

## Merchant Processing Agreement Terms and Conditions

These Terms and Conditions apply to your card processing program. For simplicity, we refer to ourselves (i.e., National Processing Company) as "Processor", "we", "our", or "us" in this document. We refer to you (i.e., the legal entity or sole proprietorship on the Application) as "you" or "your" or "Merchant." Other parties may also be parties to this Agreement (e.g., Member Bank, Guarantor, etc.). Terms that are capitalized but not defined are defined in Section 18.

### 1. Term and Exclusivity.

**A. Term.** This Agreement binds you on the earlier of your execution of this Agreement or your submission of a transaction for processing. This Agreement binds us the earlier of (i) the date we issue you a Merchant Identification Number; or (ii) the date we process your first transaction. Unless otherwise stated in the Agreement/Application, the term of this Agreement is 36 months ("Initial Term"). Following the end of any term, the Agreement automatically renews for periods of 36 months, unless either party gives written notice of its intent to terminate or not renew the Agreement at least 90 days before the then-current term expires, provided that if automatic renewal of this Agreement violates the provisions of applicable law, the renewal term will be 30 days. For clarity, termination of this Agreement does not terminate your equipment lease.

**B. Exclusivity.** This Agreement is a "requirements contract." This means you shall exclusively receive the Services from us. However, we have no obligation to process a Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard, or to process Discover or American Express transactions outside the United States. Prior to exercising any right of termination or non-renewal, you agree that we shall have a right of first refusal before you enter into an agreement with a third party for the Services. Except for term length, you agree that our right includes terms and conditions that are substantially similar to those discussed with the third party.

**2. Rules, Regulations and Laws.** As part of this Agreement, you agree to comply with, and to cause your employees and agents to comply with: (i) the Laws; (ii) the Rules Summary; (iii) the Operating Regulations and terminal update requirements related to optional Association programs, if applicable (and any related costs); and (iv) the confidentiality and security requirements of (a) USA Patriot Act and any related laws, rules, or regulations; and (b) the Associations and Networks, including the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other Association or Network program or requirement. You accept any responsibility or liability (e.g., data breach liability) resulting from your decision not to participate in optional Association Programs (e.g., the Association EMV program).

### 3. Acceptance of Cards.

**A.** You can elect to accept all card types, or only certain Visa and MasterCard card types ("**Limited Acceptance**"). You are solely responsible for your Limited Acceptance program. This includes: (i) policing card types at the point of sale; (ii) paying Association fees and charges for only accepting certain card types; and (iii) paying any costs we incur in connection with your Limited Acceptance. Our obligations are limited to those expressed in the Operating Rules. Should you submit a transaction for processing for a card type you have indicated you do not wish to accept, we may process that transaction and you agree to pay any applicable fees, charges, and assessments. The card types are: (i) "Debit Card" -- U.S. and non-U.S. bank issued Visa or MasterCard Cards that access consumer asset accounts within 14 days of purchase, including stored value, prepaid, EBT, gift, or consumer check Cards; (ii) "Other Card" -- all Visa and MasterCard Cards issued by a non-U.S. bank and all Visa and MasterCard Cards other than Debit Cards, including business and consumer credit Cards. Your Limited Acceptance program only applies to U.S.-issued cards. The Visa and MasterCard Operating Regulations require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue accepting both debit and credit Card products issued by non-U.S. members.

**B.** If we are unable to obtain, or choose not to obtain, authorization from an Association or Other Network, we may "stand-in" for the Association or Other Network. If we stand-in, we will authorize the Card transaction based on our own criteria. Our decision to stand-in does not change your obligation(s) to us.

### 4. Our Responsibilities.

**A.** We will provide the Services in accordance with our then-current systems, standards, and procedures. Nothing requires us to provide you with any special programming; any system, program, or procedure implementation; or any special hardware or software.

**B.** We will provide reports online for each fiscal day's activity by 10:00 AM ET the next calendar day. Such reports will include an accounting for each currency with supporting detail of transaction activity, Daily Proceeds, reserves and funds transfers for transaction settlement services. Reports will be available for download on the online reporting tool for a period of 14 months from the date of issue. Reports may be upgraded, enhanced and/or modified by us at any time.

**C.** We will initiate payment to you for the amount of each accepted Card transaction only after we receive payment.

**D.** We have the right to honor and rely on the request(s) or instruction(s) of any person we reasonably believe to be your representative or Agent. In the event we receive returned mail intended for you, we may, but are not required to, procure a replacement address according to our standard operating procedures.

**E.** We are only responsible for processing credits and adjustments for Card transactions that we originally processed. You authorize us to audit all Card transactions and deposits. We have the right to withhold amounts from you if we discover inaccuracies.

**F.** We may report information about your account, late payments, missed payments, or defaults to credit bureaus.

**G.** We may suspend or cease providing any Services to you in response to a Member Bank, Network, or Association request. We will use reasonable efforts to notify you if we suspend or cease any Services.

**H.** We are responsible for the security of Cardholder data we store or transmit on your behalf only while it is in our possession and control.

### 5. Your Responsibilities.

**A.** We have the right to charge your Designated Account without notice or to require payment from you in any appropriate situation for the amount of any Card transactions. This right includes Card transactions: (i) where merchandise is returned; (ii) where there is no valid authorization response; (iii) where the Cardholder has not given authority (e.g., improperly drawn, accepted, or endorsed transactions); (iv) where the Card transaction record is illegible;

(v) where the Cardholder disputes the sale, quality, or delivery of merchandise or performance or quality of services; (vi) where the Card transaction was drawn by, or depository credit given to, you in a way that breaches the agreement or violates the Laws or Operating Regulations; (vii) where we have not received and retained payment for the Card transaction (even if we have already paid you for the transaction); (viii) where it is alleged that you have failed to comply with the Operating Regulations, Rules Summary, or the Laws; (ix) where an Association or Other Network action (e.g., a chargeback or compliance case) is pending or has been resolved against you; (x) where we have incurred claims, damages, or losses from any source including Card issuers, or (xi) where the extension of credit for a Card transaction violated the Laws or Operating Regulations. Additionally, you remain fully liable to us for any transaction returned to us for any reason ("**chargebacks**" or for PIN debit Card transactions, "**reversals**"). You agree to review all chargeback-related notices and reports (in any format). Your failure to respond to a chargeback or reversal within the applicable deadline may forfeit your chargeback rights. We have no duty to assist you in defending a non-compliance allegation related to a chargeback or reversal.

**B.** You represent that any information you have supplied to us is true and accurate and that the name and tax identification number ("TIN") on the Application matches the name and TIN that you use to file your tax returns. You agree to update your information with us when it changes. We may need to share your TIN, entity name, processing volume, principal's social security number, or other information with governmental entities. You agree to cooperate with our requests for information for any reason. We may be required to withhold processing funds or to forward processing funds to the IRS if you supply incorrect information, or a state or federal law or government agency so requires. You expressly release us from any liability in connection with our withholding of funds or submission of information to a government agency, even if incorrect. You are responsible for any fines or penalties assessed against you or us.

**C.** You shall not sell, purchase, provide, share, or exchange Cardholder name, address, account number, or other information to any third party (including your Agent) other than us, the Associations, or the Networks, and then only for the purpose of completing a Card transaction.

**D.** You agree to balance and reconcile the Designated Account and the Reserve Account each day. You shall immediately notify us of any missing or improperly deposited funds. Additionally, you agree to review our (or our agents') reports (including those made available online), notices, and invoices. You agree to accept any report, notice, invoice, Service deficiency, or billing or payment error if you fail to reject or dispute it in writing within 30 days of the date we made it available to you. We may make our reports, notices and invoices available to you in accordance with our standard processes, which are subject to change. For 60 days following our receipt of your written notice of an error or deficiency, you agree to refrain from making any loss or expense claims against us so that we have time to investigate the situation. If you notify us that a Card transaction batch has not processed, we may, at our option, attempt to re-present the missing Card batches dated during the 90 day-period preceding the date we received your notice. We have no obligation to correct any errors that flow from your failure to comply with the duties and obligations in this paragraph.

**E.** You shall not sell, assign, transfer, or encumber any part of your interest in the Reserve Account, or any present or future rights under this Agreement, including your right to receive payments or funds. Neither we nor Member Bank are obligated to honor any purported attempt to sell, assign, transfer, or encumber any interest, rights, payments, or funds. In the event you breach this Section, we have the right to withhold funds payable to you, in addition to any other rights we may have at law or equity. You shall indemnify and hold us harmless from and against any claims, liabilities and damages that any person (including a purported assignee) may assert against us arising out of your purported sale, assignment, transfer, or encumbrance of all or any of your present or future rights under this Agreement.

**F.** You agree to provide us with audited annual financial statements for your business using generally accepted accounting principles, at any time upon request. Additionally, you agree to provide any other financial information within fifteen days of a request by us.

**G.** You shall timely assist us in complying with all Laws and Operating Regulations related to the Services. This obligates you to execute and deliver all instruments we deem necessary for you to meet your obligations under the Agreement. Further, you agree to allow our auditors (third-party or internal), and the auditors of any Association or Other Network, to review the documents, records, procedures, systems, controls, equipment, and physical assets related to your transactions upon reasonable notice at any time. You also agree to assist our auditors as necessary. If an Association, Member Bank, or regulatory agency requires a third-party audit, or if the Operating Regulations or applicable law requires a third-party audit, we may retain a third party to perform the audit or require you to immediately retain a specific third-party auditor and provide us with a final audit report. You agree to pay our audit costs or the audit costs of Member Bank, an Association, or Other Network.

**H.** In the case of a delayed merchandise delivery, you agree to deliver the Card transaction record to us within two business days of the merchandise delivery (or as we specify in the Rules Summary). You agree to electronically deliver all other Card transactions and credit records to us in a suitable format within two business days of the transaction (unless the Associations or Networks require the records earlier). You also agree to deliver Card transactions and credit records to us at least once every business day. Your delivery constitutes an endorsement of each recorded transaction. You authorize us or our representative to place your endorsement on any Card transaction at any time. We have the right to refuse to acquire any Card transaction. You waive notice of dispute related to any individual Card transaction.

**I.** You shall not store Cardholder data, including track-2 data, in violation of the Laws or the Operating Regulations. Further, you shall not retain or store magnetic stripe data following the authorization of a Card transaction.

**J.** You are solely responsible for the quality, accuracy, and adequacy of all transactions and information you supply. Accordingly, you shall implement and maintain adequate audit controls for monitoring the quality and delivery of data. When submitting Card transaction, settlement, and other data and information to us, you agree to follow our communications processes and document formats. You agree to only transmit information and data to us with a secure system.

**K.** You may use a third-party agent ("**Agent**") to perform some of your obligations under this Agreement, subject to our approval. Agents include your software providers and equipment providers. You shall cause your Agent to complete any Association-required steps or certifications (e.g., registrations, PABP, PCI-DSS, audits, etc.). You shall ensure that your

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Agent complies with all applicable requirements of this Agreement. You expressly assume all responsibility for the acts or omissions of your Agent as if they were your acts or omissions. If your Agent qualifies as a service provider under applicable Operating Regulations, you agree, at your expense, to cause the Agent to cooperate with us in our due diligence requests, and in performing any steps required for registration and certification. You are responsible for conducting your own due diligence on your Agents, including the fitness of their services for a particular purpose and for determining the compliance of their services with the Operating Regulations and the Laws. You expressly assume all liability for the acts and/or omissions of your Agent even if we introduce or recommend the Agent, or resell the Agent's services.

L. You agree that it is important to notify us about changes in your business. Because of this, you agree to provide us 30 days prior written notice of your intent: (i) to change business form or entity type; (ii) to sell stock or assets to another entity; or (iii) to make changes that would affect information on the Merchant Application. Additionally, you shall notify us within three days of any judgment, writ, warrant of attachment, execution, or levy against any substantial part (25% or more) of your assets. Should you change or add locations, you agree to follow our standards and procedures. Unless we agree otherwise, you agree that you will only present Card transactions to us that correspond to the activities and volumes described on the Merchant Application. Accordingly, we must pre-approve increases in Card transaction volume of 25% or more over the amount stated in the Merchant Application. Changes in monthly volume, the stated average ticket size, or any other information on the Merchant Application entitle us to increase fees, delay or withhold settlement, or terminate this Agreement. Your failure to notify us of changes under this Section subjects you to liability for any losses or expenses we incur.

M. Virtual Private Network ("VPN")/Secure Socket Layer ("SSL") Services. Our standard VPN and SSL services establish an internet connection between you and us for processing your transactions. You are responsible for: (i) ensuring that your communication equipment is compatible with our VPN or SSL; (ii) ensuring that each terminal with a connection to the VPN or SSL has an active personal firewall; and (iii) ensuring a secure key exchange and key management process (including a process for key revocation when your personnel leave). Our VPN or SSL communication interface relies on the internet. You agree that the internet is not always reliable, and that internet problems and issues may interfere with our ability to process your transactions. Any service levels that appear in other parts of the Agreement do not apply to the VPN or SSL connection or to transactions transmitted using the VPN or SSL connection. We provide VPN and SSL services in accordance with our own standards, which are subject to change without notice. You agree to comply with any VPN and SSL standards we or the Associations or Other Networks establish.

N. Optional Services. We may offer you products and services through one or more third parties ("Optional Services"). You agree that, as available, the applicable third-party provider ("Provider") solely supplies and/or supports all Optional Services. We are not a party to your contracts with Providers. You are responsible for conducting your own due diligence on any Provider that you use, including the fitness of its services for a particular purpose and for determining the compliance of its services with the Operating Regulations and the Laws, even if we resell the Provider's services. You bear all of the risks associated with using an Optional Service. Although not an exhaustive list, we are not liable for: (i) exercising control over Provider; (ii) errors related to establishing and maintaining account relationships with Providers; or (iii) ensuring service levels with respect to the Optional Service(s). Our decision to offer any Optional Service shall not limit your duty to: (i) ensure that all account numbers are correct; (ii) notify Providers of changes to ACH, address, and account information; (iii) pay all fees, fines, damages, losses, or expenses arising in connection with your possession or use of an Optional Service; (iv) perform your own due diligence before using an Optional Service; and/or (v) perform any other proper act related to your use of the Optional Service. You agree to indemnify and hold us harmless for any damage, loss, claim, or liability arising from your possession and/or use of any Optional Service. Each Provider has the right to require you to enter into a separate agreement with it. Whether you and Provider enter into a separate agreement, you agree that: (i) your rights and duties regarding the use of an Optional Service are neither assignable nor delegable without Provider's prior written consent; (ii) you acquire no property right, intellectual property right, claim, or interest in any of Provider's systems, equipment, software, processes, programs, or data; and (iii) you shall protect the confidentiality of Provider's software and documentation.

O. You agree to pay us all Provider-imposed fees and assessments in connection with your use of the Optional Service(s). Your obligation to pay us shall continue until: (i) you have notified Provider(s) of your intent to cancel the Optional Service(s); (ii) you have provided us with notice that (a) you have notified Provider of your intent to terminate, (b) you have returned all equipment and software to Provider, and (c) you have ceased receiving all Optional Services; and (iii) Provider no longer assesses us for your receipt of the Optional Services or for possession of the equipment or software. You waive all rights to contest, challenge, or withhold payment for any fees we assess for Optional Services until you have satisfied the conditions in the preceding sentence.

P. You authorize us to contact your customers or their Card issuing bank(s) to find out information about any Card transaction. You shall not contact a Discover Cardholder unless authorized to do so by the Operating Regulations or required by Law.

Q. Bankruptcy. You agree to execute and deliver to us any documents we request to perfect and confirm the lien, security interest, and setoff rights in this Agreement. You shall immediately notify us of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you or any of your principals. Further, you shall include us on the list of creditors filed with the Bankruptcy Court, even if no claim exists at the time of filing. This is an executory contract to make a loan or extend other debt financing or financial accommodations to or for your benefit and, as such, cannot be assumed or assigned in the event of your bankruptcy. This is a contract of recoupment and we are not required to file a motion for relief from the automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest a motion for relief from the automatic stay. You must adequately fund the Reserve Account to provide us with adequate protection under Bankruptcy Code § 362. We have the right to consume and offset against the Reserve Account to cover your obligations under this Agreement, regardless of whether they relate to transactions created before or after your bankruptcy filing. Because this Agreement contemplates the extension of credit for your benefit, you acknowledge that you cannot assign the contract in the event of a bankruptcy. We may immediately terminate the Agreement if you fail to comply with any part of this Section.

R. Wireless Service Acknowledgement. We are not responsible for verifying your wireless service coverage, or for losses in coverage, or for your failure to maintain coverage. By selecting wireless service, you acknowledge that wireless coverage is not guaranteed and we have no control over the wireless service providers or the decisions they make. Additionally, you acknowledge that if wireless service is lost in your area, the equipment will not operate with another wireless carrier. We are not liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

S. Virtual Terminal Processor Services and Fees. Our Virtual Terminal Processor Service (the "VT Service(s)") is an additional service (subject to separate fees and charges). It allows you to effectuate Card transactions within the merchant portal application in accordance with our standards. You represent and warrant that you have implemented and will maintain secure systems for using the VT Services and transmitting information to us. You are responsible for any authorized or unauthorized transactions initiated using your user IDs. You assume all liability for (i) acts or omissions arising out of your use of the VT Services; and (ii) risks associated with using software with internet connectivity.

### 6. Fees and Other Services.

A. You agree to pay fees, cost escalations, assessments, tariffs, penalties, fines, claims or other items under this Agreement or the Operating Regulations. We will periodically (daily, monthly, etc.) calculate your fees and charges and debit the account(s) that you designate ("Designated Account(s)") to collect those amounts. We have the right to determine and change the periodic basis in the previous sentence in our sole discretion, without notice. We have the right to round, assess and calculate interchange and other fees and amounts in accordance with our standard operating procedures. We also have the right to assess some or all of the fees and charges via a separate or combined Services invoice(s). We will charge you for any fines, fees, penalties, loss allocations, assessments, registration expenses, certification expenses, telecommunication expenses, sponsorship fees, and other amounts assessed by Member Bank and/or third parties or incurred as a result of your actions, omissions, or use of the Services, or those we incurred on your behalf under the Operating Regulations, the Rules Summary, and the Laws.

B. Transaction fees are fees charged on each authorization, Card draft, credit draft, or other transaction type, regardless of the stated total ("Transaction Fee(s)"). We may charge a Transaction Fee for any transaction activity.

C. VISA, MasterCard, and Discover Interchange fees, assessments, and other amounts will be either: (i) assessed to you separate from and in addition to the Discount Rate, Transaction Fee, and other fees listed in the Application, or (ii) included in the Discount Rate and/or Transaction Fee listed in the Application. For American Express Card transactions, we will assess interchange fees, assessments and other fees in addition to the Authorization Transaction Fee and other fees described on the Application. For American Express Card transactions under Tiered Transaction Pricing, interchange fees and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. For PIN debit Card transactions under Tiered Transaction Pricing, we will assess interchange fees, sponsorship fees, switch fees, and gateway fees as pass through, and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. Certain fees are available upon request or through the Associations. You are responsible for conducting your own inquiry into the nature and type of applicable fees. The Discount Rate, Transaction Fee and other fees may be based, in whole or in part, on interchange rates, assessments, and other fees that the Associations and Other Networks periodically change.

D. You acknowledge that in order to receive the best Discount Fee and Transaction Fee on a particular Card transaction, the transaction must first "qualify" and exactly meet certain criteria. Several factors can prevent a Card transaction from qualifying, including that it: (i) was hand entered (i.e., the encoded card information was not read by a point of sale device); (ii) was voice-authorized; (iii) was not authorized; (iv) was not transmitted for processing within 24 hours; (v) was a Consumer or Commercial Reward transaction, a Visa Signature transaction, or a MasterCard World Elite Card transaction; (vi) was deemed a "Non-Qualifying" transaction by the Operating Regulations (e.g., certain foreign transactions or transactions from business, commercial, purchasing, or government Cards); (vii) was difficult to capture; (viii) was difficult to authorize; (ix) was submitted incorrectly; or (x) was not eligible for the lowest electronic interchange fee for any other reason. Additionally, you might not qualify for the best Transaction Fee or Discount Rate if your average ticket differs from what we used to calculate the Transaction Fee and/or Discount Rate; if you submit more than five percent of your monthly Card drafts without electronic transmission; or if your terminal, software, or communications lines fail to function properly. The Associations change the transaction qualification criteria from time to time. For certain non-qualifying transactions, we assess a surcharge of a certain percent of the transaction amount. In the event that your Card transactions under Tiered Transaction Pricing do not qualify or only partially qualify for the qualified discount rate quoted on the Merchant Price Schedule and/or the Operating Regulations, you agree to pay the Mid-Qualified Discount Rate and/or Transaction Fee, or Non-Qualified discount Rate and/or Transaction Fee set forth on the Application. We do not guarantee that your transactions will qualify for any given rate, and we disclaim all responsibility and liability for a transaction's failure to so qualify. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

E. You shall pay all taxes imposed in connection with the Services. If we pay taxes for you, we can immediately debit your Designated Account or demand payment from you.

F. Your use of any service not listed on the Application or provided at the commencement of the Agreement obligates you to pay any accompanying fees, charges, and related expenses. If you receive these Services you will be deemed to have consented to the fees, charges and expenses. We have no obligation to enhance or customize Services or additional services, but we may choose to do so for a separate fee. You shall take all necessary steps to ensure that you can receive the Services, at your own cost. This includes procuring equipment and software, and taking other steps as we direct.

G. We reserve the right to charge you a reasonable fee if we reasonably believe you are not fully compliant with the Rules Summary, Operating Regulations, Payment Card Industry Data Security Standard ("PCI-DSS") or any Laws, or if you fail to prove compliance upon our request. This fee will be in addition to any other amounts payable under the Agreement.

H. After your initial conversion to us, you agree to pay all direct and indirect costs (including those we, our affiliates, or our agents incur) related to any conversion to or from us as applicable, and/or relating to any programming effort affecting the Services.

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I. If we advance funds to you or delay your obligation to pay funds, we reserve the right to assess you a cost of funds in the manner and amount of our choosing.

J. After we approve your Application, we will begin assessing any applicable monthly recurring charges. This Agreement subjects you to a Minimum Monthly Bill unless otherwise noted on the Application. In the event this Agreement expires or terminates for any reason, the Annual Fee or Semi-Annual Fee, as applicable, will not be prorated or refunded. If applicable, we may assess the ACH/DBA Fee listed on the Merchant Application for administrative services.

### 7. Termination or Suspension of Services.

A. **Default Event.** You are in default under this Agreement ("Event of Default") if: (i) we believe there has been a material or potentially material deterioration of your financial condition; (ii) you become subject to any voluntary or involuntary bankruptcy, insolvency, reorganization or liquidation proceeding, a receiver is appointed for you, or you make an assignment for the benefit of creditors, or admits your inability to pay your debts as they become due; (iii) you cease doing business as a going concern, or there is a change in the identity of any person or entity owning, directly or indirectly, ten or more percent of the business; (iv) you are in breach any of the terms of the Agreement; (v) we reasonably believe fraud may be occurring, including splitting tickets or laundering tickets; (vi) your name or your principals' names are listed on the MATCH (Membership Alert to Control High Risk Merchants) System or other security or credit alert systems, or you are identified under an Association risk monitoring program; (vii) we determine that your Card transactions or the circumstances surrounding your Card transactions have become irregular or increase our exposure to chargebacks, reputational, or other security risks; (viii) we receive instructions from an Association or Other Network to close your account; (ix) circumstances exist that could cause harm or loss of goodwill to the Associations or Other Networks; (x) you no longer meet the eligibility requirements of an Association or Network; (xi) your volume in a calendar month exceeds 120% of the average annual volume indicated on the Merchant Application; (xii) your non-card present transactions in a calendar month exceed 120% of the MO/TO and internet volume on the Merchant Application; (xiii) you experience returns greater than three percent; (xiv) you cease doing the kind of business described in the Merchant Application; (xv) you fail to pay any amount to us when due; (xvi) in our opinion, provision of a Service might violate the Operating Regulations, Rules Summary, or the Laws; or (xvii) we believe that you have violated or are likely to violate the Operating Regulations, Rules Summary, or the Laws. We shall determine the existence of an Event of Default or Improper Transaction (defined in Section 7.A.). Our determination is conclusive unless you contest it in writing within one year. Upon the occurrence of an Event of Default, we may exercise any right or remedy in this Agreement without notice. These include: (i) terminating the Agreement; (ii) suspending or ceasing to provide the Services; (iii) collecting the early deconversion fee, if applicable; (iv) establishing a Reserve Account; (v) collecting any amounts you owe us by means of setoff, recoupment, or any other legal means; and/or (vi) assessing fees and recovering costs associated with the investigation of any suspected fraudulent activity or Event of Default. Termination for any reason shall not relieve you of any liability or obligation you owe us. We have a right to assess fees and recover all costs associated with our investigation of suspected fraudulent activity or an Event of Default. You agree that we may retain the entire amount of the Reserve Account as liquidated damages if you engage in an Improper Transaction. If you accept transactions in connection with an Event of Default, we have the right to hold settlement funds and to subject them to a per month fraudulent transaction fee equal to 15% of the amount held. We have no liability to you for any direct or indirect losses you may suffer as a result of our suspension of funds disbursement or failure to pay transactions in connection with an Event of Default.

B. **Early Deconversion Fee/Liquidated Damages.** If we terminate this Agreement after a breach by you, or if you wrongfully terminate the Agreement, you shall: (i) pay us the Early Deconversion Fee set forth on the Merchant Application for each Merchant Identification number and Merchant location; and (ii) pay us liquidated damages equal to your average monthly fees for the three calendar months and that your revenue was highest during the preceding 12 months (or shorter period of the Agreement has not been effect for 12 months), multiplied by the number of months then remaining in the term of the Agreement. For clarity, the Early Deconversion Fee includes costs of processing Chargebacks, restocking equipment, and deleting numbers related to your deconversion. You agree that the liquidated damages are fair and reasonable because it is difficult or impossible to estimate our damages following a breach or wrongful termination. Additionally, you agree to pay us (i) any unpaid invoice; and (ii) any damages, losses, expenses, fees, fines, penalties, chargeback amounts, and adjustments we incur in connection with the Agreement. You authorize us to debit your Designated Account or to deduct amounts you owe us under this Section from the settlement funds we owe you. You are responsible for any collection fees, legal fees, and other expenses we incur in recovering your delinquent amounts.

C. **Return of Equipment/Materials.** You shall return our equipment, promotional materials, advertising displays, emblems, Card drafts, credit memoranda, and other forms within 14 days of termination. You agree to immediately pay any amounts you owe for equipment costs.

D. **Remedies Cumulative.** Our rights and remedies under this Agreement and/or at law or in equity are cumulative.

E. **Terminated Merchant File.** You acknowledge and consent to our obligation to report your business name and the name of your principals to the Associations if we terminate you due to the reasons listed in the Operating Regulations, including for breaching this Agreement. You agree to refrain from bringing any claims against us for reporting you to the Associations.

F. Termination of this Agreement for any reason does not automatically terminate your equipment lease, if applicable.

G. If we believe that any of your activities or our performance of any service under the Agreement could subject us to increased regulatory scrutiny or reputational harm, we reserve the right to (i) terminate the Agreement at any time; or (ii) suspend or cease providing any service or the Services at any time.

### 8. Authorization, Setoff, Reserve, and Security Interest.

A. You authorize us, our agents, and third parties to initiate ACH credit/debit entries to or from the Designated Account, the Reserve Account, or any other account you maintain at any institution that is a receiving member of ACH, including for amounts you owe us, that we owe you, or for correction of errors. This authorization applies even after you change accounts. It

survives the termination of this Agreement, until the later of: (i) two years from the Agreement's expiration; or (ii) the date you have satisfied all of your obligations to us. You shall ensure the Designated Account(s) have funds sufficient to satisfy your contingent and accrued obligations and duties under this Agreement. No attempt to change or alter the account (an "Account Change") is effective until we acknowledge the change on our system. Accordingly, you shall not close an old account until the new account receives the third deposit. We are not responsible for checking the accuracy of any Account Change your purported representatives submit in connection with an Account Change. Additionally, we are not responsible for liability associated with any Account Change unless it is due to our gross negligence or willful misconduct. You are solely liable for all fees and charges your financial institution assesses, including overdraft and NSF charges. You release and hold us harmless from any financial institution fees or charges, regardless of cause. We are not liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties, including the Associations, Other Networks, a clearing house, or your financial institution. We may audit and verify all Card and credits you accept. You agree that we may debit or credit your Designated Account for any inaccuracies. You also agree to be bound by the National Automated Clearing House Association's operating rules.

B. You agree that payment is due the date we originate an ACH debit transaction record to your Designated Account. Fees not paid when due bear interest at the rate permitted by Law. You are responsible for paying all fees, without set-off or deduction. We have a right to set-off amounts you owe us from amounts we owe you or your affiliates.

C. The closing of your Designated Account does not constitute a mutually agreed upon termination of this Agreement.

D. As a specifically bargained for inducement for us to enter into this Agreement with you, we reserve the right at any time to: (i) create a reserve of funds ("Reserve Account") from settlement amounts or any other amount payable to you; (ii) require you to pay us the amount needed to fund a Reserve Account during this Agreement and/or pay any additional funds needed to maintain the Reserve Account at all times; and/or (iii) require you to establish an irrevocable standby letter of credit naming a beneficiary we designate ("Letter of Credit"). If we require security as described in the preceding sentence, you will immediately fund the Reserve Account or provide the Letter of Credit, and maintain the Reserve Account or renew or replace the Letter of Credit as we instruct. We have complete discretion to determine the amount of any Reserve Account or Letter of Credit. You will increase either at any time upon our request. If a Letter of Credit will be cancelled, will not be renewed, or will not be in full force and effect, you will provide a replacement Letter of Credit upon our demand, on or before the date that we determine. Any Letter of Credit will be issued by a financial institution, in a format, and with an expiration date acceptable to us. We have the right to use the Reserve Account(s) and/or Letter(s) of Credit to cover amounts due or that might become due to us at any time. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in your name. Subject to the other terms of this Agreement, we have the right and discretion to retain funds placed into the Reserve Account until you request the funds in writing, and the later of (i) 270 days has passed following the termination of this Agreement; or (ii) 180 days has passed since the last possible chargeback (the later date shall be the "Refund Request Date"). The Reserve Account becomes our property upon our notice to you if you engage in, or are suspected to have engaged in, (i) illegal business activities; (ii) collusive fraudulent transactions with Cardholders; (iii) laundering or aggregating illegal and/or brand damaging transactions; (iv) establishing your account with us through identity theft; or (v) any other fraudulent act. (each an "Improper Transaction"). You waive any contract right you have in the Reserve Account and its balances if you fail to object in writing within 90 days of the Refund Request Date or our notification of an Improper Transaction event.

E. We have the right to divert your funds to a Reserve Account or to temporarily suspend processing for a reasonable time to investigate any real or potentially improper transaction activity. Following an investigation, we may continue to maintain the diverted funds in a Reserve Account in accordance with this Section 8. We have no liability to you for diverting funds or suspending processing.

F. This Agreement is a security agreement under the Uniform Commercial Code. You grant us a security interest in and lien upon all: (i) funds in the Designated Account; (ii) funds in the Reserve Account; (iii) amounts due you under this Agreement, including rights to receive payments or credits; and (iv) proceeds in any account or from any sale (collectively, the "Secured Assets"), to secure all of your obligations under this Agreement. For Secured Assets maintained by Member Bank, you authorize Member Bank to comply with our demands regarding the Secured Assets. Our control of the Secured Assets with Member Bank constitutes a perfected interest under Article 9 of the Uniform Commercial Code. We may direct the disposition of the Secured Assets without further consent from you. You represent and warrant that we have the only security interest in the Secured Assets. You agree not to grant a security interest in the Secured Assets to a third party without our prior written consent. Additionally, we have a contractual right of set-off against the Secured Assets. Our right of set-off shall be deemed to have been exercised immediately upon the occurrence of an Event of Default without any action by us or notation in our records, even if we enter the set-off on our books and records at a later time.

### 9. Indemnification and Limitation of Liability.

A. You shall indemnify and hold us, and our directors, officers, employees, affiliates, and agents harmless from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including any fines, fees, assessments, audit fees, card replacement costs, or penalties levied against us by an Association, any Card issuer, or any Other Network, and attorneys' and collection fees and expenses) resulting from or otherwise arising out of: (i) the Services; (ii) any breach of any term or condition of this Agreement; (iii) any misrepresentation by you under this Agreement; (iv) your acts or omissions in connection with the Services under this Agreement, including the acts and omissions of your employees and agents; (v) your processing activities and provision of goods and services to Cardholders; (vi) any violation of the Operating Regulations, the Rules Summary, or the Laws; (vii) any guarantees we provide to a third party for your benefit, including lease guarantees; (viii) any infiltration, hack, breach, or violation of the processing system resulting from, arising out of, or in any way related to your ability to use the Services, including your use of an Agent or any other third party processor or system, or your ability to connect to the Internet or an external network; (ix) any act or omission of a third-party with which you have contracted; (x) any bankruptcy proceeding; (xi) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card; (xii) any action you institute against any Association, Other Network or Card

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issuer following a chargeback or fine; or (xiii) any action we take against the Designated Account, Reserve Account, or any other account you own, pursuant to this Agreement. You shall also defend, indemnify, and hold harmless the institution that maintains your Designated Account for acting in accordance with any instruction from us regarding the Designated Account. This indemnification shall survive the termination of the Agreement.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You acknowledge and assume all risks associated with the acceptance of cards. We are not liable for lost profits, lost business, or any incidental, special, consequential, or punitive damages (whether or not arising out of circumstances known or foreseeable by us) you or your customers or any third party suffers in connection with the Services. We are not liable for damages or losses wholly or partially caused by you or your employees or agents. Nor are we liable for any damages or losses you may sustain as a result of our exercise of post-default rights or remedies under this Agreement, provided we had a good-faith, reasonable basis to believe an Event of Default occurred. Our liability related to or arising out of this Agreement shall not exceed the fees paid to us for the particular Services in question for the calendar month preceding the date of our relevant act or omission. The parties acknowledge that the limitations in this Section are integral to the amount of fees we charge for the Services. Except as otherwise described in this Section, your exclusive remedy for any claim against us is termination of the Agreement. We are not in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting, directly or indirectly, from errors in data you or other parties provide to us, or any event beyond our reasonable control, including the Force Majeure Events defined below. If we defend a claim you bring against us and prevail, you shall reimburse us the costs, attorneys' fees, and other related expenses we incurred.

C. We are not liable for, nor in default under this Agreement, for any delays, failure to perform, loss of performance, or interruption in service resulting directly or indirectly from a Force Majeure Event. A "Force Majeure Event" includes labor disputes; fire; weather; acts of God; acts of a public enemy; other casualty; power outages; funding delays (however caused); governmental orders or regulations; errors in data provided by you or others; international, domestic, and/or economic terrorism; or any other cause, whether similar or dissimilar to those just mentioned, beyond our reasonable control.

D. Except for actions related to your failure to pay amounts due under the Agreement, no cause of action shall be brought by either party more than one year after it accrued.

E. You recognize and agree that any limitations of liability set forth in this Agreement are fair and reasonable.

### 10. Confidentiality.

A. We will be providing you with Confidential Information. "Confidential Information" includes this Agreement and information relating to our methods, techniques, programs, devices and operations and those of Providers, the Associations, and Other Networks. You shall not disclose Confidential Information to any person or entity, other than to your employees and agents who participate directly in the performance of this Agreement and need access to the information. You agree to comply with the confidentiality and security requirements of the Rules Summary, the Laws, and the Operating Regulations. This includes the Visa Cardholder Information Security Program ("CISP") found at [www.visa.com/cisp](http://www.visa.com/cisp); the MasterCard Site Data Protection Program ("SDP"), found at [www.mastercard.com/sdp](http://www.mastercard.com/sdp); and the American Express Data Security Operating Policy ("DSOP"), found at [www.americanexpress.com/merchant](http://www.americanexpress.com/merchant); and any similar Association or Other Network program requirement. You acknowledge receipt of the Vantiv, LLC Privacy Notice or the NPC Privacy Notice, as applicable ("Privacy Notice") also available on [www.NPC.net](http://www.NPC.net). Notwithstanding anything to the contrary in the Privacy Notice or this Agreement, we have the right to use, disclose, share, and retain any information you provide or that arises out of the Services, during the term and thereafter: (i) with your franchisor or franchisee(s), association(s) you belong to or belonged to at the commencement of this Agreement; (ii) with your affiliates; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable Laws; (vi) with our affiliates, business partners and agents; (vii) to Associations and Other Networks and their designees, (viii) to Providers and their designees; (vii) to any other referral source or processor, including the applicable referrer, ISO/MSP, or independent Card office; (x) to perform analytic services for you, us and/or others, including analyzing, tracking, and comparing transaction and other data to develop and provide insights for those parties as well as for developing, marketing, maintaining and/or improving our products and services; and/or (xi) to offer or provide the Services under this Agreement. You authorize us to (i) make public the execution of this Agreement and/or the provision of Services under this Agreement; and (ii) include your name and logo on a list of our customers that may be shared with the public. Upon our request, you agree to provide testimonial information regarding the Services.

B. You must secure and prevent the unauthorized access of any systems and media containing account, Cardholder, or transaction information (physical or electronic, including account numbers, Card imprints, and terminal identification numbers). Except for Card drafts you maintain in accordance with this Agreement or the Laws or Operating Regulations, you shall render inoperative and unreadable any media you no longer deem necessary or appropriate to store. You shall notify us of the identity of any third party who will have access to Cardholder data ("Merchant Provider(s)"). You shall also ensure that (i) Merchant Providers cannot access Cardholder data unless authorized by the Operating Regulations; (ii) Merchant Providers have proper security measures to protect Cardholder data; (iii) you and Merchant Providers comply with the PCI DSS; and (iv) you have written agreements with Merchant Providers requiring compliance with the terms of this Section. You shall immediately notify us of any suspected or confirmed loss or theft of any transaction information. This includes any loss or theft from a Merchant Provider. You are responsible for demonstrating your and Merchant Providers' compliance with the PCI DSS programs. You agree to provide us reasonable access to your locations and the locations of your Merchant Providers so that we can, at our option, verify whether you and your Merchant Providers can prevent future security violations. In the event of a suspected or confirmed loss or theft of information, you agree, at your expense, to provide any information, whether requested by us, an Association, financial institutions, or a local, state, or federal official in connection with the event. You further agree to cooperate in any ensuing investigation, including any forensic investigation. The information you provide in response to an investigation shall be considered our confidential information.

The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether you process transactions via internet, mail, phone, face-to-face or any other method.

C. Our proprietary and confidential online portal service provides reporting detail about your use of the Services ("Portal Services"). We reserve the right to disallow, discontinue, suspend, or change your use of Portal Services at any time without notice. You agree to maintain the confidentiality of any Portal Services passwords in your possession. If we provide Portal Services to you, our only obligation is to make the Portal Services available in accordance with our standard operating procedures (e.g., then-current timeframes, standards, scheduling, and procedures, including those for setup, account access, and suspension of Portal Services). You shall provide us with prompt written notice of account or user ID changes, including User IDs that are no longer active or should be deleted. You are solely responsible for any unauthorized access to Portal Services, including unauthorized employee or agent access, or third party access. We have no liability for third-party interruptions in Portal Services (e.g., internet providers), or errors or inaccuracies in the data reported to you.

11. **Continuing Unlimited Guaranty.** This Section ("Continuing Unlimited Guaranty") applies to each person who signs this Agreement as a Guarantor (each a "Guarantor"). To induce us to enter the Agreement, each Guarantor jointly and severally guarantees the prompt and full payment of all Obligations (defined below) when due.

A. The word "Obligation" is used in its most comprehensive sense. It includes all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) that Merchant owes us, whether Merchant created the obligation alone or with others, and whether Merchant is primarily or secondarily responsible. Obligations can be secured or unsecured, absolute or contingent, liquidated or unliquidated, and direct or indirect. Obligations can be evidenced by note, draft, a guaranty agreement, or otherwise. Obligations can exist now or arise in the future. It includes all payment obligations, indemnification obligations, and indebtedness Merchant owes us arising from or related to the transactions or Services under this Agreement.

B. Guarantor promises to pay any Obligation that Merchant has not promptly paid when due. Guarantor promises to pay irrespective of our actions or inactions regarding the Obligations, or whether we have enforced any security interest created under this Agreement. Guarantor further promises to pay irrespective of the invalidity, insufficiency, or unenforceability of any Obligation. Guarantor's obligations shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against you (Merchant) or us, except payment or performance of the Obligations.

C. Guarantor waives notice of any acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any Obligations. Further, Guarantor waives notice of sale or other disposition of any collateral or security we now hold or later acquire. The duties of Guarantor shall not be released, discharged, or modified by: (i) our extending the time for payment (for Merchant or Guarantor); or (ii) our delay or omissions in exercising any rights, taking any actions, or pursuing any remedies against Merchant or Guarantor. Guarantor agrees that we may release or modify any collateral, security, or other guaranties without notice or consent from Guarantor and without modifying Guarantor's duties to us. This is a guaranty of payment and not of collection. We have no obligation to demand or pursue any rights against Merchant, anyone else (including another Guarantor), or to exhaust any rights or remedies related to any collateral, security, or other guaranties before demanding payment from Guarantor. Guarantor waives all defenses based on suretyship or impairment of collateral. Following a default under this Agreement, we may apply and/or setoff against amounts due to us any deposits, account balances, or other credits of Guarantor in our possession. Guarantor grants us a security interest in the items just described.

D. The obligations of any Guarantor shall be joint and several with Merchant and any other Guarantor under this Agreement. The property described in any collateral security documents Guarantor provides, whether previously, contemporaneously, or in the future, secures this Continuing Unlimited Guaranty. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees and assignees. Other terms and conditions applicable to this Continuing Unlimited Guaranty can be found in Section 12.L.

12. **Miscellaneous Terms and Conditions.** The following terms and conditions also apply.

A. **Title to the Services.** You agree that the Services are licensed and not sold. As a result, you only acquire a nontransferable, revocable, non-exclusive right to use the Services. The right exists only during the term of the Agreement, and only for the purpose of accepting and managing payments. We retain all right(s), title, and interest in and to the Services. This includes rights in materials we deliver to you, and any invention, development, product, trade name, trademark, service mark, software program, or derivative from any item just listed. You shall not: (i) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell, or distribute any of our material; (ii) permit any third party to use or benefit from the Services through a rental, lease, timesharing, service bureau, or other arrangement; (iii) work around, bypass or circumvent any of the technical limitations of the Services, use any tool to enable disabled functionalities, or decompile, disassemble, or reverse engineer the Services (unless the restriction is prohibited by the Laws); (iv) perform any act that interferes with proper access or use of the Services; or (v) use the Services in any manner not expressly allowed under this Agreement.

B. **Notices.** Unless otherwise stated, you shall deliver notices and other communications in writing via certified mail or reputable overnight courier (postage prepaid) to the following address: NPC, Attention: General Counsel/Legal Department, 8500 Governors Hill Drive, MD# 1GH1Y1, Symmes Township, OH 45249-1384. Notices delivered in this manner become effective upon our actual receipt. Our communications to you shall be delivered via email, facsimile (effective upon transmission confirmation), ordinary or certified mail (effective the seventh day after mailing), reputable overnight courier (effective the first day after submission to the courier), or via a report, communication via Portal Service or invoice (effective when made available).

C. We have no obligation to process any Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card or American Express transaction outside the United States and other United States territories.

D. **Account Debiting Authorization.** In addition to our other collection rights in this Agreement, you expressly authorize us or our affiliate to collect amounts due us or our affiliate by debiting any deposit account you maintain with Member Bank.

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E. **Amendments.** We may amend this Agreement or change rates at any time. You do not have the same right. We will provide notice of changes in accordance with the notice Section of this Agreement. If you continue to process transactions after, or fail to notify us that you contest a change within seven days of actual or constructive notice, you will be deemed to have accepted that change. We have the right to make Association and Other Network changes and increases in interchange, fees, or assessments without providing you notice. You agree to pay these increased fees and charges throughout the term. We are not bound by any changes, additions, or deletions you make to the Agreement unless they are part of a written amendment that is signed by you and us.

F. **Assignment.** We have a right to assign this Agreement. Unless you get our prior written consent, you do not. This means that any assignment, even an assignment by operation of law, is prohibited without our consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees, and assignees (if applicable). If you assign this Agreement without our consent, the assignee will be bound by the terms of this Agreement. Your sale of the business does not relieve the original owner or original Guarantors of chargeback or other liabilities, even those occurring after sale.

G. **Independent Contractors.** We are not your agent, and we are not in a joint venture, or partnership with you (or vice-versa). Both you and we are independent contractors.

H. **No Third-Party Beneficiary.** Unless expressly stated in these Terms and Conditions, this Agreement is for the benefit of, and may be enforced by, only you and us, and our successors and permitted transferees and assigns. It is not for the benefit of any third party.

I. **Employee and Agent Actions.** You are responsible for the acts or omissions of your employees and agents related to this Agreement and the use of the Services.

J. **Severability and Non-Waiver.** The invalidity or illegality of any part of this Agreement shall not invalidate the rest of the Agreement. The Agreement shall instead be construed as if the invalid or illegal provision were not part of the Agreement. Our delay or failure to exercise any right under this Agreement shall not operate as a waiver or estoppel of that right.

K. **Signature.** An original, a copy, facsimile copy, or digital, photographic or electronic copy of your signature serves as the signature for this Agreement. Further, duplicate original records of this Agreement (digital, photographic, or otherwise) have the same force and effect as the original. The parties agree that contracting through electronic means including e-signature or "click to agree" processes is an acceptable form of showing agreement.

L. **Arbitration, Governing Law, Jury Waiver, and Class Action Waiver.** This Section applies to you, any Guarantor, or any other party who claims an interest in this Agreement.

i. **Arbitration.** The parties agree to submit any unresolved dispute, controversy, or claim between them to binding arbitration in lieu of litigation or other court or administrative proceedings. ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. The Federal Arbitration Act governs the interpretation and enforcement of the arbitration provisions in this Section. It also governs any arbitration proceedings that take place pursuant to this Section. The parties shall make arbitration filings in Cincinnati, Ohio or Hamilton County, Ohio. Filings must comply with the Commercial Arbitration Rules of the American Arbitration Association. The parties shall share the costs, fees, and expenses of the arbitration and the arbitrators equally. The arbitrator's award, including awards of attorney's fees, costs, and expenses, shall bind the parties and may be entered as a judgment in any court of competent jurisdiction. The statute of limitations is a defense to the commencement of an arbitration proceeding. However, the filing of an arbitration proceeding tolls the statute of limitations. Nothing in this Section prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

ii. **Governing Law.** The parties have entered into this Agreement in Ohio. The laws of Ohio govern the interpretation, construction, and enforcement of this Agreement, including the Continuing Unlimited Guaranty. Without waiving our right to enforce the Arbitration provisions in this Section, you/Guarantor agree only to bring a legal suit, action, or proceeding arising out of or related to this Agreement or pertaining in any way to the relationship between us and you, or us and Guarantor (an "Applicable Claim"), in a state or federal court in Hamilton County, Ohio. With respect to any Applicable Claim brought by us, you or Guarantor, you/Guarantor waive any objection to venue, and submit to the jurisdiction of a state or federal court in Hamilton County, Ohio. Nothing in this Section prohibits us from bringing any action or from exercising our rights under this Agreement in another state or country. You/Guarantor agree that our service of a Summons and Complaint at the address listed in the Agreement constitutes proper service and subjects you/Guarantor to the personal jurisdiction of the respective court. Unless the Operating Regulations require otherwise, you shall bring any claim you have against Member Bank against us (subject to the limitations and restrictions of the Agreement), and not against Member Bank.

iii. **Jury Waiver.** YOU AND/OR GUARANTOR KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS TO HAVE A CASE DECIDED BY A JURY. YOU AND/OR GUARANTOR AGREE THAT OUR FILING OF A COPY OF THIS PARAGRAPH IN ANY PROCEEDING CONCLUSIVELY PROVES YOUR WAIVER.

iv. **Class Action Waiver.** YOU AND/OR GUARANTOR ALSO WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST US OR MEMBER BANK.

M. **Headings and Construction.** The parties have used the headings in this Agreement for convenience only. No heading shall affect the interpretation of any provision. These Terms and Conditions are subordinate to the Rules Summary, the Operating Regulations, and the Application (unless the Application is blank). Our approval of the Application does not guarantee you a right to receive processing. The parties have chosen the language in this Agreement to express their mutual intent. No rule of strict construction shall operate against any party. This Agreement constitutes the entire agreement between the parties with regard to the Services, and supersedes all prior or other agreements or representations regarding the Services, whether written or oral. All prior understandings have merged into this Agreement.

N. **Other Rights and Acknowledgements.** We may change Member Banks at any time without notifying you. Any Member Bank may delegate all or part of its duties to its affiliate at any time, also without notifying you. We are an agent of Member Bank in connection with Visa and MasterCard transactions, and may use an ISO/MSP in connection with this Agreement. The ISO/MSP is an independent contractor and not our agent. Accordingly, ISO has no authority to execute an Agreement on our or Member Bank's behalf. You owe Member Bank the same obligations you owe us. We may exercise any rights or remedies in this Agreement individually or jointly with Member Bank, and may likewise exchange or allocate the duties and obligations each owes to you.

O. **Attorney's Fees.** You shall reimburse and indemnify us for all attorneys' fees and other costs and expenses we incur or pay in: (i) defending our rights under this Agreement; (ii) enforcing the Agreement; or (iii) collecting any amounts you owe us under the Agreement.

P. **Survival.** Provisions that impose or could impose a continuing obligation on you shall survive the expiration or termination (for any reason) of this Agreement. This includes your liability for chargebacks and reversals, your duty to indemnify us and Member Bank, and your duties with respect to account maintenance.

Q. **Association/Other Network Agreements.** You may sign an agreement with an Association or Other Network ("Other Merchant Agreement"). An Other Merchant Agreement is a separate and independent agreement. We have no responsibility for Association's, Other Network's, or your breach of an Other Merchant Agreement. We do not have to comply with the terms or conditions of an Other Merchant Agreement. We have a right to cease providing Services for any Other Networks or Associations in our sole discretion. You agree to pay all fees, fines, assessments and penalties the Associations or Other Networks impose. We may allocate those fees, fines, assessments, or penalties in any manner and in our sole discretion. You agree that all POS terminals operate with unique keys according to PIN debit network requirements.

R. **Routing.** You authorize us to decide where to route a Card transaction.

S. If applicable, we and you shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their color, race, religion, sex, or national origin. Moreover, these regulations, if applicable, require each of us to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

13. **Regulatory Accounting Assistance Program.** The Regulatory Accounting Assistance Program ("RAAP") is an online and paper reporting tool that will assist you with reconciling your gross sales with your net sales (for sales processed with us). We have a right to charge you a RAAP fee for each of your unique Taxpayer Identification Numbers.

14. **Alternate Funding.** If you request and are approved for Alternate Funding, we will generally initiate an ACH of settlement funds due to you to the Designated Account within one business day (i.e., any day the Federal Reserve is open for business, other than Sundays or State or Federal holidays), provided we receive the complete transaction data by the applicable cutoff time. We have no liability to you if we do not ACH your settlement funds within one business day. If you are not approved for Alternate Funding, we will set you up with Premium ACH for your deposit timeframe. We can change your deposit timeframe from Alternate Funding to Premium ACH at any time and without giving you advance notice. We can also, in our sole discretion, delay your settlement payments for up to seven days from the date we received the settlement payment. This does not preclude us from exercising our right to establish a Reserve Account or to suspend payments pursuant to this Agreement. On the next business day following the expiration of the delay period, we will begin crediting the settlement payments to your Designated Account, less any amounts you owe us. This delay of the settlement payments will be ongoing and will continue as long as we are providing you with processing Services (i.e., it will be a rolling delay). Additionally, we have a right to delay, in our sole discretion, crediting the Designated Account with funds evidenced by submitted Card transactions. You are responsible for verifying the amount of funds actually deposited to and available in your Designated Account on a daily basis. We are not responsible for the availability of funds represented by submitted Card transactions, or for any charges you incur for overdrawing the Designated Account.

15. **NPC Security Services.** Security Services may individually or collectively mean EMV Support, PCI Program, and point-to-point encryption ("P2PE") or such other service as designated by us. You may utilize P2PE products and services on select terminals using services provided wholly or partially by a third party with our support (collectively referred to as "Security Services"). You bear all risk and responsibility for conducting your own due diligence regarding the fitness of Security Services for a particular purpose and for determining compliance with the Rules Summary, the Operating Regulations, and the Laws. Accordingly, your use of Security Services is at your own risk. Our decision to offer Security Services shall not limit your duties and obligations contained in this provision or the Agreement. You acknowledge that the receipt of Security Services may require the use or upgrading of certain terminals and/or equipment or new message specifications (which shall be at your sole expense) and may not be supported on all terminals/equipment. We do not warrant or guaranty that use of the Security Services, in itself, will: (i) result in your compliance with Rules Summary, Operating Regulations, and/or Laws; (ii) prevent any and all unauthorized breaches of your terminals, systems or facilities; or, (iii) be uninterrupted or error-free. You shall not acquire any interest in (ownership, intellectual property or otherwise) any of the third party provider software used to provide the Security Services. You shall not, and shall have no right to, own, copy, distribute, sub-lease, sub-license, assign or otherwise transfer any portion of such third party provider software used to provide the Security Services or any materials provided by us or to modify, decompile, or reverse engineer any such software, materials, or the Services.

A. **EMV Non-Enabled Fee.** The EMV Non-Enabled Fee is effective if you do not have EMV enabled equipment and/or software. The EMV Non-Enabled Fee is determined based on the chargeback liability risk of your MCC as determined by us. Transactions will be evaluated and assessed monthly at the MID level. This fee is based on the gross sales amount of each card present transaction.

B. **EMV Support.** Europay, MasterCard, and Visa ("EMV") is a set of global standards for credit, debit and contactless card payments. EMV chip cards help prevent in-store fraud

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and are nearly impossible to counterfeit. If you have not made the investment in chip-enabled technology, you may be held liable for card-present fraud. EMV acceptance requires an EMV enabled standalone terminal or POS system. We are enabled to process in-store EMV transactions to help reduce fraud liability.

C. **Point to Point Encryption.** The P2PE Service is a two part service designed to: (i) encrypt (make unreadable) card data information at the origin of the payment transaction, which is a PCI-PTS certified Secure Cryptographic Device (SCD) that has licensed P2PE functionality that aligns with the P2PE technologies hosted by the us; and, (ii) decrypt card data information at the destination of the transaction, which are our data systems. You acknowledge and agree that SCD P2PE functionality is required and may require you to engage an appropriate third party provider or authorized reseller and said licensed functionality may incur fees in addition to those set forth herein. Card data information protected by the P2PE Service may include Track 1 or Track 2 data (Magnetic Stripe Data obtained through a magnetic card swipe read) or PAN Data (Manually Entered Personal Account Number ("card") data) as appropriate to the type of transaction processed on the SCD. The SCD functionality supporting the P2PE Service is designed to securely store or generate encryption keys which are used in conjunction with the P2PE functionality to encrypt card data at the moment that the card data is captured by the SCD. The P2PE Service applies only to transactions that were encrypted by the SCD and sent from the terminal to our authorization and settlement systems pursuant to the Agreement. Supported transactions include those associated with credit (signature), debit (signature) and debit (PIN). Our provision of P2PE Service to you is subject to the availability of the licensed encryption software from the applicable third party provider and your compliance with the Agreement.

D. **PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). We have a PCI DSS program ("PCI Program") to assist merchants with PCI DSS validation. Member Bank is not a party to or liable for PCI Program.

a. **Benefits of PCI.** Upon enrollment in the PCI Program, you are eligible to receive:

- (i) Access to an online PCI certificate validation system, where you can complete your Self-Assessment Questionnaire (SAQ);
- (ii) Access to remote scanning services, which includes monthly vulnerability scanning for up to five (5) of your computer website (IP) addresses (additional fees apply if you have more than 5 IPs). This applies to PC/IP merchants only; and
- (iii) Access to MyNPCdata.net.

b. **PCI Compliance Validation Process**

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

(ii) **Self-Assessment Questionnaire (SAQ).** A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC").

(iii) **Vulnerability Scans.** A vulnerability scan ("Scan") is necessary for PC, IP enabled terminal, or integrated ECR merchants. Here are the steps to receive your Scan:

1. Once you have completed your SAQ, the system will guide you to schedule a Scan, if applicable.
2. The Scan will identify vulnerabilities or gaps that may allow unauthorized or malicious users to gain access to your network and potentially compromise cardholder data. The Scan does not require you to install any software, and no denial-of-service attacks will be performed.
3. Upon completion of the Scan, you will receive a link to your full compliance report. A network vulnerability review failure means that the Scan discovered areas of severe vulnerability. The report describes the issues found and provides you with recommendations for scan resources to begin fixing the problems. The tool will guide you to remediate the failed Scan and work toward achieving compliance. Once you have addressed the vulnerabilities, simply schedule a follow-up Scan to ensure your remediation of the problem meets the PCI DSS requirements.

(iv) **Certificate of Validation.** Upon successful completion of the SAQ and Scan, if applicable, your Certificate of Validation will be issued. You can print your Certificate through our online portal or, if you have completed a paper version of the SAQ, your Certificate will be mailed to you.

(v) **Re-Validation.** You must maintain a current, successfully completed SAQ and timely pass quarterly Scans, if applicable, in order to take full advantage of the PCI Program. A SAQ is no longer current if the Certificate of Validation issued by us to you is more than one (1) year old. You are also required to re-validate by completing a new SAQ and passing Scans, if applicable, when you make a change in your processing environment or if you fail to timely complete a required quarterly Scan.

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

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

3. With respect to a re-validation required due to the expiration of the annual SAQ or any other reason for which Re-Validation is required, you will have five (5) days to

complete the PCI Compliance Validation Process, in order to maintain your validation of compliance with the PCI DSS.

Once you have successfully completed the re-validation of your PCI DSS compliance, we will issue you a new Certificate of Validation for the current validation period.

c. **Costs.**

(i) We may assess you a non-compliance fee if you do not validate your compliance with the PCI DSS.

E. **Security Policy.** As part of PCI DSS, the Card Organizations require that you have a security policy that covers the security of credit card information.

F. **Amendment.** The Security Services is subject to change from time to time by us. Any changes will be effective fifteen (15) days following the date notice of such change is sent to you, even if it was not received by you.

G. **Further Information.** To speak with our customer service representative, please call us at 888-208-7231.

H. **Waiver; Limitations on Waiver.** Upon your successful validation of compliance with the PCI DSS under the PCI Program, we agree to waive your liability to us, up to \$50,000, for the following fees and costs incurred as a result of a verified compromise of cardholder data that are otherwise your liability under this Agreement: (1) fees and costs associated with a required forensic audit conducted by an approved Qualified Incident Response Assessor (QIRA); (2) fines or assessments levied by a Card Organization as a result of the required forensic audit; and (3) fees and costs associated with the production and distribution of replacement credit cards for compromised card numbers (the "Waiver").

The Waiver provided under this Section is also subject to the following:

(i) Our agreement to waive your liability to us for the fees and costs described in this Section is only effective upon: (1) your continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) your successful completion of the PCI Compliance Validation Process described in Section 15.D.b above; provided, however, that there is no change in your business practices regarding Card acceptance. Your continuing qualification for the PCI Program is premised upon initial validation of your compliance with the PCI DSS as described in Section 15.D.b above and timely re-validation of your compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.

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

(iii) Your validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate your compliance, Merchant must successfully complete the PCI Compliance Validation Process described in Section 15.D.b, including any required re-validation of your compliance with the PCI DSS as described in Section 15.D.b (v). You will not be eligible for the Waiver if your SAQ is not current, if you have not timely completed the quarterly vulnerability scans, or if you have otherwise failed to maintain compliance with the PCI DSS through the PCI Program.

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

16. **Representations and Warranties.** You represent and warrant that:

A. **Information.** Any information you have submitted is true, complete, and accurate. This includes information about your entity type, the nature of your business (e.g., products and services sold, manner of sale, etc.), and the financial condition and ownership and executive structure of your business.

B. **Corporate Power.** You and the person signing this Agreement on your behalf have the power to execute this Agreement and to perform under this Agreement. The person signing this Agreement may execute any future documents and take any future action on your behalf.

C. **Existence/Organization.** You are a person or an entity validly existing and organized in the United States.

D. **No Litigation.** You have no knowledge of an actual or threatened action, suit, or proceeding against you that might impair your financial condition or prevent you from operating your business as you now conduct it. You have never appeared on MasterCard's MATCH system or the Combined Terminated Merchant File, except as already disclosed in writing.

E. **Transactions.** The Card Transactions you submit to us: (i) represent the obligations of the authorized Cardholder for merchandise or services actually sold, rented, or rendered (except for any delayed delivery or advance deposit authorized by the Rules) and must not involve any element of credit for any other purpose; (ii) represent *bona fide* Card/rentals of merchandise and/or services not previously submitted and do not represent a refinancing of any prior obligation; (iii) are not subject to any dispute, setoff, or counterclaim against the price; (iv) are not, to your knowledge or notice, fraudulent, not authorized by the Cardholder, or subject to any other infirmity or impairment; and (v) do not result from any sale outside your normal course of business, as described in the Application.

F. **Products and Services.** The following items are true: (i) you have complete power and authority to sell the products and services you offer and to display the advertisements you use; (ii) your products and services are not illegal, and you will not accept a Card for any illegal transaction; (iii) you will prominently and unequivocally inform each Cardholder of your identity at all points of interaction during the transaction to distinguish you from any other party; (iv) your products, services, and business name do not infringe upon the rights of any other



## Merchant Processing Agreement Terms and Conditions

person, including trademark, copyright, confidentiality or patent rights; and (v) you will not sell, market, or display any products or services that would jeopardize our reputation.

G. **PIN Debit & EBT Card Processing Services: Availability of Terminals.** We will process PIN debit Card transactions for you if indicated in the Application or an amendment. If you accept EBT Cards, the terms in Addendum A shall apply. We will provide sponsorship services to you (through a third party bank), if applicable. You will take all steps necessary to ensure that point-of-sale devices and PIN pads will be available for Cardholder use and will function in a reliable manner.

17. **Special Association Considerations.** There are a few special rules regarding your participation in the Discover or American Express Card programs.

A. **Discover.** We have no liability for not processing or settling a retained Discover merchant's Discover Cards (as defined by Discover).

B. **American Express.** The following terms apply only to your American Express Program (see the American Express merchant requirements for capitalized terms).

- i. You authorize us to exchange transaction and settlement information with American Express on your behalf.
- ii. We may disclose Transaction Data, Merchant Data, and other information about you to American Express. American Express may use the disclosed information for any lawful business purpose.
- iii. In the event your Charge Volume exceeds (1) \$1,000,000 in a rolling twelve month period, or (2) \$1,000,000 in any three consecutive months ("High CV Merchant"), American Express may convert you to a direct Card acceptance relationship. Upon conversion, you will be bound by American Express' then-current Card Acceptance Agreement and corresponding pricing and fees.
- iv. You shall only sell *bona fide* goods and services at your establishment(s). Your Card transactions shall be free of liens, claims, and encumbrances, other than ordinary Card tax. Additionally, you shall not assign any payments you are due under the Agreement to a third party. However, you may sell and assign future transaction receivables to us or our affiliated entities and/or any other cash advance funding source we (or our affiliates) partner with.
- v. This Agreement confers third party beneficiary rights in American Express for enforcing terms against you. It imposes no obligations on American Express.
- vi. You may opt out of accepting American Express Cards in writing without affecting your rights to accept other payment products.
- vii. We may terminate your right to accept American Express Cards if: (i) you breach the Agreement; (ii) American Express instructs us to do so; or (iii) you engage in fraudulent or any other activity justifying termination.
- viii. You may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless chargeback has been exercised, you have fully paid for the charge, and you otherwise have the right to do so.
- ix. You agree to remove any American Express Licensed Marks from your website or any other location when your participation in the Program ends.
- x. If you do not participate in the American Express Program or EA Program, we will have no liability for not processing or settling your American Express transactions. Further, American Express cards will not be included in the definition of Cards.

18. **Key Definitions.** The following definitions are especially important:

A. **"Agreement"** means the Merchant Processing Agreement (including these Terms and Conditions), the Application, Rules Summary, Operating Regulations, and any attached addenda, exhibits, schedules, or other documents.

B. **"Associations"** means, collectively, MasterCard International Inc. ("MasterCard"), VISA U.S.A., Inc. ("VISA"), DFS Services LLC d/b/a Discover Network ("Discover") (including any card issuer of payment cards processed and settled through the Discover network, which may include Japanese Credit Bureau ("JCB"), China Union Pay ("CUP") and Diners Club International ("DCI"), and American Express Travel Related Services Company, Inc. ("American Express") and certain similar entities.

C. **"Application"** means either the physical/virtual form or the act of making application to National Processing Company by providing information via a web page user interface.

D. **"Cards"** means Association or Other Network branded cards that enable consumers to purchase goods and services from Merchants.

E. **"Cardholder(s)";** persons authorized to use Association or Network branded cards.

F. **"Effective Date"** means the later of (i) the date you signed the Application, or (ii) the date we approved the Application.

G. **"ISO/MSP"** means an independent Card organization/member service provider operating under the Operating Regulations.

H. **"Laws"** means all applicable state, federal, and local laws, rules, and regulations.

I. **"Member Bank"** means a member of VISA®, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement.

J. **"Operating Regulations"** means the Association and Network bylaws, operating regulations, rules, policies and procedures. The Operating Regulations may be changed or updated from time to time without notice.

K. **"Other Networks" or "Networks"** means, collectively, all Processor supported networks not defined above as Associations.

L. **"Rules Summary"** means the document containing a summary of key Operating Regulations governing this Agreement as amended from time to time.

M. **"Service"** means any services described in this Agreement and/or provided by us.

ATTACHMENTS TO THIS MERCHANT PROCESSING AGREEMENT include:

- **Exhibit A – Rules Summary**

- Schedule I – Applicable and included if Advantage Buyer Program is selected on the Merchant Agreement

- Schedule II – Applicable and included if NPC Check Services is selected on the Merchant Agreement

- Schedule III – Applicable and included if Voyager Fleet Card is selected on the applicable Merchant Addendum

- Schedule IV – Applicable and included if EBT is selected on the applicable Merchant Addendum

- Schedule V – Applicable and included if wireless terminals using GPRS services or CDMA services are selected on the Merchant Application.

## EXHIBIT A Rules Summary

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

### Good Business Practices That Will Help Reduce Your Processing Costs

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

### 1. Honoring Cards

A. You shall honor all Cards when presented in accordance with these Rules for the purchase of goods or services or in processing a request for credit resulting from such a transaction, by an authorized holder of a Card without imposing any special conditions not required by any Rules. However, if you do not deal with the public at large (for example, if your business is a private club), you are required to honor a valid Card only if presented by a cardholder who has purchasing privileges or a membership with you. You may attempt to steer customers who initially present a Card to an alternative method of payment, such as by providing discounts for cash, but you may not do so in a confusing manner that denies consumer choice. You may also consider whether present circumstances create undue risk, for example if the sale involves high-value electronics, but the card signature panel is not signed, and the Cardholder does not have any other identification.

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

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

D. **Card Recovery.** You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed

account number, indent printed account number and/or encoded account number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face. This obligation upon you in no way authorizes a breach of the peace or any injury to persons or property, and you will hold Processor or Member Bank harmless from any claim arising from any injury to person or property or other breach of peace.

E. **Return Policy.** You will properly disclose to the Cardholder, at the time of the transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

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

G. **Disputes With Cardholders.** You must ensure that the Cardholder understands that you are responsible for the transaction, for any related customer service, dispute resolution, and performance of the terms and conditions of the transaction. All Disputes between you and any Cardholder relating to any transaction will be settled between you and the Cardholder. Neither Processor nor Member Bank bears any responsibility for such transactions. You shall not require a Cardholder to waive his or her rights to dispute the transaction as a condition of the sale.

H. **Employee Actions.** You are responsible for your employees' actions while in your employ.

I. **Prohibitions on Card Acceptance.** You may not do any of the following: (i) submit for payment into interchange any transaction that is illegal or that you should have known was illegal; (ii) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, expiration, signature or any other account-related data in plain view when mailed; (iii) add any tax to a transaction, unless applicable law expressly requires you to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (iv) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Rules; (v) disburse funds in the form of travelers cheques, if the sole purpose is to allow cardholder to make a cash purchase of goods or services from you, (vi) permit a Cardholder to purchase travelers cheques, or other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (vii) accept a Card to collect or refinance an existing debt that has been deemed uncollectible; (viii) enter into interchange a transaction that represents collection of a dishonored check; (ix) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (x) accept Cardholder payments for previous Card charges incurred at the Merchant location; (xi) submit for payment into interchange any transaction that may in the sole discretion of a Card Organization, damage the goodwill of such Card Organization or reflect negatively on a Card Organization's brands; (xii) add any surcharge to a transaction; (xiii) enter into interchange any transaction receipt for a transaction that was previously charged back to Member Bank and subsequently returned to you, irrespective of Cardholder approval (you may pursue payment from the customer outside of the Card Organization system); (xiv) accept a Card for the purchase of Scrip; (xv) accept a Visa Electron Card or a Visa TravelMoney Card for manual cash disbursement; or (xvi) redeem a Visa Prepaid Card for cash. You may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Card Organizations and/or issuers and the minimum transaction amount does not exceed \$10.00 (or any higher amount established by applicable law or the Rules). Unless otherwise set forth below or otherwise allowed by applicable law or the Rules, you may not establish a maximum sale amount as a condition for honoring Cards. You may establish a maximum sale amount as a condition for honoring Cards if you are a department, agency or instrumentality of the U.S. Government, you are a corporation owned or controlled by the U.S. Government, or your primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum transaction amount does not differentiate between Card Organizations and/or issuers.

J. **Security Features.** You are required to examine the Card security features prior to completing a sale. You should examine the Card to be sure there has been no tampering to the signature panel. Specific Card security features are as follows:



i. **Visa:**

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

ii. **MasterCard:**

- a. The MasterCard Global hologram or the Debit MasterCard hologram and the MasterCard brand mark stacked within a retaining line, or the MasterCard brandmark without a retaining line if the hologram is on the back.
- b. All MasterCard account numbers are 16 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card. The last four digits of the account number are embossed over the hologram.

iii. **Discover Network:** (certain valid devices (e.g., radio frequency enabled Cards, key fobs, contactless Cards, and JCB, CUP and DCI Cards) may not display the features described below).

- a. Card numbers are at least 16 digits embossed on the front of the Card.
- b. The word DISCOVER or DISCOVER NETWORK will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- c. An overprint on the signature panel reads Discover Network.
- d. The Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water and stars on a repetitive pattern background (the "Discover Network Hologram"), appears on the front of certain Discover Network Cards. The hologram reflects light and appears to move as the Card is rotated.

When an Electronic Cash Register or Electronic Draft Capture terminal reads the magnetic stripe on the Card, you must check the Card account number on the terminal (if displayed) against the account number embossed on the Card or follow such other security check as is mandated by Processor from time to time. If the Card is read with a terminal that displays the Card number and the Sales Draft is printed, you shall verify that the account number displayed on the terminal and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card. In the event that they do not match, the sale must not be completed. Failure to follow these checks and procedures will expose you to chargebacks. If the terminal is programmed to require you to key the last 4 or more digits of each Card used for a sale, and the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

K. **Advertising.** You must display Visa, MasterCard, Discover Network and any other applicable Card issuer, Debit Network and EBT Network decals and program marks on promotional materials that Processor furnishes, including, if applicable, the JCB, CUP, DCI and/or Electron symbol, in equal prominence near the point-of-sale devices and as otherwise required by the Rules. Your use of the promotional materials of Visa, MasterCard, Discover Network or any other Association or State will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network or any other Association or State endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover Network or any other Association or State in stating eligibility for your products or services.

L. **Acceptance Procedures.** You may ask or incent your customers to use alternative forms of payment other than a Visa or MasterCard. Discounts can be offered on alternate card brands, card types or payment types. Card brand or payment method preference can be promoted, as well as the ability to inform your customers of the costs associated with accepting a particular card type or brand.

i. **MasterCard Specific Requirements.** You may request or encourage a customer to use a payment card with an acceptance brand other than MasterCard or other form of payment or a Card of a different product type (e.g., traditional cards, premium cards, rewards cards) than the Card the consumer initially presents. You may do so by methods that include, but are not limited to:

- a. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment;
- b. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or

any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment;

- c. expressing a preference for the use of a particular payment card or form of payment;
- d. promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that merchants will abide by the MasterCard trademark standards relating to the display of its marks); or
- e. communicating to customers the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

You are free to engage in the POS practices that are described above, or any other substantially equivalent practices.

ii. **Visa Specific Requirements.** You may steer customers to use a particular network brand, such as Visa or MasterCard; to a type of payment card, such as a "non-reward" credit card; or to another preferred form of payment. You may also encourage a customer who initially presents a Visa card to use a payment card with a different network brand, a different type of payment card, or a different form of payment. You may engage in any of the following steering activities:

- a. offering a customer a discount or rebate, including an immediate discount or rebate at the point of sale;
- b. offering a free or discounted product;
- c. offering a free or discounted or enhanced service;
- d. offering the customer an incentive, encouragement or benefit;
- e. expressing a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- f. promoting a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence or sequencing of payment choices, or through other communications to a customer;
- g. communicating to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or
- h. engaging in any other practices substantially equivalent to these.

You are not required to display the Visa mark in a size as large as other payment marks. You may promote acceptance brands other than Visa through the size, prominence, or sequencing of payment choices. However, you must continue to respect a cardholder's ultimate decision to pay with Visa: you still have an obligation to accept for payment properly presented Visa cards, including rewards cards. In addition, surcharging of Visa cards and steering among Visa cards based on the issuing bank are not permitted and you must ensure that your steering practices are not performed in a confusing manner.

iii. **American Express Specific Requirements.** If you accept American Express cards, you must comply with the American Express rules regarding card acceptance. You should review your agreement with American Express for further details on the requirements for American Express card acceptance.

2. **Authorization.**

A. **Required on all Transactions.** You will obtain a prior authorization via electronic terminal or similar device before completing any transaction, including MO/TO transactions. You will follow any instructions received during such authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder. If you receive a negative authorization response, you may not complete the sale and may be requested to recover the Card, if you can do so by reasonable and peaceful means. If you do recover the Card, you should notify the voice authorization center and ask for further instructions. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request. You may not, after receiving a negative response or decline on an authorization request, split the sale amount into multiple transactions in order to obtain a valid authorization for each one so that the separate transactions total the original dollar amount of the sale.

B. **Effect.** Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction or a transaction involving the use of an expired Card. Obtaining an authorization will not assure payment to you for a Card transaction. The fact that an authorization is obtained by you will not affect Processor's or Member Bank's right thereafter to revoke the authorization of a Card transaction or to charge back the transaction to you. In no event will the fact that an authorization is obtained by you be deemed to be Processor's or Member Bank's representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

C. **Unreadable Magnetic Stripes.** If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Member Bank and Processor for processing.

D. **Procedures.** If an unsigned Card is presented at the point of sale, you must request that Cardholder provide proof of identification and sign the card before completing the sale. Details of the identification provided must be placed on the Sales Draft unless prohibited by local law. If the Cardholder refuses to do so, the sale must not be completed. In any of the following cases, you shall obtain authorization from the voice authorization center, designated or approved by Processor or Member Bank, before completing a sales transaction:

- i. paper merchants whose sales exceed your floor limit as established by Processor or Member Bank, or amended from time to time;
- ii. an unsigned Card is presented;
- iii. if you believe the Card may be counterfeit or stolen or that the sale is in some other manner suspicious or unusual, you should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or
- iv. in any other circumstances established by Processor or Member Bank or stated in the Rules and/or this Agreement.

E. If you are approved to utilize batch authorization by Processor, you may obtain batch authorization for certain sales after such sales have occurred provided, however, that authorization for each transaction is obtained by end of the calendar day upon which such sale was initiated and that you do not presort the batch by account number or BIN. Further, you explicitly agree that you will be responsible for any fines, fees, chargebacks, assessments, and declined or disputed transactions that may result from using a batch authorization process.

### 3. Sales Drafts.

A. **Forms.** You will use a Sales Draft to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, identification number, and city and state; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale (including any applicable taxes) or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable. If you use an electronic terminal to print Sales Drafts, the account number must be truncated on the cardholder copy of the Sales Draft. This means that only the last 4 digits of the account number may appear. The entire expiration date must be suppressed on receipts provided to cardholders.

B. **Signatures.** Sales Drafts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid MO/TO or electronic commerce card transaction, which fully complies with the requirements set forth in this Agreement, or if otherwise permitted by the Rules.

C. **Delivery and Retention of Sales Drafts.** You will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You shall store all Sales Drafts and transaction records in a limited access area for at least 1 year after the date of sales. You will retain the Merchant copy of the Sales Draft or credit memorandum for at least 12 months following the date of completion of the transaction for Visa Card transactions, at least 18 months following the date of completion of the transaction for MasterCard Card transactions and at least 3 years following the date of completion of the transaction for Discover Network Card transactions (or such longer period as the Rules may require), which documentation must be maintained in a secure manner in accordance with your obligations under the Bank Card Merchant Agreement. You will submit to Processor or Member Bank a legible copy of a Sales Draft if any Card issuer requests such retrieval. Your deadline for providing Processor or Member Bank a legible copy of the requested Sales Draft will be ten (10) days after the date of the Card issuer's retrieval request, as specified in the notice from Processor or Member Bank. Unless specifically permitted by Processor, goods and services purchased must be delivered to Cardholder at the time of sale. You shall not disclose a

Cardholder's account information or any other personal information to third parties other than your agents for the purpose of completing the transaction or as specifically required by the Laws or by the Rules.

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

E. **Daily Settlement of Transactions.** You must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which you total and settle all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to Processor. In all cases, Merchant must present the record within 3 business days (2 business days for Electron Cards) after the transaction date, unless otherwise permitted by the Rules. Transactions contained in an untimely Batch Out may be refused, held for a 180 day period, become subject to chargeback or be transferred to a Reserve Account and held in accordance with the terms of the Bank Card Merchant Agreement. Merchant is responsible for resubmitting a Batch Out or ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. Processor is not liable to Merchant for amounts it did not collect, including but not limited to amounts collected by Third Party Service Providers.

### 4. Chargebacks.

Failure to comply with the Rules will reduce Processor or Member Bank's ability to reverse chargebacks and increase the likelihood of your receiving a chargeback. You may be subject to a chargeback on sales for a minimum period of 180 days from the date the sale was entered into the Association's processing system. Processor may hold funds from your account to cover any chargebacks for the later of 270 days following the effective date of termination of this Agreement or 180 days from the date of your last chargeback. Processor or Member Bank will mail all chargeback documentation to the address provided by you. You agree to respond promptly to all chargebacks. If Processor or Member Bank elects, at its discretion, to take action on chargebacks after the Association time limits have expired, such action shall be done at additional cost. You will not redeposit sales that have been previously charged back and not represented. This restriction applies whether or not the Cardholder consents to such activity. If you receive a chargeback for an international Cardholder, you are responsible for any currency conversion differences in the dollar amount. You will be charged the fee indicated on the Merchant Application for each chargeback.

### 5. Chargeback Reasons.

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

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

- xi. the Card issuer has information that a Merchant fraud has occurred;
- xii. the Card account number and the amount of sale is missing from Sales Draft or is illegible;
- xiii. the Sales Draft bears the imprint of a Card which to the Associations is a counterfeit Card because the Card is not embossed in accordance with the standards set forth in the Rules, even if the sale was authorized.

#### 6. Chargeback Monitoring Programs.

A. If you exceed a 1% chargeback to interchange ratio for all incoming chargebacks for a particular location you are considered an excessive chargeback merchant and may be subject to a Card Organization's monitoring programs. You are responsible for monitoring your monthly chargeback percentage and developing chargeback reduction plans as required by the Card Organizations. Excessive chargeback activity for an unreasonable period of time may result in termination of this Agreement. You must pay Member Bank or Processor for any fine or charge levied by the Associations on Member Bank, Processor or Merchant as a result of your chargeback activity. This section may be amended from time to time as a result of action by the Associations.

B. **Other Monitoring Programs.** If you are identified by certain Association monitoring programs, Processor or Member Bank's ability to reverse chargebacks may be severely restricted. Certain monitoring programs review the number of lost, stolen and counterfeit Cards accepted by you in the normal course of business and the percentage of Cards used for sales that were not read electronically by terminals or Electronic Cash Registers. The purpose of these programs is to reduce the use of lost, stolen, fraudulent, and counterfeit Cards. In the event that you are identified under these programs as exceeding the acceptable threshold value of such Cards, you may become liable for chargebacks and sales on lost, stolen, or counterfeit Cards regardless of the Card acceptance procedures followed, and this Agreement may be terminated by Processor or Member Bank and/or Processor or Member Bank may immediately cease providing services to Merchant without notice.

C. **Excessive Activity.** Your presentation to Processor of Excessive Activity will be a breach of this Agreement and cause for immediate termination. "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or Merchant Identification Numbers, chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, Member Bank and Processor to take additional actions as either of them may deem necessary, including but not limited to suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

#### 7. Credits.

A. **Credit Memoranda.** You will issue a credit memorandum, instead of making a cash advance, a disbursement or a cash refund on any Card transaction. Member Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to Processor. You will not submit a credit relating to any Sales Draft not originally submitted to Processor, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide Processor with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

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

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

D. **Fraud and Factoring.** You agree that, except as otherwise contemplated herein or otherwise permitted by Processor, you will use the services provided by Processor only for your own internal and proper business purposes and will not resell, directly or indirectly, any of the services or any portion thereof to any third party. You must deposit only transactions that directly result from Cardholder transactions at your merchant locations. You must not deposit transactions resulting from any transaction involving a Card between a Cardholder and another entity (with the exception of Payment Service Providers (PSPs), who may deposit transactions resulting from a transaction between a Cardholder and a Sponsored Merchant of the PSP). You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of Fraudulent Transactions will be referred to law enforcement officials. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. In addition to Processor's and Member Bank's ability to establish and maintain a Reserve Account, you agree that Processor may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Upon completion of Processor's investigation, Processor may transfer such Sales Draft funds into a Reserve Account. Processor and Member Bank will have no liability for any losses you may attribute to any suspension of funds disbursement. You further agree that engaging in the aforementioned activity may result in the incurrence of research fees and may be grounds for termination of this Agreement.

#### 8. Other Types of Transactions.

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

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

C. **Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless: (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an

advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. If the total amount of both Sales Drafts exceeds the floor limit, authorization must be obtained. The use of multiple Cards for one purchase is permissible as long as an individual Sales Draft is used for each Card. The use of multiple sales on one Card, for one purchase, is not permitted.

**D. Deposits.**

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

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

**E. Future Delivery.** You will not present any Sales Draft or other memorandum to Member Bank or Processor for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor's prior written authorization. If Member Bank or Processor have previously given such consent, you represent and warrant to Member Bank and Processor that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

**F. Electronic Commerce Transactions.**

i. **Electronic Commerce.** You must obtain the consent of Processor to process electronic commerce ("EC") transactions, and you may process such transactions only if the transactions comply with the Payment Card Industry Security Standard requirements set forth below. If you submit EC transactions without Processor's consent, Processor may immediately terminate this Agreement. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. A Merchant must not refuse to complete an EC transaction using a MasterCard card solely because the Cardholder does not have a digital certificate or other secured protocol. You are liable for all chargebacks and losses related to EC transactions, whether or not: a) EC transactions have been encrypted; and/or b) you have obtained the consent of Processor to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction. You are responsible for contracting with a third party payment engine, payment gateway or other Internet service provider. You must ensure that such third parties transmit Sales Drafts to Processor and Member Bank in an acceptable format and in compliance with the Rules, including but not limited to PCI DSS. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Member Bank into a depository institution of the United States in U.S. currency.

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

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

maintain a policy that addressed information security for employees and contractors, and restrict physical access to Cardholder information.

iv. **Physical Address.** If you accept EC transactions, your website must include the physical address of your permanent establishment, along with your country of domicile, either:

- On the same screen view as the checkout screen used to present the total purchase amount, or
- Within the sequence of webpages the Cardholder accesses during the checkout process.

v. You acknowledge and agree that you will only submit Electronic Commerce Card transactions in U.S. Dollars that arise from a Cardholder's purchase over the Internet. If software is to be purchased by you, you will be responsible for sublicensing fees and all other fees for software and the software program utilized by you that enables you to connect to and maintain communication between you, the Internet and Processor. You will, at all times, maintain in effect a sublicense agreement for any such software. You agree to use any such software and the software program properly and for the purposes for which it was intended.

**G. Third Party Service Provider Transactions.**

i. **Authorization.** Upon your request, Processor will provide access to authorization and/or data capture services for Third Party Service Provider transactions, such as American Express, and all settlement and chargeback obligations and similar financial responsibilities arising from your transactions involving Third Party Service Providers will be governed exclusively by your agreement with such Third Party Service Providers. You must enter into a separate agreement with such Third Party Service Providers and must abide by the terms and conditions of such Third Party Service Providers. Neither Processor nor Member Bank are responsible for funding such transactions. The terms of this Agreement will apply to Third Party Service Providers. Processor may notify you in writing of the fees applicable to Third Party Service Provider transactions. Third Party Service Providers separately invoice Merchants for their services, and their fees are not necessarily included in this Agreement (including the Merchant Application). Any applicable fees and charges for third party services will be disclosed by the applicable Third Party Service Provider and may be subject to adjustment in accordance with the Third Party Service Provider's terms and conditions. Additionally, Processor charges a transaction fee for such transactions in addition to those fees charged by Third Party Service Providers (see the Merchant Application). Your acceptance of cards, bearing the symbols of organizations other than the Debit Networks or the Card Organizations, such as American Express and transmission of such card transactions to Processor will constitute your agreement to the terms of this Agreement with regard to such cards. Termination of your Agreement with Processor does not automatically terminate your agreement with Third Party Service Providers.

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

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

iv. **JCB.** The following special provisions apply (notwithstanding any contrary provision in this Agreement) to your JCB Card transactions: (i) you must retain original sales drafts and credit vouchers for at least 120 days after the transaction and must retain microfilm or legible copies of sales drafts and credit vouchers for at least three (3) years after the transaction; (ii) for purposes of your chargeback liability with respect to JCB Card transactions, an Authorization obtained on a transaction does not override any chargeback reason which may apply to the item; (iii) if you process JCB Card transaction data electronically, your account number must be included in the JCB Card transaction data transmitted to us, in addition to the other information required to be included on each sales draft or credit voucher; (iv) if you are a lodging

merchant, JCB Cardholders must be allowed to cancel reservations at resort establishments until 4:00 p.m. on the scheduled arrival date; and (v) by contracting for JCB settlement services, you authorize JCB to publish your name, address and telephone number in JCB solicitation materials.

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

#### **9. Cash Transactions.**

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

#### **10. Third Parties.**

**A. Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. You are also responsible for demonstrating compliance by your Merchant Suppliers and other Agents with the requirements of the Cardholder Information Security Program and other security requirements. Processor has no responsibility for any transaction until that point in time when Processor receives data about the transaction.

**B. Use of Terminals Provided by Others.** You will notify Processor immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor or its authorized designee ("third party terminals") to process transactions. If you elect to use third party terminals, you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Member Bank via a data processing network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member Bank nor Processor will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a third party terminal.

#### **11. Vehicle Rental Authorization Procedures.**

**A. Estimate.** A special authorization procedure is available if you estimate the transaction amount based upon Cardholder's intended rental length at time of rental, the applicable rental rate, tax, and/or mileage rates. Such estimated transaction amount shall not include ancillary charges representing amounts to cover potential vehicle damages or insurance deductible when Cardholder waives insurance at time of rental.

**B. Procedures.** Special terminal downloads may be required in order to qualify for certain rates on Vehicle Rental transactions. You shall record on the Sales Draft the date, amount, and all authorization approvals obtained. You shall disclose to Cardholder the amount authorized at the time of rental. Subsequent Authorization:

i. If no authorization was obtained at the time of rental and you, based upon Cardholder's actual charges, later estimate that the transaction amount will exceed the applicable floor limit, you may obtain an Authorization approval code for the new estimated amount.

ii. You may obtain authorization for additional amounts (above any amount not authorized) on the car rental pickup date or prior to the car rental return date. Additional authorization is not necessary if the sales transaction

does not exceed the sum of the authorized amounts plus 15% of the sum of the authorized amounts.

#### **12. Paper Processing Merchants.**

Paper processing merchants shall authorize by using the established floor limits. Any Merchant that wishes to accept a sales transaction that is under the established floor limits, and that is not authorized, is liable for the resulting chargebacks from those Card numbers listed on the Electronic Exception File. In the case of a Merchant depositing paper drafts, such drafts shall be deposited with Processor or Member Bank within 5 days of the sale date.

#### **13. Forensic Investigations.**

**A.** You will fully cooperate with any forensic investigation initiated by an Association (including but not limited to any investigation that is ongoing at the time your Merchant Agreement is signed) until such time as the investigation is completed.

#### **14. T&E Services.**

**A. Travel and Entertainment ("T&E") Merchants.** A merchant whose primary function is to provide travel related services shall be referred to as a Travel & Entertainment ("T&E") Merchant. These include, but are not limited to, car rental, lodging, and central reservation services. A T&E Merchant may process delayed or amended charges if the Cardholder has consented to be liable for those charges. These charges may NOT include charges for loss, theft, or damage.

**B. Services.** T&E Merchants may participate in any of the following Visa T&E Services:

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

#### **C. Visa Priority CheckOut Service:**

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. have Cardholder complete, sign, and return a Priority CheckOut Agreement ("PCO Agreement") which includes the Cardholder's mailing address;
- iii. complete a Sales Draft which includes the total sales amount and the words "Priority CheckOut" on the signature line;
- iv. review the completed PCO Agreement and ensure the account number matches the account number on the Sales Draft if applicable;
- v. comply with normal authorization and deposit requirements;
- vi. at the Cardholder's request, you must mail the Sales Draft copy, the itemized bill, and the signed PCO Agreement to the Cardholder within 3 business days of the Cardholder's departure; and
- vii. you must retain the itemized bill and signed PCO Agreement for a minimum of 6 months after the transaction date.

#### **D. T&E Advance Deposit Service:**

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. obtain the Cardholder name, account number, expiration date on the Card, telephone number, mailing address, scheduled date of arrival/embarkation/rental, and intended length of stay/term/rental;
- iii. determine the advance deposit amount, which is the cost of the intended length of stay, cost of the cruise, or cost of the intended term of rental, not to exceed 14 days;
- iv. apply the deposit amount to the total obligation;
- v. provide: (1) reservation confirmation code to the Cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
- vi. advise the Cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;
- vii. advise the Cardholder that you will retain the deposit amount if the Cardholder has not canceled the reservation within the specified time frames;
- viii. you must not charge for a no show transaction;
- ix. complete the Sales Draft including advance deposit amount, Cardholder name, mailing address, telephone number, account number, expiration date, the words "Advance Deposit" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- x. follow normal authorization procedures;

xi. mail a Sales Draft copy and cancellation policy to the Cardholder within 3 business days of the sales date;

xii. accept all Cardholder cancellations within the time limits specified by you;

xiii. upon cancellation, you shall complete a Credit Transaction Receipt with the information set out in (ix) above and include the cancellation code. You must deposit the Credit Transaction Receipt within 5 days of the transaction date and mail a copy to the Cardholder within 3 days of the transaction date of the Credit Transaction Receipt;

xiv. for a Lodging Merchant, if the reserved accommodations are unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, (2) a copy of the Credit Transaction Receipt to the Cardholder, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) two three-minute telephone calls, (5) message forwarding to the alternate establishment, (6) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and your location; and

xv. for a Car Rental Merchant if the reserved vehicle is unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, and (2) provide a comparable vehicle for the number of days specified in the reservation, not to exceed 14 days or until the reserved vehicle becomes available.

xvi. for a Cruise Line Merchant if the reserved accommodations are unavailable, and no comparable accommodations are available on the ship, the Merchant may offer: (1) a comparable cruise within the same approximate sailing dates and number of sailing days specified in the reservation, (2) any extra nights' accommodations or air fare to a different port city necessitated by the Cardholder's acceptance of alternate accommodations. The Merchant must refund the entire T&E deposit amount, if comparable accommodations are not available or the Cardholder does not accept the offered accommodations. The Merchant must provide a credit receipt to the Cardholder and the Merchant must provide all of the following without charge, (1) one night's hotel accommodation, if required, (2) transportation to the hotel as well as the airport, (3) Airline transportation to the airport nearest the Cardholder's residence, (4) reasonable out-of-pocket expenses incurred by the Cardholder because the guaranteed accommodations were not available.

**E. T&E Cash Disbursement Service:** You may make cash disbursement to a registered Visa Gold or Platinum Cardholder under the following conditions:

i. Cardholder indicates at registration the intent to pay for services with a Visa Card;

ii. Before disbursement, you review positive identification, and, if permitted by applicable law, record type and number on the Sales Draft;

iii. You complete an 80 column Cash Disbursement Sales Draft or a 51 column Cash Disbursement T&E Sales Draft that includes the Cardholder's positive identification or a Cash Disbursement Record;

iv. You do not disburse more than \$250.00 during the Cardholder's stay. Cash availability may limit cash disbursements; and

v. You must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.

**F. Visa Reservation Service:** Any Merchant who accepts Cards to guarantee reservations must do so in accordance with the following requirements:

i. You must accept all Visa Cards in accordance with this Agreement;

ii. You must obtain the Cardholder's account number, expiration date, and name embossed on the Card. You must quote to Cardholder the rate of reserved accommodation, Merchant's name and address, and the Confirmation Code advising that it be retained. Advise the Cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the Cardholder will be billed for one night's lodging plus applicable taxes. If requested, you will provide a written confirmation with the above information including the Visa reservation service provisions relating to the Cardholder's obligation, and any other reservation details;

iii. You must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notification prior to the scheduled arrival date. But, if the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If you require that the Cardholder cancel before 6:00 p.m. on the arrival date, you must mail the cancellation policy to the Cardholder;

iv. If the reservation is properly canceled, you must provide a cancellation code and advise the Cardholder to retain it. If requested, you must mail a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;

v. If Cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. You may then complete a Sales Draft for 1 night's lodging plus applicable tax, indicating the Cardholder's account number, expiration date, and name embossed on the Card and the words "No Show" on the Cardholder signature line. You must obtain an authorization code for the no show transaction;

vi. If guaranteed accommodations are unavailable, you must provide Cardholder with comparable accommodations as described in Section 14.C.xiv above. These services shall be provided at no cost to Cardholder.

## 15. Health Care Transactions and Programs

### A. Preauthorized Health Care Transactions.

i. **Order Form.** Merchants accepting Preauthorized Health Care Transactions must have the Cardholder complete an order form containing the following:

a. a request for the services to be charged to the Cardholder's account;

b. assignment of insurance benefits to you;

c.. authorization for you to charge the Cardholder's account for only that portion of the bill subsequent to your receipt of any applicable insurance payment;

iv. duration of time, not to exceed 1 year, for which permission is granted; and

d. if the Preauthorized Health Care Transaction is renewed, the Cardholder must provide an updated order form.

ii **Procedures.** Merchants accepting Preauthorized Health Care Transactions must:

a. retain a copy of the order form during the period it is in effect;

b. provide a copy of the order form upon Processor or Member Bank's request; and

c. type or print the words "Preauthorized Health Care" on the signature line of the Sales Draft; and

d. submit a Sales Draft within 90 days of the service date and request authorization for the amount due upon receipt of notice of adjudication from Cardholder's insurance company.

iii. **Cancellation.** You must not complete a Preauthorized Health Care Transaction after receiving a decline response or a notice of cancellation from Cardholder, Processor or Member Bank.

**B. Health Care Auto-Substantiation.** Merchants participating in Health Care Auto-Substantiation must comply with the provisions of the Visa Health Care Auto-Substantiation Transactions Documents. The Merchant must also obtain a license from and be certified by SIGIS, the Special Interest Group for IIAS Standards.

**C. Health Care Eligibility Service.** Merchants participating in the Health Care Eligibility Service must comply with the provisions of the Visa Health Care Eligibility Service Implementation Guide.

## 16. Visa Supermarket Program.

A merchant that wishes to participate in the Visa Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement with Processor or Member Bank.

## 17. Telephone Services.

A telephone service Merchant must not accept payment for a telephone call when the Card number is either entered via touchtone key pad or provided to an operator. This prohibition excludes the following:

(i) Telephone Service Transactions conducted at an Unattended Cardholder-Activated Terminal

(ii) Transactions for which the Issuer has a contract with the carrier

(iii) Transactions involving telephone services that have been explicitly approved by Visa and provide appropriate risk controls

(iv) Telephone orders for goods and services; and

(v) Transactions provided by Inbound Teleservices Merchants, as specified in the Visa Merchant Data Standards Manual

## 18. Automated Fuel Dispenser

### A. Procedures.



i. When an Automated Fuel Dispenser ("AFD") transaction takes place, the card must be presented and the entire, unaltered contents of either Track 1 or Track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.

ii. The Merchant name, city, state, and zip code of the station location where the transaction took place must be included in any authorization and clearing message.

iii. A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

iv. You must obtain an authorization for the exact amount of the transaction or use the status check procedure, which requires you to request an authorization for no more than \$1.00.

v. You must use the status check procedure if the floor limit is zero and the actual transaction amount is no more than the maximum set by Visa and MasterCard, which amounts are currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

vi. You must have an established self-service terminal operating plan on file with Processor or Member Bank and must establish a velocity check program that monitors the volume and frequency of account transactions.

vii. The transaction ratio of chargebacks to total Visa Interchange for Merchant must not exceed an average of 0.30% for the previous 6 months.

viii. The transaction ratio of fraud to total Visa Interchange for Merchant must not exceed an average of 0.40% for the previous 6 months.

ix. Under no circumstances should you use an arbitrary estimation of the transaction amount to obtain an authorization.

x. An AFD must not dispense scrip.

xi. Terminals at automated fuel dispensers do not qualify for the Qualified Rate set forth on the Merchant Application. In order to qualify for the Automated Fuel Dispenser Transaction Rate the authorization must be obtained within 1 day of the transaction date and the sale must be for less than the maximum amount set by Visa and MasterCard, currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

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

## 19. Equipment

If you enter into a lease or rental agreement for the use of credit card processing equipment, you understand that such agreement is separate and apart from the Merchant Processing Agreement and is subject to the terms and conditions of the lease or rental agreement. Neither Processor nor Member Bank is a party to such leases and neither is affiliated with the third party institutions. Such leases are typically non-cancelable 48-month leases. Termination of your Merchant Processing Agreement with Processor does NOT automatically terminate your equipment lease, it only terminates your processing agreement with Member Bank with respect to payment card processing and any other electronic transactions that are settled through the Member Bank as designated on your monthly statement from the Member Bank. You acknowledge that you have selected the equipment set forth on the Merchant Application based upon your own independent evaluation and you are not relying upon any warranty or representation of any third party, including but not limited to the representations of a sales representative, regarding the equipment. Processor is not responsible for and is not able to provide customer service for equipment, such as POS devices, installed by and/or operated by any third party. Merchant should contact the third party for service of this equipment. Merchant shall not allow any third party to install, remove, or modify any terminal software application of Processor or Member Bank without the express written consent of Processor or Member Bank.

## 20. Imprinters.

You must be in possession of a working imprinter, a supply of blank Sales Drafts and an accurate imprinter plate showing your DBA name, city, state, and Merchant Identification Number. If you are not in possession of the above equipment, you must contact Processor to obtain such equipment. Failure to use the equipment and supplies listed above will seriously increase your liability for chargebacks. You must obtain an imprint of a Card when a Card will not swipe. Obtaining an imprint of a Card will greatly reduce your chance of a chargeback.

## 21. Merchant Identification Number.

You are responsible for ensuring that your Merchant Identification Number ("MID") is kept confidential. When a change to your Merchant Account is required, you must disclose your MID to the Processor representative as confirmation that the person requesting the change has authority to do so. If the person requesting the change discloses the proper MID, Processor or Member Bank shall assume that person has the proper authority to make the change. You shall be fully liable for any changes to your Merchant Account after

disclosure of the MID. Processor or Member Bank may request from you additional information to further verify your identity.

## 22. Use of Third Party Terminals and/or Software.

If you elect to use the terminal of a third party provider of software (such as POS or Accounting System vendors) to capture and transmit to Processor or Member Bank, you assume full responsibility and liability for any failure of such third party provider to comply with the Rules. The third party provider is the source for information regarding authorizations and reversals that may be needed by Processor or Member Bank. Certain reversals require authorization information to reverse. You are responsible for obtaining this information from the third party provider. Processor and Member Bank are not liable for sales that were not received by them. In addition, Processor will not be liable for third party software or clearing of Association transactions.

## THE FOLLOWING RULES APPLY ONLY IF MEMBER BANK OR PROCESSOR SETTLES YOUR DISCOVER NETWORK CARD TRANSACTIONS

### 23. Discover Network Marks.

You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by Processor or Processor. "Discover Network Program Marks" mean the brands, emblems, trademarks, and/or logos that identify Discover® Network cards. Additionally, you shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to you by Processor or Processor pursuant to this Agreement or otherwise approved in advance in writing by Processor or Processor. You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by Processor or Processor in writing. You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any third party any of the rights to use the Discover Network Program Marks. Your authority to use the Discover Network Program Marks will terminate immediately upon notice from Processor, Member Bank or Discover Network.

### 24. Priority Check-Out Service.

If you offer priority check-out services, you must comply with the following requirements: (i) require the Cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a Sales Draft at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the Cardholder signature line of the Sales Draft; (iv) obtain a final authorization code for any additional amounts from the check-in estimate to equal the total amount to be billed to the Cardholder by following the normal authorization procedures; and (v) mail (at the address shown on the registration card) or otherwise deliver a copy of the Sales Draft and the itemized lodging bill (portfolio) to the Cardholder within seven (7) calendar days of check-out.

### 25. Card Checks.

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

### 26. Cardholder Contact.

You must not contact any Discover Network Cardholder with respect to any matter arising under the Discover Rules, except as required or permitted in the Discover Rules.

## IN ADDITION TO THE OTHER REQUIREMENTS SET FORTH IN THIS DOCUMENT, THE FOLLOWING RULES APPLY TO PIN-DEBIT CARD TRANSACTIONS

**27. Honoring PIN-Debit Cards.** You shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required by the Rules. You may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. You shall place the PIN Entry Device in an area accessible by all Cardholders and that will reasonably prevent others, including Merchant employees, from observing the PIN. Any penalties incurred by you for failure to comply with Debit Network Rules will be your responsibility. You assume exclusive responsibility for the consequences of any oral or written instructions you may give to Processor and/or Member Bank, for your failure to

properly access the services in the manner prescribed by Processor or Member Bank, and for your failure to supply accurate input information. You will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying Processor of any errors in the foregoing after receipt of the applicable report from Processor or Member Bank. You will reject all incorrect reports or output within two (2) business days after receipt of the reports or output. Note, also, that neither Processor nor Member Bank warrant the continuing availability of any Debit Network.

#### 28. PIN-Debit Card Sales Drafts.

A. **Procedures.** You shall deliver to the Cardholder at the time of a sale a true and completed copy of the Sales Draft evidencing a sale involving use of a PIN-Debit Card ("PIN-Debit Sales Draft"). The PIN-Debit Sales Draft must comply with the Rules and Laws. The following information must be included on the PIN-Debit Sales Draft: (i) the PIN-Debit Card account number; (ii) your DBA name; (iii) your city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. You may not require or request the Cardholder to provide or disclose their PIN in any oral or written manner to the Merchant. You shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of Processor or Member Bank. If surcharging is approved by Processor, it must be a separate line item on the PIN-Debit Sales Draft and must be in compliance with all Debit Networks' rules and federal and state laws and regulations. You shall not process any sale if an authorization code is not received through the electronic terminal. When a denial to an authorization request is received, the POS transaction shall not be completed unless completed as a store and forward transaction or resubmission transaction. A sale shall not be completed if you know or should know that the sale is fraudulent or not authorized by the Cardholder.

B. **Reversal.** A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect a reversal or void, Cardholder must reenter the PIN, the magnetic stripe reader must read the card, and you must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the PIN-Debit Sales Draft at which the original sale was initiated, but it need not be initiated at the same POS terminal.

C. **Returns.** All returns shall be processed in accordance with your normal procedures except that you or Cardholder shall not attempt to reverse a previously approved POS transaction unless otherwise permitted in accordance with the Debit Network Rules. Any sale known by you to be erroneous should be canceled and re-billed in the Cardholder's presence.

D. **Balance Inquiry.** Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to enter the PIN and use the magnetic stripe reader.

34. **Distribution and Storage of Information.** You shall not disclose a Cardholder's account information or any other personal information to third parties other than to your agents for the purpose of completing the sale or as specifically required by law or by the Rules. You shall store in a limited access area for at least 1 year after the date of sales all transaction records, and you shall make and retain for at least 2 years the original or legible microfilm copies of both sides of all transaction records. Prior to discarding, you shall destroy or make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. You may not store the Cardholder's PIN in any manner.

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

30. **Reversals.** You agree to pay Processor or Member Bank for any Debit Network fees, fines or charges imposed on you, Processor or Member Bank. Such reimbursement will be accomplished by the debit of the sum(s) involved from your Merchant Account. If Processor or Member Bank elects, at its discretion, to take action on reversals after the Debit Network time limits have expired, such action shall be done at additional cost. Upon request of a Debit Network, processor, Processor, or Member Bank, you will retrieve and forward to Processor or Member Bank, within the time frame required, either the original or a readable copy of the terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the Debit Network such information from such transaction records as it requests by telephone. You will, on request of the Debit Network, cooperate fully with the Debit Network and

the Card issuing participant in order that the participant may comply with the error resolution procedures.

31. **Your Name and Address.** All forms submitted to Processor or Member Bank must bear both your corporate and "Doing Business As" ("DBA") name.

#### 32. Equipment.

A. **Use.** You shall take all necessary steps to ensure that all POS Terminals and PIN Entry Devices operated in all of your locations:

- i. are placed in an area accessible by all Cardholders;
- ii. are available for use whenever you are open for business;
- iii. will function with minimal error, meeting all applicable technical specifications and security regulations; and
- iv. will require the Cardholder to enter the Cardholder's PIN at or near the check out location when initiating a POS transaction.

B. **Standards.** A PIN Entry Device must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released. A PIN Entry Device must comply with the PCI DSS requirements for POS and PED equipment. Terminals must have a magnetic stripe reader capable of reading Track 2 on the PIN-Debit Cards. PINs used in conjunction with any store and forward transaction or your resubmission must be encrypted and stored within a tamper-resistant security module. If your authorization system is capable of store and forward, it must comply with the Debit Networks' rules and regulations regarding this capability. Processor or Member Bank, the Issuer and the Debit Networks shall not be liable for any losses suffered by you arising from the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

33. **Supply of Information.** You must submit all information requested by the Debit Networks, Processor or Member Bank, including but not limited to lists and mailing addresses of terminals. You shall not sell, purchase, provide, or exchange account number information in any form, including but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, to any third party other than to your agents for the purpose of assisting you in your business, or to the Debit Networks, Processor or Member Bank, or pursuant to a government request.

35. **Left PIN-Debit Cards.** PIN-Debit Cards that are inadvertently left at your location must be held under dual control during the time they are retained. PIN-Debit Cards inadvertently left at your location may be returned to the Cardholder by you under the following conditions: (A) the Card was inadvertently left by the Cardholder at an on-premise location, (B) the Cardholder requests the Card within 1 business day, and (C) the Cardholder provides 2 forms of current identification, at least 1 of which is a photo identification. If the Cardholder has not requested the Card within 1 business day, the Card should be destroyed by cutting it in half through the stripe.

**SCHEDULE I**  
**Advantage Buyer Program**

**Member Bank is not a party to or liable for the Advantage Buyer Program (“ABP”). If Merchant elects to receive the ABP on the Merchant Application, the following terms and conditions shall apply:**

You will receive a discount card to be used in connection with ABP. You must use the discount card when purchasing office supplies from Office Depot in-store to receive the benefits of ABP\*. You must reference your Merchant Identification Number when purchasing supplies online or via telephone. If you make a qualifying purchase from Office Depot following the procedures set forth herein, you will receive a reimbursement for the cost of the office supplies, including terminal paper, ink and ribbon, up to a maximum of \$25.00 per month. The reimbursement will appear on your statement for the month following the purchase month. For example, if you places a qualifying order in April, a statement credit for the appropriate amount up to the maximum amount of \$25.00 will appear on your statement for May activity, which is received in June. Under ABP, you will receive a discount on the top 500 “best buy list” of most frequently used products and services, including discounted copy center services at Office Depot store locations. To be eligible for ABP, you must be actively processing transactions with us. We may immediately terminate or amend ABP upon notice to you. If you participate in ABP, your contact information, which may include your email address, will be provided to Office Depot. Additional information about ABP can be obtained by contacting Customer Service.

\*Note that to order terminal paper, ink and ribbon supplies, you must call Office Depot Red Team’s toll-free merchant support number at 866-220-7273 Option #0. These items are not available in-store or online.

## SCHEDULE II Check/ACH Services

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

### CONVERSION WITH OR WITHOUT GUARANTEE SERVICE AGREEMENT

#### TERMS AND CONDITIONS

This Agreement (the "Agreement") is entered into by and between Sage Payment Solutions EFT, Inc. ("SPS-EFT"), a Delaware corporation and the undersigned ("Merchant").

#### DEFINITIONS

"**ACH**" means the Automated Clearing House.

"**Application**" means the Application executed Processor and Merchant.

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

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

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

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

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

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

"**SPS-EFT Services**" means the services the Merchant has elected to purchase from SPS-EFT in the Application.

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

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

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

"**Processor**" means National Processing Company.

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

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

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

#### TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND SPS-EFT WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.

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

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

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

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

Merchant will not disclose and will keep confidential the terms and conditions of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**13. Warranties By Merchant.** Merchant warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to customer protection. Merchant also warrants not to change the nature of its business as indicated on the Application or to modify the ownership of the business without the prior written consent of SPS-EFT. With each transaction presented to SPS-EFT by Merchant for authorization, Merchant specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account; (b) that each debit or credit is for an amount agreed to by the customer; (c) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (d) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (e) the total amount of each sales receipt evidences all goods and services purchased in a single transaction



(No splitting check transactions to multiple checks); (f) Merchant has delivered the goods or completed the services identified in the authorized sales receipt draft; (g) each sales draft represents a bona fide direct sales transaction, in the ordinary course of Merchant's business, between the Merchant and the person presenting the check; (g) the person presenting the check has no claim, defense, right of offset, or dispute against Merchant in connection with the purchase of the goods or services and Merchant will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (h) Merchant has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law (the foregoing shall not prohibit Merchant from extending discounts to customers paying by cash or by any means other than electronic check processing); (i) all of Merchant's business locations engage in the business activities listed on the Application; (j) neither Merchant, nor any of its employees, have submitted checks drawn from their personal checking accounts on the Merchant's Equipment; (k) Merchant uses only the name and address shown on the front of the Agreement on all its sales drafts; (l) Merchant has not submitted duplicates of any transaction; (m) the banking information for the check on the printed sales receipt is correct; and (n) no transaction submitted for authorization to SPS-EFT is with or through an entity other than Merchant.

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

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

**16. Chargebacks And Returns.** Merchant shall bear all risk of loss, without warranty or recourse to SPS-EFT for the amount of any transaction, or other amounts due SPS-EFT (including SPS-EFT's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except that a Merchant which has purchased Conversion with Guarantee, shall not be liable for any returns or chargebacks covered by the Guarantee provided with that service. For Merchant's who have purchased Conversion without Guarantee, SPS-EFT shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in SPS-EFT's direct or indirect control and to chargeback such transactions to Merchant including, but not limited to, any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by Merchant; (b) where the purchaser and/or merchant breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the Application or approved in advance by SPS-EFT; (d) where the amount shown on the sales receipt differs from the copy given to the customer; (e) where a customer disputes in writing with SPS-EFT, or the customer's financial institution named on the check, that: (1) goods or services were received; (2) goods or services received conform to the description on the sales receipt; (3) goods or services were not defective; (f) where the customer has a claim, dispute or defense to payment related to the transaction, including a claim or defense authorized by a relevant statute or regulation, (g) where a Electronic Check Authorization Receipt was not received by SPS-EFT as required hereunder or is subject to chargeback by the customer's financial institution when acting on the customer's behalf; (h) where the transaction was generated through the use of an account that was not valid (as in, but not limited to, R03, R04 return codes) or effective (as in, but not limited to, R02 return code) on the transaction date; (i) where the transaction was made on an altered or counterfeit check authorization document; (j) where Merchant had notice not to honor the transaction and failed to reject the transaction; (k) code on the transaction date; ; (l) where Merchant disregarded any denial of authorization; (m) where no signature of the customer to the transaction appears on the Electronic Check Authorization Receipt; (n) where Merchant failed to obtain specific authorization in advance from SPS-EFT to complete the transaction and/or a valid authorization number was not on the Electronic Check Authorization Receipt; (o) where the customer has certified in writing to SPS-EFT or his financial institute on that no authorized user made or authorized the transaction; (p) where security procedures were not followed; (q) where the customer's financial institution or SPS-EFT has information that Merchant fraud occurred at the time of the transaction(s); (r) where the transaction is not a sale by Merchant, whether or not such transaction(s) was authorized by the customer; (s) where the check authorization was executed or a credit was given to Merchant in circumstances constituting a breach of any representation or warranty of Merchant or in violation of applicable law; (t) where Merchant has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (u) where a sales receipt was charged back and re-presented, whether or not the customer knows or consents to this re-presentment; and (v) where Merchant does not provide copy of the signed authorization receipt as requested by SPS-EFT within forty-eight (48) hours from the time of such request. For those Merchant's who have purchased Conversion with Guarantee, SPS-EFT shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in SPS-EFT's direct or indirect control and to chargeback such transactions to Merchant only for those items set forth in (a) through (v) above that are not covered by the Guarantee. If, with respect to any one of Merchant's outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of SPS-EFT, Merchant may be charged back for all transactions, this Agreement may be terminated immediately without notice, and Merchant's funds, including but not limited to those in incoming transactions and in Merchant's designated account, shall be held pursuant to the provisions herein. SPS-EFT shall retain any Discount Fee or Transaction Fee related to a chargeback transaction. Merchant agrees that SPS-EFT will assess up to twenty-five dollars (\$25.00) for each chargeback, or such increased or additional charges as may be established by SPS-EFT from time to time. Additionally, SPS-EFT shall have the same rights to debit Merchant's designated account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction, subject to the condition that if the Merchant has purchased the Conversion with Guarantee, SPS-EFT shall not have the right to debit the Merchant's designated account for items covered by that guarantee.

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

**18. Collections.** Merchant acknowledges and agrees that when collection services are required, SPS-EFT may utilize an appropriately licensed third party to perform such collection services. Merchant further authorizes SPS-EFT to continue collection efforts for Merchant. If collections are unsuccessful, SPS-EFT

shall be absolved of all responsibility. Any collection of checks after electronic presentment(s) shall be paid to the Merchant at percentage of the collected amount as set forth by SPS-EFT, fees excluded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**34. Effective Date.** This Agreement shall be effective only upon acceptance by SPS-EFT.

## CHECK GUARANTEE AGREEMENT TERMS AND CONDITIONS

This Agreement (the "Agreement") is entered into by and between Sage Payment Solutions EFT, Inc., a Delaware corporation ("SPS-EFT/SPS-EFT") and the undersigned ("Merchant").

- 1. TERM.** This Agreement shall continue indefinitely unless and until terminated by any party. Merchant may terminate this Agreement upon sixty (60) days written notice to SPS-EFT. Monthly minimum and subscription fees will continue in effect for this time. If Merchant terminates this contract within the first three (3) years of the contract of this contract, a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from Merchants account. SPS-EFT shall have the right to suspend or terminate this Agreement immediately and without notice to Merchant.
- 2. PRICING.** SPS-EFT shall charge and Merchant shall pay to SPS-EFT the Guarantee Fees and the Transaction Fees as stated in the Application for services with SPS-EFT. Merchant shall also pay a minimum monthly fee which shall be equal to the difference between the minimum monthly fee as set forth in the Application and the total Guarantee Fees paid by the Merchant for the applicable month. The Guarantee Fee for each check submitted shall be equal to the Discount Rate set forth in the Application multiplied by the face value of each personal check (hereinafter referred to as "Instrument") presented through the Merchant's Point of Sale Electronic device. A Transaction Fee shall be charged for each attempt at authorization of a check. Merchant shall also pay to SPS-EFT a Service Fee in the amount set forth in the Application. SPS-EFT reserves the right to increase any fee under this Paragraph 2. Merchant will be given written notice of any fee increase. Merchant shall also pay an Annual Subscription Fee of \$59.95 each year. Merchant must promptly notify SPS-EFT in writing of any dispute regarding fees under this Agreement. Merchant's written notice must include: (i) Merchant name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by SPS-EFT no later than ninety (90) days after the disputed fees have been paid by Merchant or charged to Merchant's account by SPS-EFT. Merchant's failure to so notify SPS-EFT will waive and bar the dispute.
- 3. LIMITS.** During the term of this Agreement, SPS-EFT shall purchase up to the assigned check limit amount of any authorized Instrument which is properly presented for purchase as a Qualified Instrument pursuant to Paragraphs 4, 5 and 6 of this Agreement. Merchant acknowledges that SPS-EFT may, at its sole discretion, increase or decrease the Check Limit with written notice.
- 4. AUTHORIZED INSTRUMENT.** To be authorized, an Instrument must meet the following criteria at the time of presentation for authorization:
  - a. The name of the person or entity presenting the Instrument ("Presenter") is commercially imprinted thereon. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee;
  - b. Merchant shall require the person presenting the Instrument to produce a valid driver's license or non-driver's State-issued identification card and to write the State of Issue and the identification number contained thereon on the face of the Instrument;
  - c. The address of the person upon whose account the Instrument is drawn is shown on the face of the Instrument. Merchant will verify that the address on the instrument matches that of the drivers license address submitted by the Presenter. Merchant will then input any corrected information on the instrument. If not commercially imprinted, Merchant will write this information. Post Office Boxes are not acceptable addresses for this purpose;
  - d. The Instrument is not a two party check, or a SPS-EFT check or a temporary check. The check has not been declined by SPS-EFT through its authorization process.
- 5. QUALIFIED INSTRUMENT.** For any Instrument to qualify for purchase by SPS-EFT it must be an Authorized Instrument as defined by the terms of Paragraph 4 and meet the following criteria:
  - a. The authorization number issued by SPS-EFT for the Instrument and the identification used for authorization is written on the face thereof;
  - b. The Instrument is payable to Merchant, and was issued in exchange for goods delivered or services rendered at the time of the Instrument's issuance by presenter;
  - c. The Instrument has been signed by the person presenting same and has been endorsed by Merchant;
  - d. The Instrument has not been altered;
  - e. The Instrument was not tendered, in whole or in part, in exchange for cash. Merchant has not received value in full or in part on the dishonored instrument through cash, credit, service, exchange, or repossession.
  - f. The Instrument was not presented as partial payment for a transaction, as payment for debt due the Merchant previous to the date of authorization, or as one of multiple payments in a single transaction;
  - g. The Instrument was not authorized under a state driver's license or identification number different than the one appearing on the Instrument;
  - h. The State ID code or the name of the issuing state must appear on the face of the Instrument being processed;
  - i. Merchant did not subsequently receive value, in full or in part, for the dishonored Instrument from the presenter thereof in the form of payment, credit, services, return, exchange or repossession;
  - j. The Instrument was not dishonored as a result of a "stop payment" order issued by the presenter to his financial institution which is based upon a dispute against the Merchant by the presenter, unless Merchant has selected coverage for this contingency;
  - k. The authorization for the Instrument was not secured by Merchant, its agents or employees under fraudulent pretenses. Merchant, its agents or employees has not submitted an Instrument for authorization with prior knowledge of the likelihood of the check being dishonored or the ID was forged, stolen or otherwise did not belong to the check writer or that was knowingly illegal, void, or invalid.
  - l. The date of the Instrument must be no more than one (1) day from the date on which the Instrument was authorized by SPS-EFT. The check number and the dollar amount of the instrument being authorized must be the same check number and dollar amount given at the time authorization is attempted.
  - m. The Instrument was not previously denied by SPS-EFT based on the same or a different driver's license number presented for authorization by Merchant;
  - n. The presenter's name, address and home and work telephone number must appear on the Instrument
  - o. Merchant must have followed instructions contained in SPS-EFT's Merchant Quick Reference Guide or other authorized, current published instructions;
  - p. SPS-EFT may change any of these procedures upon written notice to Merchant
- 6. CLAIM AND PURCHASE PROCEDURE.** SPS-EFT shall purchase Qualified Instruments, subject to the Check Limit, for each Instrument presented by Merchant under the following Claim Procedure:
  - a. Merchant agrees to require its depository bank to forward dishonored Instruments directly to SPS-EFT at its designated address
  - b. Merchant shall submit all authorized Instruments to SPS-EFT for purchase within thirty (30) days from the date of authorization of said Instrument. For the purposes of determining time frames, the United States Postal Service postmark shall control
  - c. SPS-EFT shall make payments to Merchant on properly presented Qualified Instruments within thirty (30) days from the receipt of the same.
- 7. COLLECTION OF INSTRUMENTS.** In consideration of SPS-EFT's purchase of the Qualified Instrument from Merchant, Merchant assigns all right, title and interest in and to the Instrument purchased by SPS-EFT. Merchant further agrees to provide SPS-EFT with any additional testimony or information reasonably requested by SPS-EFT to aid SPS-EFT in the collection or enforcement of said Instrument. Merchant agrees that SPS-EFT shall be entitled to all interest, collection, costs, damages and fees allowed by applicable law in addition to any amount received in collection or enforcement of the instrument.
- 8. NOTIFICATION OF RECEIPT OF PAYMENT.** Merchant agrees to promptly notify SPS-EFT of any payments on an Instrument which has been forwarded to SPS-EFT pursuant to the Claim Purchase recited herein. In the event the Instrument has been purchased by SPS-EFT, Merchant agrees to promptly forward payment of the amount received by Merchant to SPS-EFT with sufficient information to allow SPS-EFT to identify the Instrument to which the payment is to be credited.
- 9. NOTICES.** All notices required pursuant to the Agreement shall be in writing and shall be deemed to have been properly given twenty-four (24) hours after being deposited, with proper postage prepaid, in a facility of the United States Postal Service. Notices shall be sent to the respective addresses of the parties as recited in the Agreement. Each party warrants to the other that it will immediately inform the other party of any change in address.

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

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

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

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

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

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

The Remote Check Deposit (Check 21 Plus) Terms and Conditions agreement is entered into by and between Sage Payment Systems EFT, Inc. ("SPS-EFT") and the MERCHANT, whose name and address are identified on the Merchant Agreement as MERCHANT ("MERCHANT") to which this Remote Check Deposit (Check 21 Plus) Terms and Conditions is attached. SPS-EFT and MERCHANT will be referred to collectively as the "Parties" and interchangeably as the "Party." This Remote Check Deposit (Check 21 Plus) Service Terms and Conditions, and all signed addendums are collectively referred to as the "Agreement."

**WHEREAS,** SPS-EFT provides electronic transaction processing, Remote Check Deposit (Check 21 Plus), return check processing, and similar services (the "Solutions").

**NOW, THEREFORE,** in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows: If MERCHANT has not requested Remote Check Deposit (Check 21) with Guarantee service, or if SPS-EFT has not accepted the MERCHANT application for Remote Check Deposit (Check 21) with Guarantee service, SPS-EFT will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

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

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

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

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

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

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

**3.1 REQUIREMENTS FOR PROCESSING REMOTE CHECK DEPOSIT (CHECK 21 Plus).** MERCHANT shall comply with the following conditions when accepting checks for Remote Check Deposit (Check 21 Plus) and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established and/or revised by SPS-EFT from time to time. MERCHANT shall accept only the following checks as source documents to initiate Remote Check Deposit entries through SPS-EFT; (a) All instruments must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than or equal to the approved check limit assigned by SPS-EFT. (b) MERCHANT shall obtain proper identification, in the form of a valid driver's license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to SPS-EFT for

authorization. (c) MERCHANT shall scan each check through a SPS-EFT approved imaging device and/or an approved software vehicle to initiate Remote Check Deposit (Check 21 Plus) processing. (d) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (e) At the time MERCHANT initiates authorization with SPS-EFT, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. (f) Once SPS-EFT authorizes the transaction, MERCHANT shall retain and store the check in a secure location for a minimum period of ninety (90) days. Refer to "Check Retention" and "Image Requirements" below. (g) MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt. (h) No check may be altered after SPS-EFT authorizes acceptance of the check. Once SPS-EFT authorizes a transaction, MERCHANT may not resubmit a check electronically or deposit it by any means, unless instructed by SPS-EFT to do so in such case where the image quality does not meet the required standards to process the check via Remote Check Deposit. In addition, MERCHANT shall write the current phone number and driver's license number of the customer on the face of the check prior to scanning the check through the check reader. Failure to comply with the above minimum requirements will result in loss of guarantee (if Remote Check Deposit (Check 21 Plus) with Guarantee Service is selected on application) on ALL transactions, subject MERCHANT to chargebacks or withholding of funds, and may be grounds for immediate suspension/termination of services and indemnification of SPS-EFT by MERCHANT pursuant to this Agreement.

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

### **3.3 SECTION OMITTED**

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

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

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

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

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

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

**4.5 SOFTWARE.** SPS-EFT may select software and related user materials ("Software") for use in SPS-EFT's electronic check deposit services and the processing of Transactions. From time to time, modifications or updates to the Software may be available. Customer agrees to adopt such updates or modifications as they become available. MERCHANT acknowledges that any Software supplied by SPS-EFT for use in Transactions, including, but not limited to, any Software created or modified by SPS-EFT to be specific to MERCHANT's environment is the property of SPS-EFT or a third party from whom SPS-EFT

may have licensed rights in Software and that SPS-EFT claims and reserves all rights and benefits therein afforded under copyright and other laws. MERCHANT's license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to MERCHANT's own use of such Software for the purpose of processing Transactions as set forth in this Agreement. SPS-EFT's Software may not be used to process transactions with or through any other party without the express written consent of SPS-EFT, and may not be exported in contravention of U.S. or foreign export laws. MERCHANT further acknowledges that SPS-EFT's Software contains confidential information and trade secrets, which SPS-EFT has entrusted to MERCHANT in confidence. MERCHANT shall protect SPS-EFT's property and its interest in the trade secrets contained in the Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of SPS-EFT to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, MERCHANT specifically agrees that it will not delete, mask or obscure any proprietary notices, which SPS-EFT places on any Software.

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

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

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

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

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

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

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

**5.6 RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. Unless MERCHANT has been approved by SPS-EFT in advance to initiate credit entries for a lesser amount than the original check entry, MERCHANT must initiate a credit receipt for the same amount as the original check entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer's authorized representative prior to crediting Customer. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt



shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and void entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to SPS-EFT to initiate such reversal. MERCHANT shall give SPS-EFT enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by SPS-EFT.

**6.1 WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of SPS-EFT. As to the Transactions transmitted to SPS-EFT, MERCHANT represents and warrants to SPS-EFT that: (a) MERCHANT's customer has authorized MERCHANT to endorse all checks and other cash items for collection; (b) the preparation and presentment of the Transactions comply with the terms and conditions set forth in this Services Agreement; (c) the digital image of the check transmitted to SPS-EFT is a sufficient copy that is a true, correct, and accurate image that represents all the information on the front and back of the original check at the time the original check was truncated so that a Substitute Check created from the image will satisfy legal equivalence requirements and the image has not been altered in any manner by MERCHANT or any third party acting on behalf of MERCHANT; (d) MERCHANT, or any third party acting on behalf of MERCHANT, has reviewed and confirmed that the transmission of MICR line information is identical in all respects to the original check and that the encoded check amount is accurate; (e) MERCHANT understands that any message text or other information MERCHANT elects to add to the check image transmitted to SPS-EFT may cause the depository bank's endorsement not to be legible which may result in the delayed return of the Substitute Check or electronic representation if it is not paid; (f) the original check, or a paper or electronic representation, has not previously been deposited for collection with any financial institution, and no depository bank, drawee, drawer, or endorser will be asked to pay a check that it already has paid; (g) MERCHANT will retain the original check, or in the event MERCHANT utilizes the lockbox services of a third party or other similar services that MERCHANT's third party designee will retain the original check, until final settlement of the Transaction and for such additional period as may be required in the event of a disputed truncated or Substitute Check, including claims that the Substitute Check or electronic representation does not satisfy legal equivalence requirements, so that the original check can be processed for collection, and that MERCHANT or MERCHANT's third party designee will take reasonable efforts to safeguard any original checks until they are destroyed; (h) MERCHANT understands that the appearance of the original check and the use of certain background colors, decorative images, and choices in ink on the original check may affect the ability to produce a readable digital image of the check or the creation of a Substitute Check that meets legal equivalence requirements which may require the original check to be processed for collection (i) MERCHANT has no knowledge or notice of information to indicate that the transaction is fraudulent; (j) that each check is for an amount agreed to by the customer; (k) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (l) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt; (m) each check represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT's ordinary course of business and that the amount of the check evidences the customer's total indebtedness for the transaction involved; (n) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (o) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by cash or by any means other than Remote Check Deposit (Check 21 Plus) check processing; (p) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (q) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (r) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (s) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT's SPS-EFT approved check imaging device; (t) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (u) MERCHANT warrants that no transaction submitted for authorization to SPS-EFT is with or through an entity other than MERCHANT; MERCHANT further acknowledges that if for any reason funds are credited to MERCHANT in excess of the amount that MERCHANT is entitled to receive under this Agreement, MERCHANT shall return all such excess funds to SPS-EFT upon demand by SPS-EFT. Such excess funds may be collected by SPS-EFT by a debit to MERCHANT'S designated account initiated by SPS-EFT as provided in this Agreement. If for any reason such account does not have sufficient funds, then MERCHANT shall promptly remit the excess funds to SPS-EFT. Until the return of such funds to SPS-EFT, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of SPS-EFT.

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

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

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

**9.1 CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to SPS-EFT for the amount of any transaction, or other amounts due SPS-EFT (including SPS-EFT's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, or any other type of returns, except as set forth in the Remote Deposit Capture (Check 21 Plus) with Guarantee provisions below (provided that MERCHANT has purchased and SPS-EFT agreed to provide Guarantee service). SPS-EFT shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in SPS-EFT's direct or indirect control by reason of SPS-EFT's security interest granted to SPS-EFT by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for Remote Deposit Capture (Check 21 Plus) processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the MERCHANT application or approved in advance by SPS-EFT or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to SPS-EFT, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation; (e) where a check is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03 return code) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where MERCHANT failed to obtain specific authorization in advance from SPS-EFT to complete the transaction and/or a valid authorization number was not on the sales receipt (h) where security procedures were not followed; (i) where the customer's financial institution or

SPS-EFT has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) in any other situation where the check authorization was executed or a credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of applicable law or where MERCHANT has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (k) a sales receipt was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of SPS-EFT; MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. SPS-EFT shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that SPS-EFT will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by SPS-EFT from time to time. **Additionally, SPS-EFT shall have the same rights to debit MERCHANT's account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction. If MERCHANT has requested the Guarantee service, and SPS-EFT has accepted the application for Guarantee service, certain transactions are guaranteed, as listed in the Remote Check Deposit (Check 21 Plus) with Guarantee provisions below.**

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

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

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

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

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

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

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

**11.1 CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, SPS-EFT shall have no obligation to reimburse MERCHANT for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by MERCHANT or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by SPS-EFT; (d) Lost, stolen, altered or counterfeit, and SPS-EFT has reason to believe that MERCHANT failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which MERCHANT has accepted full or partial

payment; (f) One of multiple checks presented to MERCHANT in a single transaction for Remote Check Deposit (Check 21 Plus) processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by MERCHANT or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, the closing of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which MERCHANT returns cash back to the customer, unless MERCHANT is approved in writing by SPS-EFT for such cash back; (j) Checks for which SPS-EFT previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns. In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, not a post office box, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. MERCHANT shall ensure that this identifying information is legibly printed on the check prior to imaging the check.

**11.2 QUALIFIED INSTRUMENTS FOR REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** SPS-EFT has set the following guidelines that each instrument must meet to qualify for reimbursement under the Remote Check Deposit (Check 21) with Guarantee option: (a) At the time of authorization, the individual name or business name must be commercially imprinted on the instrument. In the case of a business entity, the instrument must have the business name and current business address and phone number (as listed with information) commercially imprinted on the check. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee. (b) Checks drawn on a United States Government entity or account, Cashier's Checks, Certified Checks, Money Orders, Traveler's Check will not qualify for check guarantee; (c) Checks written by one person for goods or services provided to a 3<sup>rd</sup> party do not qualify for guarantee. (d) An instrument must be authorized with a driver's license presented by the consumer to Merchant and viewed by Merchant at the time of authorization; (e) The customer's valid driver's license and the state code found on the "Quick Reference Guide" or if the guide is not available the abbreviation of the state that issued the identification card must be noted on the instrument at the time of authorization; (f) The authorization number received through the SPS-EFT approved check imaging device and/or software vehicle must be noted on the instrument at the time of authorization prior to MERCHANT storing the check; (g) A street address must be commercially imprinted on the check. If the current street address is not the one imprinted on the instrument at the time of the authorization, it must be crossed out and the most current address should be written on the check prior to scanning the check through the imaging device. Post Office (PO) Boxes only are not acceptable addresses; (h) If the phone number is not imprinted on the instrument, Merchant must note the phone numbers (home phone and business phone) on the instrument at the time of authorization prior to scanning the check through the imaging device; (i) The date of the instrument must be the date on which the instrument was authorized by SPS-EFT (no post-dated or held checks) if merchant was approved for Face to Face Check 21+ POS program; The date of the instrument must be no more than 14 days prior to the date the instrument was authorized by SPS-EFT if merchant was approved for Consumer Not Present Check 21+ Remote program; (j) The instrument must be payable to the Merchant's business (checks written to "cash" or "bearer", or to a 3rd party do not qualify for guarantee). (k) The amount authorized and the amount shown in words and figures on the check must agree; (l) The check number of the instrument being authorized must be the same check number given at the time authorization is attempted. No represented check is guaranteed unless the instrument was authorized with the same dollar amount as when the instrument was originally authorized; (m) In the event of a personal instrument, the signature on the check must be the same as the commercially imprinted name on the check and driver's license provided at the time of authorization; (n) The instrument has been filled out completely by the customer, has not been altered, or has not been tendered in whole or in part in exchange for cash, or was not payment for a prior debt due or a financed obligation; (o) The Merchant did not subsequently receive value in full or in part for the dishonored instrument from the presenter in the form of cash payment, credit, service, exchange or repossession; (p) The instrument was not dishonored as a result of a "stop payment" order issued by the presenter to the financial institution.; (q) The instrument was not previously denied by SPS-EFT based on the same or different driver's license number, which was previously presented for authorization by Merchant. The instrument must be authorized by entering the correct ID number into the SPS-EFT approved check imaging device and/or an approved software vehicle at the time of authorization; (r) The instrument was not one of multiple instruments or payment methods presented to Merchant for sales made that day (no splitting of checks); (s) SPS-EFT reserves the right and Merchant acknowledges that a receipt for the products and services provided to the check writer may be requested. The delivery of this receipt must be postmarked or faxed within 48 hours of the request and its acceptance by SPS-EFT will be required to qualify the claim for payment; (t) Merchant must have followed instructions contained in SPS-EFT's Merchant Quick Reference Guide or other authorized, current published instructions; (u) Merchant acknowledges that first time check writers may have a lesser check limit than those of frequent check writers and check limits are based on not only dollar amount, but number of checks written in a period of time to be determined solely by SPS-EFT; (v) The instrument was not issued in connection with a transaction described herein. Merchant must comply with the terms and conditions of this agreement, including but not limited to, the requirements described herein; (w) the Merchant, or its agents, and employees must not accept any instrument with prior knowledge that the instrument is likely to be dishonored or that the identification used was forged, stolen, or otherwise did not belong to the check writer, or that the transaction for which the instrument was tendered is illegal, void, or invalid.

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

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

**12.1 COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT agrees to comply with all applicable state or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to rules and procedural guidelines established by the Federal Trade Commission ("FTC") and Regulation E. (Reg. E). MERCHANT is solely responsible for any and all losses incurred by MERCHANT or SPS-EFT in the event MERCHANT initiates any transaction prohibited by Regulation E Rules or other rules or laws of the United States of America ("USA") or in breach of this Agreement. MERCHANT shall provide such information and certifications as SPS-EFT may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by SPS-EFT or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as SPS-EFT may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations

to SPS-EFT pursuant to this Agreement. MERCHANT further agrees to provide to SPS-EFT from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as SPS-EFT may request. MERCHANT grants to SPS-EFT continuing authority to conduct credit checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes SPS-EFT or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. SPS-EFT may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to SPS-EFT and provide SPS-EFT with the opportunity to terminate this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

jurisdiction for all such matters shall lie in Okaloosa County, Florida. MERCHANT acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by SPS-EFT.

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

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

**28.1 EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by SPS-EFT.

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

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

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

**1. GENERAL.**

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

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

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

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

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

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

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

**5. RULES**

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

## Schedule IV EBT Transactions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Schedule V**  
**Wireless Terminals**

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

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

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