State of California

# MASTER AGREEMENT

| Contract Number | AM. NO. |
|---|---|
| MA-200307 | 1 |

TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER
94-1687665

THIS FIRST AMENDMENT TO THE MASTER AGREEMENT, made and entered into this 23rd day of May, 2005, ("Effective Date") in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

| TITLE OF OFFICER ACTING FOR STATE | AGENCY | |
|---|---|---|
| Business Services Manager | Judicial Council of California, Administrative Office of the Courts | , hereafter called the State or AOC, and |
| CONTRACTOR'S NAME | | |
| Bank of America, N.A. | | , hereafter called the Contractor or Bank. |

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows:

PURSUANT TO THIS AMENDMENT NO. 1 TO MASTER AGREEMENT NO. MA-200307 BETWEEN THE AOC AND THE BANK, THE AGREEMENT FOR GOVERNMENT BANKING SERVICES (TOGETHER THE "MASTER AGREEMENT") IS AMENDED AS FOLLOWS:

1. Section 1.4, Merchant Services, of the Agreement for Government Banking Services, is hereby added as follows:

1.4 Merchant Services

The entire and integrated agreement between the AOC and the Bank related to Merchant Services shall consist of this Master Agreement and the Bank's Merchant Services Agreement as described in Exhibit E-1, and as amended by Exhibit E-2 and supplemented by Exhibit E-3.

2. Exhibit E: Merchant Services Terms and Conditions, previous left blank, is hereby replaced by Exhibits E-1, Merchant Services Agreement, Exhibit E-2, Addendum to Merchant Services Agreement, and E-3, Participation Agreement Between Bank of America, N.A., and a Superior Court of California.
3. Exhibit H: Fee Schedule, is hereby deleted in its entirety and replaced by Exhibit H, Revision 1: Fee Schedule.

In the event of a conflict between this Master Agreement and an Exhibit or Appendix, the Master Agreement shall prevail.

The expiration date of the Master Agreement shall remain the same.

Except as provided herein, all the terms and conditions of the original Master Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Master Agreement, together with the attached Exhibits and Appendices, has been entered into by the parties hereto, effective upon the Effective Date.

| STATE OF CALIFORNIA | CONTRACTOR |
|---|---|
| AGENCY: Judicial Council of California, Administrative Office of the Courts | CONTRACTOR (if other than an individual, state whether a corporation, partnership, etc.): Bank of America, N.A. |
| BY (AUTHORIZED SIGNATURE): ▷ [signature] | BY (AUTHORIZED SIGNATURE): ▷ [signature] Lynetta Carnes |
| PRINTED NAME OF PERSON SIGNING: Grant Walker | PRINTED NAME AND TITLE OF PERSON SIGNING: ~~Mary Hearo Amodio,~~ Vice President Vice President |
| TITLE: Business Services Manager | ADDRESS: Attn: Suzanne Wilson, CA5-704-14-11, 315 Montgomery St., San Francisco, CA 94104-1866 |

| | | | | |
|---|---|---|---|---|
| AMOUNT ENCUMBERED BY THIS DOCUMENT: Not Applicable | PROGRAM/CATEGORY (CODE AND TITLE) | | FUND TITLE | |
| PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT: Not Applicable | (OPTIONAL USE) | | | |
| TOTAL AMOUNT ENCUMBERED TO DATE: Not Applicable | ITEM | CHAPTER | STATUTE | FISCAL YEAR |
| | OBJECT OF EXPENDITURE (CODE AND TITLE) | | | |

I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above. T.B.A. NO. B.R. NO.

SIGNATURE OF ACCOUNTING OFFICER: ▷ Not Applicable — DATE

☐ CONTRACTOR ☐ STATE AGENCY ☐ DEPT. OF GEN. SER. ☐ CONTROLLER ☐

*Department of General Services Use Only*

EXEMPT FROM DEPARTMENT OF GENERAL SERVICE APPROVAL.

# EXHIBIT E-1

# Merchant Services Agreement

Bank of America, N.A.

# Merchant Services Agreement

Bank of America

Merchant Services Agreement
Bank of America, N.A. Member FDIC
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00-39-0158B 1/2003

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## Summary of Card Acceptance Procedures
## (Part of the Merchant Services Agreement Operating Procedures)

To help you comply with Bank of America, Visa®, MasterCard® and other Card Organization regulations, the following precautions should become a part of your daily business practice. These procedures also will reduce risk to your business and increase the profitability associated with accepting Cards for payment. (See also Sections 4 and 7 of the Agreement.)

### 1. Examine the Card

Determine the validity of the Card using the following checklist:

- Verify that the "valid from" and expiration dates are current.
- Check to see that the Card is signed on its signature block.
- If applicable, determine that the user of the Card resembles any photograph on the Card intended for identification.
- For Visa and MasterCard cards, look for the Visa or MasterCard logo and an appropriate hologram on the front or back of the Card. The proper hologram for Visa is a dove in flight. For MasterCard, it is interlocking globes behind a world map. The final four digits of the embossed account number should extend into the hologram.
- Visa account numbers begin with the number 4 and have 16 digits. MasterCard account numbers begin with a 5 and have 16 digits.
- The first four digits of Visa Card account numbers appear in small print above or between the embossing. The first four embossed account numbers should match the printed numbers.
- Compare the account number or truncated portion of the account number appearing on the Card's signature panel to the embossed account number on the face of the Card. (Some Cards contain an additional three numbers on the signature panel after the Card number.)

### 2. Watch for fraud

The following list of security features should help you spot counterfeit Cards and head off fraudulent use of Cards. Verify that:

- Printing on the Card appears distinctly and clearly, and letters are not fuzzy or crooked.
- Embossed characters are straight, correctly spaced and uniform in size, height, style and alignment.
- There are no signs of tampering or alterations on the signature panel, the security hologram, any of the embossed numbers or the magnetic stripe.
- Signature panels do not appear discolored, glued, taped or painted. Any attempts at erasure should expose the word "VOID."

- The embossed account number is the same as the number displayed and/or printed by the terminal if you are using a terminal that reads and displays, or reads and prints, the magnetic stripe information on the Card.
- The last four digits of the Cardholder's account number that you manually key into the terminal match the terminal display, if you have this security feature.

### 3. Obtain an imprint of the Card

You must make Card imprints to show that a Card is present for a particular transaction. You can make imprints manually with an imprinter, or electronically with a Point-of-Sale device that reads the information off the Card's magnetic stripe. Any transaction for which the authorization is obtained by calling the voice authorization operator, or for which the account number is manually keyed into a terminal, requires a manual imprint of the Card on a completed Sales Draft, signed by an authorized Cardholder on that imprinted draft. Merchants who are authorized to accept mail, phone or Internet order transactions are not required to obtain Card imprints on those transactions.

### 4. Obtain an Authorization

All Card Transactions require authorization for the full amount of any sale. You may request authorization only for a bona fide Card Transaction. Once declined, authorization requests must not be honored or resubmitted. Instead, you may request another form of payment. You cannot make authorization requests to determine or test Cardholder credit limits.

### 5. Obtain and compare signatures

You must make a reasonable effort to determine that the signature on the Sales Draft matches the signature on the back of the Card, as judged by spelling and handwriting. The signature on the back of the Card may be different from the name embossed or printed on the face of the Card. An example of acceptable and unacceptable signatures for one particular situation is as follows:

| | |
|---|---|
| Card is embossed with: | "Patrick D. Jones" |
| Back of Card is signed: | "Pat Jones" |
| Acceptable signatures: | "Patrick D. Jones," "Patrick Jones," "Pat D. Jones," "P. D. Jones," "P. Jones" or "Pat Jones" |
| Unacceptable signatures: | "B. Jones," "Pat Jons" or "Robert Jones" |

Return the Card to the Cardholder only after a Sales Draft has been signed and you have compared the signatures. If a Card is presented to you unsigned, we strongly recommend that you make every effort to get the Cardholder to sign the Card before proceeding with the transaction. If the Cardholder declines, you have the right to request another form of payment. If you complete the transaction with an unsigned Card, you may be liable for a chargeback, even if you are presented with a driver's license or other identification. Cards with the words "check identification," or similar language in the signature panel are considered unsigned cards.



### 6. Settle your Transactions promptly

Depositing or settling your transactions is the process that provides you with payment for Card Transactions that you accept. For electronically processed Card Transactions using a terminal, you should balance and transmit transactions to the designated processor at least daily.

### 7. Be alert to fraud — Code 10 Authorizations

If anything about the Card, or the Card user is suspicious, call the voice authorization operator with a "Code 10" authorization request. The operator will ask you a series of questions designed to determine if the Card or Card user is fraudulent. These questions are deliberately asked so as not to alarm or alert your customer. Be sure to follow the operator's instructions precisely, but don't place yourself or anyone on your staff in physical danger by confronting a customer. If a Cardholder refuses to allow you to retain the Card, do not engage in any physical confrontation. Bank of America, N.A. is not liable to you, your employees or anyone else for injuries or damages resulting from a physical challenge or confrontation. In addition to avoiding Card Transactions that may result in a financial loss for your business, being alert to potentially counterfeit or fraudulent Card activity may provide you with financial rewards. If you are advised in response to a authorization request to confiscate a Card, you may be eligible for a reward of not less than $50.00 and potentially as high as $250.00.

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## MERCHANT SERVICES AGREEMENT

**Introduction.** This Agreement ("Agreement") between Bank of America, N.A. and the merchant ("Merchant") named in the Bank of America, N.A. Merchant Services Account Application ("Application") is effective as of the date an employee in the Bank of America, N.A. Merchant Approval Group signs Merchant's Application agreeing to this Agreement. This Agreement includes provisions for processing Credit Card and Debit Card Transactions, and certain other services provided by Bank of America, N.A.

A) Bank of America, N.A. is headquartered in Charlotte, North Carolina and is a member of Visa® U.S.A. Incorporated ("Visa") and MasterCard® International, Inc. ("MC"). It provides services to businesses accepting Credit Cards issued under authority of the Visa, MC and other Card Organizations and Debit Cards issued under the Visa, MC and other Networks, as well as other services.

B) The words "we," "us," "our" and "ours" may be used to refer to Bank of America, N.A., and the words, "you," "your" and "yours" may be used to refer to Merchant.

C) You are engaged in the business of selling merchandise, services or both, and desire that we provide Merchant Services to you under your Application and this Agreement.

The related addenda, schedules, relevant Association rules, and Operating Procedures are part of this Agreement and, individually and collectively, all these documents are referred to as the "Agreement" between you and us.

### Section 1. DEFINITIONS

In this Agreement, the following definitions apply and are capitalized throughout:

**1.01** **"Adjustment"** is a debit or a credit to your Deposit Account to: correct an out-of-balance situation, re-process transactions, account for rejected items or allow for fee reversals and other adjustments in amounts due to us or you.

**1.02** **"Application"** is the Bank of America, N.A. Merchant Services Account Application, and also refers to related addenda and schedules in which the payment options subject to this Agreement are designated, which you complete and sign and we sign. The Application is part of this Agreement.

**1.03** **"Associations"** collectively refers to the Visa and MC Associations and all Card Organizations and Networks.

**1.04** **"Authorization"** is the process provided by us, as well as the Operating Procedures whereby a Credit Card Transaction or Debit Card Transaction for a specified dollar amount is approved by the card-issuing bank or its approved agents.

**1.05** **"Bank"** is Bank of America, N.A.

**1.06** **"Business Day"** is Monday through Friday, excluding our holidays. Each Business Day ends at the cut-off time we specify. Card Transactions submitted for processing on a non-Business Day or after the cut-off time are treated as received on the following Business Day.



**1.07** **"Card"** is a Visa-branded, MC-branded or private-label credit card, ATM card or debit card, or any other credit card, charge card, ATM/debit card or stored value card included on the Application or which we may at any time specify as an additional card payment option available to you. (See also "Valid Card.")

**1.08** **"Cardholder Account"** is the account of a Cardholder as represented by a Card.

**1.09** **"Cardholder"** is the person issued a Card by a Card Issuer and whose name is embossed on the front of the Card by the Card Issuer, or a person authorized to use the Card by the Cardholder.

**1.10** **"Card Imprint"** is a record of Card information made using either:

A) a manual imprinter that impresses a copy of the embossed material on a Card onto a paper Sales Draft or Credit Voucher, or

B) a magnetic stripe reader that produces an electronic image of information stored on the magnetic stripe of a Card.

**1.11** **"Card Issuer"** is the institution authorized by a Card Organization to issue Cards to Cardholders and that has issued a Card presented to a merchant for a Charge or Credit Voucher.

**1.12** **"Card Organization"** is a card association such as Visa or MC International Inc. that promulgates Operating Rules and operates an interchange system for exchanging Charges and Credit Vouchers among you, us and Card Issuers. In the case of Debit Cards, "Card Organization" includes Debit Networks.

**1.13** **"Card Transaction"** is a transaction between you and a Cardholder for sale, rental or service, or any credit related thereto, that is evidenced by a Sales Draft, a Credit Voucher or electronic transmission and is presented to us by you for processing through the Card Organizations.

**1.14** **"Cashback Transaction"** is an online Debit Card Transaction in which you deliver currency to a Cardholder in addition to goods or services. (See Section 8.05.)

**1.15** **"Charge"** is the evidence of a Cardholder's obligation that arises from a Transaction with you, which you submit to us as specified by us for processing through a Card Organization's interchange system, enabling payment to you and the amount of the Charge to be added to the Cardholder's Account. A Charge also may be referred to as a "Card Transaction," "charge record," "Sales Draft," "sales slip" or "Transaction Receipt."

**1.16** **"Chargeback"** is a return of a Charge to you, even without notice to you or without consent by you, upon occurrences permitted by the Card Organizations, some of which are specified in Section 7.13 of this Agreement. A Chargeback is initiated by a Cardholder or a Card Issuer, for transmittal to and payment by you under Operating Procedures established by the Card Organizations.

**1.17** **"Credit Card"** is:

A) an unexpired Credit Card with service marks and holograms owned and licensed by MC. These marks include the word "MasterCard," a distinctive design consisting of a red circle overlapping a yellow circle, and other marks and holograms that may be adopted by MC from time to time for use in connection with its Credit Card program,

B) an unexpired Credit Card with service marks and holograms owned and licensed by Visa or Visa International Inc. These marks include the word "Visa," the distinctive blue, white and gold bands, and other marks and holograms that may be adopted by Visa or Visa International Inc. from time to time for use in connection with its Credit Card program, and

C) an unexpired American Express® Card, Discover Card®/NOVUS™ Card Brands, Diner's Club® Card, Carte Blanche® Card, JCB® Card, among others, for which we provide Merchant Services under this Agreement.

**1.18** **"Credit Voucher"** is evidence of a refund or price adjustment to be submitted by you to us, as we specify for processing through a Card Organization for credit to a Cardholder's Account.

**1.19** **"Debit Card"** means a valid card that is used to access consumer deposit accounts to pay for goods and/or services and stored value cards that are treated as Debit Cards by Card Organizations. Some "offline" Debit Cards also are known as "check cards."

**1.20** **"Debit Card Transaction"** means an online or offline transaction between you and a Cardholder that is initiated with a Debit Card and presented by electronic transmission to us by you for Authorization and processing through a Network system. An online Debit Card Transaction requires a Personal Identification Number (PIN). An offline Debit Card Transaction does not require a PIN, but does require a signature.

**1.21** **"Debit Network"** means the telecommunications and processing system of each Network that is used by Network member banks to allow their Cardholders to purchase goods and services using the member bank's proprietary Debit Card at a Point-of-Sale.

**1.22** **"Deposit Account"** is the checking account or other acceptable account you maintain at the Bank or at another depository institution acceptable to us, in your name with your tax identification number, for credit of Charges by us and debit of Credit Vouchers, Chargebacks, Processing Fees and any fines or fees assessed by Card Organizations.

**1.23** **"Discount Fee"** is one of the fees payable by you to us under Section 12 for services we provide to you under this Agreement.

**1.24** **"Electronic Authorization and Deposit"** is an electronic authorization and deposit program we authorize, whereby you can electronically transmit Card Transaction data to us using properly installed and programmed equipment.



**1.25** **"Equipment"** refers, separately or collectively, to terminals, PIN Pads, magnetic stripe readers, printers and associated software, as well as any other equipment and software that may be used to effect Card Transactions.

**1.26** **"Exception Transaction"** refers to certain online Debit Card Transactions for which you assume all risk of loss. Exception Transactions include, without limitation, balance inquiry, pre-authorization, store and forward, paper sales drafts, resubmission and merchant stand-in processing.

**1.27** **"Fee Schedule"** is the schedule of fees and pricing provided to you by us. The Fee Schedule is a part of this Agreement.

**1.28** **"Merchant Services"** refers to services provided by us to you under this Agreement.

**1.29** **"Network"** refers to each shared electronic funds transfer network of which we are a member.

**1.30** **"Operating Procedures"** collectively refers to manuals, instructional materials and specifications provided to you by us and our designated vendors, as well as to Card Organization operating regulations that describe the policies, procedures and transaction requirements set forth by Card Organizations to be followed by you and us, as amended from time to time.

**1.31** **"Order Form"** is either a mail order form, a Recurring Transaction form or a preauthorized order Transaction form that bears the Cardholder's signature, which authorizes goods or services to be charged to the Cardholder's account.

**1.32** **"Paper Deposit"** or **"Paper Transaction"** refers to manually prepared Sales Drafts or Credit Vouchers showing either a sale of goods or services or an amount to be credited to a Cardholder's card account. We do not accept Paper Deposits or Paper Transactions, except for certain Debit Card Exception Transactions.

**1.33** **"PIN"** is a Personal Identification Number comprised of an alphanumeric or numeric code that is used as verification of Cardholder identity when a PIN is an acceptable substitute for a signature to initiate an online Debit Card Transaction.

**1.34** **"Point-of-Sale"** or **"POS"** is each of your locations where you and a Cardholder can jointly complete a Charge or Credit Voucher transaction in connection with the Cardholder's purchase of goods or services you provide. "Point-of-Interaction" ("POI") is similar.

**1.35** **"Processing Fees"** are the fees payable by you to us for services we provide to you in connection with this Agreement, as specified in the Fee Schedule to the Application as it may be amended from time to time or as it may otherwise be provided to you.

**1.36** **"Recurring Transaction"** is a Card Transaction for which a Cardholder has given you permission to periodically charge the Cardholder's Account for recurring sales of goods or services.

**1.37** **"Reserve Account"** is a deposit account you established and maintained as described in Section 10.

**1.38** **"Retrieval Request"** is our request to you to provide copies of Sales Drafts or Credit Vouchers supporting electronically processed transactions to us or to our designated processing agent.

**1.39** **"Sales Draft"** is a paper record evidencing a purchase of goods or services by a Cardholder from you through the use of a Card.

**1.40** **"Special Services"** refers to the Merchant Services described in Sections 19 through 23.

**1.41** **"Terminal"** refers to an electronic Point-of-Sale device and related equipment (including software and hardware) used to electronically obtain Authorizations and to capture and submit Transactions to us.

**1.42** **"Transaction"** is the act between a Cardholder and you that results in the generation of a Transaction Receipt.

**1.43** **"Transaction Date"** is the date a Transaction between you and a Cardholder occurs.

**1.44** **"Transaction Receipt"** is an electronic or paper record of a Transaction generated by you.

**1.45** **"Valid Card"** is a Card that is: (1) properly issued under authority of a Card Organization (2) "current" according to any beginning and expiration dates on the Card (3) signed by the Cardholder named on the front or other authorized signer and (4) not visibly altered.

## Section 2. MERCHANT'S APPLICATION AND INFORMATION

By completing and signing the Application, you apply for Merchant Services covered by the Application and this Agreement. In our sole discretion, we may accept or decline your Application. You may present Card Transactions to us only for the activities and in the volumes described on the Application, including the percentage of mail/phone order and Internet transactions. Any Card Transaction volume exceeding the volume indicated on the Application by more than 25% must be approved in writing by our authorized officer before you submit Card Transactions to us.

**2.01** **Merchant information, inquiries and information sharing**

A) We may, from time to time:

1) obtain credit and other information on you and your owners and guarantors from others (such as stores, lenders and credit reporting agencies), and

2) furnish information on your relationship with us and on our experience with you to Card Organizations and others whom we determine need to know and who are seeking such information.



B) You must, from time to time upon our request, provide us with your updated business and financial information, including a new Application. All such information will be used only by us, Card Organizations and other persons and entities we deem to be appropriate, and only as we deem appropriate in performing services under this Agreement. We and Card Organizations may audit your files and records relevant to this Agreement at any reasonable time.

C) We may disclose to our affiliates information about you and your activities so that they may consider you for, and, if they desire, offer to you their products and services. You agree that we may share information about our experience with you among Bank of America Corporation and its subsidiaries and affiliates, such as information about transactions and experiences between us and you. In addition, we may share with Bank of America Corporation and its subsidiaries and affiliates information contained in any applications, financial statements or other documents provided by you in connection with these or other transactions, and information we may obtain about you from outside sources. If you are an individual, you may instruct us not to share this information with Bank of America Corporation and its subsidiaries and affiliates by sending a written request to: Bank of America, Attn. Data Integrity, P.O. Box 27025, Richmond, VA 23261-7025. Please include your name, address, phone number, account number(s) with us and Social Security number. If you make this election, certain products and services may not be made available to you.

**2.02** **Confidential information**

A) **Definition.** "Confidential Information" refers to business and financial information, as well as to data that derives economic value, actual or potential, from not being generally known to, or being readily ascertainable by other persons who can obtain economic value from its disclosure or use. Confidential Information must be prominently marked "Confidential." Confidential Information does not include: (a) information a recipient rightfully had in his or her possession when disclosed, free of any obligation to keep such information confidential (b) information a recipient independently developed without access to the other party's Confidential Information (c) information that is or becomes known to the public or (d) information rightfully received from a third party without the obligation of confidentiality.

B) **Treatment of Confidential Information.** Each of the parties, as recipients of Confidential Information, agrees that it will not use or disclose and will cause its officers, employees, affiliates, agents, consultants and independent contractors not to use or disclose Confidential Information to any person for any reason whatsoever, other than on a "need to know" basis, including (a) as reasonably required for the operation of the Merchant Services contemplated by this Agreement (b) as expressly permitted by this Agreement or (c) as required by law. Each party, as a recipient of Confidential Information, will treat Confidential Information with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish or disseminate, but with not less than a reasonable level of care.

C) **Confidential Information received before execution of Agreement.** If in applying for or negotiating this Agreement, the parties share Confidential Information and the Application references this Agreement, then the provisions of this Section 2.02 will apply to the Confidential Information whether or not you and we enter into an Agreement.

D) The obligations of this Section 2.02 will survive the termination of this Agreement.

## Section 3. MERCHANT'S DUTIES, OBLIGATIONS, WARRANTIES

**3.01 Duties concerning Agreement and confidentiality**

A) This Agreement is binding upon the parties and their successors and assigns. You must not assign this Agreement without our prior written consent, and any purported assignment made without our consent is void.

B) You must treat this Agreement and all Visa, MC, Network and our documents and materials relating to this Agreement, including but not limited to all pricing information, and Operating Procedures, as confidential and proprietary information and protect them with not less than the degree of care a prudent business entity would use to protect its own confidential and proprietary information. You may disclose such documents and materials only to those of your employees having a specific need to know.

**3.02 Obligations concerning Transactions**

A) You must provide adequate services in connection with each Card Transaction in accordance with any standard trade practices, customs and applicable warranties, and you must provide repairs, service and replacements or take other corrective action as may be required by law.

B) You must comply with all laws in completing Card Transactions, performing your obligations under this Agreement, and otherwise conducting your business.

C) You are responsible for any failure by your employees and agents to comply with this Agreement and with Operating Procedures, including but not limited to any activity that results in Chargebacks or Adjustments.

**3.03 Changes in operations**

A) You must notify us in writing at least 30 calendar days prior to any material change in your business, including without limitation: any change in your name, location or method of operation, including percentage of mail/phone order and Internet transactions; any material increase or decrease in your sales volume; any material change in ownership of your business; any sale, assignment, rental, lease or transfer of ownership of any location that accepts Cards; any going-out-of-business sale; or any change in any information required under this Agreement or in your Application.

B) You must notify us in writing at least 30 calendar days prior to replacing us at any location with any other provider of Merchant Services covered by this Agreement.



**3.04 Operating Procedures**

A) You must comply with the Operating Procedures, as they may be changed by us or the Card Organizations from time to time. We will use reasonable efforts to inform you of relevant changes to the Operating Procedures at least 15 days before they become effective. However, Associations may change the Operating Procedures with little or no opportunity for advance notice to you. If you object to any change in the Operating Procedures, you must immediately stop accepting new Card Transactions for Cards governed by the change.

B) Operating Procedures of the Debit Networks may differ with respect to the transactions they allow. At our discretion, we may require that the most restrictive requirements apply to all of your Debit Card Transactions, regardless of Card type.

C) If you select as payment options in your Application any one or more of American Express Card, Discover Card/NOVUS Card Brands, JCB Card or Diners Club/Carte Blanche Cards, and if your selection is approved by us, you understand that your acceptance of any of those payment options may require execution of separate agreements with those Card Issuers, as applicable, and that those agreements will govern the completion, processing, settlement and other procedures relating to transactions with those Card Issuers. If you experience problems with transmission or delivery of those Card Issuers' transactions, you are obligated to contact the appropriate terminal service provider for service.

**3.05 Merchant warranties.** Upon signing this Agreement, and each time you submit a Card Transaction to us, you represent and warrant that:

A) You have abided by this Agreement and all applicable laws and Operating Procedures for the Card Transaction you process and submit to us;

B) Each statement made on the Application was true as of the date you signed the Application agreeing to be bound by this Agreement;

C) There have been no materially adverse changes in information provided in the Application or in your financial condition;

D) You do not do business under a trade name or style not previously disclosed in writing to us, and there has been no change in the nature of your business, delivery methods or the product lines that you sell that you have not previously disclosed to us;

E) The Card Transaction is genuine and arises from a bona fide sale of merchandise or services by you, represents a valid obligation for the amount shown on the Sales Draft or Credit Voucher and does not involve the use of a Card for any other purpose;

F) The Card Transaction is free of any alteration not authorized by the Cardholder;

G) You have title to the Card Transaction, and there are no liens or other encumbrances on it;

H) The Card Transaction is not subject to any dispute, set-off or counterclaim;

I) The Card Transaction has not been previously presented to us for processing;

J) Each statement on the Card Transaction is true, and you have no knowledge of facts that would impair its validity or collectibility;

K) You have completed only one Card Transaction per sale, or one Card Transaction per shipment of merchandise for which the Cardholder has agreed to partial shipments;

L) The Cardholder is an authorized user of the Card and was using a Valid Card;

M) You are not the debtor or alleged debtor in any currently pending bankruptcy case under any chapter of the United States Bankruptcy Code. (NOTE: This provision is waived if you notify us in writing of the commencement of the bankruptcy case and we consent in writing to continue processing.)

## Section 4. MERCHANT ACCEPTANCE REQUIREMENTS

**4.01 Submitting Card Transactions for Cardholder purchases.** You will submit a Card Transaction to us only if it is made or approved by the Cardholder who has been issued the Card used for the Transaction. You will not submit a Card Transaction for processing by us until you have performed your services or have shipped the merchandise postage prepaid to the customer. You will not submit: (1) a Card Transaction involving solicitations from third parties (for example, telemarketing by independent contractors) or a Card Transaction involving franchises, partners or your joint ventures, except as authorized in a writing signed by our authorized officer or (2) a Card Transaction for a purchase from any entity other than you (commonly known as card "factoring" or "laundering"). You will not submit Card Transactions by any of your owners, partners, officers or employees, other than Card Transactions for bona fide purchases or credits. If any violation of this subsection occurs, we may stop processing transactions without liability to us without advance notice, though we will provide subsequent written notice to you.

**4.02 Acceptance of Cards**

A) You must honor without discrimination any valid Card when presented as payment by a Cardholder in connection with a bona fide, legitimate transaction, as described on the Application. However, if you do not deal with the public at large (for example, if your business is a private club), you are required to honor a valid Card only if presented by a Cardholder who has purchasing privileges or a membership with you.



B) You may not require Cardholders to provide any personal information, such as home or business telephone number, home or business address or driver's license number, as a condition for honoring Cards, unless the information is required under specific circumstances in this Agreement or the Operating Procedures. You may request such information, but you may not record it on the Sales Draft or otherwise.

C) If you are advised to retain a Card in response to an Authorization request, or if you have reasonable grounds to believe that a Card is counterfeit, fraudulent or stolen, you must not complete a Transaction and you must try by reasonable and peaceful means to retain or recover the Card. However, you should take no action to retain or recover a Card that could result in a breach of peace or any injury to any person or property.

D) For each Card Transaction, if you receive an Authorization, the authorization code must be recorded on the Sales Draft. If a Card Transaction is declined, you must not complete the Transaction, nor attempt to obtain Authorization for a different amount on the same card.

E) You will treat each Debit Card Transaction on a Debit Network no less favorably than you treat other comparable debit Card Transactions on other Debit Networks.

F) You will include any tax on a Card Transaction purchase in the total Card Transaction amount.

**4.03 Preservation and security of information and records**

A) You must adopt procedures to store and maintain Sales Drafts, Credit Vouchers and related information (e.g. Cardholder account numbers) in a safe, secure and confidential manner in an area limited to select personnel.

B) You must retain copies of all Sales Drafts and Credit Vouchers for at least 12 months from the date of the transaction, unless a longer period is required by applicable laws or Operating Procedures.

C) If you process mail or telephone orders, preauthorized orders, Internet orders or Recurring Transactions, you may provide a Cardholder with a substitute Sales Draft or Credit Voucher, provided that such substitute contains all information required by Sections 7 and 8 of this Agreement.

D) After record retention periods have expired, you must destroy the Transaction records in a way that renders the data unreadable.

E) You must protect the confidentiality of Cardholder PINs, in compliance with all applicable Debit Network Operating Procedures.

F) Cardholder information may only be used or recorded for purposes specifically authorized in this Agreement. At no time may the Cardholder account number be utilized in any other manner, including, but not limited to, the collection of other debts. The use of a Cardholder account number recorded on a personal check is expressly prohibited, and related fines incurred from the Associations will be collected from you by us. You must not disclose a Cardholder account number, personal information or other transaction information to third parties except to your agents, us or our

agents for the sole purpose of assisting you in completing the transaction or as specifically required by law. Nevertheless, you may disclose transaction information to third parties to the extent approved by a Card Organization for the sole purpose of supporting a loyalty program or providing fraud-control services. In the event of your failure, including bankruptcy, insolvency or other suspension of business operations, you must not sell, transfer or disclose to third parties any materials that contain Cardholder account numbers, personal information or Transaction information. You must return this information to us or provide to us acceptable proof of its destruction.

G) Your solicitations to Cardholders must provide for the return of Cardholder information in a secure manner. Use of postcards or other return mailers displaying Cardholder account numbers in plain sight are in violation of this Agreement, and may be subject to fines from the Associations.

H) You are liable for fines assessed by Card Organizations if Cardholder Account numbers, personal information or Transaction information in your possession is accessed from you by unauthorized persons.

**4.04** **Use of service marks and advertising.** If you deal with the general public, you are required to display advertising and promotional materials provided by us to inform the public that you will honor Cards, but you must only display the proprietary names and symbols associated with Cards in compliance with Operating Procedures and while this Agreement is in effect, or until we or an applicable Card Organization notifies you to stop using them. You will not indicate or suggest in any way that we or Card Organizations endorse your products or services.

**4.05** **Cardholder disputes and error resolution.** You must cooperate fully with us, the Associations and any of their members or processors to resolve disputes and errors asserted by Cardholders concerning Transactions. You must provide assistance and any required documentation within the time periods we require in order to meet the Associations' requirements for resolution of disputes and errors.

**4.06** **Merchant disputes and error resolution.** Your right to review, question or dispute your delivery of a Card Transaction to us or our receipt of any Card Transaction delivered by you is limited to 60 calendar days following the Transaction Date of the Card Transaction.

**4.07** **Forms.** You may use only the forms for Sales Drafts or Credit Vouchers that are provided or approved in advance by us. You must not use forms for Sales Drafts or Credit Vouchers provided by us except for Sales Drafts or Credit Vouchers delivered to us.



## Section 5. MERCHANT'S RESPONSIBILITY FOR ACTS OF OTHERS

You and not we are responsible for any advice from, as well as omissions, acts of fraud or acts of misconduct by your employees, processors, consultants, advisors, contractors, agents, officers and directors. We are not responsible for unauthorized use or misuse of your Terminals or Equipment used for Merchant Services, except if the unauthorized use or misuse is by our own agents or employees.

## Section 6. ELECTRONIC EQUIPMENT

You must have properly installed and programmed Equipment, Terminals for Electronic Authorization and Deposit of Card Transactions, as well as other appropriately certified electronic hardware and software.

A) You may elect to have us provide the Equipment covered by this Section ("our Equipment") or to provide the Equipment by separate arrangement ("your Equipment"). For our Equipment, you will pay us the fees specified in the Fee Schedule.

B) Upon termination of this Agreement or at our request, you must promptly return all of our Equipment, as well as all unused Sales Drafts, Credit Vouchers, plates, plastics and other reusable supplies or materials we provide.

**6.01** **Delivery and installation of our Equipment.** If you use our Equipment, we or our agent will deliver, and, if we separately agree, install the Equipment at your premises. If you install our Equipment, you will be solely responsible for its proper installation and for any damages incurred by us resulting from improper installation.

**6.02** **Maintenance and inspection of our Equipment.** We will be responsible for the maintenance of our Equipment; provided, however, that you must notify us immediately of any apparent failure or malfunction of, or damage to, our Equipment. You will pay for all maintenance or repairs required as a result of your negligence or misuse of our Equipment.

**6.03** **Ownership of our Equipment.** Our Equipment is the sole property of us or our designated independent contractor, and you have no property right or interest of any kind in it. You must not disturb any labels or other identifying numbers indicating ownership of our Equipment. You must take any action reasonably practicable and necessary under the circumstances to protect our ownership interest against claims by other parties.

**6.04** **Risk of loss for our Equipment.** You assume all risk of loss, damage to or destruction of our Equipment. You must notify us immediately of any loss, damage to or destruction of our Equipment. If our Equipment is lost, damaged or destroyed by fire, theft or any other cause, you must pay us within 30 calendar days after such event the actual cost to us or our designated independent contractor for each unit of our Equipment affected.

**6.05 Removal or modification of our Equipment.** You must not remove our Equipment from its original installation site without our prior written consent. You must not make or permit any alterations, attachments, additions or modifications to our Equipment.

**6.06 Your Equipment.** If you use your Equipment, you must obtain, install, inspect, program and maintain it at your sole expense and responsibility, unless you agree with us in writing to other terms. You will be solely responsible for any loss, damage or destruction of your Equipment, losses from improper programming by you or your agents, and for any damages or losses incurred by us resulting from the incompatibility or improper installation of your Equipment or software. The use of your Equipment and software is subject to our approval as to compatibility for use in connection with the Merchant Services covered by this Agreement. If we at any time reasonably disapprove of the use of any of your Equipment or software, you will not use the Equipment or software and will promptly obtain and use other Equipment and/or software acceptable to us. We are not liable for your losses from software, hardware or programming services not supplied by us.

**6.07 Use of Equipment and services.** You must process all Card Transactions through the Equipment using ordinary care in accordance with the Operating Procedures, all applicable laws and regulations, and any other instructions supplied by us from time to time.

**6.08 Access to Equipment.** You must permit us or our designated independent contractor to enter your premises during regular business hours, or at other times with your prior approval, to install, inspect, maintain or update systems/ software, or relocate the Equipment, as appropriate. You must allow the same access to disconnect and/or remove our Equipment. You are responsible for limiting access to Equipment to authorized persons and only for authorized Transactions.

**6.09 Telephone hook-ups for Equipment.** You must, at your sole expense and risk, provide or install suitable dial-up telephone line connections and electric power sources, as well as make all alterations to your premises required to install the Equipment.

**6.10 Training.** We will provide training (usually by phone) or training materials, at our option, to your designated employees who either will operate the Equipment or will train other employees to operate the Equipment. You must not permit any employee who has not received training to operate the Equipment.

**6.11 Non-electronic or key-entered Transactions**

A) If malfunction of the Equipment or any communication interruption prevents use of the Equipment, you must handle Credit Card Transaction, or offline Debit Card Transaction authorization and processing, in accordance with back-up procedures specified in the Operating Procedures.

B) You are responsible for obtaining and using an imprinter for non-electronic or key-entered transactions.



C) For each Card Transaction not submitted to us through an electronic terminal due to Equipment malfunction, you must complete the Sales Draft or Credit Voucher we supply for that purpose by providing all information required, including the Authorization code and a brief description of the merchandise or services sold, and you must imprint the Card on the Sales Draft or Credit Voucher, as well as obtain the signature of the Cardholder, except for Internet, mail order and telephone order Card Transactions approved by us for you in the Application or by us in writing. The required information must be submitted to us electronically when the Equipment malfunction is corrected.

## Section 7. MERCHANT PROCEDURES FOR CREDIT CARD AND OFFLINE DEBIT CARD TRANSACTIONS

The following provisions apply to Electronic Authorization and Deposit. (You will not submit Paper Deposits for Card Transactions.)

**7.01 Card examination.** Before honoring any Card, you must, at a minimum, properly use the "Summary of Card Acceptance Procedures," which are in front of this Agreement and are part of the Operating Procedures.

**7.02 Authorization**

A) You must obtain Authorization for every Card Transaction. There is no floor limit below which Authorization is not required.

B) On the date of the transaction and before honoring any Card Transaction, you must request Authorization for the total amount of the Transaction from the Authorization provider. Obtaining Authorization will not assure payment to you for a Card Transaction. Obtaining Authorization will not necessarily prevent a Chargeback to you.

C) You must not divide a single Transaction between two or more Sales Drafts using the same Card to avoid an Authorization on the full amount of the Card Transaction.

D) You may contact the Authorization provider by telephone, magnetic stripe reading terminal or other means acceptable to us. You must follow all Operating Procedures with respect to obtaining Authorization. If Authorization is denied, you must not make further attempts to obtain Authorization with that Card on that day, must not allow the Card Transaction and should follow instructions from the Authorization provider. If the Card Transaction involves suspicious or unusual circumstances, you must request a "Code 10" Authorization. You will retain any Card by reasonable and peaceful means if requested to do so by the Authorization provider.

E) For your manually prepared Sales Drafts, if Authorization is granted, you must print each authorization code and authorization date, if different from the Transaction Date, legibly on the Sales Draft. If you use Electronic Authorization and Deposit, along with Equipment that documents Authorization information, you are not required to record this information.

F) If you use Equipment to obtain Authorization, you must electronically obtain Authorization for, and process Card Transactions using, the Equipment by passing the Card through the magnetic stripe reader (and, if applicable, by entering the last 4 digits of the Cardholder account number when prompted) and shall not as a general practice key-enter Card data without notification to, and approval by, us.

G) You must, in all cases when the magnetic stripe on the Credit Card is read, compare and ascertain that the embossed account number is the same as the number displayed or printed from the authenticating Terminal. You must not complete a Card Transaction if the displayed or printed account number does not match the number embossed on the Card.

H) If, in the course of any Card Transaction processing, any Terminal does not appear to function properly, you must obtain Authorization by a telephone call to the Authorization provider.

**7.03 Card Transaction imprinters and Terminals**

A) If you manually prepare Sales Drafts and Credit Vouchers, you are responsible for having an appropriate number of Sales Draft imprinters and Terminals. If such equipment is supplied by us, you will pay the fees specified in the Fee Schedule.

B) If the magnetic stripe on a Card is unreadable through the Terminal and you elect to key-enter the account number for Authorization and settlement, you must obtain a manual Card imprint, complete the Sales Draft and obtain the Cardholder's signature on the same Sales Draft. Failing to obtain a manual Card imprint in these situations may result in a Chargeback and financial loss to you.

**7.04 Cardholder verification**

A) Except for mail order, telephone order and Internet transactions you may make under this Agreement, you will complete a Card Transaction only if the Card user's signature on each Sales Draft is the same as the signature on the signature panel on the back of the Card, as judged by spelling and handwriting. The signature may be different from the name embossed or printed on the Card. See the "Summary of Card Acceptance Procedures" in front of this Agreement. You must also verify that the Cardholder resembles the person depicted in any picture on the Card. If identification is uncertain or if you otherwise question the validity of the Card, you must contact us for instructions. You must not require the Cardholder to sign a Transaction Receipt until the final Transaction amount is entered on it.

B) Conforming to these requirements will not relieve you of your responsibility to verify that the person using the Card is the Cardholder or a person authorized by the Cardholder to use the Card.



C) If you are presented with a Card that has not been signed, that cannot be printed on the Transaction Receipt or that has expired, you must review additional identification bearing the Cardholder's signature to validate identity, request the Cardholder to sign the Card and indicate the additional identification, including any serial number and expiration date, on the Transaction Receipt. Cards with signature panels reading, "See I.D." or equivalent language are considered unsigned. If the Cardholder refuses to sign the back of the Card, you may, at your discretion and risk of loss, complete the Transaction, discontinue the Transaction or request another form of payment. You are liable for Transactions that are completed with: unsigned Cards, Cards that cannot be imprinted on the Transaction Receipts and expired Cards, and which result in Chargebacks for those reasons.

**7.05 Transaction documentation**

A) Deliver charge record to the Cardholder. You will deliver to the Cardholder an accurate and complete copy of the Transaction Receipt no later than the time of delivery of the goods or performance of services, using a form supplied or approved by us. You must provide the following information on the Cardholder's copy resulting from use of electronic processing terminals:

1) Card account number
2) Your name
3) Your location code or city and state
4) Card Transaction amount
5) Card Transaction Date and
6) Brief description of merchandise or services sold.

B) Without exception, the Authorization code must be legibly documented on the Sales Draft that is signed by the Cardholder.

C) When you manually prepare Sales Drafts and Credit Vouchers, you must do all of the following when honoring a Card:

1) enter on the Sales Draft the Transaction Date, a description of the merchandise and/or services sold in enough detail to identify the Transaction and its amount (including any applicable taxes)
2) with the exception of mail order, telephone order, preauthorized order, Internet order and Recurring Transactions, obtain the signature of the Cardholder on the Sales Draft but not before the total amount of the Transaction is entered on it
3) with the exception of mail order, telephone order, preauthorized order, Internet order and Recurring Transactions, imprint legibly on the Sales Draft the embossed information from the Card and from your imprinter plate and
4) deliver a complete copy of the Sales Draft to the Cardholder at the time of the delivery of the goods or services.

**7.06 Delivery of Card Transactions**

A) You must deposit Transactions daily with us.

B) You must not deposit any Sales Draft with us until the goods have been shipped or the services have been performed and you have otherwise performed all of your principal obligations to the customer in connection with the Card Transaction, except as specifically permitted under this Section 7.06, and the Operating Procedures such as for sale of airline tickets before a trip, or for Special Services that you are permitted to provide on your Application and under Section 23 of this Agreement.

C) If you request and receive written Authorization from the Cardholder for delayed delivery, and legibly print on the Sales Drafts the Authorization number and the words "delayed delivery," and write both the Authorization date and the Card Transaction Date on the Sales Draft, you may deliver the Sales Draft within the period permitted for delayed delivery (not to exceed 15 calendar days).

D) Excluding the receipt copy delivered to the Cardholder, and except in response to legal process, you must not tender or deliver the original or copy of any Sales Draft, Credit Voucher or other document supporting an electronically processed Transaction to a party other than us for any reason. With respect to any such document, you or your designated processing agent must retain all documents supporting electronically processed Card Transactions, subject to our retrieval requests.

E) If you have multiple locations or offices, whether in the same city or in different cities, you must deliver Card Transactions in a manner that allows us to identify the Card Transactions originating at each respective location.

F) You must not deliver to us, directly or indirectly:

1) any Card Transaction previously submitted to us

2) any Card Transaction that you know or should have known to be fraudulent or not authorized by the Cardholder

3) any Card Transaction that results from a transaction outside of your normal course of business, as described on the Application

4) any Card Transaction that results from a transaction not involving you or not originated as the result of an act between you and a Cardholder or

5) any Card Transaction containing the account number of a Card issued to you, or any account numbers issued to your business owners, family members and principals, for transactions that do not represent a purchase of goods or services from you or a related credit.



G) Subject to your warranties in this Agreement and our Chargeback rights described in Section 7.13, after our receipt, validation and settlement of Card Transactions that you deliver to us, we will pay you for the Sales Drafts you deliver to us in accordance with this Agreement, less the Credit Vouchers delivered by you to us, the amount that we charge back to you and other fees or amounts due from you as provided in this Agreement. Any payment made by us to you is subject to adjustment upon further review and verification by us.

H) Card Transaction data entered through the Equipment will be captured electronically at the time of Authorization for later deposit by you. For any given Business Day, all authorized Card Transactions deposited by you before the cut-off time we designate will be tabulated, and the net dollar amount of the Transactions will be credited or debited by us to your Deposit Account, in accordance with the applicable funds availability disclosure to you, subject to your adherence to the Operating Procedures provided by us for each of your locations. Multiple deposits transmitted by you during a single Business Day or a series of consecutive non-Business Days may be accumulated and delivered as a single credit to your Deposit Account.

I) After settlement, we or the Card Issuers have the sole right to receive payments on any accepted Sales Draft as long as the Card Transaction has not been charged back to you. Unless specifically authorized in writing by us, you must not attempt any collections on any Sales Draft, must hold in trust for us any payment you receive of all or part of the amount of any Sales Draft and must deliver promptly to us any such collections as soon as received, together with the Cardholder's name and account number and any correspondence accompanying the payment.

**7.07 Recurring Transactions**

A) If we permit you to accept Recurring Transactions from a Cardholder for the purchase of goods or services that are delivered or performed periodically, the Cardholder must first complete and deliver to you a signed (including electronic signature or similar legally binding authentication) written order for the Recurring Transactions to be charged to the Cardholder Account. The written order must specify at least the following:

1) the Transaction amounts to be charged to the Cardholder Account, unless the Recurring Transactions are to be for varying amounts

2) the frequency of the recurring charges and

3) the duration of time for which such Cardholder's permission is granted. If a Recurring Transaction is renewed, you must obtain a subsequent written order from the Cardholder for continuation of the Recurring Transactions. A Recurring Transaction may include the payment of recurring charges such as insurance premiums, subscriptions, membership fees, tuition or utility charges. A Recurring Transaction may not include partial payments made to you for goods or services purchased in a single transaction, nor may it be used for periodic payments of goods or services on which you assess additional finance charges.

B) If the Recurring Transactions are to be for varying amounts, the following additional conditions apply:

1) The written order must specify a minimum and maximum transaction amount to be charged periodically to the Card.

2) You must inform the Cardholder of the right to receive, at least 10 days prior to each scheduled Transaction Date, written notification of the amount and date of the next Charge. The Cardholder may elect to receive the notice:

i) for every charge or

ii) only when the transaction amount does not fall within the range of amounts specified on the written order or

iii) only when the transaction amount will differ from the most recent charge by more than an agreed-upon amount.

C) A copy of the written order must be retained for the duration of the recurring charges and provided in response to our request for it.

1) You must write the words "Recurring Transaction" on the signature line of the Transaction Receipt.

D) You must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, us or a response that the Card is not to be honored.

**7.08 Non-Card present, telephone orders, mail orders, Internet orders, pre-authorized orders, and Recurring Transactions; no-imprint Transactions**

A) You may complete a Card Transaction without a Card imprint or the Cardholder's signature in the case of a telephone order ("TO"), mail order ("MO"), Internet order ("IO"), pre-authorized order ("PO") or Recurring Transaction ("RT") only if you have completed the appropriate areas on your Application, or have been otherwise authorized in writing by us to accept such transactions. For these transactions, you must prepare a sales draft, or like document, for delivery to Cardholder, and enter legibly the following:

1) the Cardholder's name appearing on the Card

2) the address to which merchandise is to be delivered and/or where services are to be performed

3) address verification information, if applicable

4) the account number on the Card

5) the expiration date and any effective date on the Card

6) the date of the Card Transaction

7) the Authorization code for the Card Transaction

8) a description of the merchandise and/or services sold in enough detail to identify the Card Transaction



9) the amount of the Card Transaction (including any applicable taxes)

10) the information identifying you that would appear on an imprint Transaction, and

11) on the signature line, the letters "TO," "MO," "IO," "PO," "RT" or the applicable phrases, "telephone order," "mail order," "Internet order," "pre-authorized order" or Recurring Transaction, as appropriate.

B) You must not solicit a telephone order through use of inbound or outbound telemarketing without first identifying yourself to us as a telemarketing company and obtaining written consent from us to act as a telemarketing merchant.

C) In the case of a pre-authorized order or a Recurring Transaction, you must require the Cardholder to execute and deliver to you a written preauthorization, and in the case of a mail order, pre-authorized order, Internet order or Recurring Transaction, you must retain and make available the written orders to us upon request.

D) When requesting Authorization, you must inform the Authorization Provider that the Card Transaction is a mail order, telephone order, pre-authorized order, Internet order, or a Recurring Transaction. You must use the appropriate Terminal procedures that identify the Transaction as a mail order, telephone order, pre-authorized order, Internet order or a Recurring Transaction. Authorizations obtained without this notification will be considered invalid.

E) You must not deliver merchandise or perform services under a telephone order, mail order, pre-authorized order, Internet order, or Recurring Transaction subsequent to notification that the order has been canceled or that the Card should not be honored.

F) You must deliver to the Cardholder a copy of any Sales Draft prior to or at the time of delivery of merchandise or rendering of services.

G) You agree that any Card Transaction completed without a Card Imprint and signature comparison (including not only mail, telephone and Internet orders, but also those Card Transactions for which the Cardholder was present but no Card Imprint or signature was obtained) contains an elevated level of risk and Chargeback to you. Authorization obtained in accordance with the terms of this Agreement does not reduce this element of risk and Chargeback to you when the Cardholder alleges that the Card Transaction was not authorized.

H) Using the Card Organization Address Verification System (AVS), Card Verification Value (CVV2) or Card Validation Code (CVC1 or CVC2) may lower your interchange fees and provide you with information from which you may decide to decline a Transaction, but these systems do not prevent you from incurring Chargebacks.

**7.09 Multiple Drafts**

You must include on a single Sales Draft the entire amount due for each Transaction (including applicable taxes), unless:

A) The customer pays the balance of the amount due at the time of the transaction in cash or by check, or by using another Card for which the Transaction is properly Authorized and delivered to us.

B) All or a portion of the goods or services are to be delivered or performed at a later date, and the customer signs two separate Sales Drafts, one of which represents a deposit and the second of which represents payment of the balance, and the "balance" Sales Draft is completed only upon delivery of the goods or performance of the services. In the case of delayed payment of the balance due on a transaction, you must:

1) note on the Sales Drafts the word "deposit" or "balance," as appropriate

2) obtain prior Authorization and note the Authorization code(s) on the Sales Drafts and

3) not present the "balance" Sales Draft until all the goods are delivered or all the services are performed.

**7.10 Exchange, return policy and refund**

A) If you maintain a policy of permitting refunds, exchanges, returns or adjustments for cash customers, you must maintain the same policy for persons making purchases using a Card. If you set any limits on refunds or returned merchandise, they must be clearly disclosed to the Cardholder at the time of the sale on the Sales Draft.

B) You may limit acceptance of returned merchandise and canceled services, or establish a policy of making price adjustments, if you make proper disclosure and deliver the purchased goods or services to the Cardholder at the time of the Card Transaction. You have made proper disclosure at the time of the Card Transaction if the following or similar words are legibly printed on all copies of the Sales Draft being presented to the Cardholder for signature:

- *"No refund"* — Merchant will not accept merchandise in return or exchange and will not issue a refund to a Cardholder.
- *"Exchange only"* — Merchant will only accept merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original Card Transaction.
- *"In-store credit only"* — Merchant will accept merchandise in return and will deliver to the Cardholder an in-store credit for the value of the merchandise returned, which may be used only in the Merchant's place(s) of business. Whichever policy you select must appear in letters approximately 1/4-inch high and in close proximity to the space provided for the Cardholder's signature, and the Sales Draft must be signed by the Cardholder.



C) Card Transactions completed as telephone order, mail order, Internet order or any other transactions not face-to-face between you and a cardholder cannot be covered by any restrictive return policy for which verification of proper disclosure cannot be made.

D) You must deliver to us a Credit Voucher for a refund or adjustment to the Cardholder Account and deliver to the Cardholder a copy of the Credit Voucher at the time the refund or adjustment is made. You must include the refund date and amount, Cardholder Account number and a brief description of the refund or adjustment on the Credit Voucher, in sufficient detail to identify the Card used and original Charge. The amount of the Credit Voucher must not exceed the amount of the original Charge, except for any amount that you agree to reimburse the Cardholder for return postage.

E) You will not make a refund or adjustment for a Card Transaction in cash, except when required by law. You may not deliver a Credit Voucher to us for any refund or adjustment of a purchase not originating as a Card Transaction with the same Cardholder requesting the refund or adjustment, a Card Transaction not made with you or a Card Transaction not originally processed by us. You will not complete a Credit Voucher for a card issued to you or your employees, except for a valid refund of a Charge originating with you. You may not receive money from a Cardholder and subsequently deliver to us a Credit Voucher to make a deposit to the Cardholder Account.

F) We may delay processing Credit Vouchers on any day to the extent that they might exceed the total of valid Card Transactions deposited with us on that day, and the balance in the Deposit Account available to cover the Credit Vouchers, until the sum of valid Card Transactions deposited and the balance in the Deposit Account is sufficient to cover the Credit Vouchers.

G) After this Agreement terminates, we are not obligated to process any Credit Vouchers you submit. All Chargebacks related to Credit Voucher disputes will be your responsibility. If you enter into a new card processing service agreement with a new processor and provide us with the name and address of your new processor, we will work with the new processor at your expense to reasonably resolve disputes.

**7.11 Selected prohibited practices**

Unless expressly authorized in writing by us, you must not:

A) Execute a Card Transaction in any currency other than U.S. dollars.

B) Conduct a Card Transaction to advance any cash to a Cardholder, either directly or by deposit to the Cardholder Account, including to your, your family's, officers' or employees' personal Cardholder Accounts.

C) Receive payment from a Cardholder and subsequently prepare and deliver to us a Credit Voucher for the purpose of making a deposit to the Cardholder's Account,

D) Require, directly or indirectly, through an increase in price or otherwise, any Cardholder to pay either any surcharge at the time of sale or any part of any Charge imposed by us on you (however, cash discounts are permissible, as are convenience fees, when in compliance with Card Organization Operating Procedures).

E) Establish or post any signs indicating that you require a minimum or maximum amount for any Card Transaction,

F) Submit any Card Transaction that has been previously declined or charged back,

G) Submit any Card Transaction for Authorization for the purpose of determining or testing Cardholder credit limits,

H) Disclose any Cardholder's name, personal information or account number information obtained through a Card Transaction to any third party, except your agents for the purpose of assisting you in your business, Card Organizations or as specifically required by law.

**7.12 Retrieval Requests**

You must, at our request, provide us or our designated processing agent copies of Sales Drafts and Credit Vouchers supporting electronically processed transactions, and must adhere to the following guidelines:

A) You must accept Retrieval Requests from us by a delivery method of our choice.

B) Retrieval Requests sent to you will include your account number, the dollar amount according to our records, the Cardholder Account number and the date of the transaction. Unless otherwise requested, you must deliver copies of the original Sales Draft or Credit Voucher to us or our designated processing agent by the time specified on the Retrieval Request.

C) You are liable for, and we have the right to charge back to you the amount of, any Sales Draft that becomes a chargeback for non-receipt of a requested item, or as a result of your failure to respond to our Retrieval Request in the required time. You must be able to provide proof-of-delivery of copies to us. You will be liable for transactions for which you elect not to retain copies of Sales Drafts or Credit Vouchers and are thus unable to respond to a Retrieval Request.

D) If you have more than one location, you must, upon execution of this Agreement, notify us of the location you designate as the central location where we will send Retrieval Requests. If you do not, we may send Retrieval Requests to any of your locations. You will give us 30 days prior notice of a change of your central location.



**7.13 Chargebacks**

A) We will charge back to you, and you will pay us back, the amount of each Charge that you submit to us for processing that is charged back to us for any reason through Card Organization Operating Procedures, or to the extent we have received valid claims regarding the Charges from Cardholders under other provisions of law. A Chargeback may occur for one or more of several reasons under the Operating Procedures or by law. Chargeback reasons include, without limitation:

1) The Sales Draft is not signed by the Cardholder or is not deposited with us within the required time limits

2) The Sales Draft or any material information it contains (such as the Cardholder account number, effective date of the Card, Transaction description, Transaction amount, Transaction Date or Authorization date) is illegible, inaccurate or incomplete

3) The Sales Draft contains the imprint of a counterfeit or altered Card or a Card that had expired or was invalid on the Transaction Date.

4) The Transaction was one for which the Authorization and verification was not obtained, or a valid Authorization code is not correctly and legibly printed on the Sales Draft

5) The Sales Draft is a duplicate of an item previously paid or is one of two or more Sales Drafts using the same Card arising from a single Transaction in violation of this Agreement

6) The Cardholder disputes participating in, approving or signing the Sales Draft, or disputes the sale, delivery, quality or performance of the merchandise or services purchased, or alleges that a credit adjustment was requested and refused or that a Credit Voucher was issued by you but not posted to the Cardholder Account

7) The price of the merchandise or services shown on the Sales Draft differs from the amount shown on the copy of the Sales Draft delivered to the Cardholder

8) You have violated any term, condition, covenant, warranty or other provision of this Agreement, or any applicable laws or Operating Procedures, in connection with the Card Transaction to which it relates

9) The Card Transaction is fraudulent or the related transaction is not a bona fide transaction in your ordinary course of business, or is subject to any claim of illegality, cancellation, avoidance or offset for any reason, including, without limitation, negligence, fraud or dishonesty on the part of you, your agents or your employees

10) We have requested copies of Sales Drafts or other records and you have failed to provide the copies in the time period allowed, with proof of delivery of the copies

11) The Cardholder has asserted what the Cardholder believes is a goodfaith claim or defense against the Charge

12) The Cardholder denies participation in a non-card-present transaction

13) You fail to complete a Sales Draft and obtain a Card imprint for a manually key-entered transaction, or

14) The Card Transaction has been charged back to us for any reason by or through the Card Organizations and under their Operating Procedures.

B) Each Chargeback to you is immediately due and payable by you. Without limiting our other remedies or our security interest described in Section 11 below, we may deduct, debit or withhold the amount of a Chargeback or anticipated Chargeback from the Deposit Account at any time without advance notice, and if sufficient funds are not available in that account, from any of your other accounts at the Bank, other funds due you from us or other property of yours held by us. To the extent funds are not available in your account with the Bank, you authorize us to attach and initiate withdrawals of funds from your accounts at other financial institutions, by automated clearinghouse entry, sight draft, pre-authorized checks, reverse wires or otherwise, in order to cover the Chargebacks, and you authorize the other financial institutions to withdraw the funds from your accounts and pay us the amount of the Chargebacks. We will release to you any of your deposits, funds or property after we determine that the deposits, funds or property held are not likely to be needed to cover any Chargebacks. We will not continue to withhold your funds without reasonable justification under the circumstances.

C) You may receive Chargebacks without prior Retrieval Requests, in accordance with the Operating Procedures.

D) We may charge back to the Deposit Account any Card Transaction if you are unable or fail to provide the original or copy of the Sales Draft supporting the transaction.

E) The fact that Authorization is obtained does not affect our rights to process Chargebacks to you, revoke payment or otherwise require repayment of the Card Transaction under this Agreement. Authorization obtained by you will not be deemed to be our representation that the particular Card Transaction is in fact a valid, authorized or undisputed Card Transaction entered into by the Cardholder or an authorized user of the Card.

F) If Operating Procedures permit you to dispute a Chargeback, you must submit your rebuttal to us following our procedures within the time specified on the Chargeback notice or Retrieval Request. Your failure to act within that time may not provide us with a reasonable number of days to evaluate your dispute of the Chargeback and represent the Charge to the Cardholder under the Operating Procedures. We will not be obligated to represent Chargebacks except to the extent allowed by Operating Procedures and your timely dispute of the Chargebacks. Our obligation to you for a Chargeback is limited to a permissible representing under the Operating Procedures. We will not engage in direct collection efforts against Cardholders on your behalf.



G) If you have multiple locations, you must, upon execution of this Agreement, designate one of your locations as the central location for handling Chargebacks and Chargeback disputes, and you must notify us of the designated location. If you fail to do so, we may present Chargebacks to any of your locations.

H) You must not directly bill or accept payment from a Cardholder for any Card Transactions you submit to us. However, if a Charge results in a Chargeback you pay, you may proceed to collect from the Cardholder as permitted by law, but not by submitting a new Charge to cover the Chargeback.

I) If we determine that more than one Chargeback per 100 Charges are incurred or are reasonably likely to be incurred by you, we may notify you of new procedures you should adopt and impose additional fees for processing Chargebacks. If you do not immediately comply, we may cease accepting deposit of additional Sales Drafts until you do.

## Section 8. MERCHANT PROCEDURES FOR ONLINE DEBIT CARD TRANSACTIONS

**8.01** **Offline Debit Card Transactions.** All of the provisions of Section 7 apply to offline Debit Card Transactions.

**8.02** **Authorization.** You must obtain Authorization for each online Debit Card Transaction before you complete the transaction. You must not complete an online Debit Card Transaction unless it has been authorized by the Debit Card Issuer by using the POS Equipment and following the procedures of the Debit Card Organization that we provide to you. Nevertheless, you and we may agree, in a separate signed document, on exception procedures to implement resubmission, store and forward, or paper-based transactions when you cannot obtain Authorization. You must rely on the Authorization procedures of the Debit Card Organization and must not request the Cardholder's signature or any other means of verifying the Cardholder's identity unless specifically required by the Operating Procedures for a particular type of Transaction, which typically will be for an exception procedure.

**8.03** **Equipment requirements for online Debit Card Transactions.** We will program any POS Equipment we furnish (and, at your request and our discretion, any other Equipment) to provide Cardholders with transaction receipts that meet the requirements of law, including both Regulation E of the Federal Reserve Board and the Operating Procedures, provided you properly follow our instructions for completing online Debit Card Transactions. The cost for our programming is in our Fee Schedule. For Equipment not programmed by us, you must ensure that transaction receipts meet the requirements of law and the Operating Procedures. You must follow our instructions for completing online Debit Card Transactions and make online Debit Card Transaction receipts available to Cardholders.

**8.04 Surcharges.** If you are allowed by the Operating Procedures to impose a surcharge on online Debit Card Transactions, and to implement a permissible surcharge, you must arrange with us to include the surcharge on the Transaction Receipt made available to Cardholders, disclose the amount or percentage of the surcharge and identify the entity imposing the surcharge on a sign either on or at the POS terminal. This subsection does not give you authority to charge a surcharge, authority for which depends on the Operating Procedures.

**8.05 Cashback Transactions.** You may offer cash back to Cardholders ("Cashback") as part of an online Debit Card Transaction, provided you transmit the Cardholder's requested Cashback Transaction amount request to the Card Issuer as part of the Authorization procedures and receive an Authorization for the Transaction. If Authorization is denied solely because the Cashback portion would cause the Cardholder to exceed a limit on cash withdrawals imposed by the Card Issuer, you must inform the Cardholder that the transaction was denied solely because of the cash withdrawal limit, but that a new online Debit Card transaction for the amount of the purchase alone might be approved.

**8.06 Voided Transactions.** You may void an online Debit Card Transaction electronically, but only if the voiding Transaction is entered in accordance with the Operating Procedures that typically require the voiding Transaction to occur before midnight of the calendar day on which the original Transaction was initiated, Cardholder re-entry of the PIN used for the original Transaction and your transmission of the trace number and exact dollar amount of the transaction to be cancelled. Voided Transactions must be initiated at the same location as the original Transaction, but do not have to be at the same terminal.

**8.07 Credited Transactions.** You may credit the account of the Cardholder for an amount not exceeding an original Debit Card Transaction with you if: (a) the Cardholder provides the written receipt for the original transaction to you within one year of the original Transaction Date, and (b) the merchandise credit Transaction is originated by using equipment specified by us in accordance with the Operating Procedures. Because not all Card Organizations allow credits, if the credit transaction is not successful by using the Equipment, we recommend that you issue a cash refund to the customer with whatever documentation you typically require.

**8.08 Exception Transactions.** You may submit Exception Transactions with our written approval according to Operating Procedures we give you. No assurances are given that Exception Transactions will be authorized and that you will receive payment. You assume all risk of and responsibility for losses among you, us, the Card Issuer and the Debit Network for each Transaction not authorized. You may attempt to recover any losses from the person using the Debit Card, but you are given no assurances that such person is the Cardholder. Exception Transactions include:

A) **Balance inquiry.** Allows a Cardholder to obtain the balance in a Deposit Account accessible through a Debit Card. A balance inquiry may be made only at Cardholder-operated POS equipment.



B) **Pre-authorization.** Allows a Cardholder to obtain Authorization from the Debit Card Issuer up to a specified dollar amount in advance of a purchase Transaction. A partial pre-authorization may be granted by the Debit Card Issuer in an amount less than the pre-authorization request. The purchase may not exceed the amount authorized. To complete the Transaction, you must also receive a pre-authorization completion message at the time of purchase in accordance with the Operating Procedures. The time allowed between the pre-authorization and the pre-authorization completion varies among Card types.

C) **Store and forward.** If approved for this service, you may electronically store Transactions, including pre-authorization requests, only when your Equipment cannot receive an Authorization approval or denial for a Transaction from a Card Issuer due to technical problems; for example, equipment or communication failures. You must forward Transactions as soon as the technical problem is resolved, typically under the same requirements that apply to an ordinary purchase transaction. The maximum time allowed to forward the transaction varies among Card types.

D) **Paper Sales Draft.** Allows a Cardholder to initiate an online Debit Card Transaction through use of a paper Sales Draft only when your Equipment cannot receive an Authorization approval or denial for a Transaction from a Card Issuer due to technical problems; for example, equipment or communication failures or when your Equipment cannot capture Cardholder information for store and forward. Some Debit Networks allow paper Sales Draft Transactions as an alternative to store and forward transactions in these circumstances. You must inform the Cardholder that technical problems have prevented verification of the Transaction electronically and that the Cardholder's signature will be required on the paper Sales Draft.

1) You may only use our approved paper Sales Draft forms and complete them according to our requirements. The forms will include all information required for an electronic online Debit Card Transaction, excluding the PIN. You must deliver a copy of the completed and signed Sales Draft to the Cardholder upon completion of the purchase.

2) You must compare the signature on the paper Sales Draft with the signature on the Debit Card or another valid piece of identification, such as a driver's license, and you must not allow the Transaction to be completed if the signatures do not appear to be the same. Nevertheless, a matching signature provides no assurance to you that the Transaction will be approved or that you will be paid.

3) You must deliver the paper sales draft to us as we direct. We or you at our direction must submit to the Card Issuer the paper Sales Draft Transaction for Authorization within the time limits we specify. No assurance is given that Authorization will be granted and, even if authorized, that you will be paid.

E) **Resubmission.** Allows you to resubmit Transactions initially declined due to insufficient funds or because the Transaction exceeded daily activity limits, but not for any other reason; for example, a lost card. Some Debit Networks allow this service only for limited types of Transactions, and some do not allow it at all. Time limits and frequency limits for resubmissions vary among Card types. Requirements for resubmission data also vary among Card types, but may require all data required for the original transaction.

F) **Merchant stand-in processing.** If you process, store and forward Transactions or paper Sales Draft Transactions, Merchant stand-in processing allows you to electronically screen only those Transactions against a negative file maintained by you before completing them with a Cardholder.

1) You must include a Cardholder or Cardholder's account in your negative file only if you previously have incurred a loss due to a decline of an online Debit Card Transaction covered by this Agreement. You may store only the primary account number in your negative file and must not disclose or use any Transaction data except for determining whether to engage in a Transaction covered by this Agreement.

2) A Card Issuer may ask us for a list of the Card Issuer's Cardholder Accounts maintained on your negative file, and you must, without charge, comply with this request and requests for any updates within the time we specify.

**8.09 Chargebacks and error resolution**

A) You will fully cooperate with the Debit Networks, their members and us to resolve Cardholder disputes. The Debit Networks and we may investigate your practices relating to online Debit Card Transactions as permitted by the Operating Procedures.

B) Debit Card Issuers may charge online Debit Card Transactions back to you through the Debit Networks and us when permitted by the Operating Procedures and under the time limits imposed by them. We will obtain payment from you for the Chargebacks in the same ways as for other Card Transactions. We will re-present Chargebacks when requested by you to the extent and under the time limits allowed under the Operating Procedures.

C) A Debit Network may designate you as a "Special Merchant" or comparable designation under the Operating Procedures after an investigation of complaints that you or your employees or agents have committed or knowingly permitted an act of fraud in connection with an online Debit Card Transaction, are violating the Operating Procedures, or on more than one occasion have failed to comply with this Agreement. If you are designated as a Special Merchant or are given a comparable designation, any online Debit Card Transaction occurring during the time you are so designated may be charged back to you, and we may take or be required to take other action under the Operating Procedures, including termination of your ability to engage in Online Debit Card Transactions.



**8.10 Prohibited practices**

Unless expressly authorized in writing by us, you must not:

A) Mark or post a single regular price for merchandise or services and charge a customer who uses a Debit Card any more than that regular price, and you must not increase or add to the regular price any additional fee or surcharge.

B) Execute a Debit Card Transaction in any currency other than U.S. dollars.

C) Establish or post any signs indicating that you require a minimum or maximum amount for any Debit Card Transaction.

D) Submit any Debit Card Transaction that previously has been declined.

E) Submit any Debit Card Transaction for Authorization to determine or test Cardholder Transaction limits.

F) Sell, purchase, provide or exchange Cardholder name or account number information obtained through a Debit Card Transaction to any third party, except as permitted in Section 4.03, and except to your agents for the purpose of assisting you in your business with us, Card Organizations or as required by law.

## Section 9. DEPOSIT ACCOUNT

**9.01 Deposit Account required.** You must maintain a Deposit Account in your name in satisfactory condition with us, or at another depository institution under arrangements acceptable to us. The Deposit Account will be subject to the provisions of Section 11, "Security Interest." In the absence of any other written agreement with us, the standard terms and conditions that apply to our deposit accounts of the same type will apply. As amounts become payable to us or to you under this Agreement, we may, unless otherwise agreed, make payments to or receive payments from you by crediting or debiting the Deposit Account without prior notice. If you do not maintain a Deposit Account with us, payments between you and us must be made in a manner satisfactory to us. If you do not maintain sufficient balances in the Deposit Account to cover amounts owing under this Agreement, you must immediately pay all such amounts directly to us, and if you do not do so, at our discretion we may cease processing additional Card Transactions until the amounts due are paid.

**9.02 Account closure.** If the Deposit Account is closed, we may terminate this Agreement upon written notice unless you open another Deposit Account acceptable to us. You may change the Deposit Account upon our approval, which will not be unreasonably withheld.

## Section 10. RESERVE ACCOUNT AND DELAYED PAYMENT

**10.01 Reserve Account terms.** At our written request, you will maintain a Reserve Account with the banking office that we designate in the minimum amount we require. If you fail to establish the Reserve Account at our request, we may establish one with us in our and your name for our benefit, and fund it with amounts that become due you under this Agreement. The Reserve Account will be separate from the Deposit Account. Unless otherwise agreed, the Reserve Account will earn interest at the rate paid on our Business Savings Accounts. The standard terms and conditions that apply to our deposit accounts of the same type will apply, unless you and we otherwise agree in writing.

**10.02 Withdrawals from Reserve Account.** If funds are not available in the Deposit Account, we may withdraw from the Reserve Account any obligation of you to us under this Agreement, including Chargebacks, Credit Vouchers and Processing Fees.

**10.03 Additions to Reserve Account.** Whenever the balance in the Reserve Account is less than the minimum balance required, we may, without prior notice to you, deposit the deficiency into the Reserve Account by reducing any payment to you required by this Agreement. We also may withdraw the deficiency from the Deposit Account, any other of your deposit accounts with us or with another depository institution (including accounts of general partners if you are a partnership) and deposit it into the Reserve Account. You authorize these withdrawals by Automated Clearing House entry, sight draft, pre-authorized check, reverse wire or otherwise as we deem appropriate under the circumstances. In addition, you must deposit any deficiency into the Reserve Account within one Business Day after receiving our oral or written request. Without limiting our remedies, your failure to deposit any deficiency on time will permit us, without advance notice, to cease processing additional Charges and Credit Vouchers. We will give you written notice of any cessation of processing.

**10.04 Increases in required Reserves.** If we have reasonable grounds to believe that you may be liable to customers or to us for Chargebacks and Credit Vouchers exceeding the balance in the Reserve Account, we may: (a) immediately place in the Reserve Account payments due you and stop processing Transactions for you until such time as the extent of your obligations to us, your liability for Chargebacks and Credit Vouchers, and your liability to customers are known, and until we no longer deem ourselves insecure, and (b) demand from you an amount that in our judgment is needed to ensure payment of your obligations and liabilities. Your failure to pay the amount will permit us to stop processing additional Transactions or terminate this Agreement immediately without advance notice.



**10.05 Reserve requirements following termination.** We may continue to hold the Reserve Account after termination of this Agreement, regardless of whether termination is by you or us. If no Reserve Account is established before termination, at our option, we may require you to establish a Reserve Account upon termination of this Agreement. All provisions that apply to a pre-termination Reserve Account will apply to one opened after termination, including replenishment of deficiencies. We will return the balance in the Reserve Account to you after we reasonably determine that the risk of Chargebacks has ended (typically no later than one year after termination of this Agreement or such longer time within which any Cardholder may cause a Chargeback to occur under the Operating Procedures) and after deducting any other amounts that you owe us under this Agreement.

**10.06 Delayed payment.** In addition to, or as an alternative to, a Reserve Account, we may delay payment to you for Charges for a period of time solely determined by us.

## Section 11. SECURITY INTEREST

**11.01 Grant of security interest.** To secure your performance of your obligations under this Agreement, you grant us security interests in each Charge and its proceeds, the Deposit Account, the Reserve Account and any other deposit account held by you with us or any other financial institution, whether now existing or established in the future, and in the proceeds of all those accounts, any funds due you from us and any of your property held by us. We may enforce these security interests without notice or demand. The security interests granted under this Agreement will continue even if this Agreement terminates, until you pay all your obligations to us. You will cooperate with us by signing our standard agreements, whereby you will consent to control by us over the disposition of funds in the accounts subject to the security interests. In addition, your signature on the document establishing this Agreement also will be considered your signature agreeing to any master control agreement as defined in Article 9 of the Uniform Commercial Code among you, us and any other bank, under which agreement we, you and any other bank agree to the disposition of funds in the Deposit Account, the Reserve Account or any other deposit account without further consent by you, provided that the control agreement will not obligate you to pay additional fees to the Bank or to the other bank.

**11.02 To the extent that we have paid or may pay a Chargeback or Credit Voucher,** you will be obligated to reimburse us for any sums we pay. If you do not reimburse us, we will have all of the rights and remedies of Cardholders under 11 U.S.C. 507(a)(6)[Bankruptcy]. We may assert any claim on behalf of a Cardholder individually or on behalf of all Cardholders as a class.

## Section 12. FEES, DUTY TO EXAMINE STATEMENTS, RESPONSIBILITY FOR STATEMENT ERRORS

**12.01 Fees.** You will pay us fees in the Fee Schedule and its attachments. The Fee Schedule is part of this Agreement. Fees will be based on the gross dollar amount of all Charges received by us from you during the preceding calendar month, week, or day. In addition, you may be assessed a surcharge for certain non-qualified Transactions as described in the Fee Schedule. We may charge fees based on a discount percentage, per item, interchange plus basis, or as otherwise agreed with you. Additional fees and charges apply for the special services described following Section 18, as well as for extra services as agreed between you and us. We may change the Fee Schedule (subject to limitations on changes in fees, if any, contained in your Fee Schedule), upon 30 days' prior notice as provided in the Notices section of this Agreement. Any change in fees will become part of this Agreement as of its effective date.

A) You will pay us all fees and charges for authorization and data-capture services as specified in the Fee Schedule, in addition to any charges or fines imposed for your transactions by Card Organizations.

B) We will withdraw amounts due directly from the Deposit Account. If the balance in the Deposit Account is insufficient to pay the fees and charges, and if you fail to pay any amount that is due upon demand, we may, at our option, and without further notice or demand, cause the amount due to be withdrawn from the Deposit Account at any time the balance in the Deposit Account is sufficient to do so; or at our discretion, we may withdraw the amount due from the Reserve Account or any accounts subject to the security interests you grant to us. You authorize us to make these deductions from these accounts by Automated Clearing House entry or otherwise.

C) You will pay us immediately, upon our demand, the amount of any penalty, assessment, fee, fine or damages suffered by us as a result of any Transaction that violates this Agreement, the Operating Procedures or applicable law and that was not due to our fault.

**12.02 Merchant Services statements.** We will provide you a Merchant Services statement monthly, which will include information on deposits to and withdrawals from the Deposit Account. If you choose our online service, this information will be made available to you online.

**12.03 Duty to review statements.** You agree to promptly and carefully review your Merchant Services statement and any accompanying items. You have sole responsibility for comparing fees charged for Transactions to the fees you think you should be charged and for bringing errors to our attention. You must report problems, including missing deposits to or incorrect withdrawals from the Deposit Account, to us immediately. You agree that 60 days after the Merchant Services statement is sent to you, or is available to you through the Online Service, is a reasonable amount of time for you to review your statement and report any problem related to a matter shown on or missing from the statement, including missing deposits that we should have made to the Deposit Account.



**12.04 Responsibility for statement errors.** If you do not notify us in writing of suspected problems within 60 days after we send you the Merchant Services statement or otherwise make it available, you agree that you cannot make a claim against us related to the unreported problems, including missing deposits and incorrect deductions from the Deposit Account.

## Section 13. DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY

We make no representations or warranties of any kind, express or implied, with respect to Equipment, materials or their use by you, including, but not limited to, warranties of merchantability and fitness for a particular purpose if the Equipment or materials have not been supplied by us. We are not liable to you for any special, indirect or consequential damages, including but not limited to lost profits arising out of or incurred by you in connection with Merchant Services, the Equipment or their use by you. Our liability relating to a Card Transaction will not exceed the amount of the valid Charge for that Card Transaction. The fact that an Authorization is obtained by you will not affect our right thereafter to revoke Authorization of a Card Transaction or to charge back the Transaction to you, except if prohibited by the Operating Procedures. In no event will the fact that an Authorization is obtained by you be deemed to be our representation or warranty, either express or implied, that the particular Card Transaction is in fact a valid, authorized or undisputed Transaction entered into by the Cardholder.

## Section 14. INDEMNIFICATION

You will indemnify us against all liability, claims, demands, damages and costs (including fines or assessments by Card Organizations) attributable to any breach of this Agreement by you, or your violation of Operating Procedures. We will indemnify you against all liability, claims, demands, damages and costs attributable to any breach of this Agreement by us or our violation of Operating Procedures, as limited by Section 13. We will pay any fines or assessments by Card Organizations attributable to our violations of Operating Procedures not involving your fault.

## Section 15. TERMINATION OF AGREEMENT

Either party may terminate this Agreement or may terminate any special services (following Section 18) on 30 days' written notice, with or without cause, and as otherwise provided in this Agreement, except to the extent you agree in writing with us to a longer written-notice period from you to us. You may terminate this Agreement on less than 30 days' notice if you object to an amendment promulgated by us under Section 16. If not terminated, this Agreement will continue without need for renewal. We may terminate this Agreement immediately, followed by written notice to you in the event we reasonably determine that:

A) There is a materially adverse change in your financial condition.

B) A petition in bankruptcy has been filed by or against you or you are generally unable to pay your debts as they become due (this Agreement is a contract to extend "financial accommodations" as defined in 11 U.S.C. 365(c)(2)).

C) A receiver or similar official is appointed for a substantial portion of your business, or the business is terminated.

D) Any information provided by you to us in establishing this Agreement, including information on the Application, was false or misleading when received.

E) You have violated any requirement or warranty of this Agreement.

F) You have had for two consecutive months, or for any three months in a six month period, a monthly ratio of dollar Chargeback volume to dollar sales volume or a monthly ratio of number of Chargebacks to number of Sales Drafts in excess of 1%.

G) There is an overdraft for five consecutive calendar days or more in the Deposit Account or in any deposit account you maintain at the Bank or other depository institution under Section 9.

H) There has been any material adverse change in your operation or ownership, including changes in sales volume, average ticket size, non-card-present percentage, elimination of our security interest under Section 11 or addition or deletion of owners and/or guarantors.

I) You have been involved in originating Sales Drafts or Credit Vouchers arising from fraudulent or otherwise unauthorized Card Transactions.

J) You are unable or unwilling to perform fully your obligations under this Agreement or any applicable laws or Operating Procedures.

K) You have defaulted on any Agreement with the Bank or its affiliates.

L) You have not submitted a Charge to us within the most recent 90 days, or

M) Any guaranty supporting your obligations is revoked, withdrawn, terminated or altered in any way. Upon the effective date of termination, your rights to enter into Card Transactions, to deposit Sales Drafts or Credit Vouchers with us and to use forms, promotional material or any other items provided by us, will cease. Termination of this Agreement does not affect your obligations with respect to any fee owing at termination, to any Sales Drafts or Credit Vouchers accepted by us (whether before or after such termination) including, without limitation, Chargeback and indemnity obligations, the security interest granted to us in Section 11 or the obligations for "Preservation and Security of Information and Records" outlined in Section 4.03.



## Section 16. FINAL AGREEMENT AND AMENDMENTS TO AGREEMENT

A) **Final Agreement.** This Agreement, along with the Application, Fee Schedule and the Operating Procedures, is the entire Agreement between the parties on the subject matter contained within and supersedes all prior or contemporaneous negotiations, stipulations or agreements. If any provision of this Agreement is invalid or unenforceable, the other provisions remain effective. Sections related to Chargebacks, fees, Deposit Account, indemnification, limitation of liability, arbitration, Electronic Equipment, preservation and security of information and records, Reserve Account and general provisions survive termination of this Agreement.

B) **Amendments.** We may amend this Agreement at any time by sending you notice or making it available to you as provided in the Notices section of this Agreement at least 15 days before the effective date of the amendment, except for an increase in the Fee Schedule, which requires 30 days. The amendment becomes effective unless we receive your written notice of termination of this Agreement effective no later than the effective date of the amendment. We may amend this Agreement on less than 15 days' prior written notice if we reasonably determine any Operating Procedures or provisions of law require an earlier amendment.

## Section 17. ARBITRATION AND WAIVER OF JURY TRIAL

Any claim or controversy ("Claim") between you and us, whether arising in contract or tort or by statute including, but not limited to, Claims resulting from or relating to this Agreement shall, upon the request of either party, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, US Code). Arbitration proceedings will be conducted in accordance with the applicable rules for the arbitration of disputes of JAMS or any successor thereof. The arbitration will be conducted in California or if arbitration in California would not be reasonable for you, then in a state convenient to you and us. The arbitration hearing will commence within 90 days of the demand for arbitration and close within 90 days of commencement, and any award, which may include legal fees, shall be issued (with a brief written statement of the reasons therefore) within 30 days of the close of the hearing. Any dispute concerning whether a claim is arbitrable or barred by the statute of limitations will be determined by the arbitrator. This arbitration provision is not intended to limit the right of any party to exercise self-help remedies, to seek and obtain interim or provisional relief of any kind or to initiate judicial or non-judicial foreclosure against any real or personal property collateral. By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, if for any reason a Claim is not arbitrated, the parties irrevocably and voluntarily agree to waive any right to a trial by jury in respect of such Claim.

## Section 18. GENERAL PROVISIONS

**18.01 Applicable law.** This Agreement will be governed by and interpreted under California law without reference to conflicts of law provisions, regardless of where you may conduct business.

**18.02 Notices.** All notices required by this Agreement must be in writing and will be effective when delivered to our address shown below and to the address where your Merchant Services statement is mailed, if you have made arrangements with us to mail the statement, or at such other address as one party may provide by written notice to the other party. We may include a notice with or on your statement. As an alternative, we may make any notices available by electronic means such as on our Internet Web site and notify you how it may be accessed, including notification by electronic mail. If we make a notice available by electronic means, we also will provide a toll-free telephone number where you may order a paper copy with postage paid by us. You agree to read all notices affecting this Agreement that we send or make available to you. Our address for all notices required by this Agreement is: Merchant Services Risk Management, Bank of America, N.A., CA5-702-05-11, P.O. Box 37000, San Francisco, CA 94137.

**18.03 Waiver.** Our failure to enforce any provision of this Agreement will not constitute a waiver of any of our other rights under this Agreement. All waivers must be signed by us. A waiver effective for one instance will not apply to other occasions unless that intent is clear from the signed waiver.

**18.04 Phone call monitoring.** You authorize our personnel, at our discretion, to listen to or record all telephone calls between you and us, or any person or company authorized by you to act on your behalf. You have the duty to obtain any required consent from those acting on your behalf for this monitoring.

**18.05 Force majeure.** Performance under this Agreement may be delayed to the extent necessary due to a cause beyond a party's reasonable control, for example, floods, civil disturbance, disruptions to communications facilities or acts of unaffiliated third parties, provided that the party claiming excuse from performance informs the other party as quickly as possible and uses reasonable efforts under the circumstances to correct the deficiency. A party who has not been paid due to an excuse under this subsection claimed by the other party may delay its own performance related to additional Charges or Credit Vouchers until payments due have been made.

**18.06 Commercial Code.** Card Transactions are credit card or debit card slips excluded from the definition of "item" under Section 4104 of the Uniform Commercial Code.



**18.07 Submission of Charges to other processors.** You will give us at least 30 days' advance written notice before you submit to another processor Charges completed at any location where you also submit Charges to us. Upon 90 days' advance written notice to us, you may designate another party acceptable to a Card Organization as your agent for the direct delivery of data-captured Charges to that Card Organization for clearing and settlement (the "other party") provided that you furnish written confirmation from the Card Organization that the other party is acceptable to the Card Organization. Our obligation to reimburse you for Charges submitted through the other party is limited to the amount delivered by the other party in the Card settlement process and provided to us through the Card Organization for your account, less processing fees and other amounts due us. You are responsible for any failure by the other party to comply with Operating Procedures of a Card Organization, including, without limitation, any violation that results in a Chargeback.

## Section 19. ADDITIONAL REQUIREMENTS FOR SPECIAL SERVICES

Sections 19 through 23 apply to the Special Services described below or as further described in the Operating Procedures. To the extent you do not use these Special Services, the following provisions do not apply. If you use these Special Services, you must comply with the additional requirements for each transaction in accordance with Sections 19 through 23. All of the Agreement continues to apply to these Special Services, except to the extent requirements are modified by Sections 19 through 23.

## Section 20. AMERICAN EXPRESS, DISCOVER, DINERS CLUB, CARTE BLANCHE, JCB OR OTHER PRIVATE LABEL CARDS

If we have approved you to submit American Express, Discover, Diners Club, Carte Blanche, JCB or other private label Card Transactions, the following provisions are a part of this Agreement:

A) We agree to process transactions for you that are completed by Cardholders using American Express, Discover/Novus, Diners Club, Carte Blanche, JCB or other private-label cards, if requested by you on the Application. You agree that American Express, the Discover Financial Network, Citicorp Diners Club, Inc., JCB or other private-label Card Organization, as the case may be, and not we, will be responsible for settlement (payment) of Transactions. You agree to pay fees to us and Card Organizations related to these Card types as specified in the Fee Schedule.

B) Acceptance of American Express, Discover/Novus, Diners Club, Carte Blanche, JCB or other private-label Cards may require execution of a separate merchant services agreement with American Express, the Discover Financial Network, Citicorp Diners Club, Inc., JCB or other private-label Card Organization, as the case may be. That agreement will govern Sales Draft storage and retrieval, payment to you, Chargebacks and other terms of the relationship between you and them. If you experience problems with transmission or delivery of American Express, Discover/Novus, Diners Club, Carte Blanche, JCB or other private-label Transactions, you must contact the appropriate terminal service provider.

## Section 21. INTERNET

This section provides additional terms and conditions applicable to the eStores solution service provided by us, as well as to Independent Internet Services provided by others. All other terms of the Agreement also apply to these eStores solution and Independent Internet Services provisions.

**21.02 eStores solution.** The eStores solution is an optional service that allows you to link the sale of your products to an online shopping, payment and settlement process. The features and functions of the eStores solution will vary among those you choose either in a separate eStores schedule to this Agreement, or if and when made available by us, by choices made online at the bankofamerica.com Web site.

**21.03 Independent Internet Services.** "Independent Internet Services" are Internet related products or services provided by you or a business other than us, in an agreement or arrangement between you and a party other than us, even if we may be an authorized sales agent of the Internet product or service. The features, functions and requirements of Independent Internet Services will vary among those chosen by you and are not warranted by us in any way.

**21.04 Developer's guide.** Your use of the eStores solution must comply with the developer's guide made available to you at the manager.bamart.com Web site.

**21.05 Telecommunication and Internet hosting services not provided.** Neither we nor our agents bear any responsibility for the operations of any communications system between us, you and your customers. The eStores solution does not provide any Internet or telecommunication services between you and your customers. Our eStores solution does not provide Internet hosting services for your online store activities, except for the services provided in the eStores solution's "Start Up" or "Info-Site" services. You are responsible for obtaining and maintaining all telephone, computer hardware, software and other equipment needed for access to and use of the eStores solution services, and you are responsible for all related charges.

**21.06 Internet settlement.** We provide an Internet-based link between you and us to be used for payment settlement for orders fulfilled for customers by you when you use the eStores payment settlement service. We also may provide an Internet-based link for settlement of orders fulfilled if you use an Independent Internet Service for which we act as the sales agent.

**21.07 Warranties.** In addition to the warranties in the Agreement, you warrant that you will not engage in any illegal or unethical marketing practices through your Internet store, including but not limited to:

1) Unsolicited mass e-mailing and advertisements
2) Fraudulent product or service promotions
3) Harassing or threatening emails.



**21.08 Customer service; operating hours.** Through our agents, we will make commercially reasonable efforts to maintain the eStores solution in operation 24 hours a day, seven days a week, excluding system-maintenance time. This commitment is not a warranty that your online store will remain operable during any period. We will provide customer service to you 24 hours a day, seven days a week. Your first contact regarding any problem will be through email. We will make reasonable efforts to resolve difficulties identified by you, but do not warrant that your problems will be resolved.

**21.09 NO OTHER WARRANTY: LIMITATION OF LIABILITY. We do not represent or warrant that the eStores solution or Independent Internet Services for which we act as sales agent are immune from computer hacking or denial of- service attacks, and we are not liable to you for losses suffered from those occurrences. Except as specifically set out in this agreement, the systems and services we provide under these Internet sections are provided without warranties of any kind, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose, which you hereby waive. In no event will either party be liable for any incidental or consequential damages, or damages for loss of profits, revenue, data or time incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages. Our liability for all damages in connection with any provision of these Internet sections within any rolling twelve-month period will in no event exceed the eStores fees paid by you to us pursuant to this agreement with respect to such twelvemonth period.**

**21.10 Termination for illegal or other objectionable activity.** We may, but have no duty to, terminate you immediately from receiving eStores solution services or Independent Internet Services if, in our sole discretion, we conclude that you are engaged in illegal activities or the sale of illegal or harmful goods or services, or are engaged in activities that may damage our rights or the rights of others. Any termination under this section may take effect immediately upon written notice from us, and you will not have any opportunity to cure.

**21.11 Security requirements.** You must establish and use appropriate Cardholder information security and privacy controls and measures. The eStores solution has an established program in place. The recommended controls and measures are:

A) Install and maintain a working network firewall to protect data accessible via the Internet.

B) Keep security patches up to date.

C) Encrypt data sent across networks and encrypt stored data.

D) Use and regularly update anti-virus software.

E) Restrict access to your Internet site, data and procedures, as well as to the services of our administrative Web site, only to your employees and agents on a need-to-know basis.

F) Assign a unique ID and password to each of your employees or agents with computer access to data. Restrict access to the services only to authorized persons.

G) Do not use vendor-supplied defaults for system passwords or other security parameters.

H) Track access to data by unique user ID.

I) Regularly test security systems and processes.

J) Maintain a policy that addresses information security for employees and contractors.

K) Restrict physical access to cardholder information.

**21.12 Merchant Web site requirements**

A) Web site information. Your Web site must contain all of the following information:

1) Complete description of the goods or services offered

2) Returned merchandise and refund policy

3) Customer service contact, including electronic mail address and/or telephone number

4) Transaction currency limited to U.S. dollars

5) Export or legal restrictions (if known)

6) Delivery policy

7) Your consumer data privacy policy

8) Your security method for the transmission of payment data

B) Display of marks. Your Web site must display the Card Organization identifying marks according to specifications we provide.

**21.13 Indemnity.** You will indemnify us against all damage to us resulting from any unauthorized access to your computer systems or Internet services, including but not limited to, computer hacking of your systems and Internet services.

## Section 22. MERCHANT SERVICES ONLINE SERVICE

**22.01 General description of the Merchant Services Online Service.** The Merchant Services Online Service provides Internet-based reporting and servicing related to Merchant Services. The Online Service is available seven days a week, 24 hours a day, excluding system-maintenance time. We do not guaranty availability at any particular time.

**22.02 Registration and security procedure**

A) To register for and use the Online Service, you will need to use a password. To use the Online Service properly, you will need to follow the security procedure.



B) Password and security procedure. You will be issued a user ID and a password to access the Online Service. You also may arrange for user IDs and passwords to be issued to other people you wish to access the Online Service. We may send the password confirmation to the address to which we send your Merchant Services statements, or to other addresses you designate for the other people you wish to access the Online Service, whether or not the addresses include designations for delivery to the attention of particular individuals. We will not be responsible or liable to you in any way if information is intercepted by an unauthorized person, either in transit or at your place of business. You agree to:

1) keep your password secure and strictly confidential and not to disclose it

2) instruct the additional people you arrange to receive a user ID and password to keep their passwords secure and confidential and not to disclose them and

3) immediately notify us and select a new password if you believe your password may have become known to an unauthorized person, and instruct the other persons you arrange to receive a user ID and password to do the same. You may arrange different levels of access to the Online Service for each of the additional persons you arrange to receive a User ID and password. For your protection, sign off after every Online Service session, close your Web browser to help ensure confidentiality and require the additional people with access to the Online Service to do the same. None of our employees, nor any company affiliated with us, nor any person authorized by any of them will contact you or the other people you have arranged to receive user IDs and passwords, by e-mail, phone or otherwise, requesting anyone's Online Service user ID and password. If you are contacted by anyone requesting this information, please contact us immediately at 1.800.228.5882. We will have no liability to you for any unauthorized disclosures made using your password, nor to the other people you arrange to receive user IDs and passwords, that occur before we are notified of possible unauthorized use and we have had a reasonable opportunity to act on that notice. We may suspend or cancel your user ID or those of the other people you arrange to receive user IDs and passwords, even without receiving that notice, if we suspect your or their user IDs or passwords are being used in an unauthorized or fraudulent manner.

C) **Acknowledgment of commercially reasonable security procedures.** By using the Online Service, you agree that the security procedures for the Online Service in this Agreement are commercially reasonable. You warrant each time the Online Service is used that, in view of your requirements, the Security Procedure is a satisfactory method of verifying the authenticity of access to the Online Service. You agree to be bound by instructions, whether authorized or unauthorized by you, that we implement in compliance with these procedures, unless you have given us prior notice of possible unauthorized use as described above (and we have a reasonable opportunity to act on that notice).

**22.03 Canceling the Online Service**

A) If you terminate the Agreement, close your Deposit Account, or if it is no longer linked to your Online Service, your Online Service will end. You may terminate the Online Service at any time by notifying us of your intent to terminate through Online Service e-mail at merchantservices@bankofamerica.com, by calling Online Service Customer Service at 1.800.228.5882 or by mailing us at: Merchant Services, Bank of America, N.A., P.O. Box 2485, Spokane, WA 99210.

B) Your notification of termination of the Online Service does not terminate your Agreement or your Deposit Account. We may terminate your participation in the Online Service at our discretion at any time. We will try to notify you in advance, but we are not obligated to do so.

**22.04 Changes to Online Services.** We may change these provisions at any time. For example, we may add, delete or amend terms or functions of the Online Service. We will notify you of changes by mail or electronic message. If you maintain your Online Service after the effective date of a change, you agree to the change. We will give you 30 days advance notice of any increase in fees.

**22.05 Reporting unauthorized access.** If you believe access to the Online Service or a Transaction is unauthorized, call us at 1.800.228.5882. Online Service Customer Service is available 24 hours a day, seven days a week, excluding Bank holidays. You also may send us an e-mail at merchantservices@bankofamerica.com or contact your account manager. You also may write to us at: Merchant Services, Bank of America, N.A., P.O. Box 2485, Spokane, WA 99210.

**22.06 Limitation of liability.** Our liability to you for failure to provide access to the Online Service on a timely basis, or to provide accurate information through the Online Service, will not exceed the monthly service fees you have paid for the Online Service. In no event will we be liable to you for special, indirect or consequential damages including, without limitation, lost profits or attorneys' fees, even if we are advised in advance of the possibility of such damages.

## Section 23. REQUIREMENTS FOR ADDITIONAL SPECIAL SERVICES

Following are additional requirements for certain additional Special Services:

**Travel and Entertainment Services:**

- Reservation Service
- Central Reservation Service
- Advance Payment Service
- Priority Check-Out Service
- Cash Disbursement Service
- Advance Lodging/Cruise/Car Rental Deposit Service

**Other Special Services:**

- Express Payment Service (EPS)
- Quasi-Cash Transactions
- Delayed Delivery Transactions
- Supermarket Incentive Program
- Installment Billing Transactions



**23.01 Reservation Service.** If you provide lodging (hotel, motel, resort or inn) or car rentals only for "Peak Time" and "Specialized Vehicles" (a unique class of vehicle not in the Merchant's main rental fleet and not constituting more than 5% of your rental fleet), this service allows you to use certain Card types we specify to guarantee a reservation by obtaining the Card's embossed Cardholder name, account number and expiration date and by completing the following procedures:

A) Confirm the reservation with the Cardholder by stating the following information:

1) Card's embossed cardholder name, account number and expiration date as provided by the Cardholder

2) name and exact address, including street, city and state of the location of the lodging check-in or location for vehicle pick-up

3) reservation confirmation code

4) rate and any other details relating to the reservation and

5) provisions of the guaranteed reservation relating to the Cardholder's obligations and any other cancellation details related to the reservation as specified below:

B) For lodging reservations:

1) Inform the Cardholder that lodging accommodations will be held until check-out time on the day after the scheduled arrival date, unless cancelled by 6:00 p.m. (local establishment time) on the scheduled arrival date.

2) For establishments requiring cancellation before 6:00 p.m. (local establishment time) before the scheduled arrival date, the cancellation time must not exceed 72 hours before the scheduled arrival date. If cancellation is required before 6:00 p.m. on the guaranteed arrival date, you must mail the Cardholder the specific written cancellation policy, including the date and time the cancellation privileges expire. If a reservation is made less than 72 hours before the scheduled arrival, the cancellation procedure of 6:00 p.m. (local establishment time) on the scheduled arrival date will apply.

C) For car rental reservations:

1) Inform the Cardholder that the vehicle will be held until the scheduled pick-up time, unless the reservation is cancelled by the specified cancellation time, which must not exceed 72 hours before the scheduled pick-up time or eight hours for a Peak Time reservation.

2) If the reservation is made less than 72 hours before the scheduled rental, the cancellation period must be no earlier than eight hours before the scheduled pick-up time.

3) If a Cardholder is traveling to a car rental location by airline and the flight is cancelled or the airport is closed, the Cardholder may cancel the Peak Time reservation without penalty up to one hour before the scheduled rental time.

D) Provide the Cardholder with the written confirmation specified below:

1) For lodging reservations — If requested, provide a written confirmation to the Cardholder, including the information specified in subsection (a) above.

2) For car rental reservations — Provide a written confirmation to the Cardholder, including the information specified in subsection (a) above. For reservations made less than 72 hours before the scheduled pick-up time, written confirmation is required only upon the Cardholder request.

E) Advise the Cardholder of the billing for a no-show charge within the limits specified below. (A "no-show charge" is your charge resulting from the Cardholder's failure to use the reservation.)

1) For lodging merchants — If the Cardholder has not checked in by check-out time the day following the scheduled arrival date, and if the reservation was not properly cancelled, the Cardholder may be charged for one night's lodging (including tax).

2) For car rental merchants — If you held the vehicle but it was not rented by the scheduled pick-up time and the reservation was not properly cancelled, you may bill the Cardholder a no-show charge. The amount of the no-show charge may vary, but may not exceed the value of two days' rental, including tax for a Specialized Vehicle and one day's rental, including tax, for a Peak Time reservation. If the Cardholder Account is charged a no-show charge for a reserved vehicle, you must hold the vehicle available for the Cardholder for the period of time represented by the no-show charge.

F) Cancellation procedures. Accept a cancellation request from a Cardholder provided the cancellation request is made before the specified cancellation time. Provide the Cardholder with a cancellation code and advise the Cardholder to retain it in case of dispute. If requested, provide the Cardholder with written confirmation of the cancellation, including the Card's embossed name, the cancellation code and the details related to the cancelled reservation.

G) Scheduled reservation date procedures.

1) If the reserved lodging accommodation or vehicle has not been rented or cancelled by the specified cancellation time, the lodging accommodation or vehicle must be held available in accordance with the reservation.



2) If the Cardholder does not cancel or claim the reservation within the prescribed time, you may submit a no-show charge, including tax with the Card's embossed name, account number and expiration date and the words "no-show" on the signature line of the charge record, or as we otherwise specify.

3) You must obtain an Authorization code for the no-show charge in accordance with the Authorization provisions in this Agreement.

H) Alternate lodging or Specialized Vehicle.

1) If the guaranteed lodging or vehicle is not available, you must provide alternate accommodations or an alternate vehicle as specified below at no charge to the Cardholder.

i) For lodging reservations:

a) Provide the Cardholder with at least comparable lodging for one night at another establishment.

b) Provide transportation for the Cardholder to the other establishment.

c) If requested, provide the Cardholder with a three-minute telephone call.

d) If requested, forward all messages and calls for the Cardholder to the alternate establishment.

ii) For car rental reservations:

a) For a Specialized Vehicle: Provide the Cardholder with at least a comparable Specialized Vehicle from another car rental merchant for the period of time guaranteed, and provide transportation for the Cardholder to the location of the other car rental merchant.

b) For a Peak Time vehicle: Provide the Cardholder with at least a comparable vehicle within one hour from the scheduled rental time and, if a comparable vehicle cannot be provided within one hour, you must provide prompt transportation to the Cardholder's destination and within eight hours deliver a comparable vehicle to the Cardholder at the destination.

**23.02 Advance Lodging/Cruise/Car Rental Deposit Service**

A) Reservations. You must:

1) Determine the amount of the Advance Lodging/Cruise/Car Rental Service Deposit (the "Deposit") for the Cardholder's intended length of stay or rental. The amount must not exceed:

i) For lodging merchants: the cost for 14 nights' lodging

ii) For cruise-line merchants: the cost of the cruise

iii) For car rental: 14 days' rental.

2) Apply the amount of the Deposit to the total obligation. You may not process a no-show charge under the Reservation Service (above) in addition to the Deposit Charge.

3) Inform the Cardholder of: (a) the Deposit requirements and (B) any cancellation requirements. For lodging and car rentals: inform the Cardholder that the accommodations or rental will be held for the number of nights or days used to determine the amount of the Deposit.

4) Obtain the Card's embossed Cardholder name, account number and expiration date, as well as the Cardholder's telephone number, mailing address, scheduled date of arrival, embarkation or rental and, for lodging or car rentals, the intended length of stay or rental.

5) Inform the Cardholder that if changes in the reservation are requested and allowed, written confirmation will be provided at the Cardholder's request.

6) Advise the Cardholder of the conditions for forfeiture of the Deposit as follows: If the Cardholder has not checked in by check-out time the day following the last night of accommodation, day of rental or departure time for a cruise line, used to determine the amount of the Deposit, or if the reservation was not cancelled by the specified date and time, the Cardholder will forfeit the entire amount of the Deposit or the portion that is in accordance with your stated cancellation policy.

7) Quote the rate of the reserved accommodations or rental, the amount of the Deposit and your exact name and location or, in the case of cruise lines, your name and complete address of the point of embarkation. Provide the Cardholder with a confirmation number (advising that it must be retained) and with any cancellation policy requirements and the date and time cancellation privileges expire.

8) Complete a Charge for the amount of the Deposit using a form we specify. The Charge must include: i) the words "advance deposit" on the signature line or as we otherwise specify

   ii) the Card's embossed cardholder name, account number and expiration date

   iii) the Cardholder's telephone number and mailing address

   iv) the Cardholder's confirmation code

   v) the scheduled check-in, vehicle rental or embarkation date and

   vi) the date and time any cancellation privileges expire without Deposit forfeiture.

9) Follow normal Authorization procedures. If the Authorization request is approved, mail the Cardholder a copy of the Charge and the written hotel, car rental or cruise cancellation policy to the address provided by the Cardholder within three Business Days following the Charge date; and submit the Charge to us in accordance with this Agreement.



10) If the Authorization request is declined, advise the Cardholder and do not process the Charge.

B) Cancellations.

1) Accept a cancellation request from a Cardholder provided the cancellation request is made before the specified cancellation date and time.

2) Provide a cancellation number and advise the Cardholder to retain it in case of a dispute.

3) For cancellation of a lodging or car rental Deposit, complete a Credit Voucher for the entire amount of the Deposit. For the cancellation of a cruise Deposit, complete a Credit Voucher for the applicable amount, as defined by the cancellation terms and conditions disclosed to the Cardholder when the deposit transaction was completed. Include on the Credit Voucher:

   i) the words "advance deposit" on the signature line of the Credit Voucher or as we otherwise specify

   ii) the Card's embossed name, account number and expiration date

   iii) the Cardholder's mailing address and

   iv) the cancellation code.

4) Mail the Cardholder a copy of the Credit Voucher to the address provided by the Cardholder within three Business Days following the Credit Voucher's Transaction Date.

C) Alternate accommodations or services.

1) For lodging deposits:

   i) If lodging guaranteed with a Deposit is unavailable, complete and deliver to the Cardholder a Credit Voucher for the entire amount of the Deposit.

   ii) Provide the following services at no charge to the Cardholder:

      a) At least comparable lodging at an alternate establishment for the number of nights used to determine the amount of the Deposit, not to exceed 14 nights, or until the reserved accommodations are available for the Cardholder at the original location reserved with you, whichever occurs first.

      b) Transportation to the alternate establishment and return transportation to the original establishment. If requested, transportation to and from the alternate establishment must be provided on a daily basis.

      c) If requested, two three-minute telephone calls.

      d) If requested, forwarding of all messages and calls to the location of the alternate establishment.

2) For cruise-line merchants:

i) If a cruise guaranteed with the Deposit is unavailable, and no comparable accommodation is available on the ship, you may offer a cruise with a similar itinerary within the same approximate sailing dates and the same approximate number of sailing days at no cost to the Cardholder.

ii) Any extra nights' accommodations or air fare to a different port city necessitated by the Cardholder's acceptance of alternate accommodations must be provided by you at no cost to the Cardholder.

iii) If comparable accommodations are not available, or if the Cardholder elects not to accept the offered alternate accommodations, the Cardholder must receive a Credit Voucher for the entire cost of the cruise.

iv) You must provide the following at no charge to the Cardholder:

a) one night's hotel accommodation, if required

b) transportation to the hotel as well as the airport

c) airline transportation to the airport nearest the Cardholder's residence and

d) reasonable out-of-pocket expenses incurred by the Cardholder as a result of the unavailability of the guaranteed accommodations.

3) For car-rental merchants: If the car rental is not available, provide

i) a Credit Voucher to refund the entire Deposit, and

ii) at least a comparable vehicle for the number of days specified in the reservation, not exceeding 14 days, or until the reserved vehicle becomes available, whichever occurs first.

D) Liabilities and Indemnification. You indemnify and hold harmless us and any Card Organization from any loss, damage, claim or suit (including reasonable attorney fees) arising from use of a Card for a Deposit.

**23.03 Central Reservation Service.** A Central Reservation Service is a business that has agreements to act as a reservation resource with geographically contiguous lodging establishments. After application to and approval by us, you may provide a Central Reservation Service and may complete Advance Lodging/Cruise/Car Rental Deposits on behalf of lodging establishments and in accordance with the provisions of this Agreement.

A) Any contract between you and a lodging establishment for the Central Reservation Service must be executed by an officer or manager of the lodging establishment. Only a Central Reservation Service that has a properly executed, written contract with a lodging establishment may perform services on behalf of the establishment. The Central Reservation Service may not use an agent to perform the services.



B) The Central Reservation Service must follow the procedures for reservations, cancellations, alternate accommodations and Chargebacks in this Agreement and in the Operating Procedures, and must accept full responsibility for resolving any Cardholder problems related to the Advance Lodging/Cruise/Car Rental Deposit Service.

**23.04 Priority Check-Out Service**

A) Any lodging or cruise-line merchant participating in the Reservation Service or Advance Lodging/Cruise/Car Rental Deposit Service may participate in the Priority Check-Out Service as follows:

1) Provide the Cardholder with a Priority Check-Out Agreement that must be on a form we specify, or a form you supply, which provides for at least the following:

i) The Cardholder Account number

ii) Your name, location and telephone number

iii) The departure date of the Cardholder

iv) The Cardholder name and room number

v) A statement authorizing you to charge the Cardholder Account for the amount of the bill without the Cardholder's signature on a Transaction Receipt

vi) The Cardholder's signature on the Priority Check-Out Agreement and

vii) A provision allowing the Cardholder to request from you specific billing receipts, the lodging bill and a copy of the Priority Checkout Agreement, including the name and address to which you should mail the receipts.

2) Inform the Cardholder that the Priority Check-Out Agreement must be completed and signed, and that the Cardholder's mailing address must be included to receive a copy of the lodging or cruise bill supporting the final Charge amount.

3) Obtain the completed Priority Check-Out Agreement and ensure that the Cardholder Account number identified is identical to the account number used for the Charge.

4) Complete the Charge and record both the total amount of the Cardholder's obligation and the words "priority check-out" on the signature line of the Transaction Receipt or as elsewhere designated by us.

5) Follow normal Authorization procedures for lodging or cruise-line merchant Transactions.

6) If requested by the Cardholder, mail a copy of the Charge, the itemized lodging or cruise bill, and the signed Priority Check-Out Agreement to the address provided by the Cardholder on the Priority Check-Out Agreement within three Business Days following the Cardholder's departure.

B) You must retain a copy of the itemized hotel or cruise bill and the signed Priority Check-Out Agreement supporting a Priority Check-Out Charge for a minimum of six months following the Transaction Date.

**23.05 Cash Disbursement Service** (only for lodging and cruise-line merchants serving Gold, Platinum, Signature or Infinite Cardholders). Lodging and cruise-line businesses participating in the Reservation Service and Advance Lodging/Cruise Deposit Service may make a cash disbursement to Gold, Platinum, Signature and Infinite Cardholders ("Ultra Cardholders") under the following conditions:

A) The Ultra Cardholder must be a registered guest at the lodging establishment or a registered passenger on the cruise ship and must have requested to pay hotel charges or shipboard expenses with a Card

B) The cash disbursement must not exceed $250 during the Ultra Cardholder's stay at the lodging establishment or aboard ship and may be further limited by your cash availability

C) Each Cash Disbursement must be made only after reviewing positive identification to determine that the recipient of the cash is the Ultra Cardholder. The identification must consist of a current, official government-issued identification (such as a passport or driver's license) that bears the Cardholder's signature. You must:

1) Compare the signature on the cash-disbursement charge with the signature on the signature panel of the Card, as well as with the signature on the identification presented, in order to ascertain that they appear to be the same. In addition, if a physical description or a photograph of the Cardholder appears on the identification or Card, you must ascertain that the physical description matches, or that the photograph resembles, the person presenting the Card.

2) You must enter, in the space provided on our specified cash disbursement charge form, a description of the identification (including any serial number and expiration date), the name of the Cardholder (if not the same as the embossed name) and the address of the Cardholder.

D) Each cash disbursement must be made at par, with no fee or charges added except taxes or other charges imposed by applicable law and

E) If you use an account-number-verifying terminal and if the embossed Cardholder Account Number does not match the encoded account number, you must decline the Transaction and attempt to recover the card by reasonable and peaceful means and note the physical description of the Cardholder.



**23.06 Express Payment Service (EPS)**

A) If yours is a restaurant, fast-food, movie theater or parking lot business and has a location that submits Card Transactions of the types and amounts that we determine qualify for EPS, then that location may participate in the EPS subject to the following requirements:

1) You must process all Charges using a magnetic-stripe-reading terminal or chip-reading device capable of reading track 1 or track 2 of the magnetic stripe on a Card or the chip data, and at which an attempt to read the magnetic stripe of the Card was made. The terminal must meet the following requirements and any other requirements we specify:

i) Perform data capture of the Cardholder Account number, Transaction Date and Card Transaction amount.

ii) Validate the service code (a three-digit number encoded on the magnetic stripe that identifies how the encoded identification number is valid for use), the Cardholder Account number and expiration date.

2) The limit for each EPS Charge normally is $25.

3) For each EPS Charge that is $25 or less, you are not required to obtain the Cardholder signature on a Transaction Receipt, nor are you required to provide a Transaction Receipt to the Cardholder, unless the Cardholder requests one.

4) Unless specified below, each Charge that exceeds $25, does not meet the EPS time limit or does not satisfy the EPS data requirements will not be considered an EPS Charge and will be subject to all requirements specified for normal Card Transactions described elsewhere in this Agreement.

5) Each EPS Charge must be identified and processed in accordance with all requirements specified in the Operating Procedures.

6) Each Charge exceeding $25 that meets the additional custom-payment services requirements specified in the Operating Procedures may qualify for a fee discount, provided it is processed in accordance with the requirements specified in the Operating Procedures.

7) You must display at least one sign at each of your EPS locations advising Cardholders that a Transaction Receipt is available upon request. Each sign must be placed in a prominent location and must be clearly visible to Cardholders as they effect a Charge.

8) You must allow locations to be monitored for excessive levels of risk or suspect risk patterns and you must take corrective action as directed. This may include installation of special systems, special identification of all Charges processed, or discontinuation of EPS.

9) You must submit EPS Charges to us on the same day they are completed by Cardholders.

B) A Charge cannot qualify for the EPS rates if it is captured by an electronic POS terminal owned or controlled by an entity that directly or indirectly discriminates against certain Card types in favor of others in availability of pricing or services, or if a Card Organization determines that the entity is engaged in conduct that unfairly prevents or impedes a Card Organization or its members from competing with the entity.

**23.07 Supermarket Incentive Program**

A) You may participate in the Supermarket Incentive Program if you meet the following criteria:

1) Your business is a retail store primarily engaged in selling food for home preparation and consumption.

2) You offer a complete line of food, including self-service groceries, meat, produce and dairy products.

3) Your monthly sales of perishables represent at least 45% of your total monthly sales. Perishables are packaged and in-store bakery goods, dairy products, delicatessen products, floral items, frozen foods, meat, and produce.

4) Your annual sales volume is at least $2 million.

5) You must accept Cards at all check-out lanes that accept checks and for the purchase of all goods and services sold within the store.

B) To qualify for the Supermarket Incentive Program, each Charge must be processed in accordance with the special requirements specified below and in the Operating Procedures.

1) Authorization Requirements. Each Charge must be authorized and completed, including Cardholder signature, through the additional special requirements in the Operating Procedures.

i) An Authorization request for a Supermarket Incentive Program Charge must originate at a Point-of-Transaction terminal capable of reading and transmitting either track 1 or track 2 of the magnetic stripe of the Card used and at which an attempt to read the magnetic stripe of the Card was made. Data fields on the track selected must be read and transmitted in accordance with the Operating Procedures.

A Charge that is key-entered may qualify for the Supermarket Incentive Program provided that the Card is present, and that at least 50% of Merchant's U.S. Charge transactions meet all of the requirements for the Supermarket Incentive Program.

ii) Each Authorization request must include special entry codes we specify.

iii) In addition, an Authorization request for a Supermarket Incentive Program Charge must meet each of the following Authorization requirements:



a) Authorization must originate at an attended Point-of-Transaction terminal capable of reading either track 1 or track 2 of the magnetic stripe of a Card. Where the Card must be present, the Cardholder's signature must be obtained, and the full unaltered contents of either track 1 or track 2 of the magnetic stripe must be read and transmitted.

b) One Authorization code must be obtained for each Charge on the Charge date.

c) Authorization must not be obtained through: V.I.P. System emergency authorization procedures, Code 10 authorization procedures or "Referral" authorization procedures.

d) The Charge amount transmitted in the Authorization request and in the Charge must be in U.S. dollars.

e) The Authorization request and Charge must provide any special information specified by us or the Operating Procedures.

2) Special processing requirements.

i) Chargebacks, subsequent Charges, Credit Vouchers and reversals of Supermarket Incentive Program Charges must be submitted at the Supermarket Incentive Program Interchange Reimbursement Fee and in accordance with the Operating Procedures.

ii) You must submit a Supermarket Incentive Program Charge to us on the Transaction Date.

C) Performance certification.

1) Each year, you must complete a Supermarket Incentive Program Certification form that either we or a Card Organization provide, including a statement, signed by you, that you understand and agree to abide by all requirements of the Supermarket Incentive Program.

2) Failure to submit the certification in a timely manner will result in the assessment to you of a $5,000 fee per month until certification is received.

D) Performance criteria. A Charge cannot qualify for the Supermarket Incentive Program fee if it is captured by an electronic POS terminal owned or controlled by an entity that directly or indirectly discriminates against certain Card types in favor of others in availability, or if a Card Organization determines that the entity is engaged in a course of conduct that unfairly prevents or impedes its members from competing with the entity.

**23.08 Quasi-Cash Transactions**

A) A Quasi-Cash Transaction is a Transaction representing your sale of items that are directly convertible to cash, such as casino gaming chips, money orders, deposits, wire transfer money orders, traveler's checks (if not processed as a cash disbursement), foreign currency (if not processed as a cash disbursement) or any additional Transaction approved by a Card Organization. You must have legal authority apart from this Agreement to engage in Quasi-Cash Transactions. A Quasi-Cash Transaction must be processed through VisaNet as a purchase or through other Card Organizations as directed by them. The purchase of a prepaid card is not considered a Quasi-Cash Transaction. You must not accept an Electron or Visa Electron Card for a Quasi-Cash Transaction.

B) Processing. You must:

1) Process a sale of travelers checks, Visa TravelMoney Cards or foreign currency as a Quasi-Cash Transaction if it is not processed as a cash disbursement. A Quasi-Cash Transaction that occurs in a face-to-face environment must be authorized using a magnetic-stripe and account number- verifying terminal, as specified by us. You must comply with all of the following:

2) When the embossed Cardholder Account number does not match the encoded Cardholder Account number, you must:

i) Decline the Transaction and attempt to retain the Card by reasonable and peaceful means

ii) Note the physical description of the Cardholder

iii) Notify us

3) When the encoded Cardholder Account number cannot be read from the magnetic stripe, follow normal authorization procedures and complete the approved transaction using a manual imprinter

4) When the embossed Cardholder Account number is the same as the encoded Cardholder Account number, follow normal authorization procedures. A Merchant must validate the cardholder's identity when any Quasi-Cash Transactions occur in a face-to-face environment, as specified in Section 23.05(C).

**23.09 Installment billing Transactions**

A) If you are permitted to engage in mail/phone order or Internet Transactions (Section 21), you may offer Cardholders an option for installment billing Transactions, provided you:

1) Disclose the terms in writing, including whether the installment terms are limited to certain goods that a Cardholder may purchase. The written disclosure also must include the shipping and handling charges and any applicable tax



2) Inform a Cardholder not billed in your transaction currency that each installment billing transaction amount may vary due to currency conversion rate fluctuations

3) Ensure that the sum of the installment billing Transactions and any particular Transaction does not include any finance charge or exceed the total price of the goods

4) Obtain Authorizations for all Transactions

5) Do not deposit the first installment billing transaction with us until the shipment date of the goods. You must deposit subsequent installment billing transaction receipts at either of the following intervals:

i) Thirty calendar days or more, or

ii) Monthly anniversary of the shipment date (same day of each month).

**23.10 Delayed delivery Transactions**

A) In a delayed delivery transaction, the Cardholder completes two separate Charges. The first functions as a deposit (such as a down payment) for goods or services; the second is to pay the balance due.

B) Before completing a delayed delivery transaction you must obtain an Authorization. You must obtain an Authorization for each Charge on each Transaction Date.

C) Transaction Receipt deposits. You must:

1) Assign a separate authorization number for each Transaction Receipt and

2) Write the following information on the appropriate Transaction Receipt:

i) The words "delayed delivery"

ii) The word "deposit" or "balance," as appropriate 60

iii) The authorization date and authorization code, if applicable.

3) Deposit the Transaction Receipt as specified in Section 7.06. You may deposit with us the Transaction Receipt for the delayed delivery deposit from the Cardholder before delivery of the goods or service. You must not deposit the Transaction Receipt for the balance before delivery of the goods or service.

**23.11 Advance Payment Service**

A) The Advance Payment Service allows a Cardholder to initiate a Charge for partial or complete advance payment for recreational services or activities.

B) Advance Payment Procedures. You must:

1) Accept all Cards eligible for the Advance Payment Service when the Cardholder agrees to the Advance Payment Service;

2) Determine the amount of the Advance Payment Service Transaction. The Charge amount must not exceed the total price of the reserved services or activity;

3) Inform the Cardholder of the following:

   i) Total price of the services or activity

   ii) Advance payment amount

   iii) Advance payment confirmation code

   iv) Cancellation terms. If a cancellation request is not received within the cancellation time you specify, the Cardholder must forfeit the advance payment amount.

4) Obtain all of the following Cardholder information:

   i) Cardholder Account number, telephone number and mailing address

   ii) Card expiration date

   iii) Name embossed on the Card.

5) Complete a Transaction Receipt for the amount of the advance payment, including all of the following:

   i) The words "advance payment" on the signature line

   ii) The Cardholder Account number, telephone number and mailing address

   iii) The Card expiration date

   iv) The name embossed on the Card

6) Follow normal authorization procedures. If you receive an approval response, you must:

   i) Deposit the Transaction Receipt as specified in Section 7.06 and

   ii) Mail a written confirmation to the Cardholder, along with a copy of the Transaction Receipt and cancellation policy, including any applicable limitations relating to "bad weather" cancellations. For an advance payment made less than 72 hours prior to the scheduled commencement of services, a written confirmation is required only upon Cardholder request.

   iii) If you receive a decline response, you must advise the Cardholder and must not deposit the Transaction Receipt.

C) **Cancellation Procedures.** You must:

1) Accept all cancellation requests, provided that the request is made prior to the specified cancellation date and time

2) Provide a cancellation number for accepted cancellations and advise the Cardholder to retain it in case of a dispute

3) Complete a Credit Voucher for the amount of the advance payment cancellation with all of the following information:

   i) The words "advance payment" on the signature line



   ii) The Cardholder Account number, telephone number and mailing address

   iii) The Card expiration date

   iv) The name embossed on the Card

   v) The cancellation number.

4) Mail a copy of the Credit Voucher to the address indicated by the Cardholder within three Business Days from the Transaction Date.

## Section 24. CONTINUING GUARANTY

In this Guaranty, the "Guarantor" is each business or person who signed on the Guarantor signature line in the Bank of America, N.A. Merchant Services Account Application, "Bank" is Bank of America, N.A. and "Merchant" is the person or business organization named on the Application. The "Agreement" is the Merchant Services Agreement between the Bank and the Merchant, including the terms printed above, as now in effect and as amended in the future. "Obligations" are the obligations of Merchant under the Agreement, as more fully described below. Capitalized terms not defined in this Guaranty have the meanings defined in the Agreement.

**24.01 Guaranty.** Merchant has applied for certain services from Bank to process any combination of Credit Card Transactions, Debit Card Transactions other Card Transactions, and to provide other Merchant Services to Merchant under the Agreement ("Services"). To induce Bank to make Services available to Merchant, the Guarantor guarantees payment of, and will pay to the order of Bank on demand, the Obligations of Merchant described below.

A) The Obligations include all obligations Merchant incurs under the Agreement:

   1) at any time, past, present or future

   2) voluntarily or involuntarily

   3) directly or indirectly or

   4) individually or together with others.

B) The Obligations include amounts:

   1) due or not yet due

   2) absolute or contingent

   3) for a determined or undetermined amount

   4) for amounts due from Merchant as a result of Merchant's breach of the Agreement.

C) The Guarantor understands that the maximum amount of the Obligations is related to the Services provided under the Agreement, and may be for an unlimited amount, unless a maximum amount is provided in Section 24.02 below, Guarantor also understands that Bank may from time to time modify the amount or type of Services provided to Merchant, which will increase the Guarantor's obligations under this Guaranty.

D) This Guaranty is unconditional. Bank may require the Guarantor to pay even if Bank does not:

1) proceed against Merchant, any other Guarantor, or any other party

2) perfect any security interest

3) proceed against any security or

4) pursue any other remedy

E) Bank may release or add Guarantors without releasing any other Guarantor. Bank may require the Guarantor to pay even if a statute of limitations or disability bars recovery from Merchant, or the Obligations are or become otherwise unenforceable. The Guarantor waives the benefit of any statute of limitations that would apply to the Guaranty.

F) The Guarantor's obligations are independent of Merchant's Obligations, and Bank may sue the Guarantor without suing Merchant.

**24.02 Limits of the Guaranty.** At any one time, the Guaranty is limited to the Obligations of the Merchant under the Agreement, which may be for amounts without a limit. Bank, however, may permit Merchant to incur Obligations to Bank exceeding the limits of this Guaranty and may apply amounts received from sources other than the Guarantor to the unguaranteed portion of Merchant's Obligations to Bank. This Guaranty is in addition to any other guaranty given by the Guarantor.

**24.03 Bank's rights**

A) Bank may from time to time, without notice to or demand on the Guarantor:

1) change the interest rate on or renew any other debt of Merchant to Bank

2) accelerate, compromise or change the repayment period of the Obligations or any other debt of Merchant to Bank, or otherwise change the terms of the Agreement

3) receive, substitute or release collateral for the Obligations or for any other debt of Merchant to Bank

4) sell, otherwise dispose of or apply collateral in any order or

5) assign or sell all or a part of the Obligations and this Guaranty.



B) Bank may, at its option, request periodic financial statements from the Guarantor. The Guarantor will supply these statements promptly upon Bank's request. Bank may assign this Guaranty, in whole or in part, without notice, and Bank and any assignee or purchaser, or any prospective assignee or purchaser of the Obligations, may exchange financial information about the Guarantor with one another in connection with any assignment or purchase transaction. If Merchant is a corporation or partnership, Bank is not required to investigate the powers of anyone acting on Merchant's behalf.

**24.04 Protecting Bank's interest**

A) Any amounts Merchant owes the Guarantor now or in the future are subordinated to Merchant's Obligations to Bank. If Bank so requires, the Guarantor, as a trustee for Bank, will collect amounts Merchant owes the Guarantor and pay them to Bank in reduction of the Obligations to Bank, without affecting or reducing this Guaranty.

B) Until the Obligations of Merchant and any other obligations of Merchant to Bank have been paid in full and the Agreement has been terminated, the Guarantor does not have any:

1) right of subrogation, reimbursement, indemnification or contribution arising from the existence or performance of this Guaranty. This includes any rights arising from contract, statutory law or otherwise, and includes any claim of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute

2) right to enforce a remedy that Bank now has or may later have against Merchant

3) right to participate in security now or later held by Bank.

C) The Guarantor does not have any right to any defense based on a claim that the responsibilities of Guarantor under this Guaranty are more burdensome than or exceed the Obligations.

D) The Guarantor is solely responsible for obtaining any financial or other information from Merchant the Guarantor may require. Bank is not required to give the Guarantor any information about Merchant's business operations or financial condition, or any notices or demands to Merchant of any kind, including notices of new or additional Obligations or any other debts that may be incurred by Merchant, notices of default or notice of Bank's acceptance of this Guaranty.

**24.05 Security interest and right of set-off**

A) To secure all the debts covered by this Guaranty, the Guarantor assigns and grants to Bank a security interest in all of the following property of Guarantors held at Bank and all of its affiliates:

1) money

2) securities

3) deposit accounts and their proceeds and

4) any other property.

B) If Merchant breaches the Agreement or if any of the Guarantor's obligations to Bank are not fulfilled, Bank may immediately use any money or proceeds of the Guarantor's deposit accounts, securities or other property to reduce the Obligations.

C) Bank also may foreclose on any other collateral as provided in the Uniform Commercial Code and in any security agreements between Bank and Guarantor.

**24.06 Arbitration and waiver of jury trial.** At the request at any time of the Guarantor or Bank, any claim or controversy ("Claim") between Guarantor and Bank, whether arising in contract or tort or by statute including, but not limited to, Claims resulting from or relating to this Guaranty will, upon the request of either party, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code). Arbitration proceedings will be conducted in accordance with the applicable rules for the arbitration of disputes of JAMS or any successor thereof. The arbitration will be conducted in California, or if arbitration in California would not be reasonable for Guarantor, then in a state convenient to Guarantor and Bank. The arbitration hearing will commence within 90 days of the demand for arbitration and close within 90 days of commencement, and any award, which may include legal fees, will be issued (with a brief written statement of the reasons therefore) within 30 days of the close of the hearing. Any dispute concerning whether a claim is arbitrable or barred by the statute of limitations will be determined by the arbitrator. This arbitration provision is not intended to limit the right of any party to exercise self-help remedies, to seek and obtain interim or provisional relief of any kind or to initiate judicial or nonjudicial foreclosure against any real or personal property collateral. By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, if for any reason a Claim is not arbitrated, the parties irrevocably and voluntarily agree to waive any right to a trial by jury in respect of such Claim.



**24.07 Expenses.** Guarantor will pay all reasonable attorney fees, including allocated costs of Bank's in-house counsel, court costs and all other expenses Bank incurs in enforcing this Guaranty. The expenses covered by this provision include attorney fees and costs of any arbitration proceedings related to this Guaranty.

**24.08 Revoking this Guaranty.** The Guarantor may revoke this Guaranty as to future transactions at any time by written notice to Bank, effective two Business Days after Bank receives the written notice revoking the Guaranty, or any earlier time that Bank stops processing new transactions for Merchant after receipt of the revocation notice, provided the Guarantor renounces any consideration given in return for the Guaranty of those future transactions. The Guarantor is obligated on all Obligations relating to services extended by Bank to Merchant before the revocation becomes effective. Any revocation will not affect the Guarantor's obligation for any transactions that preceded the effective time of the revocation, and the Guarantor will remain obligated on all Obligations related to these transactions, even if those Obligations before or after the revocation have been renewed or modified. If this Guaranty is revoked, and Bank later must refund or rescind a payment, or transfer an interest in property back to Merchant, relating to Obligations before the revocation, this Guaranty will be reinstated as to that payment or interest.

**24.09 Enforcing this Guaranty.** California law governs this Guaranty, and Bank may sue the Guarantor in any court in California. Bank may delay or waive exercising or enforcing any of its rights, including its rights of set-off and lien, without losing them. These rights continue until Bank waives them in writing.