

# Terms and Conditions

Processing Terms and Conditions  
Funds Transfer Instructions  
Card Brand Rules  
ATM/Debit Network Rules  
CPC Products and Services  
TMS Discover Agreement  
American Express OptBlue<sup>SM</sup> Program Agreement  
Addendum

Provided by



First National Bank of Omaha  
800.853.9586  
Member Bank for Visa, Inc. and MasterCard International, Inc.

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## PROCESSING TERMS AND CONDITIONS

This Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), is by and among the parties in the Merchant Application (the "PARTIES"). The AGREEMENT shall become effective as set out in the signature block of the Merchant Application.

- A. WHEREAS, BANK is a Member of VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD"), and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, and other financial service card organizations, including ATM/Debit networks (together herein known as "CARD(S)"); VISA, MASTERCARD, ATM/Debit Networks, and the other financial service card organizations shall be collectively known as "CARD BRANDS";
- B. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and have BANK process the resulting transactions ("SALES") pursuant to the terms and conditions set out below. For purposes of this AGREEMENT, ATM/Debit transactions shall mean those transactions processed on an ATM/Debit network ("NETWORK(S)") in an on-line real time environment requiring the entry of a personal identification number ("PIN");
- C. WHEREAS, MERCHANT may desire to be sponsored as a participant in certain NETWORKS, under the terms of the rules and regulations of each such NETWORK;
- D. WHEREAS, CARD BRANDS and BANK each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated herein by this reference and shall be referred to as the "RULES"; and
- E. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing.
- F. WHEREAS, BANK has assigned and/or delegated some of its rights and obligations under this AGREEMENT to TSYS Merchant Solutions, LLC ("TMS"); provided however that it is able to do so by the CARD BRANDS, NETWORKS, RULES, and any applicable law. To the extent that BANK has assigned and/or delegated rights and/or obligations to TMS under any particular provision of this AGREEMENT, references to BANK in such provisions shall include TMS.;
- G. WHEREAS, all applicable ADDENDA are attached hereto and are made a part of this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

### **1. GENERAL:**

- 1.1 As a result of MERCHANT submitting SALES for processing to BANK, BANK will process such SALES and credit or debit MERCHANT's DESIGNATED ACCOUNT (as defined herein) with the resulting financial proceeds of such SALES, provided, however, that no payment for SALES will take place unless and until BANK has received payment for such SALES from the CARD BRANDS. In addition, when a disputed transaction ("CHARGEBACK") occurs, MERCHANT agrees to provide all requested information to BANK and BANK agrees to forward such information to the CARD BRANDS in accordance with the RULES and the CARD BRANDS' dispute resolution guidelines. BANK is not responsible for the outcome of any CHARGEBACK.
- 1.2 The CARDS designated herein will be processed under the terms and conditions of the AGREEMENT as long as BANK is contractually permitted to offer such SERVICES by the respective CARD BRANDS.
- 1.3 On an exclusive basis, MERCHANT agrees to submit all SALES for processing from CARDS accepted in MERCHANT's business as described in the Merchant Application to BANK in accordance with the RULES and pursuant to the terms of this AGREEMENT.
- 1.4 MERCHANT and BANK agree to abide by the RULES, a summary of which is attached hereto as the CARD BRAND RULES and the ATM/DEBIT NETWORK RULES. The attached summaries are incorporated into the collective definition of the RULES. BANK and CARD BRANDS may from time to time amend the RULES or operating procedures related to SALES and SERVICES. MERCHANT has been supplied with a summary of the RULES and by signing AGREEMENT, acknowledges that it has reviewed them. MERCHANT agrees to comply with all applicable state, federal and local laws, rules and regulations ("LAWS"). MERCHANT agrees to assist BANK in complying in a complete and timely manner with all LAWS and RULES now or hereafter applicable to any SALE or this AGREEMENT. MERCHANT will execute and deliver to BANK all such instruments that BANK may from time to time deem necessary. It is MERCHANT's responsibility to know all applicable LAWS and the RULES that apply to MERCHANT's acceptance of CARDS and to ensure that MERCHANT's equipment complies with all LAWS and RULES. MERCHANT agrees to indemnify, defend, and hold BANK harmless from and against any loss, cost or damage (including reasonable legal fees and court costs) incurred as a result of MERCHANT's failure to comply with applicable LAWS or RULES.
- 1.5 MERCHANT agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of BANK, including but not limited to the terms of this AGREEMENT, and will safeguard such information and data by using a reasonable degree of care but in no event less than the same degree of care that MERCHANT uses to protect its own confidential information.

## 1.6 Security Standards.

- A. MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by LAWS or RULES. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. 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 deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction.
  - B. If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify BANK of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must: (1) only allow the Merchant Providers access to the cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at [www.visa.com](http://www.visa.com)) and the MasterCard Site Data Protection Program ("SDP") (found at [www.mastercard.com](http://www.mastercard.com)) and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify BANK 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 CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers' ability to prevent future security violations. Any fees, fines or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify BANK and the CARD BRANDS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information.
  - C. 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 BANK, a CARD BRAND, other financial institutions, or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT and BANK) be considered BANK's confidential information. MERCHANT agrees that BANK may release to the CARD BRANDS, other financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to BANK in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the CARD BRANDS' websites.
- 1.7 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of or publication by the CARD BRANDS of amended RULES to MERCHANT shall be evidence that MERCHANT was provided with and/or received access to the amended RULES and has agreed to abide by them.
- 1.8 If MERCHANT is a healthcare provider or other entity covered by the Health Insurance Portability and Accountability Act of 1996, as amended, and the supporting regulations under 45 C.F.R. Part 160 and 164, as amended, MERCHANT agrees it will not provide BANK with Protected Healthcare Information (as defined in such act).

## **2. SPECIFIC OPERATING PROCEDURES:**

- 2.1 MERCHANT agrees that it will comply with all Card Acceptance Procedures in the RULES for each SALE, including, but not limited to the following:
- A. MERCHANT agrees that it will obtain and record a valid positive authorization for all SALES in accordance with the RULES before submitting them to BANK for processing;
  - B. MERCHANT must be able to prove, by evidence of a terminal capture of the magnetic stripe or a signed SALES DRAFT (as defined in the RULES) showing imprint of the CARD, that the CARD was present at the time of SALE, unless specifically set up for Card Not Present transactions; and
  - C. Failure to read the magnetic stripe on the card may result in a DISCOUNT rate tier downgrade or a CHARGEBACK.
- 2.2 BANK and/or third party banks with which BANK has a relationship are members of certain NETWORKS and are willing to sponsor MERCHANT as a participant in such NETWORKS ("SPONSOR") as set forth in the Merchant Application. Additional NETWORKS may be available from time to time. BANK does not warrant the continuing availability of any NETWORK. MERCHANT agrees to pay BANK the then current FEES for any NETWORK added or deleted after the effective date of this AGREEMENT. MERCHANT hereby delegates to BANK the authority to decide to which NETWORK a given debit transaction will be routed.
- 2.3 MERCHANT agrees to accept valid CARDS of each of the selected NETWORKS and any minimums, maximums or surcharges imposed by MERCHANT will be in accordance with the NETWORKS, RULES and LAWS. MERCHANT agrees to comply with Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.
- 2.4 BANK may provide MERCHANT access through MERCHANT's terminals to the NETWORKS as set forth herein.

2.5 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 by which MERCHANT totals and settles all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmits the information to BANK. In all cases, MERCHANT must present the record within three (3) business days after the transaction date, unless otherwise permitted by the RULES. Transactions contained in an untimely Batch Out may incur higher rates, be refused, be held for a one hundred eighty (180) day period, or become subject to a CHARGEBACK. MERCHANT is responsible for re-submitting a Batch Out or a sales ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. BANK is not liable to MERCHANT for higher rates or for amounts BANK did not collect, including but not limited to amounts collected by third party service providers.

### **3. PAYMENT OF SUMS DUE:**

- 3.1 MERCHANT agrees to pay BANK the fees as set forth in the Merchant Application and all other sums owed to BANK for SALES and SERVICES as set forth in this AGREEMENT as amended from time to time ("FEES"). FEES include but are not limited to all CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to BANK by any affiliated entities of MERCHANT.
- 3.2 As set out in the Merchant Application and the Rate Descriptions, discount ("DISCOUNT") is a FEE charged as a percentage of gross SALES submitted by MERCHANT, which generally includes "Processing," "Authorizations," "Assessments," and "Interchange." Assessments and Interchange are the standard fees that the CARD BRANDS charge for the clearing of SALES transactions and are subject to change by the CARD BRANDS. BANK has no direct control over these fees. Any adjustment in Interchange and Assessments by the CARD BRANDS may result in an adjustment to MERCHANT's DISCOUNT. BANK will notify MERCHANT in writing of any change in FEES caused by action of CARD BRANDS prior to any such change becoming effective. If permitted by the CARD BRANDS, notice to MERCHANT of any change in FEES caused by CARD BRANDS may be less than thirty (30) days.
- 3.3 DISCOUNT is quoted by BANK based on the information supplied by MERCHANT as set forth in the Merchant Application. MERCHANT agrees that the FEES are based on the term of this AGREEMENT, the method of processing, and the information set forth in the Merchant Application. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, BANK may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change, unless prohibited by the CARD BRANDS. MERCHANT agrees to pay such amended and/or additional FEES.
- 3.4 MERCHANT agrees that FEES not listed in the AGREEMENT will be charged at BANK's current rate.
- 3.5 The FEES may be amended by BANK on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.6 MERCHANT agrees to pay BANK for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that BANK is in no way financially responsible for CHARGEBACKS. Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS. MERCHANT's obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.
- 3.7 If the CARD BRANDS or a regulatory body governing BANK should levy a fine or penalty or assess a charge to BANK as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.8 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions set out herein, authorizes BANK to make deposits and withdrawals from the DESIGNATED ACCOUNT. MERCHANT hereby grants to BANK a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT's (or any related entity under MERCHANT's control) obligations to BANK under this AGREEMENT. If required by BANK, MERCHANT agrees to cooperate with BANK and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount specified by BANK and MERCHANT agrees to deposit funds into the DESIGNATED ACCOUNT so that the minimum balance required by BANK is maintained. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. BANK may recoup and debit from the DESIGNATED ACCOUNT all non-VISA and non-MASTERCARD related FEES and other obligations due to BANK under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with BANK without prior notice to MERCHANT. BANK may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to BANK under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with BANK without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the DESIGNATED ACCOUNT, if any, shall be paid to MERCHANT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from BANK with respect to the DESIGNATED ACCOUNT. MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due BANK under this AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a RESERVE ACCOUNT, as defined below, is established, MERCHANT authorizes BANK to make withdrawals from the DESIGNATED ACCOUNT to replenish the RESERVE ACCOUNT as necessary.
- 3.9 MERCHANT agrees to provide BANK with a deposit in the amount of money required by BANK ("RESERVE ACCOUNT"), if determined necessary by BANK: (i) at the time this AGREEMENT is executed; (ii) if in the opinion of BANK, information received or discovered about MERCHANT reflects an adverse change in status; (iii) in the event that any information requested by BANK is not received; (iv) upon the notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of this AGREEMENT. BANK may withhold the payment for SALES in an amount reasonably determined by BANK as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, BANK may

require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with BANK in the name of BANK and under the sole control of BANK, and MERCHANT grants to BANK a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to BANK under this AGREEMENT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT, or for such longer period if determined necessary by BANK in their reasonable discretion to protect BANK from future risk of loss. BANK may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to BANK under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the RESERVE ACCOUNT, if any, shall be paid to MERCHANT.

- 3.10 BANK agrees to pay MERCHANT for SALES less FEES owed to BANK by MERCHANT. BANK shall recoup and deduct FEES from incoming transactions or recoup and debit the same from MERCHANT's DESIGNATED ACCOUNT or the RESERVE ACCOUNT. MERCHANT agrees that BANK has the right to deduct these FEES at any time including on a daily basis if necessary. BANK is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to BANK after MERCHANT becomes insolvent, ceases to do business, or dissolves.
- 3.11 BANK has the right of recoupment and set-off. This means that BANK may recoup and offset any outstanding or uncollected amounts owed to BANK under this AGREEMENT from: (i) any amounts BANK would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts BANK may owe MERCHANT under this AGREEMENT or any other agreement.
- 3.12 If MERCHANT does not pay any sums due within thirty (30) days from date of notice, BANK will charge, and MERCHANT agrees to pay, a late fee of one and one-half percent (1.5%) per month on the balance outstanding or the highest amount allowed by law.
- 3.13 If MERCHANT breaches AGREEMENT or if BANK identifies suspicious or irregular activity related to SALES or SERVICES, BANK may refuse to process SALES or to provide SERVICES and/or may hold funds pending the cure of such breach or resolution of such activity.
- 3.14 If BANK takes any action against MERCHANT to collect any FEES or monies due to BANK from MERCHANT, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney fees, to the extent allowed by law.
- 3.15 If MERCHANT is a participant in a BANK third party program including, but not limited to, Agent Bank and/or CARD BRAND programs, and MERCHANT subsequently leaves such third party, BANK may amend the FEES or terminate the AGREEMENT.

#### **4. TERM OF AGREEMENT:**

- 4.1 The initial term of this AGREEMENT shall be for three (3) years ("INITIAL TERM") commencing on the date this AGREEMENT is approved by BANK or approved and uploaded by BANK's Risk Department.
- 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive two (2) year periods ("RENEWAL TERM") unless terminated as set out below.

#### **5. TERMINATION OF AGREEMENT:**

- 5.1 This AGREEMENT may be terminated by BANK at any time effective upon thirty (30) days written notice.
- 5.2 MERCHANT may terminate this AGREEMENT as follows:
  - A. upon BANK's default of any material obligation to MERCHANT thereunder and the failure of BANK to cure such default within thirty (30) days after written notice of such default;
  - B. upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM; or
  - C. on thirty (30) days notice of termination accompanied by payment of the ACCOUNT CLOSURE FEE.
- 5.3 In order to protect the CARD BRANDS and BANK, BANK may terminate this AGREEMENT effective immediately for any of the following reasons:
  - A. insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT's assets for the benefit of MERCHANT's property creditors, or if any part of MERCHANT's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter;
  - B. if MERCHANT fails to pay any FEES when due;
  - C. if MERCHANT has misrepresented or omitted any material information provided to BANK;
  - D. if MERCHANT is in breach of the AGREEMENT or the RULES;
  - E. if MERCHANT, after BANK's request, fails to send copies of SALES DRAFTS to BANK;
  - F. if MERCHANT submits for processing SALES that were not originated as a result of a direct SALE transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");
  - G. if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of SALES in that or any prior month;
  - H. in the event of a material change of MERCHANT's business as described in the Merchant Application ("BUSINESS");
  - I. in the event the CARD BRANDS identify MERCHANT, its principal, or associated parties under any program designed to monitor merchants, or MERCHANT creates circumstances that cause harm or loss of goodwill to BANK or the VISA system;
  - J. if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT; or
  - K. in the event that Guarantor (if designated) gives notice of its intention to withdraw the Guaranty.
- 5.4 Effect of Termination of the AGREEMENT:
  - A. In the event that this AGREEMENT is terminated by BANK for cause, BANK may be required to report the name and address of MERCHANT and MERCHANT's principals to the CARD BRANDS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT

is obligated to BANK for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.

- B. MERCHANT hereby releases, indemnifies and holds BANK and the CARD BRANDS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by BANK or its Agents on the CARD BRANDS' merchant monitoring lists.

**6. BANKRUPTCY:**

- 6.1 In the event of a bankruptcy filing by MERCHANT, BANK reserves the right to suspend or discontinue processing SALES or providing SERVICES. Upon filing voluntary or involuntary bankruptcy proceedings by or against MERCHANT, MERCHANT must notify BANK in writing within five (5) days. Notification must be sent by certified mail to BANK at the address for NOTICES set out herein.
- 6.2 Credits to MERCHANT's DESIGNATED ACCOUNT and other payments to MERCHANT are provisional. The PARTIES acknowledge the AGREEMENT is an agreement whereby BANK is extending financial accommodations to MERCHANT within the meaning of 11 U.S.C. § 365(c)(2) of the Bankruptcy Code as amended from time to time. The right of MERCHANT to receive any amounts due or to become due from BANK is expressly subject and subordinate to the CHARGEBACKS, recoupment, setoff, lien, and security interest rights of BANK under this AGREEMENT without regard to whether such CHARGEBACKS, recoupment, setoff, lien, and/or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

**7. INFORMATION AND DOCUMENTATION:**

- 7.1 MERCHANT agrees to comply with all requests for information and documentation regarding SALES and the CARDS utilized in processing such SALES or SERVICES under AGREEMENT within the time period stated by BANK in its request.
- 7.2 **USA PATRIOT ACT REQUIREMENTS.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means: When MERCHANT opens an account, BANK will ask for the applicant's name, physical address, date of birth, taxpayer identification number, and other information that will allow BANK to identify the applicant. BANK may also ask to see the applicant's driver's license or other identifying documents. BANK will advise MERCHANT if additional information is required.
- 7.3 Upon BANK's request, MERCHANT shall provide BANK with current financial statements in a format acceptable to BANK.
- 7.4 MERCHANT, its signing officer/owner/partner/principal, and any Personal Guarantor authorize BANK, or its agents or assigns, to make, from time to time, any business and personal credit and other inquiries BANK considers necessary to review the acceptance and continuation of this AGREEMENT. MERCHANT authorizes parties contacted by BANK or any of its affiliates, in relation to this AGREEMENT, to release the credit information requested by BANK or any affiliate. By executing this AGREEMENT, MERCHANT, its signing officer/owner/partner/principal and any Personal Guarantor acknowledge that BANK has a legitimate business need for the information contained in any personal credit report that may be obtained in connection with this AGREEMENT, and that this AGREEMENT is a business transaction that was initiated by the MERCHANT and/or any Personal Guarantor identified in the Merchant Application.
- 7.5 MERCHANT is supplied with monthly reports by BANK regarding MERCHANT's SALES or SERVICES activity. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to BANK within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
- 7.6 MERCHANT will notify BANK immediately of any change in ownership, corporate or "d/b/a" name, location address, or the information contained on MERCHANT's imprinter plates.
- 7.7 If MERCHANT participates in any BANK third party program, MERCHANT agrees that BANK may report information as required to such third party.
- 7.8 MERCHANT is solely responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, SALES and any other customer information in accordance with this AGREEMENT, LAWS, and RULES.

**8. PROCESSING RESTRICTIONS:**

- 8.1 MERCHANT agrees that it will not materially change its BUSINESS or the method in which it markets or sells the goods and services of BUSINESS without informing BANK in advance of such change. BANK will only process SALES from the BUSINESS as defined in the AGREEMENT.
- 8.2 If actual monthly SALES volume substantially exceeds the projected annual SALES volume as provided in the Merchant Application and pro-rated to one month, BANK may, at its option, do one or more of the following: (i) refuse to process SALES in excess of such sum; (ii) process such SALES and retain the proceeds of such SALES until the next month and release such sums to MERCHANT at that time counting this volume as SALES volume for that month; (iii) terminate this AGREEMENT; and/or (iv) amend this AGREEMENT in a way as to ensure that BANK has security for the increased volume. Such rights of termination and retention of funds are in addition to those already provided for herein.
- 8.3 In the event of failure, including bankruptcy, insolvency, or other suspension of business operations by MERCHANT, MERCHANT shall not sell, transfer, or disclose any materials that contain cardholder account numbers, personal information, or other CARD BRAND transaction information to third parties. Upon request from BANK, MERCHANT shall either (i) provide this information or (ii) provide acceptable proof of destruction of this information.

**9. USE OF THE INTERNET, SYSTEM INTEGRATORS, AND/OR THIRD PARTY SERVICE PROVIDERS:**

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its: (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent

establishment" on its web site along with MERCHANT's country of domicile, either: a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.

- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to BANK in accordance with the then current RULES and requirements of BANK and CARD BRANDS. If MERCHANT is using a third party's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the third party is providing the customer service, then such third party is a separate entity and is not an agent of BANK. MERCHANT understands the AGREEMENT is between BANK and MERCHANT. Disputes involving a third party shall be dealt with independently from BANK. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify BANK at the address set out in the AGREEMENT. MERCHANT must pay BANK regardless of any disputes it has with any third party. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to BANK, MERCHANT must disclose the relationship to BANK and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by BANK. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. BANK is not liable for SALES that it did not receive. MERCHANT understands that in the event MERCHANT rents BANK terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.
- 9.3 MERCHANT agrees that BANK is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that BANK is not responsible for and is not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. 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 BANK without the express written consent of BANK. MERCHANT agrees BANK can only process SALES received by BANK, and any third party is responsible for ensuring SALES are formatted and transmitted to BANK in accordance with the then current requirements of BANK and CARD BRANDS. BANK may increase FEES if a third party presents SALES transactions not in accordance with the then current CARD BRANDS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by BANK.
- 9.4 MERCHANT shall assume full liability and shall indemnify and hold BANK and CARD BRANDS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

#### **10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:**

- 10.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. BANK shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. BANK shall not be liable for any services or products of third parties. In any event, BANK's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid to BANK by MERCHANT in the month prior to the incident giving rise to liability. In no event shall BANK, the CARD BRANDS, or the CARD BRANDS' contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL BANK, THE CARD BRANDS, OR THE CARD BRANDS' CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR BANK WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- 10.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY BANK, THE CARD BRANDS, AND THE CARD BRANDS' CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. BANK ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

#### **11. WARRANTIES AND INDEMNITIES:**

- 11.1 MERCHANT understands that BANK merely provides processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, BANK does not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants 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 warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the CARD BRANDS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to BANK.
- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to BANK and does by this reference assign all its rights, title, and interest to payment for such SALES to BANK so that BANK may process SALES under the AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered

or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.

- 11.4 MERCHANT agrees to indemnify and hold harmless BANK, SPONSORS, and CARD BRANDS, including the CARD BRANDS' contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. BANK, SPONSORS, or the CARD BRANDS 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 BANK, SPONSORS, and the CARD BRANDS for reasonable attorney fees or any other necessary expenses incurred by BANK by reason of such defense.
- 11.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 11.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

## **12. NOTICES:**

- 12.1 All notices required under this AGREEMENT from MERCHANT shall be written paper notices effective, unless otherwise stated in AGREEMENT, upon the earlier of actual receipt thereof or the third (3rd) business day following such notices being deposited postage prepaid in the United States Postal System.
- 12.2 All written paper notices shall be sent to the following addresses, which may be changed by any PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:

**If to BANK:**

TSYS Merchant Solutions, LLC  
Attention: Merchant Legal Department  
1601 Dodge Street, 23E  
Omaha, NE 68102-1637

**If to MERCHANT:**

At the address set out in the Merchant Application or such alternative address as designated in writing by MERCHANT.

**If to ISO:**

At the address set out in the Merchant Application or such alternative address as designated in writing by ISO.

- 12.3 MERCHANT consents to receiving electronically rather than in paper form all notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at BANK's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Application. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that MERCHANT has such access. MERCHANT understands that there are costs related to access DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 12.1 and 12.2.

## **13. MISCELLANEOUS:**

- 13.1 **Assignment.** Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of BANK. BANK may assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT. Without limiting the generality of the foregoing, 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 BANK be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless BANK consents in writing.
- 13.2 **Governing Law and Forum.** The PARTIES acknowledge and agree that this AGREEMENT and the Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this AGREEMENT and any Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or any Guaranty contained herein, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein.
- 13.3 **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. BANK 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 BRING OR PARTICIPATE IN ANY CLASS ACTION AGAINST BANK BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT. IF A CLASS PROCEEDING IS INITIATED AGAINST BANK, MERCHANT MAY NOT JOIN THAT PROCEEDING OR



- PARTICIPATE AS A MEMBER OF THAT CLASS. If MERCHANT brings legal action against BANK for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.
- 13.4 Waiver. No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.
- 13.5 Force Majeure. BANK is not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.
- 13.6 Entire Agreement. This AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.
- 13.7 Costs. Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.
- 13.8 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.
- 13.9 Amendment. This AGREEMENT may be amended or modified by BANK effective upon thirty (30) days written notice. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.
- 13.10 Authority. By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.
- 13.11 P-Card. To the extent applicable, BANK agrees not to use any information supplied by MERCHANT in the Purchasing Card Information that is required for acceptance of purchasing cards, in its decision as to whether to accept MERCHANT for processing. MERCHANT agrees to hold BANK harmless from any and all claims relating to the collection, processing, dissemination, and use or misuse of the information contained in the Purchasing Card Information. MERCHANT acknowledges that the information from the Purchasing Card Information will be sent to MERCHANT's corporate customers who pay with a purchasing card. MERCHANT agrees that BANK is not responsible for any actions or omissions of others regarding this information.
- 13.12 Taxes. MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes, including penalties and interest, which may be assessed in connection with the services and related products provided under this AGREEMENT. The FEES set forth in the AGREEMENT are exclusive of any and all applicable taxes or assessments, whether designated as sales taxes, use taxes, ad valorem taxes, GST/HST taxes, VAT taxes or by some other name or designation, and including any interest or penalties thereon, which may be levied or assessed by any governmental or taxing jurisdiction in connection with the performance of services or provision of materials to MERCHANT by BANK. In the event of the payment of or for any such tax, assessment or expense by BANK, MERCHANT shall in turn pay BANK for such items.
- 13.13 Disclosure of Merchant Identification Number ("MID"). For security reasons, MERCHANT must disclose its MID thereby authorizing BANK to make changes to its account. BANK may request from MERCHANT additional information to further verify MERCHANT's identity. BANK may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT authorizes BANK to share information regarding the MERCHANT's account with the person disclosing the MID. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.
- 13.14 Information. MERCHANT authorizes BANK to release and use MERCHANT's information, in connection with offering or providing business products and services, to third parties that provide services to BANK or MERCHANT or to any third party that requests and has a reason to know such information, including but not limited to the CARD BRANDS, and any third-party having regulatory control over the PARTIES.
- 13.15 Counterparts/Facsimile. This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes BANK and its affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.
- 13.16 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and BANK may be monitored and recorded.
- 13.17 Binding Agreement. This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is approved by BANK; and (ii) BANK has received a negative response to its inquiry of the CARD BRANDS' programs designed to monitor merchants. The commencement of transaction processing under this AGREEMENT shall constitute BANK's approval and its signature to this AGREEMENT.
- 13.18 Products and Services. BANK may from time to time add products and/or services to the SERVICES. At MERCHANT's request, BANK may provide such additional products and/or services to MERCHANT at BANK's then current rate. MERCHANT agrees to abide by all parameters set by BANK for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. BANK has made reasonable efforts to secure information and abides by the CARD BRANDS' security guidelines but BANK does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify BANK immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. BANK shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source

code from the products and SERVICES. Any PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.

13.19 **Communication.** MERCHANT authorizes BANK and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by BANK, its affiliates, or any third party that BANK shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold BANK, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.

13.20 **Disclosure.** The CARD BRANDS require that the following be disclosed to MERCHANT: (i) if applicable, BANK is in control of Independent Sales Organization's ("ISO") and/or Member Service Provider's ("MSP") performance under this AGREEMENT; (ii) BANK must pre-approve all FEES; (iii) the AGREEMENT may not be amended without BANK's express written consent; (iv) if applicable, ISO and/or MSP may not have access to MERCHANT's funds; and (v) BANK may not waive the foregoing requirements.

#### FUNDS TRANSFER INSTRUCTIONS

MERCHANT desires to effect settlement of credits and debits from MERCHANT's DESIGNATED ACCOUNT by means of ACH and/or wire transfer in conjunction with the processing of SALES transactions or SERVICES as anticipated by AGREEMENT. In accordance with this desire, MERCHANT authorizes BANK to initiate debit and credit entries to the DESIGNATED ACCOUNT (the details of which are set out herein and in the Merchant Application). MERCHANT agrees to maintain sufficient funds in DESIGNATED ACCOUNT to cover debit transactions. By signing this AGREEMENT, MERCHANT states that it has authority to agree to such transactions and that the DESIGNATED ACCOUNT indicated is a valid and legitimate account for the handling of these transactions. This authority is to remain in effect until BANK receives written notice from MERCHANT revoking it. This authorization is for the payment of SALES, returns and FEES, CHARGEBACKS, or any other sums owed between the PARTIES. MERCHANT also certifies that the appropriate authorizations are in place to allow MERCHANT to authorize this method of settlement. All changes to the identification of the DESIGNATED ACCOUNT under this authorization must be made in writing in accordance with the AGREEMENT. MERCHANT understands that if the information supplied as to the ABA Routing Number and Account Number of the DESIGNATED ACCOUNT is incorrect, and funds are incorrectly deposited, BANK will attempt to assist MERCHANT in the recovery of such funds but has no liability as to restitution of the same. BANK's assistance in recovering the funds, where available, will be billed to MERCHANT at BANK's current hourly rate for such work. MERCHANT acknowledges that the origination of ACH transactions to the DESIGNATED ACCOUNT must comply with the provisions of U.S. law.

#### CARD BRAND RULES

**NOTICE: This information is a summary of common CARD BRAND regulations; however card acceptance, processing and chargeback procedures are subject to change. Capitalized Terms not defined herein shall have the meaning ascribed to them in the CARD BRANDS' regulations. If there are any differences between the CARD BRANDS' regulations and these RULES, the CARD BRANDS' regulations will prevail in every instance. To the extent these RULES or the CARD BRANDS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern. The CARD BRANDS publish summaries of the regulations for merchants. Some of these summaries may be accessed at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com), while AMERICAN EXPRESS and DISCOVER regulations may be accessed at [www.cpay.com/amexterms](http://www.cpay.com/amexterms). The AMERICAN EXPRESS OptBlue<sup>sm</sup> Program Merchant Operating Guide may be accessed at [www.cpay.com/amexterms](http://www.cpay.com/amexterms).**

#### CARD BRAND CARD ACCEPTANCE PROCEDURES

##### 1. Honor All CARDS:

- 1.1 MERCHANT shall honor all CARDS issued by a CARD BRAND, when presented in accordance with these RULES, for the purchase of goods or services by an authorized holder of CARD or in processing a request for credit resulting from such a transaction, unless MERCHANT provides TMS and BANK with a thirty (30) day written notice that it no longer wishes to accept either credit or debit cards, including check or prepaid cards (i.e., non-PIN based debit). If MERCHANT has provided such notice to TMS and BANK, upon the expiration of the thirty (30) day notice period, MERCHANT will no longer be required to accept such cards.
- 1.2 If a cardholder presents a VISA CARD that is in the MERCHANT's category of acceptance and that bears a mark representing another payment service: (i) MERCHANT must honor the cardholder's request if the cardholder indicates that the transaction is to be processed as a VISA transaction and (ii) MERCHANT may process the transaction as something other than a VISA transaction despite an initial indication by the cardholder that the transaction is to be processed as a VISA transaction, but only if the cardholder agrees that the transaction may be processed as something other than a VISA transaction. MERCHANT may not mislead the cardholder concerning what payment service or system will be used. These rules do not require MERCHANT to explain any loss of consumer rights if the transaction is not processed as a VISA transaction, but if MERCHANT provides any information on this topic, that information must be accurate.
- 1.3 PROHIBITIONS - A MERCHANT must not:
  - A. Accept cardholder payments for previous Visa Card or Visa Electron Card charges incurred at the MERCHANT location;
  - B. Require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed;
  - C. Add any surcharge to transactions, except as permitted by the RULES;
  - D. Add any tax to transactions, unless applicable laws or regulations permit a MERCHANT to collect a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately;
  - E. Enter into interchange any transaction receipt for a transaction that was previously charged back and subsequently returned to the MERCHANT irrespective of cardholder approval. The MERCHANT may pursue payment from the customer outside the VISA system;

- F. Request or use an account number for any purpose other than as payment for its goods or services, except to support the Health Care Eligibility Service or VISA Activation and Load Service, as specified in VISA regulations;
- G. Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT;
- H. Disburse funds in the form of cash, unless:
  - 1) MERCHANT is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign currency plus any commission or fee charged by the MERCHANT; or
  - 2) MERCHANT is participating in the Visa Cash Back Service, as further specified in the VISA regulations.
- I. Accept a Visa Card or Visa Electron card for the purchase of Scrip;
- J. Accept a Visa electron Card for Manual Cash Disbursement;
- K. Accept a Visa TravelMoney Card for a Manual Cash Disbursement;
- L. Accept a card to collect or refinance an existing debt that has been deemed uncollectible by the merchant providing the associated goods or services. (Note: A transaction that represents a payment on an existing obligation must be identified by the appropriate indicator in the Authorization Request and Clearing Record.);
- M. Enter into interchange a transaction that represents collection of a dishonored check;
- N. Require a cardholder to waive his or her rights to dispute the transaction as a condition of the SALE; or
- O. Establish a minimum or maximum transaction amount as a condition for honoring a Visa Card or Visa Electron Card, except as permitted by the RULES.

**2. Sales Transactions:**

- 2.1 No SALE may be completed if cardholder (the duly authorized holder and user of CARD) fails to present his/her CARD to MERCHANT at time of SALE, except in the case of Card Not Present environments where MERCHANT has received written permission by TMS and BANK to do so.
- 2.2 IF USING AN ELECTRONIC DEVICE, MERCHANT MUST HAVE THE CARD SUCCESSFULLY READ BY A MAGNETIC STRIPE CARD READER/TERMINAL WITH PRINTER ATTACHED. If MERCHANT's 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 (a paper record evidencing the purchase of goods or services using a CARD) 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 on such a transaction regardless of the authorization that may or may not be received.
- 2.3 MERCHANT shall obtain the cardholder's signature on the SALES DRAFT, where required by the RULES.
- 2.4 Unless specifically permitted by TMS and BANK to the contrary, goods and services purchased must be delivered to cardholder at time of SALE.
- 2.5 MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a SALE, unless required by the RULES.
- 2.6 If MERCHANT receives BIN information from TMS and BANK, MERCHANT must not use such information for any reason other than to identify VISA debit category products at the point of sale, unless authorized by VISA. VISA BIN information is proprietary and confidential information belonging to VISA. MERCHANT must not disclose VISA BIN information to any third party without prior written permission from VISA. If MERCHANT uses an agent or Merchant Servicer, MERCHANT must include the foregoing provisions in its agreement or contract with such agent or Merchant Servicer.

**3. SALES DRAFTS:**

- 3.1 MERCHANT shall deliver to the cardholder, at the time of a SALE, a true, complete, and legible copy of the SALES DRAFT or suitable receipt evidencing a SALE involving use of CARD.
- 3.2 At a minimum, the following information must be included on the SALES DRAFT (additional information may be required by the RULES depending on the transaction):
  - A. final four digits of CARD account number. MERCHANT is responsible for determining and complying with all applicable LAWS regarding CARD account number truncation requirements and CARD expiration date requirements for SALES DRAFTS;
  - B. MERCHANT's d/b/a name;
  - C. MERCHANT's city and state;
  - D. amount of the SALE (including any applicable taxes or amount of adjustment or credit);
  - E. date of the SALE;
  - F. space for cardholder signature if applicable;
  - G. transaction payment type;
  - H. legend identifying the party to whom it will be delivered (i.e. merchant copy, customer copy);
  - I. authorization code;
  - J. clear imprint of the CARD unless successfully read by a magnetic stripe reader; and
  - K. brief description of the goods or services sold, returned, or cancelled.
- 3.3 MERCHANT shall store all SALES DRAFTS and transaction records in the manner and timeframes required by the RULES.
- 3.4 MERCHANT shall not deposit SALES DRAFTS that it knows or should have known to be either fraudulent or not authorized by the cardholder.

**4. Security Features:**

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.

- 4.2 When an Electronic Cash Register (“ECR”) or Electronic Draft Capture (“EDC”) 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 TMS and BANK 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 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.
- 4.3 In the event that the terminal is programmed to require MERCHANT to key the last four (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.
- 4.4 In order to protect the integrity of the CARD BRANDS’ systems, BANK may hold funds settled by MERCHANT in the event of a breach of AGREEMENT, irregular SALES activity, or receipt of detrimental financial information.

**5. Authorization:**

- 5.1 On all SALES, MERCHANT shall request an authorization for the total amount of the SALE and shall record the positive authorization response code on the SALES DRAFT prior to completing the SALE. If MERCHANT receives a negative authorization response, MERCHANT shall not complete the SALE and may receive further instructions from the authorization center.
- 5.2 MERCHANT may not, after receiving a negative response or decline on an authorization request:
- A. 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; or
  - B. attempt any further electronic or voice authorizations.
- 5.3 In the event that 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. In the event that the cardholder refuses to do so, the SALE must not be completed.
- 5.4 MERCHANT agrees to obtain authorization from the voice authorization center as required by the RULES.

**6 Returned Merchandise and Adjustments:**

- 6.1 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.
- 6.2 MERCHANT may limit its acceptance of returned merchandise or establish a policy to make price adjustments for any SALE provided proper disclosure is made and purchased goods and service are delivered to the cardholder at the time of the SALE.
- 6.3 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.
- 6.4 For each credit transaction, MERCHANT must be able to provide TMS and BANK with evidence of the original purchase.

**7. Cash Transaction:**

- 7.1 MERCHANT shall not receive money from a cardholder and subsequently prepare a credit voucher for the purpose of depositing to the cardholder’s account.
- 7.2 Cash disbursement by MERCHANT to a cardholder is not permitted unless you are a financial institution with written authorization from BANK and as specifically permitted by the RULES. Additionally, MERCHANT shall not make any cash advance to an employee, principal, or family member of MERCHANT, who is a cardholder.
- 7.3 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.

**8. Use of Promotional Materials and Marks:**

- 8.1 MERCHANT will adequately display promotional materials as required by the RULES or provided by TMS and BANK to inform the public that MERCHANT will honor CARDS.
- 8.2 MERCHANT shall prominently display the CARD BRANDS’ Marks at or near all major public access points to inform the public that MERCHANT will honor CARDS. MERCHANT shall always display the Marks in their full color version. The MERCHANT must display the Marks upon acceptance of the CARDS.
- 8.3 MERCHANT shall not use the CARD BRAND’s Marks for any other purpose without the express written consent of the CARD BRANDS. MERCHANTS who use the Marks shall obtain no interest in the Marks except the right to use them in accordance with the RULES.
- 8.4 All uses by MERCHANT of decals, signs, printed and broadcast materials, and other promotional materials must be in conformity with the requirements of the CARD BRANDS, SPONSORS, TMS and 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 TMS’s, BANK’s, CARD BRANDS’, or SPONSOR’s exclusive right, title, and interest in and to its respective protected Marks.
- 8.5 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS’ services.
- 8.6 MERCHANT may not refer to the CARDS in stating eligibility for its products, services, or membership.
- 8.7 MERCHANT shall permit TMS, BANK, CARD BRANDS, and SPONSORS, at all reasonable times, to inspect the MERCHANT’s use of the promotional materials and Marks. Should any materials so submitted fail to meet with TMS’s, BANK’s, CARD BRANDS’, or SPONSOR’s approval or fail to comply with the RULES, for any reason whatsoever, the MERCHANT agrees to cease using such material. Neither TMS, BANK, CARD BRANDS, nor SPONSOR shall have any liability to MERCHANT relating to disapproval of use of such materials.
- 8.8 MERCHANT’s right to use and display the Marks shall terminate upon termination of this Agreement. Upon termination, voluntary or involuntary, the MERCHANT shall immediately remove all Marks from all terminals and from any other display

location maintained by such MERCHANT and shall immediately cease the use of all promotional materials using the Marks of CARD BRANDS.

**9. CARDS Other than VISA, MASTERCARD, AMERICAN EXPRESS and DISCOVER:**

- 9.1 MERCHANT is required to comply with the specific regulations, as set out in its agreements with CARD BRANDS other than VISA, MASTERCARD, AMERICAN EXPRESS, and/or DISCOVER with regard to the acceptance of cards issued by such CARD BRANDS. TMS and BANK are not responsible for the funding of such transactions. Further, TMS and BANK are not responsible for payment for SALES for any CARD BRANDS unless and until TMS and BANK have received payment for such SALES from the CARD BRANDS.

**CHARGEBACKS**

**10. General:**

- 10.1 Failure to comply with the RULES will reduce TMS's and BANK's ability to reverse CHARGEBACKS and increase the likelihood of MERCHANT receiving a CHARGEBACK.
- 10.2 MERCHANT may be subject to a CHARGEBACK on SALES for a minimum period of 180 days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT, from the date the SALE was entered into the CARD BRANDS' processing system.
- 10.3 TMS and BANK agree to mail all CHARGEBACK documentation to the address provided by MERCHANT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If TMS and/or BANK elects, at their sole discretion, to take action on CHARGEBACKS after the CARD BRAND time limits have expired, such action shall be done at additional cost.
- 10.4 MERCHANT agrees that it will not re-deposit SALES that have been previously charged back and not represented. This restriction applies whether or not the cardholder consents to such activity.
- 10.5 MERCHANT agrees that if it receives a CHARGEBACK for an international cardholder, the MERCHANT is responsible for any currency conversion differences in the dollar amount.

**11. CHARGEBACK Reasons:**

- 11.1 MERCHANT should refer to the RULES for a complete list of CHARGEBACK reasons.

**12. CHARGEBACK Monitoring Programs:**

- 12.1 Any MERCHANT location that exceeds a one percent (1%) CHARGEBACK to Interchange ratio for all incoming CHARGEBACKS for that location is considered an excessive chargeback merchant and may be subject to Visa and MasterCard's monitoring programs. Merchants are responsible for monitoring their monthly chargeback percentage and developing chargeback reduction plans as required by Visa and MasterCard. Excessive CHARGEBACK activity for an unreasonable period of time may result in termination of this AGREEMENT. MERCHANT will pay TMS and/or BANK for any fine or charge levied by the CARD BRANDS on TMS and/or BANK or MERCHANT as a result of its chargeback activity. This section may be amended from time to time as a result of action by CARD BRANDS.

**13. Other CARD BRAND Monitoring Programs:**

- 13.1 If MERCHANT is identified by certain CARD BRAND monitoring programs, TMS's and BANK's ability to reverse CHARGEBACKS may be severely restricted.
- 13.2 Certain monitoring programs review the number of lost, stolen and counterfeit CARDS accepted by MERCHANT in its normal course of business and the percentage of CARDS used for SALES that were not read electronically by terminals or ECRs. The purpose of these programs is to reduce the use of lost, stolen and counterfeit CARDS.
- 13.3 In the event that MERCHANT is 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 AGREEMENT may be terminated by TMS and BANK.

**14. CARD BRAND Registration Programs:**

- 14.1 If MERCHANT is identified by certain CARD BRAND registration programs, TMS and/or BANK will take the necessary steps to register the merchant. MERCHANT will pay TMS and BANK for any fine or charge levied by the CARD BRANDS on TMS, BANK, or MERCHANT as a result of the registration program including but not limited to one-time registration fees, ongoing registration fees and non-compliance fees. This section may be amended from time to time as a result of action by CARD BRANDS.

**UNIQUE BUSINESS REQUIREMENTS**

**15. Card Not Present Merchants:**

- 15.1 MERCHANT may not accept Card Not Present SALES unless AGREEMENT specifically refers to Card Not Present SALES. If this is not the case, MERCHANT should contact TMS and BANK if they wish to accept Card Not Present SALES and provide descriptions of product types and marketing methods. TMS and BANK may refuse MERCHANT permission to accept Card Not Present SALES.
- 15.2 If MERCHANT is specifically authorized by TMS and BANK to accept Card Not Present SALES, no SALE shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the cardholder.
- 15.3 Card Not Present SALES do not require the cardholder's signature on the SALES DRAFT. MERCHANT is required to obtain the valid dates for each CARD used for a SALE. The expiration date must be submitted as part of the Authorization inquiry.
- 15.4 If MERCHANT supplies goods and/or services under a Pre-Authorization Order ("PO"), it shall not charge a cardholder for goods after receiving notice from a cardholder that the authorization for goods or services is canceled.
- 15.5 The receipt of a valid Authorization does not protect MERCHANT from CHARGEBACKS on SALES for the Unauthorized Purchaser reason code. 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.
- 15.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.
- 15.7 Card Not Present MERCHANTS are encouraged to investigate the CHARGEBACK protection attributes of the various Address Verification Services and Card Verification Value Services available from CARD BRANDS.

- 15.8 MERCHANT, or its agent, shall implement and maintain all of the security requirements specified in PCI. MERCHANT shall immediately notify TMS and BANK of the use an agent. MERCHANT shall immediately notify TMS and BANK of any suspected or confirmed loss or theft of material or records that contain account information and both:
- A. demonstrate its ability to prevent future loss or theft of account or transaction information; and
  - B. allow the CARD BRANDS, or an acceptable independent third party, to verify this ability by conducting a security review.
- 15.9 Electronic Commerce Merchants (VISA):
- A. VISA makes the 3-D Authentication system available to Electronic Commerce Merchants as a way to reduce fraud in Internet Transactions. Electronic Commerce Merchants may elect to implement 3-D Secure. Electronic Commerce Merchants that process 3-D Secure Transactions must comply with requirements specified in the: (i) VISA Operating Regulations; (ii) the VISA 3-D Secure: Merchant Implementation Guide and (iii) VISA Cardholder Information Security Program.
  - B. A web site operated by an Electronic Commerce Merchant must contain all of the following information: (i) a complete description of the goods or services offered; (ii) the merchant's returned merchandise and refund policy; (iii) the merchant's customer service contact, including electronic mail addresses and/or telephone number; (iv) the transaction currency; (v) any export or legal restrictions (if known); (vi) the merchant's delivery policy; (vii) the address of the merchant's permanent establishment; (viii) the merchant's consumer data privacy policy; and (ix) the security method for the transmission of payment data.
  - C. Electronic Commerce Merchants must offer cardholders a secure transaction method, such as: (i) Secure Sockets Layer (SSL), or (ii) 3-D Secure.

**16. Travel and Entertainment ("T&E") Merchants:**

- 16.1 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.
- 16.2 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.

**17. T&E Services:**

- 17.1 A T&E MERCHANT may participate in any of the following VISA T&E Services:

- A. Priority Check-Out Service
- B. T&E Advance Deposit Service
- C. T&E Cash Disbursement Service
- D. VISA Reservation Service

RULES which apply to the VISA T&E Services are available upon request.

- 17.2 Visa Reservation Service: Any MERCHANT who accepts CARDS to guarantee reservations must do so in accordance with the following requirements:
- A. MERCHANT must accept all VISA CARDS;
  - B. MERCHANT will 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 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, the 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;
  - C. MERCHANT must accept all cancellations prior to the specified time. The MERCHANT must not require more than seventy-two (72) hours cancellation notification prior to the scheduled arrival date. But, if the cardholder makes the reservation within seventy-two (72) hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If the MERCHANT requires that the cardholder cancel before 6:00 p.m. on the arrival date, the MERCHANT must mail the cancellation policy to the cardholder;
  - D. 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 following: cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
  - E. 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 one 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; and
  - F. if guaranteed accommodations are unavailable, MERCHANT must provide cardholder with comparable accommodations for one night at another establishment, transportation to the location of the alternative establishment, and if requested, provide cardholder with a three (3) minute telephone call and message forwarding to the alternate establishment. These services shall be provided at no cost to cardholder.

**18. Pre-authorized Health Care Transactions:**

- 18.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:
- A. a request for the services to be charged to the cardholder's account;
  - B. assignment of insurance benefits to the MERCHANT;
  - C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
  - D. duration of time, not to exceed one (1) year, for which permission is granted; and

- E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.
- 18.2 MERCHANT must:
- A. retain a copy of the order form during the period it is in effect;
  - B. provide a copy of the order form upon TMS's and/or BANK's request;
  - C. type or print the words "Pre-authorized Health Care" on the signature line of the SALES DRAFT; and
  - D. submit a SALES DRAFT within ninety (90) days of the service date and request authorization for the amount due upon receipt of notice of adjudication from the cardholder's insurance company.
- 18.3 MERCHANT must not complete a Pre-authorized Health Care Transaction after receiving a notice of cancellation from cardholder, TMS, BANK, or if the MERCHANT receives a decline response.

**19. Recurring Transactions:**

- 19.1 MERCHANT will not accept recurring SALES transactions where the delivery of, provision of, or billing for, goods or services is performed on a periodic basis ("RECURRING TRANSACTIONS") without the express written consent of TMS and BANK and without following the rules stated below.
- 19.2 MERCHANT must obtain from the cardholder a completed Order Form containing a written request for the goods or services to be charged to the cardholder's CARD. The Order Form must include the transaction amount (unless the RECURRING TRANSACTIONS are for varying amounts), the frequency of the recurring charges, and the duration of time for which the cardholder's permission is granted. The cardholder signature (including electronic signature or other similar authentication) must be effective under applicable law.
- 19.3 MERCHANT must retain a copy of the Order Form for the duration of the RECURRING SERVICES and provide it to TMS and BANK upon request.
- 19.4 Upon completion of the SALES DRAFT, MERCHANT should write the words "Recurring Transaction" on the signature line.
- 19.5 When a RECURRING TRANSACTION is renewed, MERCHANT must obtain an updated Order Form (as set out above) from the cardholder.
- 19.6 For an Electronic Commerce Transaction, include the frequency and duration of the RECURRING TRANSACTION, as agreed to by the cardholder, on the SALES DRAFT and provide a simple and easily accessible online cancellation procedure, if the cardholder's request for goods or services was initially accepted online.
- 19.7 For RECURRING TRANSACTIONS, MERCHANT must not:
- A. include partial payment for goods or services purchased in a single transaction;
  - B. include additional finance charges on a RECURRING TRANSACTION;
  - C. complete a RECURRING TRANSACTION if it does not receive an Authorization or if it receives a cancellation notice from the cardholder; or
  - D. request or use a cardholder account number for purposes other than as payment for its goods or services.
- 19.8 For RECURRING TRANSACTIONS of varying amounts, the MERCHANT must:
- A. on the Order Form, allow the cardholder to specify a minimum and a maximum transaction amount to be charged;
  - B. inform the cardholder of his/her right to receive, with at least ten (10) days notice before the transaction date, a written notification of the amount and date of the next charge; and
  - C. allow the cardholder to choose to receive notice in any of the following ways: (i) for every charge; (ii) when the transaction amount is outside of the specified minimum and maximum amount range; and (iii) when the transaction amount will differ from the most recent charge by more than an agreed upon amount.

**20. Employee Purchases:**

- 20.1 MERCHANT is prohibited from conducting Cash Advances, Card Sales or returns for goods or services with the MERCHANT's owners, officers or employees using such individual's personal Card(s), except for bona fide Card Transactions in the ordinary course of MERCHANT's business. MERCHANT is responsible for the actions and omissions of MERCHANT's principals, officers, employees and agents, including any fraud committed by, and/or any intentional or negligent acts or omissions by, any owner, officer or employee of MERCHANT.

**MISCELLANEOUS RULES**

**21. Liability of MERCHANT:**

- 21.1 MERCHANT shall be liable for all actions of its employees and agents and shall insure that they comply with the RULES and all LAWS.

**22. Supply of Information:**

- 22.1 MERCHANTS must submit all information requested by the CARD BRANDS, TMS, and BANK, including, but not limited to, lists and mailing addresses of terminals.
- 22.2 A MERCHANT shall not sell, purchase, provide, or exchange account number information in the form of transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, or other media obtained by reason of a SALE to any third party other than to the MERCHANT's agents for the purpose of assisting the MERCHANT in its business; or to the CARD BRANDS, TMS and/or BANK; or pursuant to a government request.

**ATM/DEBIT NETWORK RULES**

**NOTICE: The following summary of NETWORK RULES only applies to ATM/Debit transactions that are processed by a Cardholder entering a PIN. Such ATM/Debit transactions are subject to the rest of the Agreement, as applicable, except to the extent the terms of the NETWORK RULES summary directly conflicts with another provision of this Agreement, in which case, the terms of this NETWORK RULES summary will control. The following information is a summary of common rules that are specific to ATM/Debit Network transactions; however card acceptance, processing and chargeback procedures are subject to**

**change. If there are any differences between the NETWORKS' regulations and these Rules, the NETWORKS' regulations will prevail in every instance. To the extent these RULES or the NETWORKS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern.**

## **ATM/DEBIT NETWORK CARD ACCEPTANCE PROCEDURES**

### **1. Discrimination:**

- 1.1 MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a CARD, unless required by the RULES.
- 1.2 MERCHANT may not require or request the cardholder's signature or any other means of verifying the cardholder's identity.
- 1.3 MERCHANT shall place the PIN Entry Device in an area accessible by all cardholders and that can reasonably prevent others from observing the entered PIN.
- 1.4 MERCHANT shall not request or require the cardholder to provide or disclose their PIN in any oral or written manner to the MERCHANT.

### **2. SALES DRAFTS:**

- 2.1 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 CARD. The SALES draft must comply with the requirements of all RULES, and LAWS.
- 2.2 The following information must be included on the SALES DRAFT: (i) CARD account number; (ii) MERCHANT's DBA name; (iii) MERCHANT's city and state; (iv) amount of SALE; and (v) SALE date.
- 2.3 A SALES DRAFT shall be made available to the cardholder at each terminal.
- 2.4 MERCHANT may not require or request the cardholder to divulge the PIN belonging to that cardholder.
- 2.5 MERCHANT shall not impose any fee or charge without the prior written consent of TMS and BANK. If surcharging is approved by TMS and BANK, it must be a separate line item on the SALES draft and must be in compliance with all NETWORKS' rules, and LAWS.
- 2.6 MERCHANT shall not process any SALE if the terminal does not receive an authorization code. When a denial to an authorization request is received, the POS transaction shall not be completed, unless completed as a MERCHANT Store and Forward Transaction or Resubmission Transaction.
- 2.7 A SALE shall not be completed if the MERCHANT knows or should know that the SALE is fraudulent or not authorized by the cardholder.
- 2.8 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 re-enter 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 SALES draft at which the original SALE was initiated, but need not be initiated at the same POS terminal.
- 2.9 All returns shall be processed in accordance with the 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 rules.
- 2.10 Any SALES known by the MERCHANT to be erroneous should be canceled and re-billed, in the cardholder's presence.
- 2.11 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. SALES DRAFTS - Distribution and Storage of Information:**

- 3.1 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.
- 3.2 MERCHANT shall store in a limited access area for at least one (1) year after the date of SALES all transaction records and MERCHANT shall make and retain for at least two (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.
- 3.3 There are no voice authorizations for transactions and no manually imprinted SALES drafts.

## **CHARGEBACKS**

### **4. General:**

- 4.1 MERCHANT agrees to pay TMS and/or BANK for any NETWORK fees, fines or charges imposed on MERCHANT or TMS and BANK. Such reimbursement will be accomplished by the debit of the sum(s) involved from the MERCHANT's DESIGNATED ACCOUNT.
- 4.2 Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS.
- 4.3 TMS agrees to mail all CHARGEBACK documentation to MERCHANT promptly to MERCHANT's address shown on AGREEMENT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If TMS and BANK elect, at their discretion, to take action on CHARGEBACKS after the NETWORK time limits have expired, such action shall be done at additional cost. Upon request of NETWORK, TMS, or BANK, the MERCHANT will retrieve and forward to TMS, within the time frame required by the NETWORKS, 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 NETWORK such information from such transaction records as it requests by telephone. The MERCHANT will, on request of the NETWORK, cooperate fully with the NETWORK and the card-issuing participant in order that the participant may comply with the error resolution procedures.

### **5. Monitoring Programs:**

- 5.1 If certain monitoring programs identify MERCHANT, TMS's and BANK's ability to reverse CHARGEBACKS can be severely restricted.
- 5.2 Certain Monitoring Programs review the number of Lost, Stolen and Counterfeit CARDS accepted by MERCHANT in its normal course of business. The purpose of these Programs is to reduce the use of Lost, Stolen and Counterfeit CARDS.



- 5.3 In the event that MERCHANT is 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 AGREEMENT may be terminated on notice by TMS and BANK.

#### **OPERATIONAL REQUIREMENTS**

##### **6. MERCHANT Name and Address:**

- 6.1 All forms submitted to TMS and BANK must bear both the corporate and "Doing Business As" ("DBA") name.

##### **7. Equipment:**

- 7.1 A MERCHANT shall take all necessary steps to insure that all POS Terminals and PIN Pads operated in all of its locations:
- A. are placed in an area accessible by all cardholders;
  - B. are available for use whenever open for business;
  - C. will function with a minimum of error meeting all applicable technical specifications and security regulations; and
  - D. will require the cardholder to enter the cardholder's PIN at or near the check out location when initiating a POS Transaction.
- 7.2 A PIN pad or PIN processor must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released.
- 7.3 Terminals must have a Magnetic Stripe reader capable of reading Track 2 on the CARDS.
- 7.4 PINS used in conjunction with any store and forward transaction or MERCHANT resubmission must be encrypted and stored within a Tamper Resistant Security Module.
- 7.5 If MERCHANT's authorization system is capable of store and forward, it must comply with the NETWORKS's rules and regulations regarding this capability. TMS, BANK, the Issuer, and the NETWORKS shall not be liable for any losses suffered by a MERCHANT arising from the use of the store and forward function.
- 7.6 A PIN must never be logged in any form as a function of software either in the clear or encrypted.

##### **8. Left CARDS:**

- 8.1 CARDS that are inadvertently left at a MERCHANT location must be held under dual control during the time they are retained.
- 8.2 CARDS inadvertently left at a MERCHANT location may be returned to the cardholder by MERCHANT under the following conditions: (i) the CARD was inadvertently left by the cardholder at an on-premise location, and (ii) the cardholder requests the CARD within one business day, and (iii) the cardholder provides two forms of current identification, one of which is a photo identification.
- 8.3 If the cardholder has not requested the CARD within one business day, the CARD should be destroyed by cutting it in half through the stripe and processed in the normal manner.

##### **9. Security Features:**

- 9.1 TMS, BANK, NETWORK or their designated agent, on behalf of itself or others, shall have the right to inspect MERCHANT's security systems and procedures from time to time.

#### **ISO PRODUCTS AND SERVICES**

**Important Note: MERCHANT acknowledges and agrees that BANK and its affiliates have no obligation or liability whatsoever for: (1) the ISO Products and Services, (2) any actions or omissions of ISO with respect to the ISO Products and Services, or (3) any claims or disputes arising out of the foregoing.**

**BANK is not a party to the following agreements. MERCHANT acknowledges and agrees that BANK and its affiliates are in no way responsible for the actions, inactions, performance or nonperformance of ISO or SpotOn, or for disputes or resolving disputes of any kind arising from these agreements.**

#### **SpotOn Inc.**

**THE SERVICES OF SPOTON ARE PROVIDED SUBJECT TO THIS CONTRACT. THIS CONTRACT BECOMES BINDING WHEN CLIENT SIGNS UP FOR SPOTON'S SERVICES OR WHEN CLIENT USES SPOTON'S SERVICES AFTER RECEIVING A COPY OF THIS CONTRACT. YOU, IF YOU ARE ACTING ON YOUR OWN BEHALF, OR THE COMPANY YOU REPRESENT, IS REFERRED TO AS "CLIENT." CLIENT'S ACCEPTANCE OF THIS CONTRACT INCLUDES ACCEPTANCE OF THE TERMS OF SERVICE AND PRIVACY POLICY, BOTH OF WHICH ARE AVAILABLE AT [WWW.SPOTON.COM](http://WWW.SPOTON.COM). THIS CONTRACT CREATES BINDING LEGAL OBLIGATIONS. IF CLIENT DOES NOT AGREE TO BE BOUND BY THIS CONTRACT, THE TERMS OF SERVICE AND THE PRIVACY POLICY, YOU SHOULD NOT SIGN UP FOR OR USE SPOTON'S SERVICES. IF CLIENT DOES NOT ACCEPT THIS CONTRACT CLIENT WILL NOT BE ABLE TO USE SPOTON'S SERVICES.**

SpotOn, Inc. ("SpotOn") offers the services described in Section 1 (the "Services") to businesses. Client wishes to use the Services for Client's business purposes, and SpotOn agrees to provide the Services to Client, pursuant to the terms of this contract.

#### **1. Description of Services**

The Services allow Client to send a variety of messages, special offers, coupons and other information (collectively, "Notes") to Client's customers through various social media platforms, which may include Facebook, \* Twitter,\* Foursquare,\* SMS text messaging, mobile notifications and possibly other social media platforms. Consulting, analytics and customer management support related to the foregoing activities are also included in the Services. SpotOn Services also allows client to use SpotOn's loyalty program to offer benefits to customers, such as awards or incentives based on points, visits, or spots, using its Tablet as defined below ("Loyalty Program"). Client can choose to use SpotOn Services with its Loyalty Program ("SpotOn Connect"). Client can also choose to use SpotOn Connect with a traditional loyalty solution using the Client's POS instead of a SpotOn Tablet ("SpotOn Loyalty"). Spoton Services or SpotOn Loyalty also include online tools through which Client can manage and track such Loyalty Programs.

## 2. Responsibilities of SpotOn

- 2.1. *SMS*. SpotOn will maintain an SMS point-to-point subscription and make such point-to-point subscription available to Client. Availability of this subscription is subject to the terms of this contract and the then applicable policies of SpotOn, including the requirement that Client may not send more than one SMS message per week to a particular individual without prior written consent by SpotOn.
- 2.2. *Program Sites*. SpotOn will connect its tools (the "SpotOn Application") to Client's existing Facebook and Twitter accounts and Client's accounts on other social network platforms for which SpotOn offers Services and in which Client has elected to participate (collectively, "Program Sites"). If Client does not have an existing Facebook or Twitter account SpotOn will set up and create the content for a Facebook page and a Twitter account for Client, and accounts for Client on such other Program Sites as may be made available by SpotOn from time to time and in which Client has elected to participate. SpotOn will take into account Client's input with respect to content for such accounts set up by SpotOn, other than the Terms of Service and Privacy Policy, which are required by SpotOn.
- 2.3. *Tracking of Offers and Loyalty Programs*. SpotOn will provide online tools through which Client may track customer responses to Offers ("Deal Redemptions"). If Client sets up a Loyalty Program and selects SpotOn Services or SpotOn Loyalty, SpotOn's tools will enable Client to track customer activity related to Client's Loyalty Program and the purchasing habits of Loyalty Program customers.
- 2.4. *Social Media Tracking*. SpotOn will provide Client tools to manage communications with customers, such as: (i) posting Notes, (ii) responding to messages through certain social media, (iii) distributing promotions and tracking redemptions, (iv) identifying certain categories of users (e.g., "fans," "friends"), (v) keeping track of amounts users who have joined Client's Loyalty Program (if offered) have spent with Client, and (vi) using other tools or solutions that may be included in the Services from time to time.
- 2.5. *Loan of Tablet and Router*. SpotOn will, if Client so chooses, loan Client either or both of a tablet type device ("Tablet") and/or a router or other device to connect the Tablet to the Internet ("Router"), provided that Client agrees to comply with the provisions of Section 3.8.

## 3. Responsibilities of Client

- 3.1. *Notes*. Client will create and send all Notes to customers who have elected to receive such Notes, some of which may be special offers or promotions ("Offers"). Client will fulfill Offers accepted by customers, whether or not such customers have signed up to receive Notes or Offers from Client.
- 3.2. *Loyalty Programs*. Client may, but is not obligated to, offer a Loyalty Program to its customers. If Client elects to offer a Loyalty Program and chooses SpotOn Services or SpotOn Loyalty, Client will be responsible for designing and administering such Loyalty Program and for providing SpotOn with a current description of the terms of the Loyalty Program.
- 3.3. *Customer Incentives*. Client understands that if a customer enters certain optional personal information into the registration form on Client's Facebook page, or signs up for certain types of messaging or other services, the customer may be offered Loyalty Program points or other special Offers, as agreed by SpotOn and Client. Client agrees to honor any such Loyalty Program points or special Offers accepted by customers.  
  
\* Facebook, Twitter, and Foursquare are registered trademarks of Facebook, Inc., Twitter, Inc., and Foursquare Labs, Inc., respectively. SpotOn is not in any way affiliated with, partnered with, or endorsed by Facebook, Inc., Twitter, Inc., or Foursquare Labs, Inc.
- 3.4. *Connectivity; Use of Dashboard*. Client will be responsible for maintaining internet connectivity for access to SpotOn's dashboard and for entering any redeemed promotional codes into the SpotOn Application, via SpotOn's dashboard, web application or mobile application. Client will also be responsible for all information it enters into SpotOn's Application, for training and supervising Client's employees and others acting on Client's behalf in the use of the Services and, if SpotOn has loaned a Tablet and/or Router to Client, for the use of such devices, and for using the Services and any loaned devices in accordance with SpotOn's policies and instructions. Client will be responsible for checking SpotOn's dashboard frequently and for entering all information required or recommended by SpotOn in an accurate and timely way.
- 3.5. *Payment*. Client will pay SpotOn for the Services monthly, as further described in Section 4, pursuant to the automatic payment authorization agreed to by Client.
- 3.6. *Authorization to Set Up Program Sites*. In the event Client does not have a Facebook page, a Twitter account or, when other Program Sites are available and agreed to by Client, accounts on such other Program Sites, Client hereby authorizes SpotOn to set up such accounts on behalf of Client and in Client's name. All such accounts will include Terms of Service and a Privacy Policy.
- 3.7. *Promoting Services to Customers*. Client will encourage its customers to agree to have Client's Notes sent to them via SMS, Facebook, Twitter and other Program Sites, and to join Client's Loyalty Program (if one is offered). Client will also encourage its

customers to sign up on the SpotOn Application in order to register to participate in the services offered there by Client and SpotOn.

3.8. *Tablet and Router.* In the event Client chooses to accept a loan by SpotOn of a Tablet or a Tablet and Router, Client understands that SpotOn will continue to be the owner of such devices, that they are merely loaned to Client for the term of this contract, and that Client has the obligation to return the devices to SpotOn upon termination of this contract. Specifically, without limiting the foregoing, Client agrees as follows:

3.8.1. **Title; Labeling.** Client agrees that title and all ownership rights in the Tablet and Router remain in SpotOn. Client will not remove, alter, efface, cover or otherwise alter any markings, stickers or other indicia applied to the Tablet and/or Router by or on behalf of SpotOn.

3.8.2. **Exclusive Use.** Client will use the Tablet and/or Router exclusively in conjunction with the Services, and for no other purpose. Client will use such devices in accordance with normal usage, and will not alter, or seek to alter, any such device. Client will be responsible for the security of such devices and for maintaining them in good and operable condition.

3.8.3. **Return of Devices; Payment.** Client will, within 15 days after termination of this contract for any reason, return the devices SpotOn has loaned to Client (i.e., the Tablet and/or Router) in good and operable condition, subject only to ordinary wear and tear. In the event that Client does not return such devices to SpotOn within 15 days after termination of this contract, SpotOn may elect to treat such failure as an election by Client to purchase such devices from SpotOn for the price set forth in Section 4.4, which may be debited to Client's credit card, as described in Sections 4.4 and 4.8. Upon receipt by SpotOn of payment for such devices, title to the Tablet and/or Router shall vest in Client, and Client's obligations set forth in Sections 3.8.1 – 3.8.3 shall terminate.

#### 4. Fees

Please refer to the Merchant Application.

##### 4.3. *Payment of Fees.*

4.3.1. **Subscription Fees.** Monthly subscription fees are payable in advance, via the payment method authorized by Client. Each monthly debit for subscription fees will be made in advance, on the first day of the month, provided that if a regularly scheduled debit date falls on a weekend or federal holiday, the debit shall occur on the following business day. If the Effective Date of this contract is other than the first business day of any month, the subscription fees for the first partial month shall be prorated and charged on the first of the following month, together with the regularly scheduled monthly fees for such following month. If SpotOn offers one or more months of service free as an introductory promotion, the subscription fee for the initial partial month shall be charged along with the subscription fee for the first month commencing after the promotional period.

4.3.2. **Activity Fees.** Activity fees described in Section 4.1 will be payable in arrears, on the first business day of the month following the month in which such fees were incurred.

4.3.3. **Fees for Loyalty and/or Gift Cards.** All fees for loyalty and/or gift cards ordered by Client and related design fees incurred by Client will be charged on the day such orders are placed by Client (or the following business day).

4.4. *Price for Tablet and Router.* If Client elects to purchase the Tablet and/or Router loaned by SpotOn to Client, or if Client fails to return such devices upon termination of this contract in accordance with Section 3.8.3 and SpotOn elects to treat such failure as a decision by Client to purchase such devices, the prices will be as indicated on the Merchant Application.

4.5. *Fee and Price Changes.* SpotOn may change the fees it charges for any Services or the prices for the Tablet and Router by providing Client notice of such change at least 30 days before the change becomes effective ("Fee Change Date"). If Client does not agree to any such change in fees, Client may terminate this contract (and Client's use of the Services) by notifying SpotOn of termination prior to the Fee Change Date, unless SpotOn agrees to change prices. This contract and Client's use of the Services shall thereupon be terminated as of the last day prior to the Fee Change Date. If Client does not agree to any such change in the prices for the Tablet and/or Router, Client may return such devices in good and operable condition, before the Fee Change Date. Client's failure to terminate this contract prior to the Fee Change Date or to return the Tablet and/or Router before such date shall constitute Client's acceptance of the change in fees and/or prices. The amount to be debited to Client's account for the Services and, if applicable, the price for the Tablet and Router, shall then be adjusted pursuant to the fee change, effective as of the Fee Change Date.

4.6. *Notices of Charges.* SpotOn will send Client, on the same business day as debits are made to Client's account, notice of such charges, including the amount charged and an itemized account of the charges.

4.7. *Obligation of Client for Fees.* Client agrees not to terminate its authorization for debits to Client's account until all fees and charges payable under this contract have been paid in full. All fees and charges payable hereunder shall remain enforceable obligations of

Client regardless of whether Client terminates its debit authorization prior to collection in full by SpotOn, an authorized credit card debit fails or is rejected, or Client challenges or seeks to reverse any charge authorized under this contract.

4.8. *Credit Card Authorization.* By providing its credit card information to SpotOn, Client agrees that SpotOn is authorized to charge Client's credit card for all fees payable under this contract, as described in Sections 4.1- 4.5. Service may be interrupted on accounts that reach 10 days past due. Accounts that are not collectable by SpotOn may be turned over to an outside collection agency for collection.

## 5. Proprietary Rights

5.1. *Client's Proprietary Rights.* Certain trademarks and copyrighted material of Client may be used on the Program Sites created by SpotOn on behalf of Client. Client consents to all such usage by SpotOn. Client retains all rights in and to its trademarks and copyrights. All materials developed by Client for use on the Program Sites shall, as between the parties, be owned by Client.

5.2. *SpotOn's Proprietary Rights.* SpotOn has developed proprietary software and systems through which it delivers the Services (the "SpotOn Software"). SpotOn grants Client a license to access the SpotOn Software via the internet during the term of this contract, but only for the internal use of Client and subject to the other terms and conditions of this contract. SpotOn has developed trademarks and copyrighted material that it may use on the Program Sites or make available for use by Client. All trademarks and materials used by SpotOn in the Services (other than those owned by Client); the SpotOn Software; and all other software, technology and systems used by SpotOn are owned by SpotOn.

## 6. Representations, Warranties and Covenants of SpotOn

SpotOn represents and warrants to Client that SpotOn will provide the Services in compliance with (i) all applicable laws and regulations, (ii) SpotOn's published policies relating to the Services; and (iii) the Terms of Service and Privacy Policy.

## 7. Representations, Warranties and Covenants of Client

Client represents, warrants and covenants to SpotOn as follows:

7.1. *Noninfringement.* Client has all rights to all materials delivered by Client for use on (or approved by Client for use on) Program Sites, and to all materials used in the Notes and Client's Loyalty Program (if any), without infringing the rights of SpotOn or any third party.

7.2. *Compliance with Law and Policy.* Client will use the Services only for Client's business purposes, will comply with all applicable laws and regulations, and with the terms of its published policies and programs, with respect to any of its operations that relate to the Services. Client will also comply with the Terms of Service and Privacy Policy and with policies of SpotOn.

7.3. *No Unauthorized Alteration of Program Sites.* Client will not, during the term of this contract, make any changes to its Facebook page, Twitter account or any other Program Site that relates in any way to the Services, including without limitation the registration form, the Privacy Policy and the Terms of Service provided by SpotOn, without the prior written consent of SpotOn.

7.4. *Notes and Offers.* Client will be wholly responsible for the creation and dissemination of Notes and for the fulfillment of all accepted Offers. All such Notes and Offers, and fulfillment of all Offers, shall be in compliance with (i) all applicable laws and regulations, (ii) the terms of this contract, and (iii) the terms of such Offers.

7.5. *Loyalty Programs.* If Client offers a Loyalty Program, Client will be wholly responsible for the design and description of the Loyalty Program and for fulfillment in accordance with the terms of such Loyalty Program. Any such Loyalty Program and related fulfillment shall be in compliance with (i) all applicable laws and regulations, (ii) the terms of this contract, and (iii) the terms of such Loyalty Program.

7.6. *No Infringing or Inappropriate Content.* Client will not disseminate, whether on its premises, in any SMS message, on any Program Site, via any Note or Offer, in any Chat Facility (as defined in Section 12.8) or otherwise, any content that Client does not have the right to use, or any content that is unlawful, vulgar, profane, disparaging or, in the sole judgment of SpotOn, otherwise objectionable ("Inappropriate Content").

7.7. *No Interference.* Client will not upload, post, e-mail or otherwise transmit any material that contains a virus or other mechanism designed to interrupt, destroy or limit the functionality of the SpotOn Software, any of the Services, or any software or system of a third party. Client will not interfere with the provision or use of the Services by SpotOn, by any client of SpotOn or by any end user, nor will Client interfere with any other technology or services offered by SpotOn. Client will not seek to download, obtain the code for or in any other way seek to access the SpotOn Software or any other software or technology of SpotOn, except for remote use of the SpotOn Software as authorized by this contract.

7.8. *No Unauthorized Use of Third Party Information or Customer Information.* Client will not download or make any copy (whether in hard copy or electronic) of any customer information collected by SpotOn or through SpotOn's technology or the Services. Client will use all customer information accessible to Client through the Services only during the term of this contract, and only for Client's

internal business purposes, in accordance with the Privacy Policy and in accordance with applicable laws and regulations. Client will not provide any customer information obtained through the Services to any third party. Client will not obtain or seek to obtain access to any nonpublic information of SpotOn, any other SpotOn customer or other third party, or customer information maintained on behalf of another SpotOn client.

7.9. *Use of Tablet and Router.* If SpotOn loans Client a Tablet and/or a Router, Client will use such devices in accordance with the terms of Section 3.8.

## **8. Disclaimers; Limitations of Liability; Release and Waiver**

8.1. *Third Party Services.* Client understands and agrees (i) that SpotOn offers Services through the internet and through third parties, including but not limited to SMS gateways, Facebook, Twitter and possibly other social networking or other third party sites or services (collectively, "Third Party Services"), and (ii) that any Tablet and/or Router loaned to Client by SpotOn has been manufactured by a third party ("Third Party Devices"). Client agrees that SpotOn is not responsible for the performance of the internet, any Third Party Services or any Third Party Devices, for the reliability, security, availability, compliance with law or any other aspect of the internet, Third Party Services or Third Party Devices. CLIENT HEREBY RELEASES SPOTON FROM ANY DAMAGES CLIENT OR ITS CUSTOMERS MAY INCUR AS A RESULT OF USE OF THE INTERNET; SPOTON'S WEBSITE, TOOLS, TECHNOLOGY OR SERVICES; OR THIRD PARTY SERVICES OR THIRD PARTY DEVICES. CLIENT AGREES NOT TO ASSERT ANY CLAIMS AGAINST SPOT ON, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES (COLLECTIVELY, "ASSOCIATED PERSONS") ARISING IN ANY WAY FROM USE OF THE INTERNET, THIRD PARTY SERVICES OR THIRD PARTY DEVICES. In connection with the foregoing release, Client hereby waives California Civil Code Section 1542, and any similar provision in any other jurisdiction. California Civil Code Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

8.2. *No Assurance of Availability of Services.* Client understands and agrees that the Services and Third Party Devices may be unavailable from time to time for maintenance or other reasons, and that SpotOn is not responsible for any error, omission or interruption in Services or in the performance of Third Party Devices; defect or delay in operation or transmission; communications failure; deletion, theft, destruction or unauthorized access to or alteration of any content that Client sends or attempts to send through use of the Services or Third Party Devices; or any technical malfunction or other difficulty Client may experience in the use of the Services or Third Party Devices.

8.3. *Disclaimer of Representations and Warranties.* The representations, warranties and covenants set forth in Section 6 are the only representations, warranties or covenants made by SpotOn. SPOTON HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THE SERVICES AND THIRD PARTY DEVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. THE FOREGOING DISCLAIMER INCLUDES, WITHOUT LIMITATION, A DISCLAIMER OF ANY REPRESENTATION, WARRANTY OR COVENANT THAT THE SERVICES, THIRD PARTY DEVICES OR SPOTON'S WEBSITE WILL BE UNINTERRUPTED, RELIABLE, SECURE OR ERROR FREE; THAT SUCH SERVICES, THIRD PARTY DEVICES OR WEBSITE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT THE SERVICES OR THIRD PARTY DEVICES WILL MEET CLIENT'S EXPECTATIONS.

8.4. *Limitation of Liability.* Under no circumstances will SpotOn or any Associated Person (as defined in Section 8.1) be liable for damages of any kind, under any legal theory arising out of or in connection with Client's use of, or inability to use, the Services or Third Party Devices, or from SpotOn's suspension of or termination of the Services, or from Client's participation in the Services, including any direct, indirect, incidental, special or consequential damages (including but not limited to damages for loss of profits, use, data or other intangibles), even if SpotOn or any Associated Person has been advised of or is aware of the possibility of such damages. Some jurisdictions do not allow the limitation or exclusion of incidental, consequential or other types of damages, so some of the foregoing limitations may not apply to Client. Without limiting the terms of Section 8.3 and this Section 8.4 in any way, SpotOn's liability for damages shall be limited to the return of the monthly fees paid by Client for the month(s) in which the events giving rise to such damages occurred.

8.5. *Basis of the Bargain.* Client agrees that without the limitations of liability, exclusions of damages, releases and waivers contained in this contract it would not be feasible for SpotOn to offer the Services or the Third Party Devices at the rates provided for herein, that such limitations of liability, exclusions of damages, releases and waivers are fundamental elements of the basis of the bargain between Client and SpotOn pursuant to which the Services and Third Party Devices are offered, and that the Services and Third Party Devices would not be made available to Client if Client did not agree to such limitations, exclusions, releases and waivers.

## **9. Indemnification**

Client hereby agrees to indemnify SpotOn and its Associated Persons, and to hold them harmless from and against, any and all losses, damages, costs or expenses, including reasonable attorneys' fees, arising out of any claim by a third party resulting from the operation of Client's business (including but not limited to goods and services sold or provided by Client) or from an actual or alleged breach of or failure to comply with any of Client's obligations, representations, warranties or covenants set forth in this contract, including but not limited to those in Section 7.

## **10. Rejection or Suspension of Client's Participation; Consequences of Termination or Suspension**

- 10.1. *Rejection by SpotOn.* SpotOn may refuse to enter into a contract to provide Services to Client for any reason, in SpotOn's sole discretion, without providing any explanation for such refusal.
- 10.2. *Suspension of Services.* If SpotOn accepts this contract and thereby accepts Client as a client, in addition to its termination rights in Section 11.3, SpotOn may suspend Client's access to the Services if Client violates any of the terms of this contract or any policy or procedure applicable to the use of the Services that may be published by SpotOn from time to time.
- 10.3. *Consequences of Suspension or Termination.* Upon suspension of Client's right to use the Services or termination of this contract, SpotOn will remove Client's access privileges to the SMS and other communications services offered by SpotOn and Client's access to the SpotOn Application, including but not limited to the tools that allow Client to track its Loyalty Program and outstanding Offers, and will remove and/or delete all material relating to Client that was uploaded by SpotOn to the Program Sites. If SpotOn has loaned Client a Tablet and/or Router, Client shall be responsible for the prompt return of, or purchase of, such devices, pursuant to Section 3.8.3.
- 10.4. *Right to Review Notes and Offers.* SpotOn reserves the right to review all Notes and Offers, including but not limited to those sent by SMS and those posted through Facebook, Twitter or other Program Sites, but SpotOn has no obligation to review any Notes or Offers. If SpotOn believes, in its sole judgment, that any Note or Offer contains any Inappropriate Content (as defined in Section 7.6) or that any Offer will not be fulfilled by Client in accordance with the terms of such Offer, SpotOn may refuse to post the Note or Offer or may prevent its posting or delivery. However, Client shall remain wholly responsible for its Notes and Offers. Whether or not SpotOn reviews any Notes or Offers or does or does not refuse to post any Notes or Offers it may have reviewed, SpotOn assumes no responsibility for any Note or Offer, and Client shall remain wholly responsible for the contents of its Notes and Offers and for fulfillment of accepted Offers.

## 11. Term and Termination

- 11.1. *Initial and Renewal Terms.* This contract commences on the Effective Date, as described in Section 14.2. The initial term of this contract ends on the first anniversary of the later of (i) the Effective Date or (ii) if SpotOn offers a free introductory promotional period, the first day of the first month in which Client is charged a subscription fee. THIS CONTRACT SHALL AUTOMATICALLY RENEW FOR ONE OR MORE RENEWAL TERMS WHICH WILL END OF THE FIRST ANNIVERSARY OF THE INITIAL TERM OR THE THEN-CURRENT RENEWAL TERM UNLESS EITHER PARTY GIVES THE OTHER NOTICE OF TERMINATION AT THE END OF THE THENCURRENT TERM AT LEAST 90 DAYS PRIOR TO THE END OF SUCH TERM.
- 11.2. *Early Termination by Client.* This contract can be terminated by Client by delivery of written notice to SpotOn (i) pursuant to Section 4.4 or (ii) if SpotOn materially breaches this contract and does not correct such breach within thirty (30) business days after receipt of written notice of the breach from Client.
- 11.3. *Early Termination by SpotOn.* This contract may be terminated by SpotOn at any time in SpotOn's sole discretion, without providing any explanation for such termination and without any liability or obligation to Client.
- 11.4. *Effect of Termination.* In the event of early termination of this contract by either party for any reason, SpotOn will take the actions described in Section 10.3.
- 11.5. *Intentionally deleted.*
- 11.6. *Survival.* Client's payment obligations under the following sections of this contract shall survive termination of this contract for any reason: Sections 3.8.3, 4 through 9, 11.5 and 12. In addition, Client shall continue to honor all Offers made and Loyalty Program benefits accumulated during the term of this contract. The preceding sentence shall survive termination of this contract.
- 11.7. *Notices.* All notices, demands, requests or other communications that may be or are required to be given, served or sent by any party to any other party pursuant to this contract shall be in writing and shall be sent by courier service or mailed by registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile or email, addressed to the other party as set forth in Section 15.
- 11.7.1. **Changes.** Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent, or additional persons or addresses for notice.
- 11.7.2. **Delivery.** Each notice, demand, request or communication sent in the manner described above shall be deemed received at the time shown on the delivery receipt if delivered by courier service; three days after being mailed if sent by registered or certified mail, return receipt requested; at the time shown on the sender's confirmation of sending notice (if sent by facsimile); or at the time sent by email; provided that any notice of breach or termination, or any demand for indemnification, that is sent via facsimile or email must also be sent promptly by courier service or registered or certified mail, as described in Section 12.1.
- 11.8. *Effectiveness of Email Communications.* Any notice or contract called for by this contract to be in writing, other than notices of breach or termination, or demands for indemnification, shall be effective if sent by email from an address at the sending party's

domain to an individual designated by the other party for receipt of such notices, at the email address provided by the other party, and need not be sent by any other method.

- 11.9. *Severability.* If any term, provision, covenant or restriction of this contract is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this contract shall remain in full force and effect to the maximum extent permitted by law and shall in no way be affected, impaired or invalidated.
- 11.10. *Relationship between the Parties.* The parties agree that each of them is an independent contractor with respect to the other. Neither party is an express or implied agent of the other, has authority to assume or create any obligation, express or implied, on behalf of the other party, or has authority to represent the other party as agent, employee, or in any other capacity; and neither party will make any representation to the contrary.
- 11.11. *Use of Customer Data by SpotOn.* SpotOn reserves the right to gather and store data regarding Client's customers who sign up for Client's SMS messages, visit Client's Facebook page or other Program Sites, or respond to Client's Notes or Offers ("Client's Customers"). Such data may include the Client's Customer's use of Client's Loyalty Program and responses to Offers, including (i) the personal information submitted by Client's Customers (e.g., telephone number, email address, zip code, birthdate or other registration information; optional information such as name, gender and other information) and (ii) such customers' responses to Notes and Offers (whether from Client or another client of SpotOn), enrollment in Loyalty Programs (of Client and/or other SpotOn clients) and accrued Loyalty Program points, purchases from Client and other SpotOn clients, and other habits of such customers. Client acknowledges that all such customer data is owned exclusively by SpotOn. SpotOn may use such information to generate reports and analyses based on such data, including pattern recognition and benchmarking against data from other clients of SpotOn and their customers and other information available from third parties. Information about Client's Customers gathered by SpotOn may also be used by SpotOn for remarketing, including sending marketing messages, coupons, Notes or Offers to such customers (directly or through an agent or contractor), provided that SpotOn agrees not to send marketing messages, coupons, Notes or Offers to Client's Customers on behalf of companies that Client has listed as its competitors in the portion of SpotOn's dashboard provided for that purpose. If SpotOn uses information about individuals that is gleaned solely from one or more other client's participation in SpotOn's services and from publicly available sources (including commercially available mailing lists), such individuals shall not be considered Client's Customers for purposes of the preceding sentence, whether or not they are also customers of Client.
- 11.12. *Use of Customer Data by Client.* Client may not store data regarding Client's Customers obtained through the use of the Services. Client may use data relating to Client's Customers obtained through the use of the Services solely to market Client's goods and services to Client's Customers through the Services. Client will not provide any information obtained through the use of the Services, including any information that would personally identify, or facilitate personal contact with, any Client Customer (e.g., name, email, telephone number, zip code, birthdate, gender or other identifying information) to any third party other than (i) to an acquirer in the event of a sale or merger of Client's business, provided that the acquirer agrees to maintain and use such data regarding Client's Customers in accordance with the Privacy Policy, (ii) as necessary to fulfill an order for such customer, (iii) to service providers to Client who need to know such information and are obligated to keep it confidential, or (iv) if required by law or subpoena, in response to an inquiry from law enforcement authorities or if Client believes the release of such information is necessary to address or prevent illegal or harmful activity.
- 11.13. *User IDs and Passwords.* Client's use of SpotOn's Services will be controlled by user IDs and passwords, in accordance with SpotOn's access policies in effect from time to time. Client understands and agrees that SpotOn will provide access to Client's information, in accordance with access levels and controls offered by SpotOn, to anyone using an active user ID and password combination selected by Client and associated with the appropriate level of access, and that SpotOn will rely on all messages and may post all Notes (including Offers) sent using active user IDs and passwords assigned to Client with the appropriate level of access. Client will be responsible for selecting secure passwords and for safeguarding all user IDs and passwords. Client will notify SpotOn in writing of any user IDs and/or passwords that may have been compromised or that Client wishes to terminate or change for any reason.
- 11.14. *Use of Chat Facilities.* SpotOn may provide, as part of the Services, discussion blogs, bulletin board services, chat rooms and/or other means of communication for use by SpotOn, Client, other customers of SpotOn and possibly by third parties such as operators of Program Sites (collectively, "Chat Facilities"), but SpotOn is under no obligation to provide any Chat Facilities. If SpotOn does provide Chat Facilities, Client acknowledges that such facilities are not for private communications, that all other persons with access to such Chat Facilities may read any of Client's communications posted there, that SpotOn does not control or endorse the messages posted by users and that SpotOn disclaims any responsibility or liability for any messages posted on the Chat Facilities or any action taken as a result of such messages. Client agrees that its use of, and any reliance on, the Chat Facilities or any messages posted on them is at Client's own risk. Any message posted to the Chat Facilities by Client will be treated by SpotOn as non-confidential. Client hereby consents to SpotOn's posting of all such messages, with or without attribution to Client, to any and/or all Chat Facilities and for any other lawful purposes, such as advertising, promoting or enhancing the Services. Such consent shall be irrevocable and shall apply to all forms of media and transmission, whether now existing or created in the future. All submissions by Client to Chat Facilities will be subject to Client's representations, warranties and covenants of noninfringement and no Inappropriate Content, as set forth in Section 7.6. SpotOn may refuse to post any message or may remove any message of Client or any third party at any time, at SpotOn's sole determination, without any obligation or explanation.

- 11.15. *Marketing.* SpotOn reserves the right to use Client's name in promotional, marketing and presentation materials for the purpose of marketing SpotOn's Services and promoting SpotOn, and in communications with investors and prospective investors and with third parties with which SpotOn does, or seeks to do, business. Client agrees that all Program Sites may bear a logo, tagline and/or other message attesting to SpotOn's role in offering the Services (e.g., "Powered by SpotOn"), may disclaim any responsibility of SpotOn for Merchant's products, services or communications, and may contain other information regarding the respective responsibilities of Client and SpotOn.
- 11.16. *No Waiver.* The failure of either party to exercise in any respect any right or remedy provided for herein shall not be deemed a continuing waiver or a waiver, partial or complete, of any future breach or any other right or remedy hereunder.
- 11.17. *Force Majeure.* Except for each party's payment obligations, neither party shall be liable under, or in default of, this contract for failure to perform its obligations under this contract if such failure arises out of causes beyond such party's reasonable control and without its fault or negligence. Such causes or conditions shall include, but shall not be limited to, acts of God, terrorism, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunications or internet outages, riots, or wars.
- 11.18. *Entire Contract; Assignment.* This contract constitutes the entire contract and supersedes all prior contracts and understandings, both written and oral, among the parties, with respect to the subject matter hereof. This contract is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

## 12. Disputes with SpotOn

- 12.1. *Contact SpotOn First.* If a dispute arises between Client and SpotOn, SpotOn's goal is to learn about and address Client's concerns and, if SpotOn is unable to do so to Client's satisfaction, to provide Client with a neutral and cost effective means of resolving the dispute quickly. Disputes between Client and SpotOn may be reported to SpotOn's customer service at Support@SpotOn.com, or by calling SpotOn's customer service representative at 877- 814-4102 between 9 a.m.- 5 p.m. Pacific time weekdays (other than holidays).
- 12.2. *Arbitration.* If any dispute is not resolved by negotiation as described in Section 13.1, such dispute (excluding claims for injunctive or other equitable relief) shall be resolved through binding arbitration. Either Client or SpotOn may initiate such arbitration by notifying the other party and the alternative dispute resolution provider ("ADR Provider") that Client or SpotOn wishes to initiate a binding arbitration proceeding. Such arbitration shall be handled by the American Arbitration Association or another established ADR Provider mutually agreed upon by the parties. The arbitrator shall apply Illinois law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law. There shall be no authority for any claims to be arbitrated on a class or representative basis. Arbitration can decide only the individual claims of Client and/or SpotOn. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The party initiating arbitration can elect non-appearance-based or appearance-based arbitration. For non-appearance-based arbitration: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; and b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties. For appearance-based arbitration, the arbitration shall be held at a location in Chicago, Illinois determined by the ADR Provider, or at such other location as may be mutually agreed upon by Client and SpotOn. Any judgment on an arbitration award rendered by the arbitrator (whether non-appearance-based or appearance-based) may be entered in any court of competent jurisdiction.
- 12.3. *Law and Forum for Disputes.* This contract shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Illinois, without regard to any conflicts of laws rules. Exclusive jurisdiction over any dispute over this contract or any action to enforce rights under this contract, including any claim for injunctive or other equitable relief or to enforce a binding arbitration award, shall be in the state or federal courts located in Chicago, Illinois. Client hereby irrevocably submits to the personal jurisdiction of the courts located within Chicago, Illinois for the purpose of litigating all such claims or disputes, including for enforcing an arbitration award, agrees to venue in such courts and will not allege forum non-conveniens or otherwise seek to bring or move any such action in or to any other location.
- 12.4. *Improperly Filed Litigation.* All claims Client brings against SpotOn must be resolved in accordance with Section 13 of this contract. All claims filed or brought by Client contrary to Section 13 shall be considered improperly filed and a breach of this contract. Should Client file a claim contrary to Section 13, SpotOn may recover attorneys' fees and costs up to \$1,000, provided that SpotOn has notified Client in writing of the improperly filed claim, and Client has failed to promptly withdraw the claim.

## 13. Acceptance and Effectiveness of this Contract

- 13.1. *By Client.* By signing up for SpotOn's Services or by using SpotOn's Services after receiving a copy of this SpotOn Application Contract, Client accepts and agrees to be bound by the terms of this contract. The individual accepting this contract (by signing up for SpotOn's Services or by using those services after receipt of this contract) hereby represents and warrants that he or she has full power and authority to bind Client by such acceptance.



13.2. *By SpotOn.* Notwithstanding the acceptance of this contract by Client, this contract shall become and binding on SpotOn and effective only after SpotOn has notified Client that SpotOn has accepted Client as a client ("Effective Date").

### 13.3. **Addresses for Notice**

Subject to Section 12.1, all notices to SpotOn shall be sent as follows:

13.4. *If to SpotOn.* Notices to SpotOn shall be sent to:

**SpotOn, Inc.**

**2350 Kerner Boulevard, Suite 380**

**San Rafael, CA 94901**

**877-814-4102**

**Facsimile: 877-521-6288**

**[Support@SpotOn.com](mailto:Support@SpotOn.com)**

13.5. *If to Client.* Notices to Client shall be sent to the physical address, email address or facsimile number (i) provided by Client when Client signs up for SpotOn's Services or (ii) otherwise provided to SpotOn by Client.

## **SAGE PAYMENT SOLUTIONS EFT, INC. (SPS-EFT) POS GUARANTEE CONVERSION, POS CONVERSION, AND QSP: MERCHANT RIGHTS AND RESPONSIBILITIES**

MERCHANT wishes to initiate debit and credit entries pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Sage Payment Solutions, Inc. (SPS-EFT) is willing to act as the third party processor for MERCHANT, subject to the terms and conditions set forth in this Agreement with respect to such Entries. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data, which is transmitted by the MERCHANT to SPS-EFT to prepare such Entries for processing.

This agreement is only applicable to processing point of sale transactions utilizing the end-customer's Checking account data. Upon MERCHANT'S request and SPS-EFT's approval, check guarantee services (hereinafter referred to as "SPS-EFT POS Guarantee Conversion" service) will also be provided pursuant to provisions below. If MERCHANT has not requested SPS-EFT POS Guarantee Conversion service, or if SPS-EFT has not accepted the MERCHANT application for SPS-EFT POS Guarantee Conversion service, SPS-EFT will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

### AGREEMENT

1.1 MERCHANT'S AUTHORITY. MERCHANT specifically warrants to SPS-EFT that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with SPS-EFT. 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 POS GUARANTEE CONVERSION. If MERCHANT has marked the SPS-EFT POS GUARANTEE CONVERSION box on the application form of this Agreement then MERCHANT wishes SPS-EFT also to provide check guarantee services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged SPS-EFT to provide for each check: verification, electronic funds transfer and certain collection services.

1.3 CHECK COLLECTION. MERCHANT authorizes SPS-EFT to represent all return items forwarded to SPS-EFT 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. SPS-EFT shall have sixty (60) days from the date of receipt of a return check item to complete their electronic representment process. If this Agreement is terminated for any reason, SPS-EFT will retain the right to complete their electronic representment process for all return check items forwarded to SPS-EFT prior to said termination.

1.4 MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES. SPS-EFT shall provide signage to be displayed at the point of purchase (POP), which informs customers of the MERCHANT'S use of SPS-EFT Electronic Check Processing Service. MERCHANT agrees to display these materials in the best visible and unobstructed location so as to inform the public that MERCHANT will honor electronic check processing service by SPS-EFT. From time to time, SPS-EFT 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 SPS-EFT's stale promotional materials and to display the most current materials upon receipt of such from SPS-EFT. MERCHANT will discontinue the use of all of SPS-EFT'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 SPS-EFT.

2.1 RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING SPS-EFT'S SERVICES. MERCHANT shall make no use of SPS-EFT's promotional materials or marks, other than as set forth in paragraph 1.4 above,

without SPS-EFT'S prior written consent. In no way shall the MERCHANT indicate that SPS-EFT's services are an endorsement of the MERCHANT, its business or its business practices.

3.1 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 SPS-EFT from time to time. MERCHANT shall accept only the following checks as source documents to initiate ACH debit entries through SPS-EFT; (a) All demand deposit account checks 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 SPS-EFT. (b) MERCHANT shall obtain proper identification, in the form of a valid drivers license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to SPS-EFT 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; (d) MERCHANT shall scan each check through its POP MICR reader/check scanner to initiate electronic processing. MERCHANT shall use an electronic printer connected to a POP MICR reader/check scanner 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 SPS-EFT, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. Once SPS-EFT authorizes 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. To be valid, MERCHANT shall ensure the following: 1. That the sales receipt contains the following correct information: (a) the customer's bank account number and the check number from the MICR data; (b) MERCHANT's correct name and business address; (c) the date of the transaction; (d) 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. (e) After customer signs the receipt, MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt; (f) No check may be altered after SPS-EFT authorizes acceptance of the check. MERCHANT may not resubmit a check electronically or deposit it by any means, once SPS-EFT authorizes a transaction. 2. MERCHANT shall write the current phone number and driver's license 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 of ALL transactions), subject MERCHANT to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of SPS-EFT 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, FICTICIOUS, 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 INIATED 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 SPS-EFT AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE SPS-EFT FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE SPS-EFT FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND SPS-EFT WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.**

3.2 CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct SPS-EFT to initiate an ELECTRONIC CHECK DEBIT ENTRY ("ENTRY") for MERCHANT against customer. It further permits SPS-EFT to reinitiate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. **Any collection fees received by SPS-EFT in collecting returned checks shall be the sole property of SPS-EFT.** SPS-EFT shall present the ENTRY no more than three times. SPS-EFT, for POS Conversion service shall be entitled to assess a transaction fee as set forth in the schedule against MERCHANT for each representment. If a check is returned unpaid after the third presentment, SPS-EFT shall be entitled to debit the MERCHANT'S account for the amount of the check (POS Conversion).

3.3 RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR ELECTRONIC PROCESSING. From time to time, SPS-EFT shall establish necessary security and identification procedures for presentment of checks for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by SPS-EFT. In no event, will SPS-EFT accept a check greater than \$2500 for processing without prior written authorization by SPS-EFT. SPS-EFT 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 SPS-EFT with any and all information needed to establish such limitations. MERCHANT further agrees to inform SPS-EFT 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 SPS-EFT electronically processing any check. MERCHANT shall scan each check submitted for processing through no more than one POP MICR reader/check scanner. MERCHANT agrees that sales completed at one location cannot be processed through a MICR reader/check scanner at another location. In no event is MERCHANT allowed to process checks manually by keying in the MICR number.

3.4 UNACCEPTABLE TRANSACTIONS. In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing, and MERCHANT agrees not to submit any of the following transactions to SPS-EFT 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 any depository institution that is not federally insured or part of the ACH network, (c) MERCHANT shall not electronically process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (d) MERCHANT shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (e) MERCHANT shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (f) 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, (g) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (h) 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, (i) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initialed by the customer at time of presentation, (j) MERCHANT shall not knowingly submit a check on an account which SPS-EFT 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 SPS-EFT POS Guarantee Conversion coverage from ALL checks.

- 3.5 SURCHARGES AND TAXES. MERCHANT shall not impose any illegal 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 SPS-EFT 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.
- 3.6 IRS REPORTING AND WITHHOLDINGS. Section 6050W of the Internal Revenue Code ("Code") requires payment providers and third party payment networks, such as SPS-EFT, to report payment settlement amounts to the Internal Revenue Service ("IRS") for each Merchant processing through SPS-EFT. Merchant shall verify its identity by providing SPS-EFT with a Tax Identification Number ("TIN") such as a Social Security Number (SSN) or Employer Identification Number (EIN) for each Merchant Account. In the event Merchant fails to provide its TIN, SPS-EFT will place a restriction on Merchant's Account and may restrict the receipt of funds into Merchant's Account, or withhold a percentage of payments deposited into Merchant's Account in order to satisfy the backup withholding requirements of the IRS.
- 4.1 EQUIPMENT. MERCHANT shall furnish each outlet, retail location, or business entity with a POP MICR reader/check scanner electronic printer. SPS-EFT shall assign each MERCHANT's POP MICR reader/check scanner 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 POP MICR reader/check scanners. MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT'S expense. MERCHANT shall advise SPS-EFT immediately in the event of a breakdown of a POP MICR reader/check scanner, electronic printer, or check reader or of any other system failure. MERCHANT acknowledges that SPS-EFT is not responsible for any POP MICR reader/check scanner or related equipment problems unless required fees are current. MERCHANT acknowledges that SPS-EFT will replace any reader/ check scanner within 24 hours of notification of any MERCHANT in good standing provided they are current with monthly fees. Replacement of equipment will be subject to written notification from MERCHANT to SPS-EFT and SPS-EFT's approval of request. Moreover, SPS-EFT's approval of such equipment does not constitute nor express an implied warranty, representation or endorsement of such equipment.
- 4.2 USE OF EQUIPMENT. MERCHANT agrees to utilize only equipment approved by SPS-EFT for the electronic processing of checks and in a format and medium of transmission acceptable to SPS-EFT.
- 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 SPS-EFT Virtual Terminal in place of a traditional credit card terminal. SPS-EFT's Virtual Terminal performs the basic functions of a traditional credit card terminal including verification services, ACH conversion, and transaction voids. **NOTE: ACH Conversion Services requires use of a SPS-EFT compatible Check Imager or Check Reader connected to the PC.** MERCHANT is required to use a 3.5 inch or PC printer to print EFT receipts in order to obtain CUSTOMER'S signature authorization in conjunction with Check Conversion Services per NACHA and Reg "E". If a compatible Imager or Reader is not used, then MERCHANT understands that SPS-EFT will only provide Verification Services, and there will be no transactions converted and processed via ACH. The SPS-EFT Virtual Terminal requires Internet Explorer 7.0 or higher. Supported Operating Systems include WindowsXP ® or higher (32 and 64-bit versions). 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 SPS-EFT Virtual Terminal Software.
- 5.1 DAILY SETTLEMENT OF TRANSACTIONS. MERCHANT agrees to "batch out" each POP MICR reader/check scanner used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions on each POP MICR reader/check scanner used by midnight (12:00 am) of the day SPS-EFT authorizes the sale and transmits the information contained in the batch out to SPS-EFT. 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 SPS-EFT. If MERCHANT account is POS GUARANTEE CONVERSION then checks contained in an untimely batch out are not covered under the POS GUARANTEE CONVERSION program. If so requested by SPS-EFT, the signed Electronic Check Authorization receipt must be sent out and received at SPS-EFT's designated location within 48 hours from the request date. Failure to do so will remove SPS-EFT's obligations under the SPS-EFT POS Guarantee Conversion program for such checks at SPS-EFT's sole discretion. MERCHANT acknowledges that failure to

batch out on a timely basis may be grounds for suspension or termination at SPS-EFT's sole discretion. **MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks.**

- 5.2 NETTING OF TRANSACTIONS. MERCHANT acknowledges that all transactions between SPS-EFT and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and SPS-EFT.
- 5.3 PROVISIONAL SETTLEMENTS. MERCHANT acknowledges that all settlements between SPS-EFT 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 SPS-EFT, MERCHANT endorses and assigns to SPS-EFT all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that SPS-EFT has the right to receive payment on all electronically processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify SPS-EFT by telephone of the payment, endorse the check; sign it over to SPS-EFT and immediately mail the payment to SPS-EFT by certified mail. If customer pays cash, MERCHANT shall reimburse SPS-EFT by MERCHANT's check.
- 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 SPS-EFT through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, SPS-EFT 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 SPS-EFT 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 SPS-EFT'S control, SPS-EFT 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 SPS-EFT's sole discretion, without any further notice or demand.
- 5.5 AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT. MERCHANT hereby authorizes SPS-EFT 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 SPS-EFT 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, SPS-EFT will transmit settlement to MERCHANT's bank by the fourth bank business day following the day MERCHANT batches out a MICR reader/check scanner's transactions. In cases where MERCHANT has been approved by SPS-EFT in advance to initiate credit entries, the debit to MERCHANT's account will be initiated first and the credit to the customer may be held until MERCHANT's debit clears, generally within 6 banking days or for a longer period as determined necessary by SPS-EFT to insure the funds have cleared MERCHANT's account. SPS-EFT may hold back certain amounts where SPS-EFT is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. SPS-EFT shall monitor MERCHANT's transactional activity and MERCHANT agrees that SPS-EFT may delay funds for a reasonable period to investigate account activity. SPS-EFT will attempt to notify MERCHANT of any investigation, but SPS-EFT shall have no liability to MERCHANT or any other party, for any such actions taken by SPS-EFT. MERCHANT agrees that SPS-EFT may hold, setoff or retain funds to protect against amounts owed SPS-EFT or based on MERCHANT's financial condition. SPS-EFT 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 SPS-EFT. SPS-EFT 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 SPS-EFT in advance to initiate credit entries for a lesser amount than the original electronic check entry, 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 POP equipment or approved SPS-EFT software 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 processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to SPS-EFT to initiate such reversal. MERCHANT shall give SPS-EFT enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by SPS-EFT.
- 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 SPS-EFT. With each transaction presented to SPS-EFT by MERCHANT for authorization, MERCHANT specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account, that each debit or credit is for an amount agreed to by the customer; (b) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (c) 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; (d) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (e) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt draft; (f) each sales draft 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 sales draft evidences the customer's total indebtedness for the transaction involved; (g) 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; (h) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (i) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (j) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (k) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT's MICR reader/check scanner; (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) MERCHANT warrants that check banking information on the printed receipt is correct; and (o) no transaction submitted for authorization to SPS-EFT 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 SPS-EFT upon demand by SPS-EFT. Such excess funds may be collected by SPS-EFT by a debit to MERCHANT'S designated account initiated by SPS-EFT 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 SPS-EFT. Until the return of such funds to SPS-EFT, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of SPS-EFT.

7.1 LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES. SPS-EFT shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. SPS-EFT 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 SPS-EFT's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of SPS-EFT. **IN NO EVENT SHALL SPS-EFT 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 SPS-EFT'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

7.2 FORCE MAJEURE. SPS-EFT 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 SPS-EFT.

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 SPS-EFT, MERCHANT'S agents approved by SPS-EFT for the purpose of assisting MERCHANT in its business to SPS-EFT, 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 SPS-EFT for the amount of any transaction, or other amounts due SPS-EFT (including SPS-EFT'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 as set forth in the SPS-EFT POS GUARANTEE CONVERSION provisions below (provided that MERCHANT has purchased and SPS-EFT agreed to provide POS GUARANTEE CONVERSION service). SPS-EFT shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in SPS-EFT's direct or indirect control by reason of SPS-EFT's security interest granted to SPS-EFT 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 electronic 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 SPS-EFT 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 SPS-EFT, 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 authorization document was not received by SPS-EFT as required herein or 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,R04 return codes) 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 no signature of the transaction appears on the sales check authorization document or if MERCHANT failed to obtain specific authorization in advance from SPS-EFT to complete

the transaction and/or a valid authorization number was not on the sales receipt and/or the customer has certified in writing to SPS-EFT or his financial institution that no authorized user made or authorized the transaction; (h) where security procedures were not followed; (i) where the customer's financial institution or SPS-EFT 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 SPS-EFT; (l) MERCHANT does not provide copy of the signed authorization receipt as requested by SPS-EFT within forty-eight (48) hours from the time of such request. 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. SPS-EFT shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that SPS-EFT will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by SPS-EFT from time to time. **Additionally, SPS-EFT 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 SPS-EFT POS GUARANTEE CONVERSION service, and SPS-EFT has accepted the application for POS GUARANTEE CONVERSION service, certain transactions are guaranteed, as listed in the SPS-EFT POS GUARANTEE CONVERSION provisions below.**

9.2 CHARGEBACK AND RETURNS RESERVE ACCOUNT. Notwithstanding any other language to the contrary contained in this Agreement, SPS-EFT reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a noninterest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon SPS-EFT'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 SPS-EFT to permit a fully informed decision as to the suitability of MERCHANT for processing through SPS-EFT**; (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 SPS-EFT 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 SPS-EFT; (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 SPS-EFT, for all obligations on the part of MERCHANT to SPS-EFT under this Agreement, MERCHANT may request SPS-EFT to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by SPS-EFT. 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 SPS-EFT 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 SPS-EFT will notify MERCHANT of such fact and SPS-EFT 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, SPS-EFT may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes SPS-EFT to continue collection efforts for MERCHANT. If collections are unsuccessful after sixty (60) days, SPS-EFT shall discontinue collections and be absolved of all responsibility.

10.1 SPS-EFT POS GUARANTEE CONVERSION . The SPS-EFT POS GUARANTEE CONVERSION provisions are operational only if MERCHANT has marked the SPS-EFT POS GUARANTEE CONVERSION box on the application form of the Agreement. If so marked, MERCHANT wishes SPS-EFT to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for electronic processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, SPS-EFT 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. SPS-EFT 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 SPS-EFT'S other published instructions. SPS-EFT shall have the right to adjust MERCHANT'S rate including SPS-EFT POS Guarantee Conversion rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of electronic check deposits. SPS-EFT 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 SPS-EFT POS GUARANTEE CONVERSION service, and SPS-EFT 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. **POS Guarantee Conversion 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 the fees as set forth on the Merchant Application. MERCHANT must promptly notify SPS-EFT 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 SPS-EFT no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by SPS-EFT. MERCHANT'S failure to so notify SPS-EFT will waive and bar the dispute.

10.3 CHECK PROCESSING. MERCHANT shall submit all documentation related to the POS GUARANTEE CONVERSION guaranteed transactions to SPS-EFT within forty-eight hours of SPS-EFT'S request.

10.4 ASSIGNMENT OF CHECKS. As of the date of this Agreement and by subscribing to SPS-EFT POS GUARANTEE CONVERSION, MERCHANT shall be deemed to have assigned to SPS-EFT, 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 SPS-EFT'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with SPS-EFT in pursuing SPS-EFT'S rights, including suing or prosecution of the customer under all applicable laws.

10.5 NOTIFICATION OF PAYMENTS RECEIVED. MERCHANT shall notify SPS-EFT pursuant to the provision set forth in Section 5.3

11.1 CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER SPS-EFT POS GUARANTEE CONVERSION. In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, SPS-EFT 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 SPS-EFT; (d) Lost, stolen, altered or counterfeit, and SPS-EFT 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 electronic 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 SPS-EFT for such cash back; (j) Checks for which SPS-EFT 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; (n) Checks must have a current phone number of customer imprinted or written on them; (o) Checks must have drivers license written on them.

12.1 COMPLIANCE AND DISCLOSURE OF INFORMATION. MERCHANT shall provide such information and certifications as SPS-EFT 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 SPS-EFT or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as SPS-EFT 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 SPS-EFT pursuant to this Agreement. MERCHANT further agrees to provide to SPS-EFT 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 SPS-EFT may request. MERCHANT grants to SPS-EFT 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 SPS-EFT 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. SPS-EFT 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 SPS-EFT and provide SPS-EFT with the opportunity to terminate this Agreement.

12.2 COMPLIANCE WITH THE RULES AND APPLICABLE LAW. The Merchant's rights and obligations with respect to any Entry are governed by the NACHA Rules ("the Rules"), this Agreement and applicable law. The Merchant agrees to comply with and be bound by "the Rules". The Merchant agrees to comply with applicable state and federal law or regulation and Merchant warrants

that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC).

- 13.1 DATA RETENTION. MERCHANT shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two years following the date of the transaction. According to SPS-EFT'S current policy for SPS-EFT, MERCHANT shall stamp or mark "ACH processed" and hand the check back to the check writer. **If check is handed back to check writer then MERCHANT acknowledges that SPS-EFT will not be able to provide any check collection services beyond the third electronic presentation of the check. Failure to provide the signed authorization receipt to SPS-EFT will result in cessation of collection efforts, and SPS-EFT will be entitled to immediately debit MERCHANT'S account for any previously processed and returned transactions.**
- 14.1 ADDITIONAL MERCHANT REPRESENTATIONS. MERCHANT agrees to permit SPS-EFT to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to SPS-EFT 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 SPS-EFT RESPONSIBILITIES. SPS-EFT will accept entries via check reader hardware on a 24-hour per day basis. SPS-EFT is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. SPS-EFT will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that SPS-EFT may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause SPS-EFT 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, SPS-EFT 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 SPS-EFT 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 SPS-EFT 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 SPS-EFT. SPS-EFT 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 SPS-EFT of termination and monthly minimum and subscription fees will continue in effect for this time. If either party terminates this agreement a one-time fee of one hundred ninety nine dollars (\$199.00) will be assessed and electronically debited from MERCHANTS account. SPS-EFT 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, Minimum Monthly Discount Fee, Subscription Fee, Batch Out Fee, Termination Fee and other terms and conditions in effect on the commencement date of this Agreement. SPS-EFT 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 SPS-EFT is non-refundable whether or not MERCHANT and this Agreement are accepted by SPS-EFT.
- 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 SPS-EFT and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between SPS-EFT 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 SPS-EFT, 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 SPS-EFT, 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, SPS-EFT, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in the 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 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.

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 SPS-EFT.

24.1 ATTORNEYS' FEES. In the event that it becomes necessary for SPS-EFT to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT SPS-EFT 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 NACHA 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 Florida, upon its acceptance by SPS-EFT.

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 SPS-EFT.

29.1 In WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

#### **TMS DISCOVER AGREEMENT**

**Important Note: BANK is not a party to the TMS Discover Agreement and has no responsibility under it. MERCHANT acknowledges and agrees that BANK and its affiliates have no obligation or liability whatsoever for: (1) products or services provided under the TMS Discover Agreement, or (2) any actions or omissions of TMS or ISO with respect to the TMS Discover Agreement. MERCHANT agrees that any claims or disputes arising out of the foregoing will be resolved without involving BANK and that BANK is entitled to rely on MERCHANT's agreements in this paragraph.**

THIS Agreement ("TMS DISCOVER AGREEMENT"), by and between TSYS MERCHANT SOLUTIONS, LLC ("TMS"), ISO, and MERCHANT, shall become effective on the date executed or approved by a duly authorized representative of TMS. TMS, ISO, and MERCHANT shall be collectively known hereafter as the "PARTIES."

WHEREAS, First National Bank of Omaha, ISO, and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"); and

WHEREAS, TMS has a relationship with the Discover Network ("DISCOVER"); and

WHEREAS, the PARTIES desire to enter into this TMS DISCOVER AGREEMENT under which TMS and ISO will provide payment processing services as to DISCOVER transactions.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.
2. The terms of the AGREEMENT, including the Merchant Application, are hereby incorporated by reference into this TMS DISCOVER AGREEMENT. References to BANK under the AGREEMENT shall be replaced with references to TMS. References to VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD") under the AGREEMENT shall be replaced with reference to DISCOVER. DISCOVER shall replace references to VISA and MASTERCARD under the definition of "CARD BRANDS" under the AGREEMENT. Financial service cards issued by DISCOVER shall replace references to financial services cards issued by VISA and MASTERCARD under the definition of "CARDS" under the AGREEMENT. Sales transactions using DISCOVER CARDS shall replace references to Sales transactions using VISA and MASTERCARD cards under the definition of "SALES" under the AGREEMENT. The rules and regulations of DISCOVER, which may be accessed at [www.tsystransactionssummary.com](http://www.tsystransactionssummary.com), shall replace references to the rules and regulations of VISA and MASTERCARD under the

definition of "RULES" under the AGREEMENT. MERCHANT agrees to comply with and assure that Merchant Providers comply with the Discover Information Security and Compliance ("DISC") (found at <http://www.discovernetwork.com/fraudsecurity/disc.html>).

3. MERCHANT agrees to pay TMS and ISO the FEES related to DISCOVER as set out on the Merchant Application.
4. This TMS DISCOVER AGREEMENT, together with any amendments, attachments, exhibits, schedules, and the terms of the AGREEMENT as modified and incorporated herein, constitutes the entire agreement between the PARTIES as to transaction processing for DISCOVER, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
5. Except as stated, ISO, TMS, and MERCHANT reaffirm the obligations of each as they are contained in the terms of the AGREEMENT as incorporated hereunder.

**AMERICAN EXPRESS OPTBLUE<sup>SM</sup> PROGRAM AGREEMENT**

**Important Note:** BANK is not a party to the American Express OptBlue Program Agreement and has no responsibility under it. MERCHANT acknowledges and agrees that BANK and their affiliates have no obligation or liability whatsoever for: (1) AMERICAN EXPRESS transactions whether under the American Express OptBlue Program Agreement, the Merchant Transaction Processing Agreement or otherwise; or (2) any actions or omissions of ISO or AMERICAN EXPRESS. MERCHANT agrees that any claims or disputes arising out of the foregoing will be resolved without involving BANK and that BANK is entitled to rely on MERCHANT's agreements in this paragraph.

THIS Agreement ("AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT"), by and between ISO and MERCHANT, shall become effective on the date executed or approved by a duly authorized representative of ISO.

ISO and MERCHANT shall be collectively known hereafter as the "Parties."

WHEREAS, First National Bank of Omaha, ISO, and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"); and

WHEREAS, TSYS Acquiring Solutions, LLC has a relationship with American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"); and

WHEREAS, the PARTIES desire to enter into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT under which ISO will provide payment processing services as to AMERICAN EXPRESS transactions.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.

The terms of the AGREEMENT, including the Merchant Application, are hereby incorporated by reference into this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, except that no references to BANK under the AGREEMENT shall apply herein.

MERCHANT agrees to pay ISO the FEES related to AMERICAN EXPRESS as set out on the Merchant Application.

The following terms and conditions apply to MERCHANT's participation in the AMERICAN EXPRESS OptBlue<sup>SM</sup> Program ("AMERICAN EXPRESS CARD ACCEPTANCE"):

MERCHANT's participation in AMERICAN EXPRESS CARD ACCEPTANCE is subject to the approval of AMERICAN EXPRESS. MERCHANT authorizes ISO and/or its affiliates to submit AMERICAN EXPRESS SALES To, and receive settlement on such SALES from, AMERICAN EXPRESS on behalf of MERCHANT.

MERCHANT agrees that ISO may disclose to AMERICAN EXPRESS information regarding MERCHANT and MERCHANT's SALES to AMERICAN EXPRESS, and that AMERICAN EXPRESS may use such information to perform its responsibilities in connection with AMERICAN EXPRESS CARD ACCEPTANCE, promote AMERICAN EXPRESS, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of AMERICAN EXPRESS CARD ACCEPTANCE, and important transactional or relationship communications from AMERICAN EXPRESS. AMERICAN EXPRESS may use the information about MERCHANT obtained in the AGREEMENT at the time of setup to screen and/or monitor MERCHANT in connection with AMERICAN EXPRESS marketing and administrative purposes. MERCHANT agrees it may receive messages from AMERICAN EXPRESS, including important information about AMERICAN EXPRESS products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of MERCHANT. MERCHANT may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. MERCHANT agrees that it may be sent fax communications.

**MERCHANT may opt-out of receiving future commercial marketing communications from AMERICAN EXPRESS by contacting ISO. Note that MERCHANT may continue to receive marketing communications while AMERICAN EXPRESS updates its**

**records to reflect this choice. Opting out of commercial marketing communications will not preclude MERCHANT from receiving important transactional or relationship messages from AMERICAN EXPRESS.**

MERCHANT acknowledges that it may be converted from AMERICAN EXPRESS CARD ACCEPTANCE to a direct relationship with AMERICAN EXPRESS if and when its SALES volumes exceed the eligibility thresholds for AMERICAN EXPRESS CARD ACCEPTANCE. If this occurs, upon such conversion, (i) MERCHANT will be bound by AMERICAN EXPRESS' then-current Card Acceptance Agreement; and (ii) AMERICAN EXPRESS will set pricing and other fees payable by MERCHANT.

MERCHANT shall not assign to any third party any payments due to it under AMERICAN EXPRESS CARD ACCEPTANCE, and all indebtedness arising from SALES will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that the MERCHANT may sell and assign future SALES receivables to ISO, its affiliated entities and/or any other cash advance funding source that partners with ISO or its affiliated entities, without consent of AMERICAN EXPRESS. Notwithstanding the foregoing, ISO prohibits MERCHANT from selling or assigning future SALES receivables to any third party.

Notwithstanding anything in the AGREEMENT to the contrary, AMERICAN EXPRESS shall have third-party beneficiary rights, but not obligations, to the terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE to enforce such terms against MERCHANT.

MERCHANT may opt out of accepting AMERICAN EXPRESS at any time without directly or indirectly affecting its rights to accept other CARD BRANDS.

ISO shall have the right to terminate MERCHANT'S participation in AMERICAN EXPRESS CARD ACCEPTANCE immediately upon written notice to MERCHANT (i) if MERCHANT breaches any of the provisions of this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT or any other terms of the AGREEMENT applicable to AMERICAN EXPRESS CARD ACCEPTANCE, or (ii) for cause or fraudulent or other activity, or upon AMERICAN EXPRESS' request. In the event MERCHANT'S participation in AMERICAN EXPRESS CARD ACCEPTANCE is terminated for any reason, MERCHANT must immediately remove all AMERICAN EXPRESS branding and marks from MERCHANT'S website and wherever else they are displayed.

MERCHANT'S refund policies for AMERICAN EXPRESS SALES must be at least as favorable as its refund policy for purchase on any other CARD BRAND, and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with LAWS. MERCHANT may not bill or attempt to collect from any cardholder for any AMERICAN EXPRESS SALE unless a CHARGEBACK has been exercised, MERCHANT has fully paid for such CHARGEBACK, and it otherwise has the right to do so.

MERCHANT must accept AMERICAN EXPRESS as payment for goods and services (other than those goods and services prohibited by this AMERICAN EXPRESS OPTBLUE PROGRAM AGREEMENT, the AGREEMENT, or the RULES) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. MERCHANT is jointly and severally liable for the obligations of MERCHANT'S business locations and websites under the AGREEMENT.

In the event that MERCHANT or ISO is not able to resolve a Claim against AMERICAN EXPRESS, or a Claim against ISO or any other entity that AMERICAN EXPRESS has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration. MERCHANT or AMERICAN EXPRESS may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither MERCHANT nor ISO nor AMERICAN EXPRESS will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, MERCHANT, ISO, and AMERICAN EXPRESS will not have the right to participate in a representative capacity or as a member of any class pertaining or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights MERCHANT, ISO, or AMERICAN EXPRESS would have in court may also not be available in arbitration.**

i. Initiation of Arbitration. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with the AGREEMENT. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that MERCHANT attends shall take place in New York, New York unless all parties agree to an alternate venue.

ii. Limitations on Arbitration. **If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated.** The arbitrator's authority is limited to Claims between MERCHANT, ISO, and AMERICAN EXPRESS. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by MERCHANT, ISO or AMERICAN EXPRESS and cannot be used in any other case except to enforce the award as between MERCHANT, ISO and AMERICAN EXPRESS. This prohibition is intended to, and does, preclude MERCHANT from participating in any action by any trade association or other organization against AMERICAN EXPRESS. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

iii. Previously Filed Claims/No Waiver. MERCHANT, ISO, or AMERICAN EXPRESS may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. MERCHANT, ISO, or AMERICAN EXPRESS may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express Card acceptance agreement, that was filed against AMERICAN EXPRESS prior to the effective date of the AGREEMENT.

iv. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including 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, nor to determine any matter or make any award except as provided in this section.

v. Split Proceedings for Equitable Relief. MERCHANT, ISO, or AMERICAN EXPRESS may seek equitable relief in aid of 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 reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.

vi. Small Claims. AMERICAN EXPRESS shall not elect to use arbitration under this section for any Claim MERCHANT properly files in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section 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 and shall honor claims of privilege recognized by law. 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, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, MERCHANT or AMERICAN EXPRESS may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this AGREEMENT shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where MERCHANT's headquarters or MERCHANT's assets are located.

viii. Confidentiality. 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 Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential 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, mediation, or arbitration.

ix. Costs of Arbitration Proceedings. MERCHANT will be responsible for paying MERCHANT's share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees MERCHANT would have incurred if MERCHANT had brought a Claim in court. AMERICAN EXPRESS will be responsible for any additional arbitration fees. At MERCHANT's written request, AMERICAN EXPRESS will consider in good faith making a temporary advance of MERCHANT's share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

x. Additional Arbitration Awards. If the arbitrator rules in MERCHANT's favor against AMERICAN EXPRESS for an amount greater than any final settlement offer AMERICAN EXPRESS made before any arbitration award, the arbitrator's award will include: (1) any money to which MERCHANT is entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by MERCHANT.

xi. Definitions. For purposes of the above arbitration provisions only, (i) AMERICAN EXPRESS includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) MERCHANT includes any of MERCHANT's affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) Claim means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against AMERICAN EXPRESS or against ISO or any other entity that AMERICAN EXPRESS has the right to join in resolving a Claim, including, a transaction using an AMERICAN EXPRESS product or network or regarding an AMERICAN EXPRESS policy or procedure.

Except as expressly permitted by LAWS, MERCHANT must not:

- o indicate or imply that it prefers, directly or indirectly, any other CARD BRANDS over AMERICAN EXPRESS,
- o try to dissuade cardholders from using AMERICAN EXPRESS,
- o criticize or mischaracterize AMERICAN EXPRESS or any of its services or programs,
- o try to persuade or prompt cardholders to use any other CARD BRANDS or any other method of payment (e.g., payment by check),
- o impose any restrictions, conditions, disadvantages or fees when AMERICAN EXPRESS is accepted that are not imposed equally on all other CARD BRANDS, except for electronic funds transfer, or cash and check,
- o suggest or require cardholders to waive their right to dispute any SALE,
- o engage in activities that harm the AMERICAN EXPRESS business or brand (or both),
- o promote any other CARD BRAND (except MERCHANT's own private label card that MERCHANT issues for use solely at MERCHANT's business locations and websites) more actively than MERCHANT promotes AMERICAN EXPRESS, or
- o convert the currency of the original SALE to another currency when requesting authorization or submitting SALES (or both).

MERCHANT may offer discounts or in-kind incentives from MERCHANT's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by LAWS): (i) MERCHANT clearly and conspicuously disclose the terms of the discount or in-kind incentive to MERCHANT's customers, (ii) the discount or in-kind incentive is offered to all of MERCHANT's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above.

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, MERCHANT must indicate MERCHANT's acceptance of AMERICAN EXPRESS and display AMERICAN EXPRESS' marks (including any AMERICAN EXPRESS card application forms provided to MERCHANT) as prominently and in the same manner as any other CARD BRANDS. MERCHANT must not use the AMERICAN EXPRESS marks in any way that injures or diminishes the goodwill associated with the mark, nor (without prior written consent from ISO) indicate that AMERICAN EXPRESS endorses MERCHANT's goods or services. MERCHANT shall only use the AMERICAN EXPRESS marks as permitted by the AGREEMENT and shall cease using AMERICAN EXPRESS' marks upon termination of the AGREEMENT. For additional guidelines on the use of the AMERICAN EXPRESS marks, contact ISO.

Any and all cardholder information is confidential and the sole property of the applicable issuer, AMERICAN EXPRESS or its affiliates. Except as otherwise specified, MERCHANT must not disclose cardholder information, nor use nor store it, other than to facilitate SALES at MERCHANT's business locations and websites in accordance with the AGREEMENT.

MERCHANT must ensure that it and any third parties it enlists to facilitate SALES processing complies with the American Express Technical Specifications (available at [www.tsystransactionssummary.com](http://www.tsystransactionssummary.com)) (valid and accurate data must be provided for all data elements in accordance with the American Express Technical Specifications). Failure to comply with the American Express Technical Specifications may impact Merchant's ability to successfully process SALES. MERCHANTS may be assessed non-compliance fees if MERCHANT fails to comply with the Technical Specifications. To ensure compliance with the Technical Specifications, MERCHANTS should work with ISO.

MERCHANT must comply with and assure that Merchant Providers comply with the American Express Data Security Operating Policy ("DSOP") (found at [www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity)), the American Express Program Merchant Data Security Requirements (found at [www.cpay.com/amexterms](http://www.cpay.com/amexterms)) and the American Express Information Protection Contract Requirements (IPCR) (found at [www.cpay.com/amexterms](http://www.cpay.com/amexterms)).

#### **ADDENDUM TO MERCHANT TRANSACTION PROCESSING AGREEMENT**

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), CENTRAL PAYMENT CO., LLC ("CPC" or "ISO"), and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

WHEREAS, BANK, CPC, and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which BANK provides transaction processing and other services regarding credit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and

WHEREAS, the PARTIES desire to amend the AGREEMENT as set forth below.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. Capitalized terms which are not defined herein shall have the same meaning as when defined in the AGREEMENT.
2. The PARTIES agree to add the following to Section 12.2:

If to CPC:

Central Payment Co., LLC  
125 East Sir Francis Drake Blvd., 3rd Floor  
Larkspur, California 94939

3. The PARTIES agree to amend Section 1.1 of the AGREEMENT by adding the following language to that section:

If the Next Day Funding option is selected on the Merchant Application and approved by BANK, then subject to the terms of this AGREEMENT, BANK will generally initiate a credit via ACH of proceeds from SALES to the DESIGNATED ACCOUNT on the business day after BANK processes such SALES, provided that BANK successfully receives the complete transaction data from such SALES by the applicable cut off time as determined by BANK. Notwithstanding the foregoing, BANK will not be liable to MERCHANT if an ACH credit of SALES proceeds is not initiated within such one (1) business day time period. BANK may change the time frame for the ACH credit of SALES proceeds at any time and without notice to MERCHANT. For purposes of this section, "business day" will mean any day on which the Federal Reserve is open for business, other than Saturdays, Sundays, or state or federal holidays.

4. The PARTIES agree to amend the AGREEMENT by adding the following new Section 1.9:

1.9 CPAY acknowledges that it is responsible for the security of MERCHANT's cardholder account information that CPAY stores, processes, or transmits on behalf of MERCHANT, to the extent such cardholder account information is in the possession of CPAY, subject to the terms and conditions as set forth in this AGREEMENT. MERCHANT must secure written acknowledgement from any other vendors or service providers that store, process, or transmit cardholder account information on behalf of MERCHANT, or otherwise could impact the security of MERCHANT's cardholder account information, that such vendor or service provider is responsible for the security of such cardholder account information.

5. This ADDENDUM, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.

6. Except as amended hereby, BANK, CPC, and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.