



MERCHANT CREDIT CARD PROCESSING AGREEMENT - PAGES 1 THROUGH 15

PRELIMINARY MATTERS

Parties to this Merchant Credit Card Processing Agreement (this "Agreement"):

"Merchant" - The Merchant identified on the Merchant Application, as defined below.

"Guarantor(s)" - The Guarantor(s) of Merchant's obligations under this Agreement, as set forth in the Merchant Application.

"TMS" - Total Merchant Services, Inc., an Independent Sales Organization and Merchant Services Provider of the Member, with headquarters in Woodland Hills, CA.

"Global" - Global Payments Direct, Inc., a provider of electronic transaction processing services for merchants, with headquarters in Atlanta, Georgia. "Member" - The Member Bank identified on the Merchant Application, and collectively with TMS and Global, the "Servicers".

ACCEPTANCE OF TERMS BY MERCHANT:

Merchant has completed and submitted to Servicers an application for services that provides information about Merchant's business and processing needs (the "Merchant Application"). As part of the Merchant Application, Merchant has certified that it has read this Agreement, and understands and agrees that the terms of this Agreement will be binding upon it if and when Servicers approve the Merchant Application to receive requested services. A MERCHANT'S SUBMISSION OF A TRANSACTION TO SERVICERS SHALL CONSTITUTE RATIFICATION OF EACH AND ALL OF MERCHANT'S OBLIGATIONS UNDER THIS AGREEMENT.

ARTICLE I. GENERAL PROVISIONS.

The General Provisions set out in Article I govern the relationship between Servicers and Merchant for all services provided by or through Servicers. The subsequent sections of this Agreement define the terms of service for different service offerings of the Servicers and shall apply to Merchant at such time that Merchant commences receiving such services.

1.1 Compliance with Rules and Servicers Guidelines.

Merchant agrees to comply with and be subject to all Rules of MasterCard International, Inc., ("MasterCard"), Visa International ("VISA"), JCB, International ("JCB"), Discover Network ("Discover Network"), American Express ("AMEX") and the National Automated Clearing House Association ("NACHA"), as they may exist from time to time and as applicable to Merchant's activities under this Agreement. Merchant also agrees to comply with all guidelines, policies and procedures for services provided to Merchant by Servicers from time to time. Additional information and links to locations where Merchant can see or obtain copies of the Rules are located at <http://www.merchantsupport.info/disclosure/TMS.html>.

MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT DISCOVER, AMEX, JCB, NACHA AND OTHER SERVICES ARE NOT PROVIDED TO IT BY MEMBER BANK, BUT ARE INSTEAD PROVIDED BY TMS, GLOBAL AND/OR THIRD PARTIES. FOR PIN DEBIT TRANSACTIONS, SUCH THIRD PARTIES MAY INCLUDE SPONSORING OR ACQUIRING BANKS THAT ARE NOT RELATED TO MEMBER BANK.

THE PROVISIONS OF THIS AGREEMENT REGARDING DISCOVER NETWORK CARD TRANSACTIONS, AMEX CARD TRANSACTIONS, JCB CARD TRANSACTIONS, NACHA TRANSACTIONS, OR ANY OTHER NON-BANK CARD TRANSACTIONS CONSTITUTE AN AGREEMENT SOLELY BETWEEN MERCHANT, TMS, GLOBAL AND THIRD PARTIES. MEMBER BANK IS NOT A PARTY TO THIS AGREEMENT INsofar AS IT RELATES TO SUCH TRANSACTIONS.

1.2 Enforcement of Servicer Rights.

To the maximum degree permitted by law and by the Rules of MasterCard, VISA, JCB, Discover Network, and NACHA, it is the intention of the parties that the rights of Servicers set forth in this Agreement, or arising from this Agreement, may be exercised solely by TMS or Global, or its or their authorized designees

1.3 Warranties of Merchant.

Merchant hereby represents and warrants to Servicers at the time of submission of the Merchant Application and during the term of this Agreement that:

- All information contained in the Merchant Application or any other documents delivered to or on behalf of Servicers in connection therewith is true and complete and accurately reflects Merchant's business, financial condition and principal partners, owners or officers.
- Merchant is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on its business.
- Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, constitutes a valid and binding obligation of Merchant and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject.
- Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so.
- There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.
- Unless Merchant notifies Servicers in writing (either on the Merchant Application or otherwise) and is approved by Servicers, no other processing relationship for any of the services offered by Servicers under this Agreement may exist between Merchant and another Card processing institution, for any business owned or operated by Merchant.
- No owner, officer, director, employee or agent of Merchant is a current or former official in the executive, legislative, administrative, military, or judicial branch of any government (elected or not); or an official of a political party; or an executive of a government-owned commercial enterprise; or a family member of any of the foregoing officials; or a close personal or professional associate of any foregoing officials.

1.4 Notifications Regarding Changes in Merchant's Business or Application Information.

- Merchant must provide Servicers with immediate notice of its intent to: (i) transfer or sell any substantial part of its total assets, or liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; or (v) alter in any way Merchant's approved monthly volume and average ticket.
- Merchant must immediately notify Servicers of any Bankruptcy, receivership, insolvency, levy or similar action initiated by or against Merchant or any of its principals. Merchant will include Servicers on the list of creditors filed with the applicable Bankruptcy Court in connection with any such Bankruptcy, whether or not a claim exists at the time of filing.
- Merchant must notify Servicers in writing of any changes to the information in the Merchant Application, including but not limited to a material change to Merchant's financial condition (within three (3) days of such occurrence), any additional location or new business, a change in the business location or contact information, both physical and email addresses, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and how sales are

completed. Merchant must also notify Servicers in writing if Merchant sells or closes its business. Except for a change to the financial condition, all such notices must be received by Servicers seven (7) days before the change. Merchant will also provide updated information to Servicers upon request.

- (d) Merchant must immediately notify Servicers in writing if Merchant is threatened with or becomes party to any action, suit or proceeding at law or in equity that could substantially impair its right to carry on its business or adversely affect its financial condition or operations.
- (e) Merchant must provide separate notification regarding changes to service providers used by Merchant in connection with Servicer-provided services, including but not limited to AMEX, and equipment leasing companies.

1.5 Credit and Financial Inquiries: Anti-Money Laundering; Additional Locations: Inspections.

- (a) Merchant authorizes Servicers to make, at the time of submission of the Merchant Application and at any later time during which Merchant owes any obligation to Servicers, any credit inquiries which, in their discretion, may be necessary or prudent. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners or officers. If requested to do so by Servicers, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Servicers may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices.
- (b) Merchant agrees to permit Servicers at any time from time to time, to inspect locations to confirm that Merchant has adhered or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and licenses or permits (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement.
- (c) Merchant may process Card transactions only at locations and websites approved by Servicers. Additional locations may be added, subject to Servicers' approval. Either Merchant or Servicers may delete any location by providing notice as provided in this Agreement.
- (d) Representatives of Servicers may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any Card transactions processed by or through Servicers.

1.6 Guarantor Notifications and Authorizations.

The decision of Servicers to enter into and continue processing Card transactions for Merchant is based on the financial condition of Guarantor and the ability of Guarantor to guarantee Merchant's obligations under this Agreement. Accordingly, Guarantor must provide Servicers with information regarding changes in his or her contact information and financial circumstances. Guarantor agrees to take the actions required under Section 1.04(b) through (e). Guarantor also authorizes Servicers to make ongoing inquiries about Guarantor as detailed in Section 1.5. For purposes of understanding Guarantors obligations and authorizations under this Section, Guarantor will apply the provisions of Section 1.04 and 1.05 to Guarantor by substituting the term Guarantor in place of Merchant where it appears in such sections.

1.7 Account.

- (a) Merchant will establish and maintain an Account at a depository institution approved by Servicers. Merchant will maintain sufficient funds in the Account to satisfy all obligations, including the fees, Chargebacks and returns contemplated by this Agreement. Merchant irrevocably authorizes Servicers to debit the Account for fees, Chargebacks, returns, fines and any other penalties or amounts owed under this Agreement. In the event the Account lacks sufficient funds, Merchant and Guarantors authorize Servicers, without notice, to debit any bank account in their name(s) or the name of any affiliated entity. Merchant must obtain prior consent from Servicers to change the Account. If Merchant does not obtain such consent, Servicers may immediately terminate this Agreement and may take other action necessary to protect their interests.
- (b) Servicers will settle all valid Card transactions to the Account subject to the terms of this Agreement. Merchant authorizes Servicers to initiate reversal or adjustment entries and initiate or suspend such entries.
- (c) Servicers, in their sole discretion, shall grant Merchant provisional credit for Card transaction amounts, subject to receipt of final payment by Servicers and subject to all Chargebacks and other amounts owed to Servicers under this Agreement.
- (d) Merchant authorizes Servicers to initiate debit/credit entries to the Account, as the Account may be changed from time to time and to any other account maintained by Merchant at any institution, all in accordance with this Agreement. In the event Merchant changes the Account, this authorization will apply to the new Account. This authorization will be effective until both: (i) Servicers have received written notification from Merchant terminating this authorization, and (ii) all obligations of Merchant to Servicers have been paid in full. Merchant may be required to provide to Servicers with a voided Account check and/or fill in the required Account numbers on Merchant Application.
- (e) If the Account is closed or is otherwise unavailable to Servicers for ACH debit, Merchant consents to Servicers locating additional deposit accounts or assets by using any means legally available. In this event, Merchant waives all rights to their privacy in favor of Servicers until such time as all unpaid Chargebacks and fees owed to Servicers have been paid in full.

1.8 Reserve Account.

In addition to any other rights granted to Servicers under this Agreement, Merchant hereby authorizes Servicers to establish a Reserve Account, with or without prior notice to Merchant, at any time prior to, during or after termination of this Agreement, to ensure the recovery of any liabilities owed them or reasonably anticipated by Servicers in their sole discretion to be owed by Merchant pursuant to this Agreement. Servicers may also require as a condition of providing continued services, that Merchant fund and maintain a Reserve Account with Servicers as security against any costs, losses or expenses incurred by Servicers in connection with the provision of services to Merchant. Merchant's obligation to maintain any Reserve Account shall survive the termination of this Agreement by a period of two hundred seventy (270) days (or longer depending on Merchant's product and business practices) during which time Servicers' right, title and interest therein shall continue. In addition Merchant further agrees:

- (a) Liabilities to be paid from the Reserve Account include, but are not limited to, those arising out of actual and/or potential post termination Chargebacks, as well as any and all post-termination fees, charges and expenses due or anticipated to be due Servicers from Merchant.
- (b) The Reserve Account shall be in such amount Servicers deem reasonable under the circumstances. The Reserve Account may be funded and/or replenished by Servicers by withholding from Merchant's Card transaction proceeds, and/or withholding or withdrawing from, or freezing all or any part of, the Account and/or any other deposit accounts maintained by Merchant wherever found by any means legally available. Unless Servicers agree otherwise in writing with Merchant, the Reserve Account shall not bear interest.
- (c) Servicers may enforce their right, title and interest in the Reserve Account without notice or demand being first made to Merchant. Servicers right to sums owed them by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Servicers' right, title and interest with respect to the Reserve Account shall survive the termination of this Agreement.
- (d) Servicers may exercise their rights under this Agreement to collect any amounts due to Servicers including, without limitation, rights of set-off and recoupment. Merchant shall have no right to withdraw funds or debit the Reserve Account.
- (e) It is stipulated and agreed that the funds placed in the Reserve Account are trust fund monies legally and exclusively held for the benefit of Servicers. In the event of Bankruptcy proceedings, Servicers may exercise their rights under this Agreement to debit the Reserve Account for amounts due Servicers regardless of the pre-petition or post-petition nature of the amount due Servicers. In the event of a Bankruptcy proceeding, Merchant also agrees that it will not contest any motion for relief from the automatic stay which Servicers may file to debit the Reserve Account.
- (f) Servicers may retain funds in the Reserve Account for as long as Merchant may be liable to make payments under this Agreement. Funds are typically retained in the Reserve Account for a minimum of two hundred seventy (270) days from the date of the oldest Card transaction in question or the date of termination, whichever is longer, and may be retained longer depending on the nature of Merchant's Card transaction activity. Servicers will have sole control of the Reserve Account. In the event of a Bankruptcy proceeding Servicers do not consent to the assumption of this Agreement. Nevertheless, if this Agreement is assumed, Merchant agrees that in order to establish assurance of future performance within the meaning of 11 U.S.C. Sec 365, as amended from time to time, Merchant must establish a Reserve Account in an amount satisfactory to Servicers.

1.9 Recoupment.

Merchant acknowledges and agrees, notwithstanding anything set forth in this Agreement to the contrary, that any and all credits provided to Merchant by Servicers for collected Sales Drafts under this Agreement are provisional and cannot be equitably finalized until the respective periods permitted for Chargebacks, returns, fees, fines, penalties and other adjustments to be assessed or implemented have all expired under this Agreement. These Chargebacks, returns, fees, fines, penalties and other adjustments are an integral part of the credit to be given to Merchant in respect of such Sales Draft. To the extent that any Chargeback, return, fee, penalty, fine or other adjustment is assessed or implemented, Servicers may exercise their right of recoupment with regard to the credit provisionally paid for the respective Sales Draft. In the absence of this remedy, Merchant acknowledges that it would be overpaid for the respective Sales Draft, and such overpayment shall be held in trust by Merchant as the legal and equitable property of the Servicers. Merchant also acknowledges that, in order for rights and obligations of the parties to be fairly and equitably administered, the various Sales Drafts presented by Merchant to Servicers shall constitute a single, integrated transaction, and not a series of separate or discrete transactions.

1.10 Security Interest.

To secure Merchant's and Guarantor's respective performance under this Agreement, including without limitation Merchant's obligations arising out of Chargebacks or returns, Merchant and Guarantor each hereby grants to Servicers, pursuant to the Uniform Commercial Code of the State of California, as amended from time to time, a security interest in all of Merchant's and Guarantor's personal assets and property, including but not limited to the following assets and property: (a) the electronic terminal, printer, imprinter and imprinter plate; (b) all Sales Drafts, ACH deposits, credit drafts, and in all Accounts and Reserve Accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor, whether established or designated and maintained pursuant to this Agreement or not; and (c) the proceeds and products of such assets and property. In the event of Merchant's default under this Agreement, Merchant and Guarantor(s) stipulate: (i) that all personal accounts standing in their names shall be subject to this Agreement and ACH debit; and (ii) all ACH debits, whether made against the Account or Guarantor's personal account, shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system, and (iii) Merchant and/or Guarantor irrevocably consent to Servicers using any means available to locate such deposit accounts until such time as all amounts due have been paid. Servicers may enforce this security interest as applicable by:

- (a) Making an immediate debit/charge via the ACH system to any deposit account standing in the name or names of Merchant and/or Guarantor, without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the Automated Clearing House (ACH) system;
- (b) Freezing the entire Account and/or Reserve Account, without notice or demand of any kind, upon Servicers determination that Merchant has breached any term of this Agreement;
- (c) Taking possession of any or all of Merchant's or Guarantor's personal assets or property;
- (d) Placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to Servicers arising under this Agreement has been satisfied in full;
- (e) By obtaining either a writ of attachment or a writ of possession without bond pertaining to Merchant's and/or Guarantor's personal assets or property.

Merchant and Guarantor hereby irrevocably authorize the Servicers at any time and from time to time to file any financing statements and amendments thereto, in any jurisdiction required for the proper perfection of the Servicers' security interest, and shall provide any statement or notice that Servicers determine to be necessary to preserve and protect this security interest. Merchant's and/or Guarantor's granting of this security interest in no way limits Merchant's and Guarantor's liabilities to Servicers under this Agreement.

1.11 Fiduciary Relationship.

Whenever Merchant and/or Guarantor has a deposit held with Servicers that arose from or is subject to this Agreement, to which, pursuant to this Agreement, Merchant and/or Guarantor is not entitled, Merchant's and Guarantor's entitlement to such deposit shall be as a fiduciary of Servicers until any claim by Servicers against Merchant and Guarantor has been resolved. Merchant and Guarantor each agrees that its failure to repay, within five (5) calendar days of notification by Servicers, funds to which Merchant or Guarantor is not entitled to, shall result in a presumption that Merchant and/or Guarantor intends to misappropriate such funds. Merchant and Guarantor each further agrees that in the event Servicers seek to enforce their rights herein in a court of competent jurisdiction, that any receivership, temporary restraining order, preliminary injunction, writ of attachment or writ of possession may be issued against Merchant and/or Guarantor without bond.

1.12 Guarantors.

As a primary inducement to Servicers to enter into this Agreement with Merchant, Guarantor, whether by signing the Merchant Application or by acknowledging consent by electronic means, jointly and severally (where more than one Guarantor), and unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Servicers pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor understands further that Servicers may proceed directly against Guarantor without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by Servicers. This guaranty will not be discharged or affected by the death of the Guarantor, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Servicers. Guarantor understand that the inducement to Servicers to enter into this Agreement is consideration for this guaranty, and that this guaranty remains in full force and effect even if the Guarantor receives no additional benefit from the guaranty.

1.13 Payment of Fees and Other Amounts Owed.

Merchant shall pay to Servicers the fees and charges set forth on the Merchant Application, any separate schedule of fees and the fee provisions of this Agreement. Merchant agrees that Servicers may collect their fees and other amounts owed under this Agreement by netting against the proceeds of Merchant's processing activity. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with the services provided under this Agreement. Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. Servicers have the right to change fees as set forth in this Agreement.

1.14 General Fees.

If fees are not listed on the Merchant Application or separate schedule of fees to the contrary, the following fees are applicable. Additional fees specific to each service offering are set forth in the fee sections of the Article of this Agreement defining the terms of that service offering.

Providing Any Documentation -	\$2.00 per page
Checking Account (DDA) Change -	\$20.00 per change
Business Name Change Fee -	\$75.00 each
Chargeback/Retrieval -	\$20.00 each
Return Fee -	\$20.00 per item
Third Party Payment Admin Fee -	\$150* Voice Authorizations - \$0.95 each
Voice Authorizations (w/ live operator) -	\$1.75 each Referral Authorizations - \$2.00 each
Annual Fee -	\$75.00
Compliance Program -	\$4.95 per month after initial 12 months Debit Service - \$5.00 per month

EBT -	\$10.00 per month and \$0.15 Batch Deposit - \$0.25 per batch deposit
ACH Reject/NSF Fee -	\$20.00 per ACH Reject/NSF Fee American Express Crossborder – 0.40%
AMEX Transactions	Fees assessed by AMEX directly**
American Express Network Access –	0.15%
American Express Downgrade Fee -	0.30% for Card Not Present transactions
Discover Network Authorization fee ***	Fees assessed by Discover directly**
AVS Response Fees -	\$0.10 per response (automated); \$2.00 per response (live)
Interchange Per Item Fee (Debit) -	\$0.22 each
Interchange Per Item Fee (Credit) -	\$0.10 each

0.80%+\$0.000	MasterCard Cross-Border Fee*	0.00%+\$0.025	Visa AVS Only Fee*
0.85%+\$0.000	MasterCard Acquirer PGM Support Fee*	0.00%+\$0.030	MC Account Status Inquiry Fee*
0.11%+\$0.000	Visa Assessments*	0.13%+\$0.000	MasterCard Assessments-Large Ticket*
0.40%+\$0.000	Visa International Service Assessment-Purchase*	0.11%+\$0.000	MasterCard Assessments*
0.40%+\$0.000	Visa International Service Assessment-Cash*	0.00%+\$0.055	MasterCard Misuse of Auth. System Fee*
0.45%+\$0.000	Visa International Acquiring Fee*	\$ _____	MasterCard Acceptance and Licensing Fee*
0.105%+\$0.000	Discover Assessments*	0.00%+\$0.0025	MasterCard CVC2 Transaction Fee*
0.40%+\$0.000	Discover International Processing Fee	0.40%+\$0.000	Cross-Border US Reg Acq Fee w/Cred*
0.55%+\$0.000	Discover International Service Fee*	0.80%+\$0.000	Cross-Border US Reg Acq Fee*
0.00%+\$0.045	Visa Misuse of Authorization System Fee*	0.00%+\$0.100	Visa Transaction Integrity Fee*
0.00%+\$0.0195	Visa Acquirer Processing Fee - Credit*	0.00%+\$0.100	Visa Zero Dollar Verification Fee*
0.00%+\$0.0195	MasterCard Network Access Fee*	0.30%+\$0.000	Amex Non-Swiped Transaction Fee"
0.00%+\$0.0025	Discover Network Fee-US*	0.10%+\$0.000	PayPal Auth Participation Fee*
0.00%+\$0.0185	Discover Network Fee-US*	1.85%+\$0.000	PayPal Participation Fee*
\$0.15%+0.000	Amex Network Fee*	0.00%+\$0.0155	Visa Acquirer Processing Fee - Debit*
\$0.40%+0.000	Amex Inbound Fee*	0.00%+\$0.005	Visa Network Access Fee*
\$ _____	Other:	\$ _____	Other:

* Servicers may charge a fee to implement legally enforceable requests for payment of Merchant funds to parties other than Merchant, such as tax levies, payments to secured parties or other legally enforceable payment requests of a similar nature.

** If no per transaction fee is specified, AMEX transactions will be subject to the same communications fee as VISA/MasterCard/Discover, specified above.

***If no Discover transition fee is specified, Discover transactions will be subject to the same communications fee as Visa/MasterCard/Discover, specified above.

Different discount rates and other fees may apply to different types of Card transactions. For example, a “Qualified Discount Rate” will be charged on certain types of Card transactions, including without limitation, swiped cards on which the full magnetic stripe has been read; a higher “Mid-Qualified Discount Rate” will be charged on other types of Card transactions, including without limitation, keyed cards at retail locations or keyed cards with valid AVS response and order number for "card not present" transactions; and a higher “Non-Qualified Discount Rate” will be charged on other types of Card transactions, including without limitation, Business, Corporate, Purchase, International, or Government cards, keyed cards where AVS is not present or missing any of the required data elements, batches not closed within one calendar day of transaction, all rewards cards as defined by the card issuers, and any Pre-Authorized sale that is not processed/captured within 7 business days.

Additional charges that may occur from time to time include chargeback fees, representation fees and retrieval fees. A monthly minimum fee will be deducted unless Merchant has met its minimum processing volume. The standard delivery method for Monthly Statements is in an electronic, online version that will be generated each month and located at <http://www.merchantsupport.info/disclosure/TMS.html>. MERCHANT IS ENCOURAGED TO REVIEW THESE ADDITIONAL RATES AND FEES ON-LINE AT <http://www.merchantsupport.info/disclosure/TMS.html>

A Merchant is billed a transaction fee each time communication is made with the host. This fee is assigned by the agent or sales representative at the time Merchant submits its Merchant Application.

Servicers may modify all fees payable by Merchant under this Agreement, including those detailed in the Merchant Application and any separate schedule of fees, by providing notice to Merchant of changes to such fees.

1.15 Card Industry Pass Through Fees.

If fees are not listed on the Merchant Application or separate schedule of fees to the contrary, the following fees are applicable. These pass through fees are costs incurred by Merchant as a result of accepting VISA, MasterCard, AMEX, Discover Network and JCB Card transactions. The names of the fees that will be charged on Merchant’s statement will be listed below.

VISA Assessment MasterCard Assessment Discover Assessment

Visa Fixed Acquirer Network Fee (VISA FANF) MasterCard Licensing Fee

1.16 Term: Termination.

- (a) This Agreement shall not become effective until the Merchant Application is approved by Servicers. Any party may terminate this Agreement or one or more services delivered under this Agreement at any time with or without cause by providing written notice to the other parties and such termination will become effective on the date specified by such notice. If Merchant terminates this Agreement, Servicers shall have thirty (30) days from date of receipt of the notice to close Merchant's Account. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. If Merchant has applied for Card processing and is approved by Servicers, and if Merchant exercises its option to terminate this Agreement within three (3) years after such approval, then Merchant will pay to Servicers a termination fee in the amount set forth in the Merchant Application. If the Merchant Application references a "standard termination fee," a fee of \$295.00 will apply upon Merchant's termination of services.
- (b) Servicers may terminate this Agreement immediately without prior notice if (i) they have reason to believe that fraudulent Card transactions or other activities prohibited by this Agreement are occurring at any Merchant location, (ii) such action is taken to prevent loss to Servicers or Card Issuers, (iii) Merchant appears on any Card Association's security reporting, (iv) Servicers' merchant acceptance criteria changes, (v) Merchant breaches this Agreement, (vi) Merchant violates the rules and regulations of a Card Association, or (vi) Merchant engages in conduct that creates harm to or loss of goodwill to any Card Association. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. An administrative account closure fee of \$500.00 will be charged to Merchant if terminated for any of the reasons set forth in subparts (i) through (iii) of this section.
- (c) Merchant will be assessed a software recovery fee if it: (i) received a free promotional copy of any third party software (such as QuickBooks or Quicken) upon entering in this Agreement, and (ii) terminated this Agreement, in its sole discretion, within two years of acceptance by Servicers. Such software recovery fee shall be determined by Servicers in their sole discretion, but will be no greater than the then current direct, retail price charged to the public to purchase such software. This software recovery fee shall be in addition to any termination fee set forth in this Agreement.
- (d) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, Bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Servicers under this Agreement shall become immediately due and payable, without the necessity of any notice, declaration or other act by Servicers. Notwithstanding such termination, Servicers, in their sole discretion, may determine that consent to Merchant's subsequent assumption of this Agreement is in Servicers' best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Servicers and comply with the applicable federal or state laws governing such assumption.
- (e) Merchant acknowledges and agrees that a Card Association can limit or terminate processing in its sole discretion and at any time.

1.17 Effect of Termination.

Without limiting the provisions of Section 1.53 below, all of Merchant's obligations under this Agreement which arise or are incurred prior to the effective date of termination shall survive the expiration or termination of this Agreement.

1.18 Third Parties.

- (a) Merchant may be using special products, services or software provided by a third party to assist Merchant in processing Card transactions, including Authorizations and settlements, or accounting functions. Merchant is responsible for ensuring compliance with the requirements of any third party in using its products, services or software. This includes making sure Merchant has and complies with any software updates and ensuring that such software satisfies all security standards required under the Rules (including PA DSS and PCI DSS), as set forth more fully below. Servicers have no responsibility for any Card transaction until that point in time Servicers receive data about the Card transaction.
- (b) Merchant will notify Servicers prior to the use of any electronic Authorization or data capture terminal or software provided by any entity other than Servicers or its authorized designee ("third party terminals") to process Card transactions. If Merchant elects to use such third party terminals, Merchant agrees that the third party provider of the terminal is Merchant's agent and Merchant is liable for the acts and omission of its agent and the terminals for failing to comply with the Rules, this Agreement and any applicable federal and state law.
- (c) Servicers may provide Merchant with reference links to websites operated by third parties ("Third Party Websites"). These links are provided as a convenience only. Such Third Party Websites are not under the control of Servicers. Servicers are not responsible for the content of any Third Party Website or any link contained in a Third Party Website. Servicers do not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites, and the inclusion of any link is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by Servicers of any information contained in any Third Party Website. Access to any Third Party Website is at Merchant's own risk, and Merchant acknowledges and understands that linked Third Party Websites may contain terms and privacy policies that are different from those of Servicers. Servicers are not responsible for such provisions, and expressly disclaim any liability for them.

1.19 Limitation of Liability.

- (a) MERCHANT AGREES AND ACKNOWLEDGES THAT SERVICERS SHALL HAVE NO LIABILITY, EITHER IN TORT, CONTRACT OR IN COMBINATION THEREOF, FOR CLAIMS ARISING FROM TRANSACTIONS PROCESSED UNDER THIS AGREEMENT EXCEPT IN THE CASE OF GROSS
- (b) OR WILLFUL MISCONDUCT ON THE PART OF SERVICERS. ANY SUCH CLAIMS ARE SUBJECT TO LIMITATIONS SET FORTH BELOW AND IN NO EVENT SHALL SERVICERS BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES OR LOST BUSINESS OPPORTUNITIES.
- (c) THE LIABILITY, IF ANY, OF SERVICERS, UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO SERVICERS DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGEBACKS, RETURNS AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH WAS INVOLVED, THE AGGREGATE AMOUNT OF SERVICERS LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL THE LIABILITY OF SERVICERS UNDER THIS AGREEMENT EXCEED \$50,000.
- (d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICERS MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND SERVICES, AND NOTHING CONTAINED IN THIS AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. SERVICERS DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. SERVICERS FURTHER DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. SERVICERS FURTHER EXPRESSLY DISCLAIM ANY LIABILITY FOR UNAUTHORIZED ACCESS OF

FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND SERVICERS' REASONABLE CONTROL.

1.20 Indemnification by Merchant.

Merchant agrees to indemnify and hold harmless Servicers, and their affiliates, employees, agents, representatives, members, or stockholders, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) arising out of or relating to:

- (a) any dispute between Merchant and a Cardholder or check writer or customer, or any Sales Draft or ACH deposit paid for by Servicers;
- (b) any actual or alleged action or omission by Merchant that would constitute a breach of any representation, warranty, or obligation of Merchant set forth in this Agreement;
- (c) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers;
- (d) the reliability, accuracy, or legitimacy of payment data submitted by Merchant;
- (e) any alleged infringement of another party's intellectual property rights by Merchant;
- (f) a failure of Merchant to maintain the confidentiality of Cardholder or check writer information;
- (g) any action Servicers take against the Account under this Agreement. Merchant will also indemnify and hold harmless the institution at which Merchant maintains the Account for acting in accordance with any instruction from Servicers regarding the Account; or
- (h) any Chargebacks or fees, fines or penalties assessed by a Card Association with respect to transactions submitted by Merchant to Servicers.

If Merchant is an agency or instrumentality of a state of the United States and is precluded by the law of Merchant's state from entering into indemnification obligations, then the obligations under this Section shall apply only to the extent permitted by such state law. This section will survive termination of this Agreement.

1.21 Confidential Information.

- (a) Servicers may disclose information relating to Merchant's sales to financial institutions, Card Associations and third parties that need the information for a purpose relating to this Agreement and to the Servicers' agent or referral source, if any, that played a role in establishing Merchant's relationship with Servicers solely for the purpose of computing payment due to such persons. Servicers may also disclose information regarding Merchant as part of an investigation by Servicers into Merchant's compliance with its obligations under this Agreement if Servicers determine there is cause to make such an inquiry, or to the extent required or requested by a court or governmental authority, or otherwise as required by law.
- (b) Except to the extent specifically permitted by the Rules, the operating rules of NACHA or this Agreement, Merchant shall not disclose any information relating to any Card transaction, or any Cardholder or check writer, to any person or entity other than Servicers, Servicers' employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information except to complete the Card transaction or as otherwise required or authorized under this Agreement or by law. Merchant shall treat all documents provided by Servicers relating to this Agreement as confidential and proprietary and protect them with the same degree of care as Merchant would protect its own confidential and proprietary information, and not less than reasonable care.
- (c) Merchant agrees that this Agreement, and all other user information provided by Servicers, the process utilized by Servicers for providing services, and all written communications concerning services hereunder are confidential and proprietary information of Servicers. Merchant agrees that neither it nor any of its employees, agents, representatives, or independent contractors will disclose any such confidential, proprietary information to any person or entity that is not a party to this Agreement without the express written consent of Servicers.

1.22 Safeguarding of Information.

- (a) Merchant and its agents shall be in full compliance with Rules adopted by any Card Association relating to the privacy and security of Cardholder and Card transaction data, including without limitation the Payment Application Data Security Standard ("PA DSS") and the Payment Card Industry Data Security Standard ("PCI DSS"), as they may be amended from time to time. Information pertaining to such requirements may be found at <https://www.pcisecuritystandards.org>. PCI DSS and other industry aligned validation requirements collectively form the basis for each of the following Card Association compliance programs, with which Merchant must also comply: (i) the Cardholder Information Security Program ("CISP") - VISA's data security program; (ii) the Site Data Protection ("SDP") - MasterCard's data security program; and (iii) the Discover Network Information Security and Compliance ("DISC") - Discover Network's data security program. Additionally, Merchant shall be responsible for demonstrating compliance by its agents for these programs.
- (b) Merchant shall be liable for all fines, charges and penalties that may be assessed by any Card Association as a result of transactions made by Merchant or Merchant's noncompliance with the preceding requirements. Merchant also acknowledges that it may be prohibited from participating in Card Association programs if it is determined that Merchant is non-compliant. Merchant acknowledges that it may be subject to, and Servicers retain the right, to conduct or cause to be conducted an audit to verify Merchant's compliance with the foregoing security requirements. Merchant must notify Servicers within twenty-four (24) hours after becoming aware of
- (c) any suspected or actual data security breach or (ii) any noncompliance by Merchant with the security requirements set forth herein. In such event, if requested by Servicers or Card Association, Merchant shall, at its own expense, (a) perform or cause to be performed an independent investigation of any data security breach of Card or Card transaction data by an authorized assessor acceptable to Servicers, (b) take all such remedial actions recommended by such investigation, by Servicers or by VISA or MasterCard, and (c) cooperate with Servicers in the investigation and resolution of any security breach.
- (d) Merchant will not, under any circumstances, disclose any Cardholder's account number nor any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card to any person other than Servicers, or as required by law. Merchant agrees not to store, distribute, copy or otherwise manipulate card account numbers or PINs that appear, are encoded or are otherwise associated with Cards. All electronic commerce Merchants must provide Cardholders with a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. Further, Merchant agrees to store (to the extent such storage is permitted) any and all material containing Cardholder account numbers, imprints or information in a secure manner, in an area limited to selected personnel, and to destroy such numbers, imprints, and information before discarding in a fashion that renders the data unreadable and unrecoverable. Neither Merchant nor any of its agents shall retain or store the full contents of any track on the Magnetic-Stripe, or equivalent data on the Contactless Payment chip, subsequent to Authorization of a Card transaction.
- (e) Merchant must notify Servicers of any third party agent of Merchant that will have any access to Cardholder data.
- (f) Merchant understands and agrees that due to requirements of law, Card receipts may not contain (i) more than the last five digits of the credit card account number; and (ii) that the Card receipt may not contain the expiration date.
- (g) If Merchant sells goods or services on the Internet, Merchant's web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.
- (h) Merchant must fully cooperate with Servicers and Card Associations if Merchant is undergoing a forensic investigation at any time with regard to the Account.

1.23 Account Access Password.

- (a) If Merchant receives a user identification name or password from Servicers to access Servicers' database or use services offered by Servicers, Merchant will: (i) keep the user identification name and password confidential; (ii) not allow any other entity or person to use the user identification name or password or gain access to Servicers' database; (iii) be liable for all action taken by any user of the user identification name or password; and (iv) promptly notify Servicers if Merchant believes the user identification name or password have been used inappropriately or the confidentiality of the information made available through their use has been compromised.
- (b) Merchant agrees that any loss incurred as a result of any party gaining access to Account or Servicers' website using information which that party was not authorized to obtain or using such information in a manner not permitted by this Agreement (including but not limited to improper or unauthorized use of Merchant's ID number and PIN) shall be the responsibility of Merchant.

1.24 Privacy.

Serviceirs will have access to the data associated with Merchant's use of the service. Serviceirs will handle this information in accordance with their privacy policies.

1.25 Feedback.

Serviceirs may provide Merchant with a mechanism to provide feedback, suggestions and ideas about Serviceirs products and services ("Feedback"). Merchant agrees that Serviceirs may, in their sole discretion, use the Feedback in any way, including in future modifications of the products and services and any related advertising and promotional materials. Merchant grants Serviceirs a perpetual, worldwide, fully transferable, non-revocable, royalty free license to use, reproduce, modify, create derivative works from, perform, distribute and display for any purpose any information Merchant provides to Serviceirs in the Feedback. Merchant will have no obligation to provide any Feedback to Serviceirs.

1.26 Modifications to Agreement.

Serviceirs may from time-to-time amend any provision of this Agreement, including those relating discount rates or other fees and charges payable by Merchant, whether such amounts are set forth in the Merchant Application, any separate schedule of fees or the fee provisions of this Agreement. Serviceirs will provide notice to Merchant of the amendment, and unless specified otherwise, the amended agreement shall become effective at the start of the first billing cycle after Serviceirs have provided notice. Amendments due to changes in a Card Association's fees, interchange, assessments, Rules, gift card systems or any law or judicial decision will become effective at such time that Serviceirs may specify, which may be sooner than the beginning of the next billing cycle following the date of notice.

1.27 Additional Services Offered by Serviceirs.

From time to time, Serviceirs may offer to Merchant additional products and services which may or may not be related to the processing of Card transactions. In the event of such offers, Merchant shall indicate its desire to Serviceirs to decline such offers or be deemed to have accepted the offers and be liable for payment therefore.

1.28 Compliance with Law.

Merchant shall comply with all laws applicable to Merchant, Merchant's business and any Card transactions, including without limitation to all Rules, state and federal consumer credit and consumer protection laws, as well as laws for any special services used by Merchant, such as gift card and other services.

1.29 Merchant Dispute Notification.

Merchant is responsible for the timely reconciliation of all issues related to services provided under this Agreement. Merchant will promptly examine all merchant statements relating to the Account and immediately notify Serviceirs in writing of any errors. Merchant's written notice must include: (i) Merchant name and Account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Serviceirs within thirty (30) days after Merchant received the periodic statement containing the asserted error. Merchant may not make any claim against Serviceirs for any loss or expense relating to any asserted error for sixty (60) days immediately following receipt of Merchant's written notice. During that sixty (60) day period, Serviceirs will be entitled to investigate the asserted error and Merchant will not incur any cost or expense in connection with the asserted error without notifying Serviceirs.

1.30 Notices; Consent to Electronic Communications.

By applying for services and confirming that it has read this Agreement, Merchant is confirming to Serviceirs that it has the means to access the Internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by Serviceirs at one or more of Serviceirs' sponsored websites, such as <http://www.merchantsupport.info/disclosure/TMS.html>. Such communications may pertain to the services delivered by Serviceirs, the use of information Merchant may submit to Serviceirs, changes in laws or Rules impacting the service or other reasons, such as amendment of this Agreement. In addition, all notices and other communications required or permitted under this Agreement by Serviceirs to Merchant may also be delivered by Serviceirs to Merchant either by FAX, overnight carrier or first class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to Serviceirs shall be delivered by Merchant to Serviceirs by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by FAX or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first (1st) business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section:

- (a) If to Serviceirs, addressed and transmitted as follows: Total Merchant Services, Inc.
21650 Oxnard Street
Suite 1200
Woodland Hills, CA 91367
Attn: Merchant Services
- (b) If to Merchant, at the address provided as the billing address, or the FAX number or e-mail address and to the contact listed on the Merchant Application.

1.31 Further Assurances.

At any time or from time to time upon the request of Serviceirs, Merchant will execute and deliver such further documents and do such other acts as Serviceirs may reasonably request in order to effectuate fully the purposes of this Agreement.

1.32 Force Majeure.

Any delay in or failure of performance by Serviceirs under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking institutions, or Card Associations.

1.33 Choice of Law, Jurisdiction, Venue.

The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in California and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California. This Agreement will be governed by California law, without regard to its conflicts-of-law principles, and applicable federal law. Subject to Section 1.50 below: (i) the parties hereby knowingly, intelligently and voluntarily consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in either the Los Angeles County Superior Court or the United States District Court for the Central District of California sitting in Los Angeles, California; (ii) the parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of California or United States federal law; (iii) the parties hereby knowingly, voluntarily and intelligently waive any claim or defense in any such legal action, suit or proceeding commenced in any of the above-referenced courts asserting that it is not subject personally to the jurisdiction of such court, that service upon it as hereinabove set forth is invalid, that its property is immune or exempt from attachment or execution, that the legal action, suit or proceeding is brought in an inconvenient forum, that the venue of the legal action, suit or proceeding is improper or that this Agreement, or the subject matter hereof, may not be enforced in or by such court.

1.34 Jury Waiver.

In the event any controversy or claim between or among the parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each party hereby knowingly, intelligently and voluntarily waives its respective right to trial by jury of such controversy or claim.

1.35 Costs.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or any part thereof, the prevailing party shall be entitled to recover its reasonable attorneys' and experts' fees and costs in addition to any other legal and/or equitable remedies to which it is entitled.

1.36 Publicity.

Merchant agrees that Servicers may issue a press release or similar public announcement referencing Merchant as a customer of Servicers. Merchant also grants to Servicers a limited license to use Merchant's and its affiliates' names, logos, trademarks, service marks or copyrights in any advertising, promotional or instructional materials for Servicers or their affiliates' services.

1.37 Intellectual Property.

Servicers retain all right, title and interest in and to the services and any related technology utilized by it under or in connection with this Agreement, including but not limited to all associated intellectual property rights. No title to or ownership of any of the foregoing is granted to Merchant or any other entity or person under this Agreement. Merchant will not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of the Servicers services or related technology.

1.38 Taxes.

Merchant shall promptly pay when due any and all liability or expense relating to the payment of federal, state, and local taxes (other than taxes based in whole or in part upon income attributable to Servicers). Merchant represents and warrants that the taxpayer identification and/or social security number provided to Servicers is true, correct and complete. Upon request, Merchant will complete, sign and deliver to Servicers a Form W-9 to verify Merchant's taxpayer identification and/or social security number. Merchant shall also take all other actions as may be required by Servicers in order to comply with Internal Revenue Section 6050W, and any amendments or supplements thereto.

1.39 Rights Cumulative.

All rights and remedies existing in this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.

1.40 Headings.

The headings listed after each section number in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.

1.41 Waiver.

Failure by Servicers to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. All waivers must be signed by the waiving party.

1.42 Entire Agreement.

This Agreement, including the Merchant Application, any separate schedule of fees, the Rules, information contained in websites or electronic links referenced in this Agreement, and Exhibits to this Agreement, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein. Reference to "this Agreement" also includes all documents, websites and electronic links incorporated into this Agreement by reference.

1.43 Severability.

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

1.44 Assignment.

This Agreement may be assigned by Servicers, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Servicers, which may be withheld in its sole discretion. The Servicers' right to assign this Agreement includes the ability to assign Servicers' right to debit the Account (and other accounts). If Merchant nevertheless assigns this Agreement without such consent, this Agreement will be binding upon the assignee at the option of Servicers, but otherwise such assignment shall be null and void, and of no force and effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs and personal representatives for an individual, and otherwise its permitted successors and assigns. If Merchant sells its business and the new owners incur Chargebacks or returns, absent notification and consent by Servicers, both the new owner and the original owner and all Guarantors will be held personally liable for all liabilities of Merchant before and after the sale of the business.

1.45 Authorization of Agreement.

Merchant represents and warrants that the person signing or electronically authorizing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement and that such person is authorized to execute any documents and to take any action on behalf of Merchant which may be required by Servicers now or in the future. Merchant will execute a separate Entity Certification if requested to do so by Servicers. Merchant, by its signature, upon its first transmission of Card transactions, or first payment of fees acknowledges that it agrees to be bound by this Merchant Agreement as it may be modified from time to time.

1.46 Relationship of the Parties.

The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.

1.47 Export Restrictions.

Merchant acknowledges that any software provided to it by Servicers in connection with delivering services is subject to the U.S. Export Administration Regulations (15 CFR, Chapter VII). These laws include restrictions on destinations, end users and end use.

1.48 Counterparts.

If copies of this Agreement or any amendments are to be physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.

1.49 Electronic Signature.

Merchant may become a party to, and become bound by, this Agreement by completing the Merchant Application and accepting it electronically over the Internet. This is done by clicking or entering "I Agree", by providing an electronic form of signature or otherwise by affirmatively indicating acceptance or consent where requested on an electronic version of the Merchant Application (any such method constituting an "Electronic Consent"). By providing such Electronic Consent, Merchant acknowledges that it has received and reviewed all applicable pages, terms and conditions of this Agreement, and it represents, warrants, consents and agrees as follows:

- (a) the electronic application process allows Merchant to sign and agree to legally binding agreements online by providing its Electronic Consent.
- (b) Merchant intends to use the electronic application process to provide its Electronic Consent.

- (c) Merchant's Electronic Consent is legally binding, and is governed by the Electronic Signatures in Global and National Commerce Act of 2000, and/or the Uniform Electronic Transactions Act governances (or an amended version thereof) in its state of residence, and Merchant agrees to be bound by these governances.
- (d) the individual providing Electronic Consent on behalf of Merchant is authorized by Merchant to do so.
- (e) the Electronic Consent will be binding upon Merchant, and will not be construed by a court of law to have any less effect than a standard ink or paper signature.
- (f) the information provided on the electronic version of the Merchant Application is complete and accurate, and Servicers are authorized to verify the information on such Merchant Application and to receive and exchange information about Merchant, including the credit and financial inquiries identified in Section 1.05 of this Agreement and confidential information under Section 1.21.
- (g) the complete and legible Merchant Application and this Agreement has been provided to Merchant, and Merchant (a) was technically capable of opening, reading, printing, downloading and/or saving all sections of the Merchant Application and this Agreement, and (b) had a reasonable opportunity to open each section of the Merchant Application and this Agreement, read it, and sign and agree to it by providing its Electronic Consent.
- (h) no strikeouts, interlineations, additions or modifications to the electronic version of the Merchant Application and this Agreement may be made.
- (i) the electronic version of the Merchant Application and this Agreement, as accepted by the Electronic Consent of Merchant, may be transmitted to or from Servicers or their designees and/or retained electronically by Servicers or their designees, which will constitute an original.
- (j) The electronic version of the Merchant Application and this Agreement is subject to approval by Servicers.

1.50 Dispute Resolution.

Servicers and Merchant each acknowledge and agree that any controversy, disagreement, dispute or claim arising out of or relating to this Agreement, or any breach thereof (each, a "Dispute"), shall be settled by following the procedures set forth below:

- (a) Servicers, on the one hand, and Merchant, on the other hand, agree first to contact the other to advise of any such Dispute. The party alleging, asserting and/or initiating the Dispute shall contact the other party or parties who is or are alleged to be liable or responsible for such Dispute, and provide a written description of the Dispute, all relevant documents/information and the proposed resolution (the "Claim Notice"). Merchant agrees to contact Servicers as contemplated above by calling or writing to: Claims Administrator, 21650 Oxnard Street Suite 1200 Woodland Hills, CA 91367, Tel. No. 1 (888) 848 - 6825. Servicers will contact Merchant in any manner approved in Section 1.30 above.
- (b) The Claims Administrator for Servicers and Merchant shall then seek in good faith to resolve the Dispute. As part of this process, each party to the Dispute shall provide a monetary amount that, if paid to the party alleging, asserting and/or initiating the Dispute, would settle the Dispute (the "Settlement Amount"). If the parties do not agree to a Settlement Amount, or the parties are otherwise unable to settle the Dispute within thirty (30) days of the date of delivery of the Claim Notice, then the parties shall proceed to arbitration, as set forth below.
- (c) IN THE ABSENCE OF RESOLVING THE DISPUTE UNDER THIS SECTION 1.50, AND INSTEAD OF SUING IN COURT, SERVICERS AND MERCHANT EACH AGREE TO SETTLE AND RESOLVE FULLY AND FINALLY ALL DISPUTES EXCLUSIVELY BY ARBITRATION, EXCEPT IN THE FOLLOWING LIMITED CIRCUMSTANCES: (I) SERVICERS OR MERCHANT MAY COMMENCE AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT WHERE THE AMOUNT OF THE DISPUTE DOES NOT EXCEED THE JURISDICTIONAL LIMIT OF SUCH COURT; AND (II) MERCHANT MAY FILE A DISPUTE WITH ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY THAT CAN, IF THE LAW SO AUTHORIZES, SEEK RELIEF AGAINST SERVICERS ON BEHALF OF MERCHANT. THE AGREEMENT TO HAVE DISPUTES RESOLVED BY ARBITRATION IS MADE WITH THE UNDERSTANDING THAT EACH PARTY IS IRREVOCABLY, KNOWINGLY AND INTELLIGENTLY WAIVING AND RELEASING ITS RIGHT TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE DISPUTES. Without limitation, Servicers and Merchant agree that Disputes, as defined above, shall include the following matters: (a) any Dispute by any party against any agent, employee, successor, or assign of the other party or parties, including to the full extent permitted by applicable law, third parties who are not signatories to this Agreement, whether related to this Agreement or otherwise; (b) any past, present, and future Dispute; and
- (d) any Dispute as to the scope, validity or applicability of this Section 1.50, and/or the arbitrability of any Dispute; and (d) any Dispute against Servicers, or any other party as stated above, related in any way to the services, including, but not limited to, the characterization of the transactions referenced in this Agreement, privacy, solicitation, or advertising, even if it arises after the Agreement has terminated.
- (e) The foregoing arbitration shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules in effect when a Claim Notice is duly provided under this Section 1.50. If any AAA procedure or rule conflicts with the terms of this Agreement, the terms of this Agreement apply.
- (f) Servicers and Merchant are entering into this Agreement in connection with a transaction involving interstate commerce. Accordingly, the arbitration set forth in this Agreement and any proceedings thereunder shall be governed by the Federal Arbitration Act (the "FAA"), 9 U.S.C. Sections 1-16. Any award by the arbitrator may be entered as a judgment in any court having jurisdiction. Any arbitrator's decision and award is final and binding, subject only to those exceptions under the FAA. Servicers and Merchant agree the FAA's provisions, not state law, govern all questions of whether a Dispute is subject to arbitration.
- (g) Unless Servicers and Merchant agree otherwise, the foregoing arbitration will be conducted by a single neutral arbitrator selected by utilizing the process provided in the AAA's Commercial Arbitration Rules in effect when Claim Notice is duly filed. The arbitrator shall be a licensed attorney and/or retired judge. Except as otherwise provided below, the arbitration shall be conducted in the county where the principal address of the party against whom the Dispute is initially commenced is located – and for any claim against Servicers, that address shall be Total Merchant Services, Inc., 21650 Oxnard Street Suite 1200 Woodland Hills, CA 91367. The federal or state law that applies to this Agreement will apply during the arbitration. The arbitrator shall have no authority to award punitive, consequential or other monetary damages not measured by the prevailing party's actual damages, except as may be required by statute or as otherwise provided below.
- (h) The award of the arbitrator shall be accompanied by a reasoned opinion.
- (i) For Disputes of \$10,000.00 or less that are initiated by Merchant ("Small Disputes"), the following rules shall apply notwithstanding anything to the contrary in the procedures or rules of the AAA and/or in this Agreement:
 - (1) The arbitration shall be conducted in accordance with the AAA's Expedited Procedures.
 - (2) The arbitrator shall include a finding as to whether the initiation of such Dispute was frivolous. If it is determined by the arbitrator not to be frivolous, then Servicers shall pay the fees and costs assessed by the AAA in administering the arbitration.
 - (3) If the arbitrator finds that Servicers are liable to Merchant for an amount greater than the Settlement Amount presented by Servicers prior to the commencement of arbitration (after all offsets and counterclaims are applied), then Servicers shall be required to pay in addition to any award of the arbitrator an amount equal to the greater of (x) \$1,000.00, or (y) twice the amount of Merchant's reasonable attorneys' fees.
 - (4) Merchant may choose to conduct the arbitration in the state of its principal address.
- (j) SERVICERS AND MERCHANT EACH AGREE NOT TO PURSUE ARBITRATION ON A CLASS-WIDE BASIS. ARBITRATION WILL BE CONDUCTED SOLELY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

1.51 Non-Disparagement.

Merchant and Guarantor(s) each agree not to disparage either or both of Servicers or their respective vendors, and promise to refrain from engaging, directly or indirectly, in any action, communication or conduct negligently, recklessly or intentionally undertaken to damage the name or reputation of either or both of Servicers or their respective vendors.

1.52 General.

Merchant is responsible for its employees' actions while in its employ. Except as otherwise expressly provided in this Agreement, the parties do not intend to confer any benefits on any person or entity other than Merchant and Servicers. Merchant is also responsible for procuring, maintaining and servicing all equipment and software necessary to allow it to engage with Servicers systems to process Card transactions through Servicers, as well as for all related Internet, telecommunication, mobile phone (including sms charges and mobile data plan fees) and other similar fees.

1.53 Survival.

All Sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

ARTICLE II. CARD TRANSACTION SERVICES/RESTRICTIONS.

The following terms and conditions govern Card services provided by Servicers to Merchant.

2.1 Advertising.

- (a) Merchant will prominently display the promotional materials provided by Servicers in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Servicers.
- (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease their use and return any inventory to Servicers upon termination of this Agreement.
- (c) Merchant shall not use any promotional materials or Marks associated with VISA, MasterCard, AMEX, Discover Network or JCB in any way which implies that VISA, MasterCard, AMEX, Discover Network or JCB endorses any goods or services other than Card services, or otherwise in violation of the Rules.

2.2 Warranties of Merchant Regarding Card Transactions.

Merchant hereby represents and warrants to Servicers at the time of execution and during the term of this Agreement that:

- (a) Each Sales Draft presented to Servicers for collection is genuine and is not the result of any fraudulent or illegal transaction and is not being deposited on behalf of any business other than Merchant. Further, Merchant warrants that each Sales Draft is the result of a Card transaction for the bona fide purchase of goods or services by the Cardholder in the total amount stated on the Sales Draft.
- (b) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card transaction evidenced thereby.
- (c) Merchant has complied with Servicers' procedures accepting Cards, and the Card transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC 1601), or other relevant state or federal statutes or regulations.
- (d) Any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card transaction by Merchant with respect to which a Sales Draft has been accepted and shall be credited to the same Card used in the original Card transaction.

2.3 Honoring Cards.

- (a) If Merchant elects to accept Card payments, Merchant will accept without discrimination, all valid Cards properly presented by Cardholders for payment for goods or services. With respect to VISA and MasterCard products, Merchant may elect to accept credit cards or debit/prepaid cards or both. Merchant shall so elect on the Merchant Application. Merchant agrees to pay and the Account will be charged pursuant to this Agreement for any additional fees incurred as a result of Merchant's subsequent acceptance of Card transactions with any VISA or MasterCard product that it has elected not to accept.
- (b) Merchant may establish a minimum transaction size for accepting Card transactions so long as such amount does not exceed \$10, or such other amount established by law, and such minimum transaction size requirement does not discriminate between Card Issuers or between Card Associations. Merchant may not impose a maximum transaction size on Card transactions, or add a fee to a Card transaction.
- (c) Merchant may offer discounts or in-kind incentives for payment by the use of cash, checks, Debit Cards, or Credit Cards, provided that the terms of the discount or in-kind incentives do not differentiate on the basis of the Card Issuer or the Card or Card Association.
- (d) Merchant shall not accept a Card as payment (other than for a mail order, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an imprint or otherwise use the physical Card to complete the Transaction.

2.4 Card Acceptance.

When accepting a Card, Merchant will follow the steps provided by Servicers for accepting Cards and will:

- (a) Determine in good faith and to the best of its ability that the Card is valid on its face, and that the back of the Card is not disfigured or tampered with.
- (b) Obtain Authorization before completing any Card transaction. Where Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder.
- (c) Obtain an Imprint of the Card unless the Sales Draft is electronically generated from a swiped Card transaction or is the result of an Internet, mail, phone or preauthorized order.
- (d) If Merchant's terminal is unable to read the magnetic stripe on the Card, Merchant will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before processing the Sales Draft.
- (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes) on the Sales Draft.
- (f) Refrain from writing any personal information of the Cardholder on the Sales Draft.
- (g) Obtain the Cardholder's signature on the completed Sales Draft and match that signature to the signature on the Card.
- (h) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale.
- (i) Offer the Sales Draft to Servicers for purchase according to the Servicers procedures and the terms of this Agreement.
- (j) Legibly reproduce without alteration of the original Card transaction receipt, the Cardholder's name, account number, expiration date and Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. Also, for MasterCard transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card.

2.5 Authorization.

- (a) Merchant will obtain an Authorization for all Card transactions. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a voice Authorization from the designated authorization center, and will legibly print the Authorization number on the Sales Draft. Fees for voice Authorizations are as set forth in Section 1.14 below.
- (b) Merchant shall not request Authorization for a Card transaction unless Merchant intends to submit a Card transaction for the authorized amount.
- (c) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale, and that an Authorization is not a guarantee of payment.
- (d) Merchant will not attempt to obtain Authorization on an expired Card. Card transactions will be deemed invalid on Cards that are expired, whether or not Authorization has been obtained.

2.6 Unusual and Suspicious Transactions; Account Monitoring.

- (a) Merchant acknowledges that Servicers will monitor Merchant's daily deposit activity for purposes of monitoring compliance with this Agreement. Merchant agrees that Merchant's deposit activity will remain consistent with the "approved" monthly volume and average ticket amount approved on the Merchant Application and/or by Servicers. Servicers may require additional documentation if Merchant should exceed "approved" monthly volume or average ticket, and Merchant agrees promptly

to provide such documentation upon request. Merchant agrees that Servicers may, in their sole discretion, elect not to process volumes over the approved monthly volume or overlimit transactions, and/or to terminate processing of Card transactions for cause in the event of overlimit or excessive activity. Merchant further agrees that Servicers may, in their sole discretion, suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity and that such suspension may subject Merchant to additional suspension fees as set forth herein. Servicers will make good faith efforts to notify Merchant of such suspension as promptly as is commercially reasonable, but no liability shall accrue against Servicers if such notice is not so provided. Servicers shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

- (b) In the event of suspension arising from a suspicious or unusual Card transaction, Merchant agrees that the Account may be charged a Security Processing Fee of
- (c) \$100 per suspended Card transaction and, if the suspended Card transaction or unusual or suspicious activity exceeds \$3,000, an additional \$100 Investigative Fee may be assessed for each such event, without limiting any other rights or remedies of Servicers under this Agreement.
- (d) If a batch is suspended by Servicers, Merchant acknowledges that the consumer's product or service must be delivered just as if Merchant has been paid. Further, if a batch or a Card transaction is suspended, Merchant acknowledges that fees associated with the Card transactions will be charged including security fees.
- (e) Merchant's presentation to Servicers of Excessive Activity will be a breach of this Agreement and a cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period and for any one of Merchant's terminal identification numbers or merchant identification numbers, (i) Chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of Card transactions, (ii) returns in excess of 3% of the average monthly dollar amount of Card transactions, or (iii) processing an average ticket above the amount approved by Servicers. Merchant authorizes, upon the occurrence of Excessive Activity, Servicers to take additional actions as they may deem necessary, including, but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

2.7 Forms.

Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Servicers.

2.8 Retention and Retrieval of Cards.

Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions upon making a request for Authorization. In carrying out such obligation Merchant will not breach the peace or cause any injury to any person or property.

2.9 Personal Information.

Merchant may not require Cardholders to provide any personal information as a condition of honoring a Card unless such information is required for delivery of the goods or services or Merchant has reason to believe that the person presenting the Card may not be the actual Cardholder.

2.10 Records; Requests for Copies.

Merchant shall retain a copy of all Sales Drafts and Credit Vouchers for customer present transactions and electronically approved authorizations for all Card Not Present Transactions for at least three (3) years after the date of the Card transaction. Within three (3) business days of receipt of any written or verbal request by Servicers, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof and any other documentary evidence reasonably requested by Servicers. A failure of Merchant to deliver the requested documentation in the required time frame may result in the transaction in question being charged back to the Account and Merchant losing further rights.

2.11 Multiple Transaction Records; Partial Payments.

Merchant shall include all goods and services purchased in a single Card transaction at one time on a single Sales Draft, except: (i) for purchases in separate departments of a multiple department store; (ii) for installment payment; or (iii) for delayed or amended charges governed by rules for travel and entertainment merchants and Card transactions.

2.12 Telephone Orders "TO", Mail Orders "MO", Internet Orders, Preauthorized Orders "PO" and Installment Orders "IO".

- (a) Unless Merchant has been approved by Servicers to accept Internet, mail and phone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place. If Merchant is found to be accepting mail orders, telephone orders, or Internet Card transactions without such consent, such charges are subject to Chargeback, as provided in this Agreement. When allowed, telephone and Internet orders are permitted only to the extent that the contact is initiated by the Cardholder.
- (b) If authorized to accept payment by Internet, mail, phone or pre-authorized order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, transaction date, an Authorization number, the sale amount and the letters "MO", "TO", "PO", or "IO" as appropriate. In addition, Merchant's business name, city and state must be included. For Internet orders, Merchant shall attempt to obtain the Card expiration date and forward it as part of the Authorization request for non-secure Card transactions and non-authenticated security transactions. Receiving an Authorization shall not relieve Merchant of liability for Chargeback on any Card transaction for which Merchant did not obtain an imprint and the Cardholders signature.
- (c) For Approved MO, TO, PO, and IO Merchants, Merchant must use reasonable procedures to verify that each Card sale is made to a purchaser who actually is the Cardholder or the authorized user of the Card. The Address Verification System ("AVS") is recommended and in some cases required. AVS is not a guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent Card transaction.
- (d) Unless approved in writing by Servicers, Merchant shall not process sales prior to delivery of product or service. If the product is being shipped, the customer must be given the shipping date of the product once the sale is processed.
- (e) Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any Card transactions. If a Merchant refund policy prohibits returns under certain circumstances, Merchant may still receive a Chargeback relating to such sales pursuant to Card Association Rules.
- (f) Merchant must not accept credit card sales via "electronic mail" over the Internet.
- (g) Merchant must be approved by Servicers to charge customers via an automatic or recurring payment plan. Any Card transactions in violation of this provision are subject to Chargeback to Merchant. For any such automatic or recurring Card transactions, Merchant must obtain a written or electronic form of request from Cardholder for such goods and services to be charged to the Cardholder's account, which request must specify (i) the Cardholder's name, address and Card number and expiration date, (ii) the Card transaction amounts (including the total of all transaction amounts authorized) to be charged to the Cardholder's account, (iii) the frequency of the recurring charge and the duration of time during which such charges may be made, (iv) a general description of the Card transaction, and (v) Merchant's business name and customer service telephone number that the Cardholder may call to obtain customer assistance from Merchant or to revoke approval of the automatic payment plan. Merchant shall not complete any recurring Card transaction after receiving a cancellation notice from the Cardholder, the Servicers, or a response to an Authorization request which indicates that the Card is not to be honored. Merchant shall type or legibly print the words "Recurring Transaction" on the signature line of the Sales Draft. Merchant shall provide a copy of Cardholder's written request to Servicers upon request, and shall retain a copy of such written request for one year after this Agreement between Merchant and Cardholder is terminated. For multi-year agreements, Merchant shall renew written request with Cardholder annually during the 12th month of the current agreement. The first automatic or recurring payment plan Card transaction must contain a positive response from the AVS. If the first payment does not contain this information, all subsequent payments are subject to Chargeback to Merchant.

2.13 Lodging and Vehicle Rental Transactions.

- (a) Merchant must estimate and obtain Authorization for the amount of the Card transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Some lodging Merchants are eligible to participate in VISA's Advanced Deposit Service Program. Merchants participating in this service must adhere to the Rules concerning the Advanced Deposit Service Program, as set forth by VISA.

- (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Card transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card transaction.

2.14 Returns and Adjustments: Credit Vouchers.

- (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. If applicable, Merchant must disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms).
- (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale.
- (c) If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant will not refund cash to a Cardholder who paid for the item by Card.
- (d) Credits must be made to the same Card account number on which the original sale transaction was processed.
- (e) If Merchant accepts any goods for return or terminates or cancels any services, in conjunction with each such Card transaction, Merchant shall have sufficient funds in its account available to Servicers to cover the amount of the Card transaction and any related fees.

2.15 Cash Payments.

Merchant shall not receive any payments from a Cardholder for charges included in any Card transaction resulting from the use of a Card, nor receive any payment from a Cardholder to prepare and present a Card transaction for the purpose of affecting a deposit to the Cardholder's Card account.

2.16 Cash Advances.

- (a) Merchant shall not deposit any Card transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party. Merchant agrees that any such deposit shall be grounds for immediate termination.
- (b) Merchant, shall not under any circumstances obtain Authorization for, nor process a sale on any Card that Merchant is not authorized to use. Processing Merchant's own Card is grounds for immediate termination.

2.17 Duplicate Transactions.

Merchant shall not deposit duplicate Card transactions. Merchant shall be debited for any duplicate Card transactions and shall be liable for any Chargebacks which may result therefrom.

2.18 Deposit of Fraudulent Transactions.

Merchant must not knowingly submit and Servicer must not knowingly transmit any transaction that is illegal or that the Merchant should have known was illegal. Additionally a Merchant must not deposit any transaction that is known to be either fraudulent or not authorized by the Cardholder. Merchant shall not accept or deposit any fraudulent Card transaction and may not present for processing or credit, directly or indirectly, a Card transaction which originated with any other merchant or any other source. Merchant shall not deposit Card transactions evidencing sales that were solicited by outbound telemarketing activities. If Merchant deposits any such transactions, Servicers may hold funds and/or demand a Reserve Account. Perpetrators of fraudulent Card transactions will be referred to law enforcement officials and may be subject to Card Association penalties.

2.19 Collection of Pre-Existing Debt.

Merchant shall not present any Card transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

2.20 E-Commerce Transactions.

- (a) Merchant must display the address of its permanent establishment on its website. This address should include the country of domicile and should be located either on the checkout screen used to present the total purchase amount to the Cardholder, or within the sequence of web pages the Cardholder accesses during the checkout process. Merchant must also display approved Card Association signage.
- (b) Merchant must obtain an authorization on the Card transaction date, except when goods are shipped and then the authorization may be obtained up to seven (7) calendar days prior to shipping goods. A detailed transaction receipt must be generated for each Card transaction. See the Rules for details. A transaction receipt must be available upon request and Merchant must communicate instructions for such request on its website. Merchant may deliver the transaction receipt electronically or by paper. Merchant must attempt to obtain the Expiration Date from the Card and forward it as part of the authorization request.
- (c) Merchant's website must communicate its refund policy to the Cardholder and require the Cardholder to select a "click-to-accept" or other affirmative button to acknowledge the policy. The terms and conditions of the purchase must be displayed on the same screen view as the checkout screen that presents the total purchase amount, or within the sequence of website pages the Cardholder accesses during the checkout process.
- (d) Merchants classified under MCC's (4829, 5967, 6051, and 7995), are not eligible for E-commerce transactions.

2.21 Settlement of Transactions.

Servicers shall accept from Merchant all valid Sales Drafts deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. Settlement of all Sales Drafts is subject to this Agreement and the Rules. Servicers shall provisionally credit the value of collected, valid Sales Drafts to Merchant's Account and reserve the right to adjust amounts so credited to reflect the value of Chargebacks, fees, penalties, late submission charges, the difference in currency exchange if the Chargeback amount is greater than the original sale, issuer claims, and items for which Servicers did not receive final payment for any reason. Servicers may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all the terms and conditions of this Agreement; (b) the Cardholder disputes his liability to Servicers for any reason, including but not limited to those Chargeback rights enumerated in the Rules; (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder, or (d) the transaction is outside the parameters indicated on the Merchant Application. Merchant will pay Servicers for any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by them.

2.22 Processing Limits.

Servicers may limit the dollar amount of Sales Drafts that it will process for Merchant. This limit may be changed by Servicers from time to time with or without notice to Merchant. If Merchant exceeds the limit established by this Agreement, Servicers may suspend processing, charge overlimit fees, hold the funds over the cap and/or return to Merchant all Sales Drafts evidencing funds over the cap.

2.23 Endorsement.

The presentment of Sales Drafts to Servicers for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with Servicers' acceptance procedures and shall constitute an endorsement by Merchant to Servicers of such Sales Drafts. Merchant hereby authorizes Servicers to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of

Bankruptcy Code 11 U.S.C. Section 365, as amended from time to time. Merchant acknowledges, in accordance with Section 1.09 above, that its obligation to Servicers for all amounts owed under this Agreement arise out of the same transaction as Servicers obligation to deposit funds to the Account.

2.24 Transmission Method.

If Merchant utilizes electronic Authorization and/or data capture services, Merchant will enter data related to a Card transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the Card transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet Servicers requirements for processing Card transactions. Information regarding a Card transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to Servicers in the form Servicers from time to time specify or as required under the Rules. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided Servicers with at least thirty (30) days prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to Servicers.

2.25 Prohibited Payments.

Unless specifically authorized in writing by Servicers, Merchant shall collect or attempt to collect from a Cardholder amounts owed for any Card transaction and shall promptly deliver to Servicers any payment Merchant receives, in whole or in part from a Cardholder for any Card transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.

2.26 Chargebacks.

All Chargebacks are due upon presentation to Merchant. In the case of a failure to pay a Chargeback upon such presentment, in addition to any other remedies which may be exercised by Servicers, Merchant agrees to pay a late charge of one and one half percent (1.5%) per month or portion thereof, or the highest amount allowable by law, whichever is less, on all unpaid Chargebacks. Servicers are authorized to deduct the amount of any Chargebacks and fees from any settlement amounts due to Merchant or from the Reserve Account, if any, or collect by any other means, including by debit to Account. Merchant acknowledges and agrees that it is bound by the Rules with respect to any Chargeback. Merchant further acknowledges that it is solely responsible for providing Servicers with any available information to re-present a Chargeback and that, regardless of any information it provides or does not provide Servicers in connection with a Chargeback, or any other reason, Merchant shall be solely responsible for the liability related to such Chargeback. Merchant understands and agrees that Card transactions are subject to Chargeback for a variety of reasons under the Rules, or if Merchant has breached this Agreement, including without limitation, for the following reasons:

- (a) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Servicers within the required time-frames.
- (b) The Sales Draft does not contain the Imprint of a valid unexpired Card.
- (c) A valid authorization number has not been correctly and legibly recorded on the Sales Draft.
- (d) The Sales Draft is a duplicate of a prior Card transaction or is the result of two or more Card transactions generated for a single sale.
- (e) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased.
- (f) The price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment.
- (g) The Card transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Card transaction or the Card transaction has been made on an expired or non-existing account number.
- (h) Servicers reasonably believe in their discretion that Merchant has violated any provision of this Agreement.
- (i) Servicers reasonably determine that the Card transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, or offset for any reason whatsoever, including without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees.
- (j) Merchant fails to provide a Sales Draft or legible copy thereof to Servicers in accordance with this Agreement.
- (k) Merchant shall not initiate a Card transaction in an attempt to collect a Chargeback.

2.27 Effect of Termination.

- (a) In the event of termination for any reason, Merchant expressly authorizes Servicers to withhold settlement of Card transactions and other payment transactions of Merchant in the process of being settled.
- (b) At the discretion of Servicers, collected funds may be placed in a Reserve Account until Merchant pays any equipment and processing termination fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, Servicers reserve the right to require Merchant to deposit additional amounts in the Reserve Account based upon Merchant's processing history and/or anticipated risk of loss to Servicers into the Reserve Account. The Reserve Account shall be maintained for a minimum of two hundred seventy (270) days after the termination date or the date of the oldest Card transaction (or longer depending on Merchant's product and business practices), and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules or during which Merchant may have outstanding obligations to Servicers. Any balance which remains in the Reserve Account after such period will be returned to Merchant. Servicers may debit the Reserve Account for all amounts owed by Merchant under this Agreement.
- (c) Merchant expressly acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or "CTMF") is a file maintained by MasterCard and accessed by VISA, and the Consortium Merchant Negative File, maintained by Discover Network, containing the business names and the identification of principals of merchants which have been terminated for one or more reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized Card transactions, excessive Chargebacks, retrievals or highly suspect activity. Merchant acknowledges and agrees that Servicers are required to report Merchant and the names and identification of its principals to MATCH and the Consortium Merchant Negative File if Merchant is terminated for any such reason. Merchant consents to such reporting to the Card Associations by Servicers and waives any claims which Merchant may raise against Servicers as a result of such reporting. Merchant also consents to Servicers reporting incidents of fraud, counterfeit paper, unauthorized Card transactions, excessive Chargebacks, retrievals or highly suspect activity to any governmental authorities.
- (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Servicers which are made after the termination date.
- (e) Following termination, Merchant shall upon request provide Servicers with all original and electronic copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.
- (f) Effective immediately upon termination whether by Merchant or by Servicers, Merchant must cease the use of all Card Association signage which indicates the acceptance of those Cards under this Agreement.

ARTICLE III. DEBIT CARD SERVICES

The following terms and conditions govern Debit Card processing services provided by Servicers to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services, or subsequently elects to receive such services from Services.

3.1 Services.

Servicers shall sponsor Merchant for membership in the Debit Card network that Merchant has selected. Merchant acknowledges that sponsorship does not guarantee acceptance. Servicers shall process and settle Merchant's Debit Card transactions.

3.2 Debit Fees.

Merchant agrees to pay Servicers the fees for Debit Card transactions as set forth in the Merchant Application as well as the following fees. Payment and modification of fees will be handled as set forth in Article I of this Agreement. Merchant acknowledges that in addition to the Debit Card transaction fee set forth on the Merchant Application, each Debit Card transaction will also be charged the Payment Network fee on a per transaction and per network basis for the Payment Networks accessed and utilized by Merchant. These fees are subject to change from time to time to conform to the interchange provisions set forth by the Payment Networks.

3.3 Merchant Obligations.

- (a) Unless otherwise authorized by Servicers, Merchant shall utilize Servicers' compatible terminals, PIN pads or systems capable of processing all Automatic Clearing House (ACH) Debit Card transactions as well as online Debit Card transactions.
- (b) In connection with Debit Card transactions, Merchant shall comply with all Rules of the applicable Payment Network.
- (c) Merchant shall be responsible for all paper copies of Debit Card transactions, in accordance with the applicable Payment Network rules. Within one (1) business day of the day of the Debit Card transaction, Merchant shall balance each location to the system for each business day that such location is open.
- (d) Merchant shall be responsible for all telephone message unit costs, if any, which may be incurred by Merchant for the Debit Card services as well as expenses related to installation of and training in the use of terminals.
- (e) Merchant shall be responsible for entering data correctly. If an entry is made incorrectly, Servicers shall use their reasonable efforts to assist Merchant in correcting the entry, but cannot guarantee that the effort will be successful.

3.4 PIN Security.

- (a) Merchant is expressly prohibited from requesting PIN numbers verbally or in writing as a condition of a sale. Merchant may not document or retain PIN numbers in any fashion at any time.
- (b) Point of sale ("POS") terminals must be positioned so as to be reasonably secure from observation by third parties. Merchant's security cameras must not be able to view the PIN pad. Pin Entry Device (PED) shielding will be considered as one of the possible prevention methods.
- (c) The operational placement and use of the Tamper Resistant Security Module (TRSM) must be within its intended physical and logical environment. POS terminals designed for indoor use are not suitable for outside use. The modification of TRSMs from their original manufactured specifications must be restrained.

ARTICLE IV. EQUIPMENT PLACEMENT AGREEMENT

4.01

By checking the box(es) in the Merchant Application, Merchant has accepted the described point of sale terminal equipment (the "Equipment") under the following terms and conditions:

- (a) Merchant agrees that the Equipment is the property of TMS, is being licensed to Merchant, and must be returned in good and working condition within ten (10) days of the termination or expiration of this Agreement. If the Equipment is not returned within ten (10) days, Merchant agrees to pay TMS the equipment value, which can be found at <http://www.merchantsupport.info/disclosure/TMS.html>.
- (b) If the box referencing rental of the Equipment is checked in the Merchant Application, Merchant shall pay the stated license fee on the Equipment on a monthly basis, plus the applicable sales use taxes, beginning the month the Equipment is received by Merchant and continuing until the Equipment is returned by Merchant or this Agreement is terminated or expires.
- (c) Merchant agrees to be responsible for any damage to the Equipment as a result of misuse or negligence.
- (d) Merchant agrees to indemnify and hold Servicers harmless from and against any and all liabilities, losses, claims, damages, disputes, offsets, claims or counterclaims of any kind in any way related to the use (or misuse) of the Equipment. This includes any damage to the Equipment resulting from an act of nature, fire, or theft, or from misuse or negligence by Merchant or its agents. Merchant also agrees to pay TMS a shipping/handling charge for each delivery of replacement Equipment, regardless of the reason, in the amount provided at http://www.merchantsupport.info/disclosure/fee_tms.html

Notwithstanding the prior paragraph, if Merchant subscribes to TMS' Merchant Advantage Benefit Program, it will not be responsible for failure of Equipment for any reason, so long as such Equipment is returned to TMS. Under this program, TMS will also provide overnight replacement of the Equipment free of shipping/handling charges, after remote troubleshooting efforts are unsuccessful. Comparable replacement Equipment may be new or refurbished, or a different brand or model. Replacements are limited to four (4) in any consecutive twelve (12) month period.

ARTICLE V. WIRELESS SERVICE PROVISIONS

5.01

TMS has acquired the right to resell and/or sublicense certain wireless data communication services offered by certain cellular telephone and data networks (the "Wireless Networks"), in order to allow merchants to capture and transmit to Servicers wireless Card transactions on wireless POS terminals and accessories (the "Wireless Equipment"). The Wireless Networks are provided by third party vendors and, as such, the Servicers are in no way responsible for providing, maintaining, servicing or supporting such networks. In the event that Merchant utilizes Wireless Equipment and Wireless Services for Card transactions, it agrees to utilize such Wireless Networks and Wireless Equipment only as permitted by the third party vendors and in accordance with applicable laws, regulations, requirements, and rulings, as such may be updated from time to time. In addition, Merchant agrees to look exclusively to the applicable third party vendor of the Wireless Networks and/or Wireless Equipment for any and all warranties relating thereto, and agrees that Servicers have not provided any such warranties. Servicers shall not be responsible for transmission errors, interruptions in service, corruption of data or for the security of data during any transmission. In addition to any other provision of this Agreement, the Wireless Services will terminate immediately upon termination of the agreement between TMS and the third party vendor, upon discontinuance of the delivery of Wireless Services by the third party vendor, or at such time as the third party vendor or TMS is prevented from providing the Wireless Services by reason of any laws, regulations, requirements, rulings or notices issued by any governmental authority.

ARTICLE VI. MERCHANT ADVANTAGE BENEFIT PROGRAM.

6.01

TMS offers certain programs under which it provides overnight replacement of POS terminals that fail to operate, shipment of replacement POS terminal receipt paper rolls/supplies, and web-based access to the merchant's Card transaction data, 24 hours per day, 7 days per week. A detailed explanation of these programs, and the related pricing, can be found at <http://www.myclaccountadvantage.com>.

ARTICLE VII. GLOSSARY

7.01 As used in this Agreement, the following terms shall have the following meanings:

- (a) "Account": An account at a banking institution designated by Merchant as the account to be debited and credited by Servicers for Card transactions, fees, Chargebacks and other amounts due under this Agreement or in connection with this Agreement.
- (b) "Authorization": Approval by, or on behalf of, the Card Issuer to validate a Card transaction for a merchant or another affiliate bank. An authorization only indicates the availability of the Cardholder's credit limit at the time the Authorization is requested.
- (c) "Bankruptcy": A case under Title 11 of the United States Code, as amended from time to time.
- (d) "Card": See either Credit Card or Debit Card.
- (e) "Card Association": Any entity formed to administer and promote Cards, including without limitation, VISA, MasterCard, Discover, JCB, AMEX and any applicable Payment Network.
- (f) "Card Issuer": The Card Association or bank institution that issues a Card to an individual.
- (g) "Cardholder": The individual whose name is embossed on a Card and any authorized user of such Card.
- (h) "Card Not Present Transaction" occurs when the Card is not present at the point of sale, including Internet order, mail order or telephone order Card sales.
- (i) "Chargeback": The procedure by which a Sales Draft or other indicia of a Card transaction (or disputed portion) is returned to the Servicers.
- (j) "Credit Card": A valid Card authorizing the Cardholder to buy goods or services on credit and bearing the service mark of VISA, MasterCard, Discover Network, JCB, Amex or other Card Association specified by TMS.

- (k) "Credit Voucher": Evidence of a return of goods or services by Merchant to a Cardholder, or other refund made by Merchant to a Cardholder, regardless of whether such evidence is in paper or electronic form or otherwise, all of which must conform to the Rules.
- (l) "Debit Card": A PIN Debit or Non-PIN Debit Card.
- (m) "Non-PIN Debit Card": A Debit Card with a VISA, MasterCard or Discover Network mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.
- (n) "Payment Network": A Debit Card network such as, but not limited to, Accel, AFFN, Interlink, MAC, Maestro, NYCE, Pulse, Star and Tyme.
- (o) "PIN": A personal identification number entered by a Cardholder to submit a PIN Debit Card transaction.
- (p) "PIN Debit Card": A Debit Card used at a merchant location by means of a Cardholder-entered PIN in the merchant PIN Pad. PIN Debit Cards bear the marks of ATM networks.
- (q) "Reserve Account": An account established using merchant funds and managed by Servicers to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges due to or incurred by Servicers.
- (r) "Rules": The rules, regulations, releases, interpretations, guidelines and other requirements (whether contractual or otherwise) imposed or adopted by any Card Association. Without limitation, the Rules include VISA International Operating Regulations and the MasterCard Rules.
- (s) "Sales Draft": Evidence of a purchase of goods or services by a Cardholder from Merchant using a Card, regardless of whether such evidence is in paper or electronic form or otherwise, all of which must conform to the Rules.