRIER AND END USER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TRANSACTION NETWORK SERVICES, INC. AND UNDERLYING CARRIER. END USER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO END USER. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, END USER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY END USER FOR THE SERVICES DURING THE TWO (2)-MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE.
  - (b) END USER SHALL INDEMNIFY AND HOLD HARMLESS THE UNDERLYING WIRELESS SERVICE CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.
  - (c) END USER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.
  - (d) END USER UNDERSTANDS THAT TRANSACTION NETWORK SERVICES, INC. AND THE UNDERLYING CARRIER CANNOT GUARANTY THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES.