



Tuition Express Merchant Transaction Processing Agreement

1 West Main, Ste. 201

Medford OR 97501

Phone: (888) 419-5033 Fax: 541-858-7008



INSTRUCTIONS

Application Version: Jul 2017

Complete Application
Complete all sections of this Application that pertain to your business.

Submit & Finalize
Once complete, click the "Submit and Finalize Application" button.

Sign and Send Additional Documents
Sign signature Page and send additional documents to Tuition Express.

Questions?
Call Tuition Express at: 1-888-419-5033

Additional Documents to Send

Once you submit an application, please print, sign and send the **Signature Page** to Tuition Express by Fax or Email. You will also be required to Fax or Email one or more of the following documents.

- Voided Check or Bank Letter confirming your bank routing/account number
- Government-Issued Photo ID (Driver's License)
- Business License or State Childcare License
- Tax ID Number Verification – IRS Form SS-4 or IRS Document showing Business Name and Tax ID Number

BUSINESS PROFILE

Ownership Type: Government (Fed St. Local) <input type="button" value="Help"/>	Services Provided: ACH + Credit Card Services <input type="button" value="Help"/>		
Legal Business Name: LFUCG Parks and Recreation <input type="button" value="Help"/>	Doing Business As: LFUCG Parks and Recreation <input type="button" value="Help"/>		
Business Address - No PO Boxes: 545 north upper street <input type="button" value="Help"/>	City: Lexington <input type="button" value="Help"/>	State: KY <input type="button" value="Help"/>	Zip: 40508 <input type="button" value="Help"/>
Mailing Address: 545 north upper street suite 303 <input type="button" value="Help"/>	City: Lexington <input type="button" value="Help"/>	State: KY <input type="button" value="Help"/>	Zip: 40508 <input type="button" value="Help"/>
Contact Name: Lee Farar Prater <input type="button" value="Help"/>	Contact Title: Office Manager <input type="button" value="Help"/>	Business Phone: 859-608-4602 <input type="button" value="Help"/>	Business Fax: 859-254-0142 <input type="button" value="Help"/>
Business Email: Lprater@lexingtonky.gov <input type="button" value="Help"/>	Additional Email Address: GKing@lexingtonky.gov <input type="button" value="Help"/>		
Business Web Site Address: www.lexingtonky.gov/esp-and-real-program <input type="button" value="Help"/>	Federal Tax ID# or SS#: 610858140 <input type="button" value="Help"/>	Start of Business - Month and Year: Aug 1993 <input type="button" value="Help"/>	
Type of Business: After school child care <input type="button" value="Help"/>	Type of Credit Card Processing: Cards Accepted <input type="button" value="Help"/>	Number of Locations: 1 <input type="button" value="Help"/>	MCC/SIC: 8351
Seasonal Business - Months Center is Closed No Yes <input type="button" value="Help"/>			
Is a 3rd party fulfillment house used to complete orders? NO Do any 3rd parties or software vendors have access to cardholder data? PROCARE SOFTWARE CARD CHARGING POLICY: When are the merchant's clients billed for services? N/A Delivery Method of Services: N/A			

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OWNER / OFFICER INFORMATION

Officer Name:

Linda Gorton

[Help](#)

Officer Title:

Mayor

[Help](#)

Enter the name of the person within your organization who is authorized to sign this agreement.

Save Progress

Procure Software is a registered ISO/MSP of First National Bank of Omaha 1620 Dodge St. Omaha NE 68197 Phone (800-853-9586)

BANK INFORMATION

In accordance with the agreed to Terms & Conditions, all fund transfers will be made to/from the account set forth in the voided check attached to this application and referenced below.

Bank Name: J P Morgan Chase	ABA Routing Number: 083000137	Account Number: 191020272	Account type: <input checked="" type="radio"/> Checking <input type="radio"/> Savings
Bank Address: 201 East Main Street	City: Lexington	State: KY	Zip: 40507

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PAYMENT ASSUMPTIONS

The values you enter in this section are assumed by all parties to be estimates (i.e. an educated guess) and do not affect your rates in any way.

Credit Card Processing

Requested Card Types:
 [Help](#)

MasterCard

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SCHEDULE OF FEES

<p align="center">Visa, Mastercard, Discover and AMEX OptBlue Rates</p> <p> Rate 1: 0.95% + \$0.33 per item Rate 5: 2.00% + \$0.33 per item Rate 9: 2.80% + \$0.33 per item Rate 2: 1.25% + \$0.33 per item Rate 6: 2.20% + \$0.33 per item Rate 10: 3.00% + \$0.33 per item Rate 3: 1.50% + \$0.33 per item Rate 7: 2.40% + \$0.33 per item Rate 11: 3.25% + \$0.33 per item Rate 4: 1.75% + \$0.33 per item Rate 8: 2.60% + \$0.33 per item Rate 12: 3.50% + \$0.33 per item </p> <p align="center"> Chargeback Fee: \$25.00 each Retrieval Fee: \$15.00 each </p> <p align="center"> All other applicable Association fees will be passed through at the Association's rate. For more information, please contact Tuition Express. </p>	<p>ACH Fees:</p> <p>Per Item Fee: \$0.75 each</p> <p>Return Item (RTN) Fee: \$3.50 each</p> <p>Notification Of Change (NOC) Fee: \$3.50 each</p> <hr/> <p>Monthly Maintenance Fee: \$10.00 per location</p> <p align="right"><i>MasterCard</i></p>
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TUITION EXPRESS MERCHANT TRANSACTION PROCESSING AGREEMENT ACCEPTANCE

By their execution below the undersigned parties agree to abide by the Merchant Transaction Processing Agreement (the "AGREEMENT"). The AGREEMENT consists of the Merchant Application and the Terms and Conditions (a separate attachment hereto), and MERCHANT acknowledges it has received and read the Terms and Conditions at the time of signing. MERCHANT warrants that the information provided on the Merchant Application is complete and accurate. MERCHANT authorizes Tuition Express and/or BANK to provide a copy of this Merchant Application to any third party for the services requested. MERCHANT, its signing officer, owner, partner and any Personal Guarantor authorize Tuition Express, BANK or their agents or assigns, to make from time to time, business or personal credit inquiries and other inquiries in connection with this Merchant Application or the Agreement. By executing this Merchant Application, MERCHANT, its signing officer, owner, partner and any Personal Guarantor acknowledge that Tuition Express and/or BANK has a legitimate business need for the information contained in any personal credit report that may be obtained in connection with this Merchant Application or the Agreement, and that this Application is a business transaction that was initiated by the MERCHANT and/or any Personal Guarantor identified above. If applicable, MERCHANT agrees by its signature below to the TMS Discover Agreement and the American Express OptBlue Program Agreement. TMS is not a party to the Merchant Transaction Processing Agreement. BANK is not party to these agreements and has no obligation or liability under such agreements. In witness whereof the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives effective on the date signed or approved by BANK.

 I have downloaded and read: [Tuition Express - Terms and Conditions - Jul 2017](#)

Signature Box: [Tuition Express Merchant Transaction Processing Agreement](#)

To be signed on the signature page of this application: 7257-6104-950-002

[Help](#)

Linda Gordon

VISA AGREEMENT ACCEPTANCE

MEMBER BANK (ACQUIRER) INFORMATION	IMPORTANT MEMBER BANK (ACQUIRER) RESPONSIBILITIES	IMPORTANT MERCHANT RESPONSIBILITIES
First National Bank of Omaha 1620 Dodge Street Omaha, NE 68197 800-853-9586	<ol style="list-style-type: none"> 1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant. 2. A Visa Member must be a principal (signer) to the Merchant Transaction Processing Agreement. 3. The Visa Member is responsible for educating Merchants of pertinent Visa Operating regulation with which Merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the Merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from settlement. 	<ol style="list-style-type: none"> 1. Ensure compliance with cardholder data security and storage requirements. 2. Maintain fraud and chargebacks below thresholds. 3. Review and understand the terms of the Merchant Transaction Processing Agreement. 4. Comply with Visa Operating Regulations.

The responsibilities listed above do not supersede the terms of the Merchant Transaction Processing Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Merchant have any problems.

Signature Box: [\(Visa Agreement Acceptance\)](#)

To be signed on the signature page of this application: 7257-6104-950-002

[Help](#)

Linda Gordon

PERSONAL GUARANTY

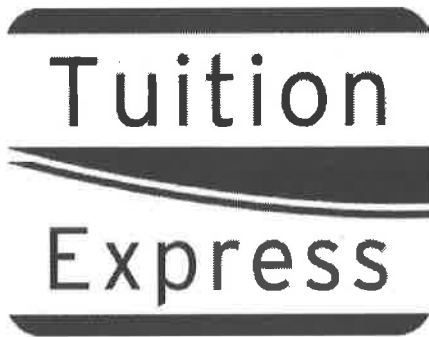
Personal Guaranty is not required for Public Corporations, Tax-Exempt Organizations or Government Entities.

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Terms and Conditions

Processing Terms and Conditions
Funds Transfer Instructions
Card Brand Rules
ATM/Debit Network Rules
TMS Discover Agreement
American Express OptBlueSM Program Agreement
Addendum
ACH Services Addendum
Rate Descriptions

Provided by



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

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PROCESSING TERMS AND CONDITIONS

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

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

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

1. GENERAL:

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

1.6 Security Standards.

- A. MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by LAWS or RULES. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. MERCHANT must keep all systems and media containing account, cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than MERCHANT's authorized personnel. MERCHANT must destroy, in a manner that will render the data unreadable, all such media that MERCHANT no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction.
 - B. If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify BANK of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must: (1) only allow the Merchant Providers access to the cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at www.visa.com) and the MasterCard Site Data Protection Program ("SDP") (found at www.mastercard.com) and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify BANK of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. MERCHANT is responsible for demonstrating MERCHANT's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers' ability to prevent future security violations. Any fees, fines or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify BANK and the CARD BRANDS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information.
 - C. In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT's cost, to provide all information requested by BANK, a CARD BRAND, other financial institutions, or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT and BANK) be considered BANK's confidential information. MERCHANT agrees that BANK may release to the CARD BRANDS, other financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to BANK in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the CARD BRANDS' websites.
- 1.7 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of or publication by the CARD BRANDS of amended RULES to MERCHANT shall be evidence that MERCHANT was provided with and/or received access to the amended RULES and has agreed to abide by them.
- 1.8 If MERCHANT is a healthcare provider or other entity covered by the Health Insurance Portability and Accountability Act of 1996, as amended, and the supporting regulations under 45 C.F.R. Part 160 and 164, as amended, MERCHANT agrees it will not provide BANK with Protected Healthcare Information (as defined in such act).

2. SPECIFIC OPERATING PROCEDURES:

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

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

3. PAYMENT OF SUMS DUE:

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

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

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

4. TERM OF AGREEMENT:

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

5. TERMINATION OF AGREEMENT:

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

terms in full force and effect as between TMS and MERCHANT, with BANK removed as a PARTY. If TMS is unable or unwilling to do so, then the AGREEMENT shall terminate as between TMS and MERCHANT as well.

5.4 Effect of Termination of the AGREEMENT:

- A. In the event that this AGREEMENT is terminated by BANK for cause, BANK may be required to report the name and address of MERCHANT and MERCHANT's principals to the CARD BRANDS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to BANK for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.
- B. MERCHANT hereby releases, indemnifies and holds BANK and the CARD BRANDS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by BANK or its Agents on the CARD BRANDS' merchant monitoring lists.

6. BANKRUPTCY:

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

7. INFORMATION AND DOCUMENTATION:

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

8. PROCESSING RESTRICTIONS:

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

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

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its: (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent establishment" on its web site along with MERCHANT's country of domicile, either: a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.
- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to BANK in accordance with the then current RULES and requirements of BANK and CARD BRANDS. If MERCHANT is using a third party's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the third party is providing the customer service, then such third party is a separate entity and is not an agent of BANK. MERCHANT understands the AGREEMENT is between BANK and MERCHANT. Disputes involving a third party shall be dealt with independently from BANK. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify BANK at the address set out in the AGREEMENT. MERCHANT must pay BANK regardless of any disputes it has with any third party. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to BANK, MERCHANT must disclose the relationship to BANK and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by BANK. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. BANK is not liable for SALES that it did not receive. MERCHANT understands that in the event MERCHANT rents BANK terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.
- 9.3 MERCHANT agrees that BANK is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that BANK is not responsible for and is not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. MERCHANT should contact the third party for service of this equipment. MERCHANT shall not allow any third party to install, remove, or modify any terminal software application of BANK without the express written consent of BANK. MERCHANT agrees BANK can only process SALES received by BANK, and any third party is responsible for ensuring SALES are formatted and transmitted to BANK in accordance with the then current requirements of BANK and CARD BRANDS. BANK may increase FEES if a third party presents SALES transactions not in accordance with the then current CARD BRANDS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by BANK.
- 9.4 MERCHANT shall assume full liability and shall indemnify and hold BANK and CARD BRANDS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

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

11. WARRANTIES AND INDEMNITIES:

- 11.1 MERCHANT understands that BANK merely provides processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, BANK does not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the CARD BRANDS, have never been

placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to BANK.

- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to BANK and does by this reference assign all its rights, title, and interest to payment for such SALES to BANK so that BANK may process SALES under the AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.
- 11.4 MERCHANT agrees to indemnify and hold harmless BANK, SPONSORS, and CARD BRANDS, including the CARD BRANDS' contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. BANK, SPONSORS, or the CARD BRANDS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify BANK, SPONSORS, and the CARD BRANDS for reasonable attorney fees or any other necessary expenses incurred by BANK by reason of such defense.
- 11.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 11.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

12. NOTICES:

- 12.1 All notices required under this AGREEMENT from MERCHANT shall be written paper notices effective, unless otherwise stated in AGREEMENT, upon the earlier of actual receipt thereof or the third (3rd) business day following such notices being deposited postage prepaid in the United States Postal System.
- 12.2 All written paper notices shall be sent to the following addresses, which may be changed by any PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:
- | | |
|--|--|
| <u>If to BANK:</u>
TSYS Merchant Solutions, LLC
Attention: Merchant Legal Department
1601 Dodge Street, 23E
Omaha, NE 68102-1637 | <u>If to MERCHANT:</u>
At the address set out in the Merchant Application or such alternative address as designated in writing by MERCHANT. |
| | <u>If to ISO:</u>
At the address set out in the Merchant Application or such alternative address as designated in writing by ISO. |
- 12.3 MERCHANT consents to receiving electronically rather than in paper form all notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at BANK's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Application. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that MERCHANT has such access. MERCHANT understands that there are costs related to access DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 12.1 and 12.2.

13. MISCELLANEOUS:

- 13.1 Assignment. Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of BANK. BANK may assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT. Without limiting the generality of the foregoing, MERCHANT shall not assign, transfer or encumber its present or future payment rights under this AGREEMENT or connected with a RESERVE ACCOUNT, if any; nor shall BANK be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless BANK consents in writing.
- 13.2 Governing Law and Forum. The PARTIES acknowledge and agree that this AGREEMENT and the Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this AGREEMENT and any Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or any Guaranty contained herein, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein.
- 13.3 Waiver of Jury Trial and Covenant Not to Participate in a Class Action. MERCHANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY ACTION, LAWSUIT, CLAIM, COUNTERCLAIM OR OTHER ACTION RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION GOVERNED BY THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY

JURY IS GIVEN KNOWINGLY, VOLUNTARILY AND INTENTIONALLY BY MERCHANT, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE BE AVAILABLE. BANK IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MERCHANT. MERCHANT ALSO COVENANTS NOT TO BRING OR PARTICIPATE IN ANY CLASS ACTION AGAINST BANK BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT. IF A CLASS PROCEEDING IS INITIATED AGAINST BANK, MERCHANT MAY NOT JOIN THAT PROCEEDING OR PARTICIPATE AS A MEMBER OF THAT CLASS. If MERCHANT brings legal action against BANK for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.

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

identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify BANK immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. BANK shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. Any PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.

- 13.19 **Communication.** MERCHANT authorizes BANK and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by BANK, its affiliates, or any third party that BANK shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold BANK, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.
- 13.20 **Disclosure.** The CARD BRANDS require that the following be disclosed to MERCHANT: (i) if applicable, BANK is in control of Independent Sales Organization's ("ISO") and/or Member Service Provider's ("MSP") performance under this AGREEMENT; (ii) BANK must pre-approve all FEES; (iii) the AGREEMENT may not be amended without BANK's express written consent; (iv) if applicable, ISO and/or MSP may not have access to MERCHANT's funds; and (v) BANK may not waive the foregoing requirements.

FUNDS TRANSFER INSTRUCTIONS

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

CARD BRAND RULES

NOTICE: This information is a summary of common CARD BRAND regulations; however card acceptance, processing and chargeback procedures are subject to change. Capitalized Terms not defined herein shall have the meaning ascribed to them in the CARD BRANDS' regulations. If there are any differences between the CARD BRANDS' regulations and these RULES, the CARD BRANDS' regulations will prevail in every instance. To the extent these RULES or the CARD BRANDS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern. The CARD BRANDS publish summaries of the regulations for merchants. Some of these summaries may be accessed at www.visa.com and www.mastercard.com, while AMERICAN EXPRESS and DISCOVER regulations may be accessed at <http://www.procaresoftware.com/pdfs/TuitionExpress/AmericanExpressMerchantOperatingGuide-2015-04.pdf>. The AMERICAN EXPRESS OptBlueSM Program Merchant Operating Guide may be accessed at <http://www.procaresoftware.com/pdfs/TuitionExpress/AmericanExpressMerchantOperatingGuide-2015-04.pdf>.

CARD BRAND CARD ACCEPTANCE PROCEDURES

1. Honor All CARDS:

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

- C. Add any surcharge to transactions, except as permitted by the RULES;
- D. Add any tax to transactions, unless applicable laws or regulations permit a MERCHANT to collect a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately;
- E. Enter into interchange any transaction receipt for a transaction that was previously charged back and subsequently returned to the MERCHANT irrespective of cardholder approval. The MERCHANT may pursue payment from the customer outside the VISA system;
- F. Request or use an account number for any purpose other than as payment for its goods or services, except to support the Health Care Eligibility Service or VISA Activation and Load Service, as specified in VISA regulations;
- G. Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT;
- H. Disburse funds in the form of cash, unless:
 - 1) MERCHANT is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign currency plus any commission or fee charged by the MERCHANT; or
 - 2) MERCHANT is participating in the Visa Cash Back Service, as further specified in the VISA regulations.
- I. Accept a Visa Card or Visa Electron card for the purchase of Scrip;
- J. Accept a Visa electron Card for Manual Cash Disbursement;
- K. Accept a Visa TravelMoney Card for a Manual Cash Disbursement;
- L. Accept a card to collect or refinance an existing debt that has been deemed uncollectible by the merchant providing the associated goods or services. (Note: A transaction that represents a payment on an existing obligation must be identified by the appropriate indicator in the Authorization Request and Clearing Record.);
- M. Enter into interchange a transaction that represents collection of a dishonored check;
- N. Require a cardholder to waive his or her rights to dispute the transaction as a condition of the SALE; or
- O. Establish a minimum or maximum transaction amount as a condition for honoring a Visa Card or Visa Electron Card, except as permitted by the RULES.

2. Sales Transactions:

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

3. SALES DRAFTS:

- 3.1 MERCHANT shall deliver to the cardholder, at the time of a SALE, a true, complete, and legible copy of the SALES DRAFT or suitable receipt evidencing a SALE involving use of CARD.
- 3.2 At a minimum, the following information must be included on the SALES DRAFT (additional information may be required by the RULES depending on the transaction):
 - A. final four digits of CARD account number. MERCHANT is responsible for determining and complying with all applicable LAWS regarding CARD account number truncation requirements and CARD expiration date requirements for SALES DRAFTS;
 - B. MERCHANT's d/b/a name;
 - C. MERCHANT's city and state;
 - D. amount of the SALE (including any applicable taxes or amount of adjustment or credit);
 - E. date of the SALE;
 - F. space for cardholder signature if applicable;
 - G. transaction payment type;
 - H. legend identifying the party to whom it will be delivered (i.e. merchant copy, customer copy);
 - I. authorization code;
 - J. clear imprint of the CARD unless successfully read by a magnetic stripe reader; and

- K. brief description of the goods or services sold, returned, or cancelled.
- 3.3 MERCHANT shall store all SALES DRAFTS and transaction records in the manner and timeframes required by the RULES.
- 3.4 MERCHANT shall not deposit SALES DRAFTS that it knows or should have known to be either fraudulent or not authorized by the cardholder.

4. Security Features:

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.
- 4.2 When an Electronic Cash Register ("ECR") or Electronic Draft Capture ("EDC") terminal reads the magnetic stripe on the CARD, MERCHANT must check the CARD account number on the terminal (if displayed) against the account number embossed on the CARD or follow such other security check as is mandated by TMS and BANK from time to time. If the CARD is read with a terminal that displays the CARD number and the SALES DRAFT is printed, MERCHANT shall verify that the account number displayed on the terminal match the embossed numbers on the face of the CARD. In the event that they do not match, the SALE must not be completed. Failure to follow these checks and procedures will expose MERCHANT to CHARGEBACKS.
- 4.3 In the event that the terminal is programmed to require MERCHANT to key the last four (or more) digits of each CARD used for a SALE, and the terminal indicates that the numbers keyed are not the same as those present on the card, the SALE must not be completed.
- 4.4 In order to protect the integrity of the CARD BRANDS' systems, BANK may hold funds settled by MERCHANT in the event of a breach of AGREEMENT, irregular SALES activity, or receipt of detrimental financial information.

5. Authorization:

- 5.1 On all SALES, MERCHANT shall request an authorization for the total amount of the SALE and shall record the positive authorization response code on the SALES DRAFT prior to completing the SALE. If MERCHANT receives a negative authorization response, MERCHANT shall not complete the SALE and may receive further instructions from the authorization center.
- 5.2 MERCHANT may not, after receiving a negative response or decline on an authorization request:
- A. split the SALE amount into multiple transactions in order to obtain a valid authorization for each one, so that the separate transactions total the original dollar amount of the SALE; or
 - B. attempt any further electronic or voice authorizations.
- 5.3 In the event that an unsigned CARD is presented at the point of sale, MERCHANT must request that cardholder provide proof of identification and sign the card before completing the SALE. Details of the identification provided must be placed on the SALES DRAFT unless prohibited by local law. In the event that the cardholder refuses to do so, the SALE must not be completed.
- 5.4 MERCHANT agrees to obtain authorization from the voice authorization center as required by the RULES.

6. Returned Merchandise and Adjustments:

- 6.1 If MERCHANT agrees to credit a cardholder for any merchandise or service that was the subject of a SALE, MERCHANT must provide a Credit Transaction Receipt using the same CARD as in the original SALE. Such credit shall not exceed the original SALE amount. MERCHANT shall not make any cash refund on SALES.
- 6.2 MERCHANT may limit its acceptance of returned merchandise or establish a policy to make price adjustments for any SALE provided proper disclosure is made and purchased goods and service are delivered to the cardholder at the time of the SALE.
- 6.3 Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the SALES DRAFT prior to obtaining the cardholder's signature on the SALES DRAFT. MERCHANT may stipulate other special circumstances or terms of the SALE on the SALES DRAFT.
- 6.4 For each credit transaction, MERCHANT must be able to provide TMS and BANK with evidence of the original purchase.

7. Cash Transaction:

- 7.1 MERCHANT shall not receive money from a cardholder and subsequently prepare a credit voucher for the purpose of depositing to the cardholder's account.
- 7.2 Cash disbursement by MERCHANT to a cardholder is not permitted unless you are a financial institution with written authorization from BANK and as specifically permitted by the RULES. Additionally, MERCHANT shall not make any cash advance to an employee, principal, or family member of MERCHANT, who is a cardholder.
- 7.3 MERCHANT will not accept SALES from cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

8. Use of Promotional Materials and Marks:

- 8.1 MERCHANT will adequately display promotional materials as required by the RULES or provided by TMS and BANK to inform the public that MERCHANT will honor CARDS.
- 8.2 MERCHANT shall prominently display the CARD BRANDS' Marks at or near all major public access points to inform the public that MERCHANT will honor CARDS. MERCHANT shall always display the Marks in their full color version. The MERCHANT must display the Marks upon acceptance of the CARDS.
- 8.3 MERCHANT shall not use the CARD BRAND'S Marks for any other purpose without the express written consent of the CARD BRANDS. MERCHANTS who use the Marks shall obtain no interest in the Marks except the right to use them in accordance with the RULES.
- 8.4 All uses by MERCHANT of decals, signs, printed and broadcast materials, and other promotional materials must be in conformity with the requirements of the CARD BRANDS, SPONSORS, TMS and BANK. MERCHANT will not at any time do or cause to be done any act or deed in any way impairing or intended to impair TMS's, BANK's, CARD BRANDS', or SPONSOR's exclusive right, title, and interest in and to its respective protected Marks.
- 8.5 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS' services.
- 8.6 MERCHANT may not refer to the CARDS in stating eligibility for its products, services, or membership.

- 8.7 MERCHANT shall permit TMS, BANK, CARD BRANDS, and SPONSORS, at all reasonable times, to inspect the MERCHANT's use of the promotional materials and Marks. Should any materials so submitted fail to meet with TMS's, BANK's, CARD BRANDS', or SPONSOR's approval or fail to comply with the RULES, for any reason whatsoever, the MERCHANT agrees to cease using such material. Neither TMS, BANK, CARD BRANDS, nor SPONSOR shall have any liability to MERCHANT relating to disapproval of use of such materials.
- 8.8 MERCHANT's right to use and display the Marks shall terminate upon termination of this Agreement. Upon termination, voluntary or involuntary, the MERCHANT shall immediately remove all Marks from all terminals and from any other display location maintained by such MERCHANT and shall immediately cease the use of all promotional materials using the Marks of CARD BRANDS.
- 9. CARDS Other than VISA, MASTERCARD, AMERICAN EXPRESS and DISCOVER:**
- 9.1 MERCHANT is required to comply with the specific regulations, as set out in its agreements with CARD BRANDS other than VISA, MASTERCARD, AMERICAN EXPRESS, and/or DISCOVER with regard to the acceptance of cards issued by such CARD BRANDS. TMS and BANK are not responsible for the funding of such transactions. Further, TMS and BANK are not responsible for payment for SALES for any CARD BRANDS unless and until TMS and BANK have received payment for such SALES from the CARD BRANDS.

CHARGEBACKS

10. General:

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

11. CHARGEBACK Reasons:

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

12. CHARGEBACK Monitoring Programs:

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

13. Other CARD BRAND Monitoring Programs:

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

14. CARD BRAND Registration Programs:

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

UNIQUE BUSINESS REQUIREMENTS

15. Card Not Present Merchants:

- 15.1 MERCHANT may not accept Card Not Present SALES unless AGREEMENT specifically refers to Card Not Present SALES. If this is not the case, MERCHANT should contact TMS and BANK if they wish to accept Card Not Present SALES and provide descriptions of product types and marketing methods. TMS and BANK may refuse MERCHANT permission to accept Card Not Present SALES.
- 15.2 If MERCHANT is specifically authorized by TMS and BANK to accept Card Not Present SALES, no SALE shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the cardholder.
- 15.3 Card Not Present SALES do not require the cardholder's signature on the SALES DRAFT. MERCHANT is required to obtain the valid dates for each CARD used for a SALE. The expiration date must be submitted as part of the Authorization inquiry.
- 15.4 If MERCHANT supplies goods and/or services under a Pre-Authorization Order ("PO"), it shall not charge a cardholder for goods after receiving notice from a cardholder that the authorization for goods or services is canceled.

- 15.5 The receipt of a valid Authorization does not protect MERCHANT from CHARGEBACKS on SALES for the Unauthorized Purchaser reason code. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code.
- 15.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.
- 15.7 Card Not Present MERCHANTS are encouraged to investigate the CHARGEBACK protection attributes of the various Address Verification Services and Card Verification Value Services available from CARD BRANDS.
- 15.8 MERCHANT, or its agent, shall implement and maintain all of the security requirements specified in PCI. MERCHANT shall immediately notify TMS and BANK of the use an agent. MERCHANT shall immediately notify TMS and BANK of any suspected or confirmed loss or theft of material or records that contain account information and both:
 - A. demonstrate its ability to prevent future loss or theft of account or transaction information; and
 - B. allow the CARD BRANDS, or an acceptable independent third party, to verify this ability by conducting a security review.
- 15.9 Electronic Commerce Merchants (VISA):
 - A. VISA makes the 3-D Authentication system available to Electronic Commerce Merchants as a way to reduce fraud in Internet Transactions. Electronic Commerce Merchants may elect to implement 3-D Secure. Electronic Commerce Merchants that process 3-D Secure Transactions must comply with requirements specified in the: (i) VISA Operating Regulations; (ii) the VISA 3-D Secure: Merchant Implementation Guide and (iii) VISA Cardholder Information Security Program.
 - B. A web site operated by an Electronic Commerce Merchant must contain all of the following information: (i) a complete description of the goods or services offered; (ii) the merchant's returned merchandise and refund policy; (iii) the merchant's customer service contact, including electronic mail addresses and/or telephone number; (iv) the transaction currency; (v) any export or legal restrictions (if known); (vi) the merchant's delivery policy; (vii) the address of the merchant's permanent establishment; (viii) the merchant's consumer data privacy policy; and (ix) the security method for the transmission of payment data.
 - C. Electronic Commerce Merchants must offer cardholders a secure transaction method, such as: (i) Secure Sockets Layer (SSL), or (ii) 3-D Secure.

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

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

17. T&E Services:

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

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

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

- 17.2 Visa Reservation Service: Any MERCHANT who accepts CARDS to guarantee reservations must do so in accordance with the following requirements:
 - A. MERCHANT must accept all VISA CARDS;
 - B. MERCHANT will obtain the cardholder's account number, expiration date, and name embossed on the CARD. MERCHANT must quote to cardholder the rate of reserved accommodation, MERCHANT name and address, and the Confirmation Code advising that it be retained. Advise the cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the cardholder will be billed for one night's lodging plus applicable taxes. If requested, the MERCHANT will provide a written confirmation with the above information including the VISA Reservation Service provisions relating to the cardholder's obligation, and any other reservation details;
 - C. MERCHANT must accept all cancellations prior to the specified time. The MERCHANT must not require more than seventy-two (72) hours cancellation notification prior to the scheduled arrival date. But, if the cardholder makes the reservation within seventy-two (72) hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If the MERCHANT requires that the cardholder cancel before 6:00 p.m. on the arrival date, the MERCHANT must mail the cancellation policy to the cardholder;
 - D. if the reservation is properly canceled, MERCHANT must provide a cancellation code and advise the cardholder to retain it. If requested, MERCHANT must mail a confirmation of cancellation that includes the following: cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
 - E. if cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. MERCHANT may then complete a SALES DRAFT for one night's lodging plus applicable tax, indicating the cardholder's account number, expiration date, and name embossed on the CARD and the words "No Show" on the cardholder signature line. MERCHANT must obtain an authorization code for the no show transaction; and
 - F. if guaranteed accommodations are unavailable, MERCHANT must provide cardholder with comparable accommodations for one night at another establishment, transportation to the location of the alternative establishment, and if requested, provide cardholder with a three (3) minute telephone call and message forwarding to the alternate establishment. These services shall be provided at no cost to cardholder.

18. Pre-authorized Health Care Transactions:

- 18.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:
- A. a request for the services to be charged to the cardholder's account;
 - B. assignment of insurance benefits to the MERCHANT;
 - C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
 - D. duration of time, not to exceed one (1) year, for which permission is granted; and
 - E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.
- 18.2 MERCHANT must:
- A. retain a copy of the order form during the period it is in effect;
 - B. provide a copy of the order form upon TMS's and/or BANK's request;
 - C. type or print the words "Pre-authorized Health Care" on the signature line of the SALES DRAFT; and
 - D. submit a SALES DRAFT within ninety (90) days of the service date and request authorization for the amount due upon receipt of notice of adjudication from the cardholder's insurance company.
- 18.3 MERCHANT must not complete a Pre-authorized Health Care Transaction after receiving a notice of cancellation from cardholder, TMS, BANK, or if the MERCHANT receives a decline response.

19. Recurring Transactions:

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

20. Employee Purchases:

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

MISCELLANEOUS RULES

21. Liability of MERCHANT:

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

22. Supply of Information:

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

ATM/DEBIT NETWORK RULES

NOTICE: The following summary of NETWORK RULES only applies to ATM/Debit transactions that are processed by a Cardholder entering a PIN. Such ATM/Debit transactions are subject to the rest of the Agreement, as applicable, except to the extent the terms of the NETWORK RULES summary directly conflicts with another provision of this Agreement, in which case, the terms of this NETWORK RULES summary will control. The following information is a summary of common rules that are specific to ATM/Debit Network transactions; however card acceptance, processing and chargeback procedures are subject to change. If there are any differences between the NETWORKS' regulations and these Rules, the NETWORKS' regulations will prevail in every instance. To the extent these RULES or the NETWORKS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern.

ATM/DEBIT NETWORK CARD ACCEPTANCE PROCEDURES

1. Discrimination:

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

2. SALES DRAFTS:

- 2.1 MERCHANT shall deliver to the cardholder at the time of a SALE a true and completed copy of the SALES DRAFT evidencing a SALE involving use of a CARD. The SALES draft must comply with the requirements of all RULES, and LAWS.
- 2.2 The following information must be included on the SALES DRAFT: (i) CARD account number; (ii) MERCHANT's DBA name; (iii) MERCHANT's city and state; (iv) amount of SALE; and (v) SALE date.
- 2.3 A SALES DRAFT shall be made available to the cardholder at each terminal.
- 2.4 MERCHANT may not require or request the cardholder to divulge the PIN belonging to that cardholder.
- 2.5 MERCHANT shall not impose any fee or charge without the prior written consent of TMS and BANK. If surcharging is approved by TMS and BANK, it must be a separate line item on the SALES draft and must be in compliance with all NETWORKS' rules, and LAWS.
- 2.6 MERCHANT shall not process any SALE if the terminal does not receive an authorization code. When a denial to an authorization request is received, the POS transaction shall not be completed, unless completed as a MERCHANT Store and Forward Transaction or Resubmission Transaction.
- 2.7 A SALE shall not be completed if the MERCHANT knows or should know that the SALE is fraudulent or not authorized by the cardholder.
- 2.8 A SALE may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the SALE was initiated. To effect a reversal or void, cardholder must re-enter the PIN, the magnetic stripe reader must read the card, and MERCHANT must transmit the trace number and the exact dollar amount of the SALE to be reversed or voided. A reversal or void must be initiated at the same MERCHANT identified on the SALES draft at which the original SALE was initiated, but need not be initiated at the same POS terminal.
- 2.9 All returns shall be processed in accordance with the MERCHANT's normal procedures, except that MERCHANT or cardholder shall not attempt to reverse a previously approved POS Transaction, unless otherwise permitted in accordance with the rules.
- 2.10 Any SALES known by the MERCHANT to be erroneous should be canceled and re-billed, in the cardholder's presence.
- 2.11 Balance inquiries may be performed only by the cardholder at a cardholder-operated terminal and shall at all times require the cardholder to enter the PIN and use the magnetic stripe reader.

3. SALES DRAFTS - Distribution and Storage of Information:

- 3.1 MERCHANT shall not disclose a cardholder's account information or any other personal information to third parties other than to MERCHANT's agents for the purpose of completing the SALE or as specifically required by law or by the RULES.
- 3.2 MERCHANT shall store in a limited access area for at least one (1) year after the date of SALES all transaction records and MERCHANT shall make and retain for at least two (2) years the original or legible microfilm copies of both sides of all transaction records; Prior to discarding, MERCHANT shall destroy or make unreadable all material containing cardholder account numbers.
- 3.3 There are no voice authorizations for transactions and no manually imprinted SALES drafts.

CHARGEBACKS

4. General:

- 4.1 MERCHANT agrees to pay TMS and/or BANK for any NETWORK fees, fines or charges imposed on MERCHANT or TMS and BANK. Such reimbursement will be accomplished by the debit of the sum(s) involved from the MERCHANT's DESIGNATED ACCOUNT.
- 4.2 Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS.
- 4.3 TMS agrees to mail all CHARGEBACK documentation to MERCHANT promptly to MERCHANT's address shown on AGREEMENT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If TMS and BANK elect, at their discretion, to take action on CHARGEBACKS after the NETWORK time limits have expired, such action shall be done at additional cost. Upon request of NETWORK, TMS, or BANK, the MERCHANT will retrieve and forward to TMS, within the time frame required by the

NETWORKS, either the original or a readable copy of the Terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the NETWORK such information from such transaction records as it requests by telephone. The MERCHANT will, on request of the NETWORK, cooperate fully with the NETWORK and the card-issuing participant in order that the participant may comply with the error resolution procedures.

5. Monitoring Programs:

- 5.1 If certain monitoring programs identify MERCHANT, TMS's and BANK's ability to reverse CHARGEBACKS can be severely restricted.
- 5.2 Certain Monitoring Programs review the number of Lost, Stolen and Counterfeit CARDS accepted by MERCHANT in its normal course of business. The purpose of these Programs is to reduce the use of Lost, Stolen and Counterfeit CARDS.
- 5.3 In the event that MERCHANT is identified under these PROGRAMS as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on Lost, Stolen, or Counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated on notice by TMS and BANK.

OPERATIONAL REQUIREMENTS

6. MERCHANT Name and Address:

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

7. Equipment:

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

8. Left CARDS:

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

9. Security Features:

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

TMS DISCOVER AGREEMENT

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

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

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

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

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

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

- 1. Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.
- 2. The terms of the AGREEMENT, including the Merchant Application, are hereby incorporated by reference into this TMS DISCOVER AGREEMENT. References to BANK under the AGREEMENT shall be replaced with references to TMS. References to VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD") under the AGREEMENT shall be

replaced with reference to DISCOVER. DISCOVER shall replace references to VISA and MASTERCARD under the definition of "CARD BRANDS" under the AGREEMENT. Financial service cards issued by DISCOVER shall replace references to financial services cards issued by VISA and MASTERCARD under the definition of "CARDS" under the AGREEMENT. Sales transactions using DISCOVER CARDS shall replace references to Sales transactions using VISA and MASTERCARD cards under the definition of "SALES" under the AGREEMENT. The rules and regulations of DISCOVER, which may be accessed at www.tsystransactionssummary.com, shall replace references to the rules and regulations of VISA and MASTERCARD under the definition of "RULES" under the AGREEMENT. MERCHANT agrees to comply with and assure that Merchant Providers comply with the Discover Information Security and Compliance ("DISC") (found at <http://www.discovernetwork.com/fraudsecurity/disc.html>).

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

AMERICAN EXPRESS OPTBLUESM PROGRAM AGREEMENT

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

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

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

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

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

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

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

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

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

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

The following terms and conditions apply to MERCHANT's participation in the AMERICAN EXPRESS OptBlueSM Program ("AMERICAN EXPRESS CARD ACCEPTANCE"):

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

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

autodialed short message service (SMS or "text") messages or automated or prerecorded calls. MERCHANT agrees that it may be sent fax communications.

MERCHANT may opt-out of receiving future commercial marketing communications from AMERICAN EXPRESS by contacting ISO. Note that MERCHANT may continue to receive marketing communications while AMERICAN EXPRESS updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude MERCHANT from receiving important transactional or relationship messages from AMERICAN EXPRESS.

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

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

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

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

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

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

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

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

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

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

ii. **Limitations on Arbitration.** If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated. The arbitrator's authority is limited to Claims between MERCHANT, ISO, and AMERICAN EXPRESS. Claims may not be jointly or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it

will apply only to the specific case brought by MERCHANT, ISO or AMERICAN EXPRESS and cannot be used in any other case except to enforce the award as between MERCHANT, ISO and AMERICAN EXPRESS. This prohibition is intended to, and does, preclude MERCHANT from participating in any action by any trade association or other organization against AMERICAN EXPRESS. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

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

iv. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the AGREEMENT or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.

v. Split Proceedings for Equitable Relief. MERCHANT, ISO, or AMERICAN EXPRESS may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.

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

vii. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, MERCHANT or AMERICAN EXPRESS may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this AGREEMENT shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, *inter alia*, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider *de novo* any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where MERCHANT's headquarters or MERCHANT's assets are located.

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

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

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

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

Except as expressly permitted by *LAWS*, *MERCHANT* must not:

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

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

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

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

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

MERCHANT must comply with and assure that *Merchant Providers* comply with the American Express Data Security Operating Policy ("DSOP") (found at www.americanexpress.com/datasecurity), the American Express Program Merchant Data Security Requirements (found at <http://www.procaresoftware.com/pdfs/TuitionExpress/AmericanExpressMerchantOperatingGuide-2015-04.pdf>) and the American Express Information Protection Contract Requirements (IPCR) (found at <http://www.procaresoftware.com/pdfs/TuitionExpress/InformationProtectionContractRequirements-2015-04.pdf>.)

ADDENDUM TO MERCHANT TRANSACTION PROCESSING AGREEMENT

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), PROCARE SOFTWARE, LLC d/b/a PROCARE SOFTWARE ("PROCARE" or "ISO"), and *MERCHANT*, the name of which is set out in the Merchant Transaction Processing Agreement.

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

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

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

1. Capitalized terms which are not defined herein shall have the same meaning as when defined in the *AGREEMENT*.

2. The PARTIES agree to replace Section 2.3 of the AGREEMENT in its entirety with the following:
 - 2.3 MERCHANT agrees to accept valid CARDS of each of the selected NETWORKS and any minimums, maximums, convenience fees, processing fees, or surcharges imposed by MERCHANT will be in accordance with the NETWORKS, RULES and LAWS. MERCHANT agrees to comply with Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.

3. The PARTIES agree to replace Sections 4.1 and 4.2 of the AGREEMENT in their entirety with the following:
 - 4.1 The initial term of this AGREEMENT shall be for one (1) month ("INITIAL TERM") commencing on the date this AGREEMENT is executed by an authorized agent of BANK or approved and uploaded by BANK's Risk Department.
 - 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive one (1) month periods ("RENEWAL TERM") unless terminated as set out below.

4. The PARTIES agree to replace Section 11.4 of the AGREEMENT in its entirety with the following:
 - 11.4 MERCHANT agrees to indemnify and hold harmless BANK, ISO, SPONSORS, and CARD BRANDS, including the CARD BRANDS' contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. BANK, ISO, SPONSORS, or the CARD BRANDS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify BANK, ISO, SPONSORS, and the CARD BRANDS for reasonable attorney fees or any other necessary expenses incurred by BANK by reason of such defense.

5. The PARTIES agree to add the following to Section 12.2:

If to PROCARE:
Procare Software, LLC d/b/a Procare Software
3581 Excel Drive
Medford, Oregon 97504

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

7. Except as amended herby, BANK, PROCARE, and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

AUTOMATED CLEARING HOUSE ("ACH") SERVICE ADDENDUM

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), BLUM INVESTMENT GROUP, INC. d/b/a PROCARE SOFTWARE ("PROCARE"), and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

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

WHEREAS, the PARTIES desire to amend the AGREEMENT to add Automated Clearing House ("ACH") Services.

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

1. GENERAL

- 1.1 Capitalized terms that are not defined herein shall have the same meaning as when defined in the AGREEMENT or the REGULATORY RULES (as defined herein).
- 1.2 The PARTIES agree to add ACH Services (as set forth below) to the definition of SALES and SERVICES as defined in the AGREEMENT.

2. ACH SERVICES TERMS AND CONDITIONS

- 2.1 **Services.** We agree to support the ACH entry types, the FEES, and Services designated in the Merchant Application. The "ACH Services" contemplated by this Agreement will be either: (i) our standard ACH services, which we will provide to you and which will consist of, but may not be limited to, processing ACH transactions based on information you provide; or (ii) if you have engaged a third party service provider (your "TPS"), our services will consist of serving as the Originating Depository Financial Institution ("ODFI") for ACH entries submitted to us by your TPS and debiting and/or crediting the amount thereof to the DESIGNATED ACCOUNT. We agree to comply with the terms of this ADDENDUM and agree to use ordinary care in performing ACH services hereunder. So long as we exercise such diligence as the circumstances may require, our failure or delay in performance will be excused if due to interruption of communications or computer facilities, failure of equipment, emergency conditions, or other circumstances beyond our control. You are responsible for any implementation required on your end, including but not limited to systems and personnel required to collect and transmit the files to us or your TPS in the required format, as well as fraud detection tools, and any other obligations designated by the REGULATORY RULES, as defined herein.
 - 2.1.1 **Your Use of a Third Party Sender.** If you are using a TPS, then that TPS must have an agreement with us. The TPS shall be considered your agent with full power and authority to act on your behalf until we receive written notice from you to the contrary and have had a reasonable opportunity to act thereon. **YOU UNDERSTAND AND AGREE THAT YOUR TPS**

HAS FULL POWER AND AUTHORITY TO PROVIDE US WITH INSTRUCTIONS PERTAINING TO ACH ENTRIES FOR WHICH YOU WILL BE RESPONSIBLE AND THE AUTHORITY TO INITIATE ACH DEBITS AND CREDITS TO THE DESIGNATED ACCOUNT. WE HAVE NO OBLIGATION OR LIABILITY WHATSOEVER WITH RESPECT TO: (1) ACTS, ERRORS, OMISSIONS OR DELAYS BY YOUR TPS; (2) REPRESENTATIONS OR WARRANTIES MADE BY YOUR TPS; (3) LOSSES TO YOU ARISING OUT OF YOUR TPS'S INSOLVENCY; OR (4) MISAPPROPRIATION OF YOUR FUNDS BY YOUR TPS. YOUR TPS IS NOT AN AGENT OR REPRESENTATIVE OF OURS AND HAS NO POWER OR AUTHORITY TO ACT OR MAKE COMMITMENTS ON OUR BEHALF. WE DO NOT INTEND TO AND HAS NO OBLIGATION TO MONITOR THE TRANSACTIONS YOUR TPS INITIATES IN RESPECT OF YOUR FUNDS.

- 2.2 Debits and credits. All debits and credits made pursuant to this ADDENDUM shall be posted to the DESIGNATED ACCOUNT. All ACH and credit card transaction debits and credits must be deposited into one DESIGNATED ACCOUNT per Merchant Identification Number ("MID"). You agree to maintain sufficient balances in available funds in the DESIGNATED ACCOUNT to cover all credit transactions you submit to us. If the DESIGNATED ACCOUNT does not have a sufficient balance, we may, at our option, either debit any other account of yours to provide such balances or decline to forward such transactions. We may require you to pre-fund certain types of ACH transactions. You agree to immediately reimburse us for any overdrafts created by transactions initiated for you, whether through originating credit transactions for which there were not sufficient funds, or for returns received by us in respect of originating debit transactions or otherwise.
- 2.3 Operating Procedures. You agree to follow and require your TPS to follow the Operating Procedures that we establish for use of the services, including, without limitation, required input formats, and delivery deadlines (including restrictions on the type of ACH transactions that may be initiated). We may at any time place a hold on, and if necessary interplead, funds if we receive a request to do so or other demand or claim from the Receiver of one of your ACH entries with respect to such funds. We are not responsible for canceling or amending any ACH entry once sent, dishonoring returns, refusing notifications of change or for any other matter not specifically provided herein. We reserve the right to modify or discontinue the ACH Services and/or modify the Operating Procedures at any time.
- 2.4 Your Responsibility. Except as otherwise provided herein, you are responsible for the accuracy and adequacy of the input data provided to us and the ACH entries transmitted on your behalf. We are not responsible for collecting on items we are unable to process through our system. If a third party claim is made against us arising out of your ACH entries, breach of the AGREEMENT or ADDENDUM, or breach of any warranty under the REGULATORY RULES, you agree to defend, indemnify and hold us harmless against such claim, including without limitation claims by Receivers of entries. We may defend on our own any such claims or demands or request you to take up such defense. In either case as set out above you will further indemnify us for reasonable attorney fees or other necessary expenses incurred by us by reason of such defense or claims. The provisions of this section are in addition to and not in lieu of any existing provisions in the AGREEMENT.
- 2.5 Fees.
- 2.5.1 Unless you are using a TPS, you agree to pay us the FEES for the ACH Services set forth in the Merchant Application. These FEES may be amended upon thirty (30) days notice to you.
- 2.5.2 If you are using a TPS, we may, on behalf of your TPS, debit from your DESIGNATED ACCOUNT the TPS's FEES for the ACH Services set forth in the Merchant Application. These FEES may be amended upon thirty (30) days notice to you. All disputes with regard to these FEES shall be resolved solely between you and your TPS.
- 2.5.3 In either case, you agree to pay any additional FEES, fines, or charges levied against us by any regulatory agencies or NACHA due to your actions or inactions associated with the ACH Services, which include, but are not limited to, your compliance with the REGULATORY RULES.
- 2.6 Compliance with Law.
- 2.6.1 Regulation E; National Automated Clearing House Association ("NACHA") Rules. You agree to comply with the Electronic Fund Transfer Act, the Unlawful Internet Gambling Enforcement Act, Federal Reserve Regulation E, and other applicable federal and state laws and regulations, to the extent that the same may be applicable to the transactions processed hereunder. You represent that all ACH entries initiated on your behalf are the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context. You understand that you will be considered the Originator of all ACH entries submitted hereunder, and agree to comply with all rules and operating guidelines of the NACHA Rules and other relevant clearing house associations which are applicable to Originators, as the same may be applicable to transactions processed hereunder. Collectively, the Electronic Fund Transfer Act, the Unlawful Internet Gambling Enforcement Act, Federal Reserve Regulation E, other applicable federal and state laws and regulations, and all NACHA rules and operating guidelines and other relevant clearing house associations, are hereinafter referred to as the "REGULATORY RULES." You understand that Sections 2.6.1.1 through 2.6.1.10 are not a complete or exclusive summary of NACHA Rules, and agree that we may provide you with revised summaries of REGULATORY RULES from time to time in the future. If you continue to initiate entries after we provide such an update, you will be considered to have agreed to the terms set forth in that update (except that if you cease initiation of entries within 45 days after the date of such an update, initiation of entries during that 45-day period will not constitute your agreement). You are responsible for obtaining and being in compliance with the most current REGULATORY RULES. BANK reserves the right to review, monitor, and audit your ACH transactions, processes, and procedures for your compliance with the AGREEMENT and the REGULATORY RULES and you agree to cooperate as requested by BANK.
- 2.6.1.1 Compliance with NACHA Rules and Law. By providing or permitting your TPS to provide information about ACH entries to us, you authorize us to transmit, and to debit or credit the amount of those entries (referred to below as "your entries") to the Receiver's account. You agree not to initiate entries that violate the laws of the United States.* (*IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC.)

- 2.6.1.2 **Receiver Authorization.** You represent that you are and shall remain in compliance with all REGULATORY RULES, including but not limited to rules regarding ACH Authorizations from and notifications due to Receivers. As to each of your entries you represent that: (1) The Receiver has authorized you to initiate your entries to the Receiver's account; (2) In the case of CBR, CCD and CTX entries, the Receiver has an agreement with you to be bound by these rules as in effect from time to time; (3) In the case of debit entries to Consumer Accounts (including, but not limited to, TEL and WEB entries), you have obtained the consumer's authorization in the form, content and manner required by the Rules; (4) In the case of WEB entries, you have implemented a commercially reasonable fraudulent transaction detection system to screen entries, you have taken commercially reasonable steps to verify the routing number, you establish secure Internet sessions utilizing commercially reasonable technology prior to consumer key entry of banking information, and you have complied with the security audit requirements set forth in the REGULATORY RULES (and you agree to provide us with copies of such audit reports promptly after they are completed); and (5) In the case of TEL entries, you have given the consumer the notices required by the Rules and you have taken commercially reasonable steps to verify the consumer's identity and routing number. You agree to retain and promptly provide copies or other evidence of such authorizations, notifications, and other materials within one (1) business day from request by us or as required by the REGULATORY RULES or as otherwise requested by us.
- 2.6.1.3 **Prenotifications.** If you initiate prenotifications, you agree to send them as required by the REGULATORY RULES. If the RDFI indicates it cannot accept such entries, you agree not to initiate the entries.
- 2.6.1.4 **Credit Entries.** In the case of credit entries subject to UCC Article 4A (in general, this means non-consumer credit entries), you are hereby notified that: (1) these entries may be transmitted through the ACH; (2) your rights and obligations concerning these entries shall be governed by and construed in accordance with New York law (in all matters between you and us, however, Nebraska law shall govern); (3) credit given by the Receiving Depository Financial Institution ("RDFI") to Receivers is conditional until final settlement or payment in accordance with UCC 4A; and (4) if an RDFI does not receive such payment, the RDFI is entitled to a refund from the Receiver and you will not be considered to have paid the Receiver.
- 2.6.1.5 **Rejection of Entries; Originating Depository Financial Institution ("ODFI") Exposure Limits.** We may refuse to transmit entries that would violate the general or special exposure limits that we have adopted with respect to you or your TPS. We also reserve the right to refuse entries in our discretion, including but not limited to, entries which we determine may expose us to a risk of loss, including, but not limited to, insufficient funds in your account.
- 2.6.1.6 **Your Entries.** We make numerous warranties and indemnities to third parties concerning your entries and files, as specified in the REGULATORY RULES. You agree to reimburse us for any payments we are required to make to these third parties with respect to your entries or files. You also agree to comply with all of your obligations in Article Three of the NACHA Rules (Obligations of Originators). If we are fined due to your infractions of the REGULATORY RULES, you are responsible for reimbursing us for the amount of that fine and any other associated costs related thereto. You agree not to reinitiate entries except as permitted by the REGULATORY RULES. You agree that reversing entries and reversing files must be transmitted on a timely basis as required by the REGULATORY RULES and in accordance with our instructions.
- 2.6.1.7 **Notifications of Change.** You agree to make changes requested in a Notification of Change within the timeframes identified by the REGULATORY RULES or prior to initiating another entry to the Receiver's account (whichever is later).
- 2.6.1.8 **Returns, Adjustments, Etc.** All credits we send to your DESIGNATED ACCOUNT are considered provisional until we receive final settlement, and we reserve the right to reverse those entries or initiate correcting debit entries for SPECIAL HANDLING CLAIMS (as defined herein). To the extent that any credits to your DESIGNATED ACCOUNT are revoked or affected by any third party claim or demand or any other process recognized by the REGULATORY RULES (such as, but not limited to, returns, reversals, adjustments, reclamations, notifications of change, or claims based on breach of any warranty made by Originators or ODFIs under the REGULATORY RULES) or to the extent that we are required to indemnify any Receiver, RDFI or other third party in respect of your entries (collectively, "SPECIAL HANDLING CLAIMS"), you agree to reimburse us through the DESIGNATED ACCOUNT or other method as designated by us. Our right of reimbursement is absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If SPECIAL HANDLING CLAIMS become excessive (in our judgment) we may adjust fees, require reserves and/or modify or discontinue services.
- 2.6.1.9 **Entries based on Paper Items.** If your entries are based on paper items (for example, XCK, RCK, POP or ARC entries), you are responsible for compliance with all requirements of the REGULATORY RULES that pertain to those entries. This responsibility includes, but is not limited to, responsibility for requirements pertaining to initiation of entries (including rules regarding eligibility of the underlying items), required notices to Receivers, opt out rights, separation of fees, and requirements regarding keeping, destroying or providing copies or originals of the underlying items. You also have the responsibility specified in the preceding paragraph with respect to any special warranties or indemnities that we make under the rules as to these entries. If we are processing ARC entries for you and also providing lockbox services: (1) you must provide the identifying information that we request to identify those of your customers that have opted out of ARC entries, in which case we will use reasonable efforts to match incoming items to those customers and process those customers' items as paper items not ARC entries; and (2) in the event that our ability to process ARC entries is interrupted, we will process the affected items as paper items until the interruption is eliminated.

2.6.1.10 **Information Security.** You agree to comply with all relevant data security requirements (including, but not limited to, those requiring the use of encryption technology where ACH information is transmitted over unsecured networks such as the internet).

2.6.2 **Other Compliance.** You are prohibited from using our services in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us or our vendors to investigation, prosecution, or legal action. You further agree: (1) to receive, resolve and respond to consumer alleged errors under applicable laws, regulations and the REGULATORY RULES; and (2) you are responsible for promptly handling and, if necessary, responding to and resolving at your own expense any SPECIAL HANDLING CLAIMS we refer to you.

- 2.7 **Risk Management.** You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, contractors, and third party service providers (such as third party payroll administrators), including your TPS, any persons granted signature authority on your accounts and any persons who are permitted to initiate and/or give us instructions in respect of your entries (collectively, "YOUR PERSONNEL"). We are entitled, without further inquiry or investigation, to assume that the actions of YOUR PERSONNEL are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls that will prevent (or at least allow the early detection of) fraud or other unauthorized activity by YOUR PERSONNEL. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of YOUR PERSONNEL.
- 2.8 **Fraud.** You are responsible for all unauthorized or fraudulent transactions of or pertaining to the ACH Services. You agree to reimburse and/or pay us the principal amount of the transaction, plus any corresponding losses, damages, or other amounts associated with said transaction.
- 2.9 **Notices with Respect to Credit Transactions.** Under the operating rules of NACHA, which are applicable to ACH transactions involving your account, we are not required to give notice to you of your ACH activity. However, we may notify you of ACH exception items (receipt of payments, notification of change, and the debiting of your account for returns via an automated e-mail notification. You must provide us with your e-mail address on the Merchant Application, and advise us of any updates to that e-mail address on a timely basis. We will not notify you of exception items if we do not have a valid e-mail address on file. If you prefer to receive reporting for ACH via TSYS InfoCenter®, which displays information related to your ACH services and your credit card transaction processing activity via a web interface, you must be currently enrolled for access to TSYS InfoCenter®. You may obtain such access by completing the applicable amendment and the TSYS InfoCenter® Access Application form, which will be made available upon request.
- 2.10 **Warranty.** You warrant that the information you provided in the Merchant Application is complete and accurate, and contains material facts, which may be used to calculate FEES and establish transaction parameters. If any of this information is incorrect or inaccurate, you agree that we may, among other actions, immediately amend FEES, revise transaction parameters, and/or terminate your ACH services, as we deem necessary in our sole discretion.
- 2.11 **Disclaimer.** **CUSTOMER UNDERSTANDS AND AGREES THAT BANK'S SOLE LIABILITY WITH RESPECT TO SERVICES PROVIDED HEREUNDER SHALL BE AS SET FORTH HEREIN. IN THE EVENT THAT BANK FAILS TO PERFORM SERVICES PROPERLY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND BANK'S SOLE OBLIGATION SHALL BE FOR BANK TO REPERFORM THE SERVICES AT ITS OWN EXPENSE. BANK DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICES ARE NOT WARRANTED TO BE FREE FROM ERROR OR INTERRUPTION. BANK SHALL HAVE NO LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR BANK'S SERVICES. IN NO EVENT WILL BANK BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER BANK WAS INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER'S REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES IN LAW OR EQUITY.**
- 2.12 **Term.** This ADDENDUM shall remain in effect until the earlier of: (i) termination by any PARTY, with or without cause, upon thirty (30) days notice to the other; (ii) termination or expiration of the Agreement; or (iii) immediate suspension or termination by BANK based on our assessment of the risk posed to BANK and/or your failure to comply with the AGREEMENT or the REGULATORY RULES. Terminations shall be effective as to prospective transactions only, and shall not alter the rights of the PARTIES as to transactions prior to the effective date of termination.
- 2.13 **Privacy.** Provision of services hereunder may require that we receive certain information concerning your consumers (e.g., their checking account numbers). We agree to use reasonable efforts to maintain the confidentiality of such information and agree not to use or disclose the same except as necessary in connection with the provision of services to you. Disclosures of the type described in 12 C.F.R. Sections 40.11, 40.13, 40.14 and 40.15 shall not be deemed prohibited by the foregoing. You are solely responsible for obtaining and maintaining any and all necessary rights, power, and authority to provide this information to us and for providing applicable privacy disclosures, if any, to your consumers.
- 2.14 **ACH User Guide.** An ACH User Guide (the "Guide") may be available to MERCHANT at www.tsystransactionssummary.com. It is at MERCHANT'S sole discretion whether MERCHANT will review and/or use the Guide. The PARTIES understand that provision of the Guide to MERCHANT is solely as a guidance tool for MERCHANT, and BANK takes no responsibility for MERCHANT'S use of the Guide.

3. MISCELLANEOUS

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

- 3.2 Except as amended hereby, the PARTIES reaffirm the obligations of each as they are contained in the AGREEMENT.
- 3.3 **CHANGES TO THESE TERMS AND CONDITIONS MUST BE APPROVED BY AN AUTHORIZED OFFICER OF FIRST NATIONAL BANK OF OMAHA. SALES REPRESENTATIVES ARE NOT PERMITTED TO MAKE ANY REPRESENTATION OR WARRANTY NOT CONTAINED HEREIN AND CANNOT WAIVER, ALTER OR AMEND THE PRINTED TERMS AND CONDITIONS HEREOF.**

NOTICE

Credit given by BANK to you with respect to an ACH credit entry is provisional until BANK receives final settlement for such entry through a Federal Reserve Bank. If BANK does not receive such final settlement, you are hereby notified and agree that BANK is entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not be deemed to have paid you in the amount of such entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your Account, BANK is not required to give next day notice to you of receipt of an ACH item and BANK will not do so. However, BANK will continue to notify you of the receipt of payments via TSYS InfoCenter®. BANK may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and BANK, Nebraska law shall govern.

RATE DESCRIPTIONS

Tuition Express Credit Card Rates are determined based upon how Visa, MasterCard and Discover qualify each transaction. The credit card companies assess a Charge Type code for each transaction that is completed by a merchant. Based upon the assessed Charge Type, Tuition Express determines the appropriate Rate. Below is a complete list of the Tuition Express Rates and the different Charge Types that are associated with each rate.

[Tuition Express Rate Descriptions](#)