

**Farmers Market Vendor Program
Chris Shanahan & Jason Butts
Electronic Payments Consultant**

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Fax: 706-644-9770



Merchant Account Contract Period- Month to Month

Wireless Terminal Setup Per Merchant Account and Terminal – Paid for by the state.

Wireless Terminal Purchase per Terminal- Paid for by state

Wireless Monthly Usage Fee per terminal- \$13.99 First 6 months paid for by the state

Wireless Encryption Fee for Previously Owned Terminals- \$15.00

Merchant Account Annual/Seasonal Fee- \$15.00 First year paid for by the state.

Merchant Account Minimum-\$0.00

Transaction Fees

Swiped Durbin Debit Cards-	1.00% plus \$0.20
Swiped Debit Cards-	1.69% plus \$0.20
Swiped Credit Cards-	1.89% plus \$0.20
Keyed Transactions-	2.75% plus \$0.20
Business Cards-	3.59% plus \$0.20
American Express-	2.89% plus \$0.10
EBT -	\$0.10
Pin Debit Fees	\$0.10 plus Pin Network Fees
Daily Batch/Capture Fee-	\$0.25

Rush Fees for priority overnight terminals is \$25.00.

PCI Non-Scanable Annual Fee- \$22.00 First year paid for by the state

TSYS Named to Ethisphere's 2012 World's Most Ethical Companies List

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MERCHANT TRANSACTION PROCESSING AGREEMENT — MERCHANT APPLICATION

201310 Merchant Application SBS Bundled

CONFIDENTIAL

BUSINESS INFORMATION

Business Legal Name (must match name on tax return): ("MERCHANT") <u>X</u>		Business D/B/A: Rutherford County Farmers Market			
Location Street Address: (No P.O. Boxes) <u>X</u>		City: <u>X</u>	State: <u>X</u>	Zip: <u>X</u>	
Contact Name: <u>X</u>	Phone: <u>X</u>	Fax: <u>X</u>	Email: <u>X</u>		
Mailing/Billing Address: (If different from Location) <u>X</u>		City: <u>X</u>	State: <u>X</u>	Zip: <u>X</u>	Phone: <u>X</u>

BUSINESS PROFILE AND ASSUMPTIONS

# of Locations: <u>1</u>	Fed. Tax ID: <u>(X)</u>	Annual Visa/MasterCard/Discover Volume (\$): <u>20,000.00</u>	Location Volume (\$): <u>20,000.00</u>	Business Open Date: <u>X</u>
Average Ticket (\$): <u>100</u>	Highest Ticket (\$): <u>100</u>	Avg. monthly Vol. (\$): <u>0.00</u>	Length of Ownership: <u>0</u> Yr <u>0</u> Mo	Visa/MasterCard/Discover Currently Accepted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
# of Employees: <u>0</u>	Ownership Type: <u>X</u> <u>Govt</u>	% of Goods/Services Cash and Carry: <u>0</u>		
Type of Business: <u>Retail</u>	Pricing Method: <u>Retail</u>	Type of Goods/Services sold: (Please include a copy of your return/refund policy) <u>non profit</u>		
Previous Processor: (Please Include copy of statements)		Business Website:		
Card Present <u>98</u> % + Card Not Present <u>2</u> % = TOTAL: 100% If CNP Choose one: <u>CATMO</u>		Sales to: Consumer <u>98</u> % + Business <u>2</u> % = TOTAL: 100% Card Swipe <u>98</u> % + Imprint <u>0</u> % = TOTAL Card Present %		
Application Type: <u>0</u>	Addl. Location LOC/Old MID:	Dun & Bradstreet #: (If available)	Have you or your business ever declared bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Do you use any third party fulfillment houses? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, please provide a contact list of all third party fulfillment houses.		Do you work with any third parties or software vendors who have access to cardholder data? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please provide a contact list of all third parties and software vendors who have access to cardholder data.		
When is cardholder billed for goods/services? <input type="checkbox"/> On Order <input type="checkbox"/> On Shipment		Average number of days between order and shipment? <u>0</u>		
Expected date of first transaction?		Do you operate as a Seasonal Merchant? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If seasonal, indicate operating months: <input type="checkbox"/> Jan <input type="checkbox"/> Feb <input type="checkbox"/> Mar <input type="checkbox"/> Apr <input type="checkbox"/> May <input type="checkbox"/> Jun <input type="checkbox"/> Jul <input type="checkbox"/> Aug <input type="checkbox"/> Sep <input type="checkbox"/> Oct <input type="checkbox"/> Nov <input type="checkbox"/> Dec				

REFERENCES

Bank Reference Name:	Contact:	Phone:	Account Number:
Trade/Supplier 1 Name:	Contact:	Phone:	Account Number:
Trade/Supplier 2 Name:	Contact:	Phone:	Account Number:

VISA DISCLOSURE

MEMBER BANK (ACQUIRER) INFORMATION First National Bank of Omaha 1620 Dodge Street Omaha, NE 68197 800-853-9586	IMPORTANT MEMBER BANK (ACQUIRER) RESPONSIBILITIES 1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant 2. A Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply 3. The Visa Member is responsible for and must provide settlement funds to the Merchant 4. The Visa Member is responsible for all funds held in reserve that are derived from settlement.	IMPORTANT MERCHANT RESPONSIBILITIES 1. Ensure compliance with cardholder data security and storage requirements. 2. Maintain fraud and chargebacks below thresholds. 3. Review and understand the terms of the Merchant Agreement. 4. Comply with Visa Operating Regulations.
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The responsibilities listed above do not supersede the terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Merchant have any problems.

Merchant Name: <u>X</u>	Authorized Signature: <u>Sign (X)</u>
Address:	Print Name:

FEES

VISA/MC/DISCOVER DISCOUNT RATE	Rate 2 <u>1.8900</u> % + \$ <u>0.000</u> per item
Rate 1D <u>1.0000</u> % + \$ <u>0.000</u> per item	Rate 3 <u>2.7500</u> % + \$ <u>0.000</u> per item
Rate 1 <u>1.6900</u> % + \$ <u>0.000</u> per item	Rate 4 <u>3.5900</u> % + \$ <u>0.000</u> per item

Visa Rewards, Visa Signature, Visa Premium, MasterCard World, MasterCard Enhanced, MasterCard Premium and Discover Premium cards will be assessed an additional 0.3000 to the applicable rate tier. Please review the Rate Descriptions online at www.tsystransactionssummary.com or contact TMS at 800.228.2443 for additional information on which interchange programs qualify.

Merchant Setup	\$ 0.00 per MID	Authorizations "or"	\$ 0.2000 per V/MC/Disc/OnePoint Auth
Monthly Maintenance	\$ 0.00 per MID	Excessive Electronic Authorizations	\$ per V/MC/Disc Auth over 100% of SALES & per OnePoint Auth
Minimum Discount Billing	\$ per month/MID	Non V/MC/Disc/OnePoint Authorizations	\$ 0.1500 each
Chargebacks	\$ 20.00 each	Voice Authorizations	\$ 0.6500 each
Retrievals	\$ 20.00 each	Voice AVS	\$ 1.99 each
Batch Capture	\$ 0.25 each	Paper Statement <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 9.95 per month/MID
Insufficient Funds Fee	\$35 per unsuccessful debit of DESIGNATED Account	Wireless Monthly Wireless Set Up	\$ 13.95 per device \$ 99.00 per device
OTHER	\$	Annual Seasonal	\$ 15.00 per MID
OTHER	\$	Regulatory and Compliance	\$ 0.00 per month/MID

ATM/DEBIT <input type="checkbox"/> Yes <input type="checkbox"/> No	Setup \$ _____ per MID	Transactions \$ _____ each	Monthly per MID \$ _____	Network Fees Pass thru	PCI VALIDATION
PCI Validation \$ <u>22.00</u> per year /MID OR \$ <u>6.50</u> per month/MID					
PCI Non-validation: \$ _____ per month/MID if MERCHANT is not validated for compliance with TMS's vendor, beginning 75 days after signing.					

Card Compromise Assistance Plan (CCAP)

CCAP Fee (PCI Validated): \$ 7.95 per month/MID, if MERCHANT is validated for PCI Compliance with TMS's vendor.
 CCAP Fee (PCI Non-Validated): \$ 34.95 per month/MID, if MERCHANT is not validated for PCI Compliance with TMS's vendor, beginning 75 days after signing. This program is not being offered by Bank. Bank has no responsibility or liability under this program.

Account Closure Fee: If the AGREEMENT is terminated early during the INITIAL TERM or any RENEWAL TERM for any reason other than set out in paragraph 5.1, 5.2A, or 5.2.B, then MERCHANT agrees to pay TMS an account closure fee ("ACCOUNT CLOSURE FEE") in accordance with the following: \$399 per MID during the first 12 months of the INITIAL TERM; \$299 per MID during the second 12 months of the INITIAL TERM; \$199 per MID during the third 12 months of the INITIAL TERM; \$149 per MID during any RENEWAL TERM. MERCHANT agrees that the ACCOUNT CLOSURE FEE shall also be due to TMS in accordance with this schedule if MERCHANT discontinues submitting SALES for processing during the INITIAL TERM or any RENEWAL TERM of the AGREEMENT. MERCHANT agrees that this fee is a not a penalty, but rather a reasonable estimation of the actual damages TMS would suffer if TMS were to fail to receive the processing business for the then current term. Paragraph references and capitalized terms not defined in this paragraph are defined in the attached Terms and Conditions. Pursuant to Section 4.1 of the Terms and Conditions the INITIAL TERM shall be for 3 years.

TMS EQUIPMENT/SOFTWARE

Brand/Model <u>VX610 Wireless CDMA</u>	Brand/Model _____	Brand/Model _____
Equipment Option <u>Purchase</u>	Equipment Option _____	Equipment Option _____
Fee \$ <u>689.00</u> Quantity <u>1</u> Total \$ <u>689.00</u>	Fee \$ _____ Quantity _____ Total \$ <u>0</u>	Fee \$ _____ Quantity _____ Total \$ <u>0</u>
Payment Option <u>Purchase</u>	Payment Option _____	Payment Option _____
Software Vendor _____	Payment Application _____	Version _____

ASSOCIATION FEES

Visa Zero Floor Limit: \$0.1039 per transaction without corresponding authorization	MC Acquirer License Fee: 0.0075% of gross MC SALES dollar volume
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The following fees will be passed through at Association's rate: Assessments, Visa International Service (including cash advance), Visa Misuse, MasterCard Cross Border (US/Non-US/Puerto Rico), MasterCard Processing Integrity, Visa Fixed Acquirer Network Fee, Visa Debit Transaction Integrity Fee, Discover Network Authorization Fee, MasterCard CVC2 Transaction Fee, All Other Applicable Association Fees

FUNDS TRANSFER

In accordance with the terms set out in the Terms and Conditions, transfer funds will be made to/from the account set forth in the enclosed voided check or bank letter. Standard Premium DDA

AMERICAN EXPRESS

Existing American Express ESA ESA SE _____ Merchant CAP _____

New American Express OnePoint Discount 2.89 % New American Express ESA Discount 0.00 % Monthly Flat (ESA)\$ _____

Merchant Name _____ Annual American Express Charge Vol \$ 3,000.00 Avg Ticket \$ 0.00

Retail: + \$0.10 Trans Fee Restaurant: + \$0.05 Tran Fee Daily Net Pay — ESA only Daily Gross Pay — ESA only

Retail, Restaurant, Travel Agencies & Tour Operators: Monthly Gross Pay (+.03% if \$100K+) - ESA only
0.30% CNP Downgrade

B2B, Travel Agencies/Tour Operators & Services, Wholesale & All Other: + \$0.15 Trans Fee Payment Timing - ESA Only: 3 Day 15 Day 30 Day

Inbound Fee: 0.40% on Cross Border Transactions* Prepaid Gift Card Discount: % + \$ per transaction
*Not applicable to Education

By signing the Merchant Transaction Processing Agreement with BANK and TMS, I represent that I have read and am authorized to sign and submit this application agreeing to be bound by the American Express® Card Acceptance Agreement (“American Express Agreement”), and that all information provided herein is true, complete, and accurate. I authorize TSYS Merchant Solutions, LLC. and its agents, assigns or affiliates (collectively “TMS”) and American Express Travel Related Services Company, Inc. (“AXP”) and AXP’s agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies from time to time, and disclose such information to their agent, subcontractors, Affiliates and other parties for any purpose permitted by law. I authorize and direct TMS and AXP and AXP’s agents and Affiliates to inform me directly, or inform MERCHANT, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports on me from consumer reporting agencies for marketing and administrative purposes. I am able to read and understand the English language. Please read the American Express Privacy Statement at <http://www.americanexpress.com/privacy> to learn more about how American Express protects your privacy and how American Express uses your information. I understand that I may opt out of marketing communications by visiting this website or contacting American Express at 1-(800)-528-5200. I understand that upon AXP’s approval of the application, the MERCHANT agrees to abide by the American Express Agreement and will be sent materials welcoming it, either to AXP’s program for TMS to perform services for AXP or to AXP’s standard Card acceptance program which has different servicing terms (e.g. different speeds of pay). I understand that if MERCHANT does not qualify for TMS’s servicing program that the entity may be enrolled in AXP’s standard Card acceptance program, and MERCHANT may terminate the American Express Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, MERCHANT agrees to be bound by the American Express Agreement. I understand that TMS and BANK are not parties to the American Express Agreement.

PERSONAL GUARANTY

THIS general, absolute, and unconditional continuing Guaranty (“GUARANTY”) by the undersigned (collectively “GUARANTOR” or “my” or “I” or “me”), is for the benefit of TSYS Merchant Solutions, LLC and/or First National Bank of Omaha (“Collectively TMS”). For value received, and in consideration of the mutual undertakings contained in the Merchant Transaction Processing Agreement and allied agreements (“AGREEMENT”) between TMS and (“MERCHANT”) as set forth below, I absolutely and unconditionally guarantee the full performance of all MERCHANT’s obligations to TMS, together with all costs, expenses, and attorneys’ fees incurred by TMS in connection with any actions, inactions, or defaults of MERCHANT. I waive any right to require TMS to proceed against other entities or MERCHANT. There are no conditions attached to the enforcement of this GUARANTY. I authorize TMS, its agents or assigns to make from time to time any personal credit or other inquiries and agree to provide, at TMS’s request, financial statements and/or tax returns. I agree that this GUARANTY shall be governed and construed in accordance with the laws of the state of Nebraska, and that the courts of the state of Nebraska shall have and be vested with personal jurisdiction over me. This is a continuing GUARANTY and shall remain in effect until one hundred eighty (180) days after receipt by TMS of written notice by me terminating or modifying the same. The termination of the AGREEMENT or GUARANTY shall not release me from liability with respect to any obligations incurred before the effective date of termination. No termination of this GUARANTY shall be effected by any change in my legal status or any change in the relationship between MERCHANT and me. This GUARANTY shall bind and inure to the benefit of the personal representatives, heirs, administrators, successors and assigns of GUARANTOR and TMS.

PERSONAL GUARANTOR: (Signature-No Titles) _____ Print Name: (No Titles) _____

MERCHANT: (Business Legal Name) _____ Social Security Number: _____

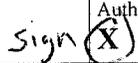
Home Address: _____ Home Phone: _____ Work Phone: _____

AGREEMENT ACCEPTANCE

By their execution below the undersigned parties agree to abide by the Merchant Transaction Processing Agreement (the “AGREEMENT”). The AGREEMENT consists of the Merchant Application and the Terms and Conditions (a separate attachment hereto), and MERCHANT acknowledges it has received and read the Terms and Conditions at the time of signing. MERCHANT warrants that the information provided on the Merchant Application is complete and accurate. MERCHANT authorizes TMS and/or BANK to provide a copy of this Merchant Application to any third party for the services requested. MERCHANT, and its signing officer/owner/partner, authorize TMS and/or BANK, or its agents or assigns, to make from time to time, any business and personal credit and other inquiries. If applicable, MERCHANT agrees by its signature below to the Equipment Agreement and/or the Card Compromise Assistance Plan Agreement. In witness whereof the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives effective on the date signed or approved by BANK.

Principal’s Name (Please Print): <u>X</u>		Title: <u>X</u>	
Equity Ownership (%) <u>0</u>	Home Phone No: <u>X</u>	Date of Birth:	Principal’s Soc Sec No:
Principal’s Home Address:		City:	State: Zip:
MERCHANT (PRINCIPAL / OFFICER / OWNER) Signature <u>X</u>		Name (Please Print): <u>X</u>	Title: Date:
TSYS Merchant Solutions, LLC (“TMS”) Signature:		Name:	Title: Date:
First National Bank of Omaha (“BANK”) Signature:		Name:	Title: Date:

Sign

Sales Professional Verification		
By the signature below, the Sales Professional verifies that that the information stated in this Agreement is correct to the best of his/her knowledge and is as represented to him/her by MERCHANT.		
Sales Professional Signature: 	Sales Professional Name Printed: Chris Shanahan	
Sales Organization: TSYS Merchant Solutions	Application Date: 4/2/14	Physical Site Inspection Conducted By Sales Professional <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
CCAP Opt Out		
<p>Note: MERCHANT may only opt out if MERCHANT validates PCI Compliance with TMS vendor within 75 days of signing. If at any time MERCHANT is not validated for compliance, MERCHANT will be automatically enrolled in CCAP until such time that MERCHANT restores validation, at which point MERCHANT will again be opted out. MERCHANT declines to participate in the Card Compromise Assistance Plan ("CCAP"). MERCHANT understands that under the terms of the AGREEMENT, MERCHANT is responsible for all expenses, fines, assessments, and penalties that arise in the event that a data breach is suspected or occurs at one or more of MERCHANT's locations. Further, MERCHANT understands and agrees that CCAP assistance will not be available to help pay any of the above mentioned expenses, fines, assessments, or penalties in the event of a suspected or actual data breach at one or more of MERCHANT's locations. MERCHANT acknowledges that despite opting out of CCAP, MERCHANT will still be assessed a PCI Validation Fee. This program is not being offered by BANK. BANK has no responsibility or liability under this program.</p>		
Merchant Name:	Authorized Signature: 	
Title:	Date:	

Please attach voided check here.

MERCHANT'S INTENTION MAY BE LEFT BLANK.

AMENDMENT TO THE MERCHANT TRANSACTION PROCESSING AGREEMENT

201310 ACF WAIVER AMENDMENT

THIS Amendment ("AMENDMENT"), by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), TSYS MERCHANT SOLUTIONS, LLC ("TMS"), and "MERCHANT", the name of which is set out below, shall become effective on the date executed or approved by a duly authorized representative of BANK. BANK, TMS, and MERCHANT shall be collectively known hereafter as the "PARTIES."

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

WHEREAS, the PARTIES desire to delete the ACCOUNT CLOSURE FEE as set out in the AGREEMENT.

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

1. Terms set forth herein, which are typed in all capitalized letters and not defined herein, shall have the same meaning as set out in the AGREEMENT.
2. The PARTIES agree to delete in its entirety the Account Closure Fee section from the FEES Section of the AGREEMENT.
3. The PARTIES agree to delete all other references to the ACCOUNT CLOSURE FEE from the Terms and Conditions of the AGREEMENT.
4. This AMENDMENT, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
5. Except as amended hereby, BANK, TMS, and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AMENDMENT to be executed by their duly authorized representative, effective as of the date executed or approved by BANK.

First National Bank of Omaha

Rutherford County Farmers Market

ADDRESS

BANK Authorized Signature

Sign(x) _____
Authorized Signature

Print Name

Print Name

Title

Title

Date

TSYS Merchant Solutions, LLC

TMS Authorized Signature

Print Name

Title

Date

ELECTRONIC BENEFITS TRANSFER ("EBT") AMENDMENT

201310 EBT AMENDMENT TSYS

This AMENDMENT ("AMENDMENT") by and between FIRST NATIONAL BANK OF OMAHA ("BANK"), TSYS MERCHANT SOLUTIONS, LLC ("TMS"), and "MERCHANT," the name of which is set out below, shall become effective on the date executed or approved by a duly authorized representative of BANK. BANK, TMS, and MERCHANT shall be collectively known hereafter as the "PARTIES."

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

WHEREAS, the PARTIES desire to amend the AGREEMENT to add electronic benefits transfer ("EBT") Services.

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

1. GENERAL

- 1.1 Capitalized terms that are not defined herein shall have the same meaning as when defined in the AGREEMENT.
- 1.2 The PARTIES agree to add EBT Services to the definition of SALES and SERVICES as defined in the AGREEMENT.
- 1.3 To the extent TMS is not already a PARTY to the AGREEMENT, the PARTIES agree to amend the AGREEMENT to make TMS a party to the AGREEMENT. BANK will continue to sponsor MERCHANT into the ASSOCIATIONS, retain the responsibility of settling MERCHANT's SALES, and all other obligations that are required to be retained at BANK by the ASSOCIATIONS. TMS will be responsible for all other responsibilities and obligations to MERCHANT under the AGREEMENT, including but not limited to processing SALES and handling customer service.

2. EBT SERVICES TERMS AND CONDITIONS

- 2.1 **EBT Programs.** MERCHANT will participate in and BANK and/or TMS will provide access to the programs for debit card access to electronically distributed government benefits as agreed to between the parties from time to time ("EBT Programs"). Each EBT Program shall be treated as an ASSOCIATION for purposes of the AGREEMENT and each debit card issued for access to government benefits issued under such EBT Programs shall be treated as a CARD under the AGREEMENT.
- 2.2 **MERCHANT Representations and Warranties.** MERCHANT hereby represents and warrants that it is qualified to participate in each EBT Program it has selected in accordance with all applicable laws, regulations, rules, and administrative guidelines related to such EBT Program, including without limitation any ATM/Debit Network rules, Quest rules, federal or state laws pertaining to delivery of services to EBT recipients and recipient confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture, or any state, pertaining to the Food Stamp Program ("EBT RULES"). MERCHANT represents and warrants that it has obtained any and all consents, approvals, certifications or other evidence of authority, and has properly executed and delivered any and all applications, agreements or other documents necessary to participate to BANK and/or TMS to process and settle SALES on its behalf in each such EBT Program. MERCHANT shall cooperate with BANK and/or TMS in obtaining any further consents, approvals, certifications or other evidence of authority, and executing and delivering any further applications, agreements or other documents that may be required from time to time in connection with MERCHANT's participation in each EBT Program and BANK's and/or TMS's provision of services hereunder.

2.3 MERCHANT Obligations.

- a. At all times during the term of the AGREEMENT, MERCHANT shall remain a participant in good standing in each EBT Program selected hereunder.
- b. MERCHANT shall submit to TMS an EBT Information Sheet, attached hereto as SCHEDULE 1 and incorporated herein by this reference, for each MERCHANT location where EBT will be offered, as amended from time to time. The EBT Information Sheet must be received by TMS prior to the desired activation date.
- c. MERCHANT shall notify BANK and/or TMS at least thirty (30) days prior to the termination or withdrawal of its participation in any such EBT Program, or if such participation is terminated involuntarily and without prior notice to MERCHANT, immediately following such notice.
- d. MERCHANT shall pay to TMS the fees set forth herein in consideration of the services provided hereunder as amended from time to time.
- e. MERCHANT agrees to abide by the EBT RULES. MERCHANT will not take any action that would cause BANK or TMS to be in violation of any law, regulation, rule, or administrative guideline applicable to an EBT Program, including any EBT RULES. MERCHANT will accept EBT CARDS only for SALES and purchases permitted under the applicable EBT Program. Without limiting the foregoing, MERCHANT shall not resubmit any EBT transaction except as specifically permitted by rules related to such EBT Program. MERCHANT shall provide refunds with respect to EBT SALES in accordance with the EBT RULES and each EBT Program. In addition, if MERCHANT accepts EBT under the Food Stamp Program, MERCHANT shall deploy and identify its terminals consistent with Department of Agriculture and any state requirements.
- f. With respect to each EBT Program in which MERCHANT participates, MERCHANT shall comply with any obligations or duties imposed on financial institutions participating in such EBT Program under any agreement ("Processor Agreement") BANK or TMS has with a Processor and the Processor has with the administrator of the EBT Program ("EBT Provider") pursuant to which BANK's or TMS's Processor is authorized to process SALES for the EBT Program, and the EBT Provider shall have the right to directly enforce the terms and conditions of the Processor Agreement against MERCHANT in the event that MERCHANT breaches its obligations hereunder. MERCHANT shall not take any action that would cause BANK, TMS, or the Processor to be in violation of any Processor Agreement.
- g. MERCHANT shall obtain a telephone authorization of each EBT transaction in situations in which it is unable to obtain electronic response from the card authorization system for the EBT Program, if required by an EBT Program. If BANK processes manual sales drafts for MERCHANT, MERCHANT shall complete any such manual sales draft for an EBT Transaction in accordance with the requirements of the EBT Program.
- h. MERCHANT shall maintain records of EBT SALES as required by the EBT RULES and each EBT Program. MERCHANT shall not use or disclose any information concerning a customer for any purpose not directly connected with the performance of MERCHANT's duties under an EBT Program.
- i. MERCHANT shall not discriminate in the provision or denial of any EBT Transaction based on a customer's disability or handicap (if any), age, race, color, religion, sex, sexual preference, political belief, national origin, creed, marital status or veteran's status.
- j. MERCHANT shall provide to BANK, TMS, and any EBT Provider any information reasonably required by BANK, TMS, or the EBT Provider to assist BANK, TMS, or the EBT Provider in ensuring the integrity, security and successful performance of the EBT Network.
- k. MERCHANT shall, at its own expense, ensure that its employees receive appropriate training in the use of equipment and procedures with respect to each EBT Program in which MERCHANT participates.

- 2.4 BANK and TMS Representations and Warranties. BANK and TMS hereby represent and warrant that either BANK or TMS has contracted with a qualified Processor for each EBT Program and that it or the qualified Processor has obtained any and all authorizations, certifications or other evidence of authority, and has properly executed and delivered any and all applications, agreements or other documents necessary to participate in each such EBT Program.
- 2.5 BANK Obligations.
- a. BANK and TMS shall provide EBT services in accordance with the terms of this EBT AMENDMENT and the EBT RULES.
 - b. BANK and TMS shall have the authority, without any liability, to terminate or suspend the provision of services hereunder with respect to each EBT Program, at the direction of any federal, state or other authority with responsibility for oversight or implementation of such EBT Program, or upon BANK or TMS determination to terminate support for such EBT Program for all customers. If BANK or TMS is directed to terminate or suspend the provision of services hereunder with respect to an EBT Program, BANK or TMS may also terminate or suspend provision of services hereunder for any other EBT Program without liability.
- 2.6 Indemnification. In addition to MERCHANT's indemnification obligations set forth in the AGREEMENT, MERCHANT agrees to indemnify and hold harmless BANK and TMS from and against any and all claims or losses arising out of (i) any act or omission by MERCHANT in violation of any applicable federal, state or local law or regulation, or rule or administrative guideline related to an EBT Program, or any EBT RULES; (ii) any negligent or fraudulent act or omission or intentional misconduct by MERCHANT; (iii) any failure by MERCHANT to comply with any obligation or duty imposed on merchants participating in an EBT Program under a Processor Agreement; or (iv) any act or omission of MERCHANT that causes BANK or TMS to breach any undertaking under a Processor Agreement, including any performance standards thereunder.
- 2.7 Limitation Of Liability. In addition to the limitation of liability set forth in the AGREEMENT, MERCHANT agrees and acknowledges that neither BANK nor TMS shall have no liability to MERCHANT arising out of any act or omission by an EBT Provider. Without limiting the foregoing, BANK, TMS, and any Processor shall have no liability to Merchant for an EBT Provider's rejection, chargeback or other failure to fully process in the ordinary course and without penalty any adjustment based upon a restriction on EBT Provider's ability to process such adjustment to the account of a recipient of government benefits, regardless of whether the error being adjusted was caused in whole or in part by the Processor.
- 3. MISCELLANEOUS**
- 3.1 This AMENDMENT, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing and ACH Services, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
- 3.2 Except as amended hereby, BANK, TMS, and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AMENDMENT to be executed by their duly authorized representative, effective as of the date executed or approved by BANK.

First National Bank of Omaha

Authorized Signature

Print Name

Title

Date

TSYS Merchant Solutions, LLC

Authorized Signature

Print Name

Title

Date

MERCHANT Name *Rutherford County Farmers Market*

Address

City, State, Zip Code

*Sign **

Authorized Signature

Print Name

Title

SCHEDULE 1

EBT INFORMATION SHEET

I. MERCHANT INFORMATION

Name:

Address:

City: County: State: Zip:

Phone: Fax:

Merchant Number:

State-required number (FCS# or CA# or AO#): FNS#

Requested Live Date: States requested:

II. EBT PROGRAMS

BANK and/or TMS shall provide MERCHANT access to, and permit MERCHANT to participate in, the EBT Programs as listed below.

(/) PLEASE INDICATE THE APPROPRIATE PROGRAM(S):

Check Program(s): Both Food Stamps & Cash Benefits Food Stamps Only Cash Benefits Only

If Cash Benefits: Purchase with Cash Back Cash Issuance (Cash Back Only)

If Cash Issuance: Limit Amount: \$ Hours: From a.m./p.m. To a.m./p.m.
(Please check days cash benefits issuance will be available)

SUN MON TUES WED THURS FRI SAT ALL

For Internal Use Only: Date Received _____ Live Date _____

FEES

1. Setup Fee: \$ 0.00 one time fee
2. Monthly EBT Fee: \$ 0.00 per month
3. Authorization Fee: \$ 0.1000 per authorization
4. Transaction Fee: \$ 0.00 per transaction

End-User Agreement

This End-User Agreement (the "Agreement") governs Your use of the products and services (collectively, the "Products") provided by APPSware Wireless L.L.C., an Arizona Limited Liability Company, dba Apriva ("Apriva"). Rates and Products are subject to change by Apriva. Any such changes shall be posted on Apriva's Web site at www.apriva.com. Certain Products are available in only selected Apriva service areas. Contact Customer Service for availability in Your area. "You," as referred to in this Agreement, means any entity, organization or individual using the Service.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE PRODUCTS PROVIDED BY APRIVA. YOUR USE OF THE PRODUCTS, OR SIGNED ACKNOWLEDGEMENT OF THIS AGREEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to You, do not use the Products. Apriva is willing to provide the Products only if You agree to be bound by the following terms:

- 1. Products.** Unless provided otherwise in specific Apriva end user terms and conditions accompanying a Product, You are granted a limited, non-transferable, non-exclusive license to use software Products solely for your internal business purposes. With regard to any firmware (software embedded in and provided with the Product; as opposed to stand-alone software), you are granted a limited, non-transferable, non-exclusive license to use the firmware solely in connection with Your use of the related Product. You agree not to distribute the firmware in any form, or to use the firmware except as it is embedded in the non-volatile memory component(s) of the Product. All software Products, including embedded software, is licensed, not sold. Apriva is not responsible for the accuracy or completeness of information sent or received by You using the Products. All Products must be used in accordance with their then current documentation. In certain instances, Apriva may make available through or as part of the Products certain products and services (collectively referred to as "Third Party Products") provided by Apriva's third party vendors, licensors and/or suppliers (the "Third Party Suppliers"). Such Third Party Products may be the subject of additional terms and conditions of the Third Party Suppliers. Your use of and access to the Third Party Products shall constitute Your acceptance of those terms and conditions. If You do not agree to the additional terms and conditions, do not use and access the Third Party Products. You have a limited, non-transferable, nonsublicensable, non-exclusive license to use the Third Party Products solely in connection with Your use of the Products. You may not: (i) download, reproduce, copy, alter, adapt, modify, improve, translate, create derivative works from, reverse engineer, disassemble, decompile or otherwise attempt to reveal the trade secrets or know how underlying the Products or Third Party Products; (ii) sublicense, resell, sublease or transfer any of your rights under the Agreement or otherwise use the Products or Third Party Products for the benefit of any third party or use the Products or Third Party Products to develop a product that is similar to the Products or Third Party Products or to operate a service bureau; or (iii) use the Products or Third Party Products in any manner or for any purpose not authorized by the Agreement or consistent with their accompanying documentation. You agree that the terms and conditions of this Agreement, including any warranty disclaimers and liability disclaimers, inure to the benefit of the Third Party Suppliers and the Third Party Suppliers are deemed to be third party beneficiaries of this Agreement. Third Party Suppliers have the right to directly enforce Your obligations under this Agreement relating to the Third Party Products, including billing and servicing.
- 2. Disclaimer.** YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE PRODUCTS AND THE THIRD PARTY PRODUCTS. NEITHER APRIVA NOR ANY THIRD PARTY SUPPLIER WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN THE PRODUCTS AND/OR THIRD PARTY PRODUCTS, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION,

(II) NON-PERFORMANCE, OR (III) INTERRUPTION IN THE PRODUCTS AND/OR THIRD PARTY PRODUCTS FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY APRIVA OR ANY THIRD PARTY SUPPLIER. UNLESS EXPRESSLY PROVIDED OTHERWISE IN ANY APRIVA END USER TERMS AND CONDITIONS ACCOMPANYING THE PRODUCTS OR IN THE APPLICABLE TERMS AND CONDITIONS, IF ANY, ACCOMPANYING THE THIRD PARTY PRODUCTS, THE PRODUCTS AND/OR THIRD PARTY PRODUCTS ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. APRIVA AND THE THIRD PARTY SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT,

QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Although Apriva uses commercially reasonable efforts to provide for the secure transmission of information through the Products, confidential use of the Products by You cannot be guaranteed by Apriva or the Third Party Suppliers. Apriva and its Third Party Suppliers are not responsible for any harm that You or any person may suffer as a result of a breach of confidentiality in respect to Your use of the Products and/or Third Party Products.

YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN APRIVA AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S). YOU UNDERSTAND AND AGREE THAT THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU. YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO YOU, AND UNDERSTAND THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME. YOU UNDERSTAND THAT APRIVA, THE THIRD PARTY SUPPLIERS, AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) CANNOT GUARANTY THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATIONS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE PRODUCTS AND THIRD PARTY PRODUCTS.

YOU SHALL INDEMNIFY AND HOLD HARMLESS APRIVA, THE THIRD PARTY SUPPLIERS, AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES), INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE PRODUCTS, THIRD PARTY PRODUCTS, AND/OR NUMBER EXCEPT WHERE THE CLAIMS RESULT FROM APRIVA'S OR THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

3. Exclusion of Damages. IN NO EVENT WILL APRIVA, ANY UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY THIRD PARTY SUPPLIER BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF THE PRODUCTS AND/OR THIRD PARTY PRODUCTS), EVEN IF APRIVA, THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY THIRD PARTY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF THE PRODUCTS AND/OR THIRD PARTY PRODUCTS, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED \$25.00.

4. Force Majeure. Neither Apriva, the underlying wireless and/or telecommunications service carrier(s), nor any Third Party Supplier shall be liable for any loss resulting from a cause over which such entity does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

5. Limitations on Your Use of The Service and Third Party Products. You agree not to reproduce, re-transmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Products and/or Third Party Products in any manner not authorized hereunder without the express written consent of Apriva, and the relevant Third Party Supplier (s). You agree to immediately notify Apriva if You become aware of any of the following: (a) any loss or theft of Your access number(s) and/or password(s) to the Products or Third Party Products, or (b) any unauthorized use of any of Your access number(s) and/or password(s), or of the Products or any Third Party Products. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the Products and Third Party Products. You agree to defend, indemnify, and hold Apriva and the Third Party Suppliers harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorney's fees) arising from Your violation of this Agreement or any third party's rights.

6. Ownership. All copyrights, patents, patent rights, trade secrets, trademarks, servicemarks, tradenames, moral rights and other intellectual property and proprietary rights in the Products and Third Party Products are and will remain the sole and exclusive property of, as applicable, Apriva and its Third Party Suppliers. The Products and Third Party Products contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to You under this Agreement are expressly reserved by Apriva and its Third Party Suppliers. You may not remove or modify any proprietary notice of Apriva and its Third Party Suppliers from the Products or Third Party Products.

7. Termination. Apriva reserves the right to terminate Your access to the Products and Third Party Products or any portion of them in its sole discretion, without notice, and without limitation, for any reason whatsoever, including but not limited to the unauthorized use of Your access number(s) and/or password(s), breach of this Agreement, failure to amounts due Apriva and/or the Third Party Suppliers, discontinuance of the Products. Upon termination, Apriva and the Third Party Suppliers shall have no liability to You; provided, however, that if the termination is without cause, Apriva shall refund the prorated portion of any fee which may have been pre-paid by You for the portion of the Products not furnished to You as of the date of such termination.

8. Export. You may not export, directly or indirectly, the Product to any country for which the United States requires any export license or other governmental approval, including any relevant import licenses, without first obtaining such license or approval. It shall be your responsibility to comply with such export laws, rules and regulations. You shall defend, indemnify, and hold harmless Apriva from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of any claim the Product was exported or otherwise shipped or transported by You in violation of applicable laws, rules and regulations.

9. U.S. Government Rights. The Product is commercial computer software as described in DFARS 252.2277014(a)(1) and FAR 2.101. If acquired by or on behalf of any the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

10. General. You acknowledge that, in providing You with the Products, Apriva has relied upon Your assent to be bound by the terms of this Agreement. Subject to Apriva's right to change applicable pricing and Product terms by posting such changes on its Web site, this Agreement and any license or other restrictions provided with the Third Party Products constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of Arizona. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable. Any negotiation or arbitration pursuant to this Section will take place in Scottsdale, Arizona. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

11. Survival. The terms and conditions of Sections 2 through 9, above, shall survive any expiration or termination of this Agreement.

Vendor: TSYS Merchant Solutions

Merchant: Rutherford County Farmers
Market

(A)

By: _____

Name: _____

Title: _____

Date of Signing: _____

Terms and Conditions

Processing Terms and Conditions
Funds Transfer Instructions
Association Rules
ATM/Debit Network Rules
TMS – Products/Services
TMS Equipment Agreement
TMS Card Compromise Assistance Plan Agreement
Third Parties – Products/Services

Provided by



www.tsysmerchantsolutions.com

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

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PROCESSING TERMS AND CONDITIONS

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

- A. WHEREAS, TMS works with one or more financial institutions, including BANK, who are Members of VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD"), and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, and other financial service card organizations, including certain ATM/Debit networks (together herein known as "CARD(S)");
- B. WHEREAS, TMS has a relationship with the Discover Network ("DISCOVER"), and American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"), and other financial service card organizations, including certain ATM/Debit networks (collectively included in the definition of "CARDS" above). VISA, MASTERCARD, DISCOVER, AMERICAN EXPRESS, ATM/Debit Networks, and the other financial service card organizations and their related international entities shall be collectively known as "ASSOCIATIONS";
Notice: Depending on MERCHANT's authorization and settlement composition, the reference to DISCOVER and AMERICAN EXPRESS in this AGREEMENT may not apply.
- C. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and have TMS and BANK process the resulting transactions ("SALES") pursuant to the terms and conditions set out below. For purposes of this AGREEMENT, ATM/Debit transactions shall mean those transactions processed on an ATM/Debit network ("NETWORK(S)") in an on-line real time environment requiring the entry of a personal identification number ("PIN"), and
- D. WHEREAS, MERCHANT may desire to be sponsored as a participant in certain NETWORKS, under the terms of the rules and regulations of each such NETWORK;
- E. WHEREAS, ASSOCIATIONS, NETWORKS, TMS, and BANK each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated herein by this reference and shall be referred to as the "RULES"; and
- F. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing; and
- G. WHEREAS, BANK has assigned and/or delegated some of its rights and obligations under this AGREEMENT to TMS; provided however that it is able to do so by the ASSOCIATIONS, NETWORKS, RULES, and any applicable law. In addition TMS has assigned and/or delegated some of its rights and obligations under this AGREEMENT to BANK; provided however that it is able to do so by the ASSOCIATIONS, NETWORKS, RULES, and applicable law;
- H. WHEREAS, all applicable ADDENDA are attached hereto and are made a part of this AGREEMENT.

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

1. GENERAL:

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

1.6 Security Standards.

- A. MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by LAWS or RULES. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. MERCHANT must keep all systems and media containing account, cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than MERCHANT's authorized personnel. MERCHANT must destroy, in a manner that will render the data unreadable, all such media that MERCHANT no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction.
 - B. If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify TMS of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must: (1) only allow the Merchant Providers access to the cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at www.visa.com), the MasterCard Site Data Protection Program ("SDP") (found at www.mastercard.com), Discover Information Security and Compliance ("DISC") (found at <http://www.discovernetwork.com/fraudsecurity/disc.html>), and the American Express Data Security Operating Policy ("DSOP") (found at https://www.209.americanexpress.com/merchant/singlevoice/pdfs/en_US/DSOP_Merchant_US.pdf), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify TMS of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. MERCHANT is responsible for demonstrating MERCHANT's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers' ability to prevent future security violations. Any fees, fines or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify TMS, BANK and the ASSOCIATIONS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information.
 - C. In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT's cost, to provide all information requested by TMS, BANK, an ASSOCIATION, other financial institutions, or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT, TMS, and BANK) be considered TMS's and BANK's confidential information. MERCHANT agrees that TMS or BANK may release to the ASSOCIATIONS, other financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to TMS or BANK in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the ASSOCIATIONS' websites.
- 1.7 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of or publication by the ASSOCIATIONS of amended RULES to MERCHANT shall be evidence that MERCHANT was provided with and/or received access to the amended RULES and has agreed to abide by them.
- 1.8 If MERCHANT is a healthcare provider or other entity covered by the Health Insurance Portability and Accountability Act of 1996, as amended, and the supporting regulations under 45 C.F.R. Part 160 and 164, as amended, MERCHANT agrees it will not provide TMS and BANK with Personal Healthcare Information (as defined in such act).

2. SPECIFIC OPERATING PROCEDURES:

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

Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.

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

3. PAYMENT OF SUMS DUE:

- 3.1 MERCHANT agrees to pay TMS and/or BANK the fees set forth in the Merchant Application and all other sums owed to TMS and/or BANK for SALES and SERVICES as set forth in this AGREEMENT as amended from time to time ("FEES"). FEES include but are not limited to all CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to TMS and/or BANK by any affiliated entities of MERCHANT.
- 3.2 As set out in the Merchant Application and the Rate Descriptions, discount ("DISCOUNT") is a FEE charged as a percentage of gross SALES submitted by MERCHANT, which generally includes "Processing," "Authorizations," "Assessments," and "Interchange." Assessments and Interchange are the standard fees that the ASSOCIATIONS charge for the clearing of SALES transactions and are subject to change by the ASSOCIATIONS. Neither TMS nor BANK have direct control over these fees. Any adjustment in Interchange and Assessments by the ASSOCIATIONS may result in an adjustment to MERCHANT's DISCOUNT. TMS and/or BANK will notify MERCHANT in writing of any change in FEES caused by action of ASSOCIATIONS prior to any such change becoming effective. Notice to MERCHANT of any change in FEES caused by ASSOCIATIONS may be less than thirty (30) days.
- 3.3 DISCOUNT is quoted by TMS based on the information supplied by MERCHANT as set forth in the Merchant Application. MERCHANT agrees that the FEES are based on the term of this AGREEMENT, the method of processing, and the information set forth in the Merchant Application. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, TMS and/or BANK may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change. MERCHANT agrees to pay such amended and/or additional FEES.
- 3.4 MERCHANT agrees that FEES not listed in the AGREEMENT will be charged at TMS's and/or BANK's current rate.
- 3.5 The FEES may be amended by TMS and/or BANK on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.6 MERCHANT agrees to pay TMS and/or BANK for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that neither TMS nor BANK is in any way financially responsible for CHARGEBACKS. Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS. MERCHANT's obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.
- 3.7 If the ASSOCIATIONS or a regulatory body governing TMS and/or BANK should levy a fine or penalty or assess a charge to TMS and/or BANK as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.8 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions set out herein, authorizes both TMS and BANK to make deposits and withdrawals from the DESIGNATED ACCOUNT. MERCHANT hereby grants to TMS and BANK a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT's (or any related entity under MERCHANT's control) obligations to TMS or BANK under this AGREEMENT. If required by TMS and/or BANK, MERCHANT agrees to cooperate with TMS and/or BANK and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount specified by TMS and/or BANK and MERCHANT agrees to deposit funds into the DESIGNATED ACCOUNT so that the minimum balance required by TMS and/or BANK is maintained. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. TMS may recoup and debit from the DESIGNATED ACCOUNT all non-VISA and non-MASTERCARD related FEES and other obligations due to TMS under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with TMS without prior notice to MERCHANT. BANK may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to BANK and/or TMS under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with BANK without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the DESIGNATED ACCOUNT, if any, shall be paid to MERCHANT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from TMS and/or BANK with respect to the DESIGNATED ACCOUNT. MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due TMS or BANK under this AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a RESERVE ACCOUNT, as defined below, is established, MERCHANT authorizes TMS and/or BANK to make withdrawals from the DESIGNATED ACCOUNT to replenish the RESERVE ACCOUNT as necessary.
- 3.9 MERCHANT agrees to provide TMS and BANK with a deposit in the amount of money required by TMS and/or BANK ("RESERVE ACCOUNT"), if determined necessary by TMS and/or BANK: (i) at the time this AGREEMENT is executed; (ii) if in the opinion of TMS and/or BANK, information received or discovered about MERCHANT reflects an adverse change in status;

(iii) in the event that any information requested by TMS and/or BANK is not received; (iv) upon the notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of this AGREEMENT. BANK may withhold the payment for SALES in an amount reasonably determined by TMS and/or BANK as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, TMS and/or BANK may require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with BANK in the name of BANK and under the sole control of BANK, and MERCHANT grants to TMS and BANK a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to TMS and BANK under this AGREEMENT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. Both TMS and BANK may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to TMS or BANK under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the RESERVE ACCOUNT, if any, shall be paid to MERCHANT.

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

4. TERM OF AGREEMENT:

- 4.1 The initial term of this AGREEMENT shall be for three (3) years ("INITIAL TERM") commencing on the date this AGREEMENT is executed or approved by BANK.
- 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive one (1) year periods ("RENEWAL TERM") unless terminated as set out below.

5. TERMINATION OF AGREEMENT:

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

Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to TMS or BANK for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.

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

6. BANKRUPTCY:

- 6.1 It is not the intention of the PARTIES that TMS or BANK remains obligated to continue processing SALES or providing SERVICES in the event of a bankruptcy filing by MERCHANT. Upon filing voluntary or involuntary bankruptcy proceedings by or against MERCHANT, MERCHANT must notify BANK and TMS in writing within five (5) days. Notification must be sent by certified mail to BANK and TMS at the addresses for NOTICES set out herein.
- 6.2 Credits to MERCHANT's DESIGNATED ACCOUNT and other payments to MERCHANT are provisional. The PARTIES acknowledge the AGREEMENT is an agreement whereby BANK is extending financial accommodations to MERCHANT within the meaning of Section 365 of the Bankruptcy Code as amended from time to time. The right of MERCHANT to receive any amounts due or to become due from TMS or BANK is expressly subject and subordinate to the CHARGEBACKS, recoupment, setoff, lien, and security interest rights of TMS and/or BANK under this AGREEMENT without regard to whether such CHARGEBACKS, recoupment, setoff, lien, and/or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

7. INFORMATION AND DOCUMENTATION:

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

8. PROCESSING RESTRICTIONS:

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

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

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its: (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent establishment" on its web site along with MERCHANT's country of domicile, either a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.

- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to TMS and BANK in accordance with the then current RULES and requirements of TMS, BANK, and ASSOCIATIONS. If MERCHANT is using a third party's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the third party is providing the customer service, then such third party is a separate entity and is not an agent of TMS or BANK. MERCHANT understands the AGREEMENT is between TMS, BANK, and MERCHANT. Disputes involving a third party shall be dealt with independently from TMS and BANK. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify TMS at the address set out in the AGREEMENT. MERCHANT must pay TMS and BANK regardless of any disputes it has with any third party. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to TMS and BANK, MERCHANT must disclose the relationship to TMS and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by TMS and BANK. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. Neither TMS nor BANK are liable for SALES they did not receive. MERCHANT understands that in the event MERCHANT rents TMS's terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.
- 9.3 MERCHANT agrees that neither TMS nor BANK is responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that TMS and BANK are not responsible for and are not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. MERCHANT should contact the third party for service of this equipment. MERCHANT shall not allow any third party to install, remove, or modify any terminal software application of TMS without the express written consent of TMS. MERCHANT agrees TMS and BANK can only process SALES received by TMS and BANK, and any third party is responsible for ensuring SALES are formatted and transmitted to TMS and BANK in accordance with the then current requirements of TMS, BANK, and ASSOCIATIONS. TMS and BANK may increase FEES if a third party presents SALES transactions not in accordance with the then current ASSOCIATIONS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by TMS and BANK.
- 9.4 MERCHANT shall assume full liability and shall indemnify and hold TMS, BANK, and ASSOCIATIONS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

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

11. WARRANTIES AND INDEMNITIES:

- 11.1 MERCHANT understands that TMS and BANK merely provide processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, TMS and BANK do not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the ASSOCIATIONS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to TMS and BANK.
- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to BANK and does by this reference assign all its rights, title, and interest to payment for such SALES to BANK so that TMS and BANK may process SALES under the AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.

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

12. NOTICES:

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

13. MISCELLANEOUS:

- 13.1 Assignment. Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of TMS and BANK. TMS and BANK may each assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT. Without limiting the generality of the foregoing, MERCHANT shall not assign, transfer or encumber its present or future payment rights under this AGREEMENT or connected with a RESERVE ACCOUNT, if any; nor shall TMS or BANK be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless BANK consents in writing.
- 13.2 Governing Law and Forum. The PARTIES acknowledge and agree that this AGREEMENT and any Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this AGREEMENT and any Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or any Guaranty contained herein, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or any Guaranty contained herein.
- 13.3 Waiver of Jury Trial and Covenant Not to Participate in a Class Action. MERCHANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY ACTION, LAWSUIT, CLAIM, COUNTERCLAIM OR OTHER ACTION RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION GOVERNED BY THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, VOLUNTARILY AND INTENTIONALLY BY MERCHANT, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE BE AVAILABLE. TMS AND BANK ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MERCHANT. MERCHANT ALSO COVENANTS NOT TO BRING OR PARTICIPATE IN ANY CLASS ACTION AGAINST TMS OR BANK BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT. IF A CLASS PROCEEDING IS INITIATED AGAINST TMS OR BANK, MERCHANT MAY NOT JOIN THAT PROCEEDING OR PARTICIPATE AS A MEMBER OF THAT CLASS. If MERCHANT brings legal action against TMS or BANK for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.

- 13.4 Waiver. No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.
- 13.5 Force Majeure. TMS and BANK are not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.
- 13.6 Entire Agreement. This AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.
- 13.7 Costs. Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.
- 13.8 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.
- 13.9 Amendment. This AGREEMENT may be amended or modified by TMS or BANK effective upon thirty (30) days written notice. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.
- 13.10 Authority. By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.
- 13.11 P-Card. To the extent applicable, TMS and BANK agree not to use any information supplied by MERCHANT in the Purchasing Card Information that is required for acceptance of purchasing cards, in its decision as to whether to accept MERCHANT for processing. MERCHANT agrees to hold TMS and BANK harmless from any and all claims relating to the collection, processing, dissemination, and use or misuse of the information contained in the Purchasing Card Information. MERCHANT acknowledges that the information from the Purchasing Card Information will be sent to MERCHANT's corporate customers who pay with a purchasing card. MERCHANT agrees that TMS AND BANK are not responsible for any actions or omissions of others regarding this information.
- 13.12 Taxes. MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes, including penalties and interest, which may be assessed in connection with the services and related products provided under this AGREEMENT.
- 13.13 Disclosure of Merchant Identification Number ("MID). For security reasons, MERCHANT must disclose its MID thereby authorizing TMS and BANK to make changes to its account. TMS and BANK may request from MERCHANT additional information to further verify MERCHANT's identity. TMS and BANK may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT authorizes TMS and BANK to share information regarding the MERCHANT's account with the person disclosing the MID. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.
- 13.14 Information. MERCHANT authorizes TMS and BANK to release and use MERCHANT's information, in connection with offering or providing business products and services, to third parties that provide services to TMS, BANK, or MERCHANT or to any third party that requests and has a reason to know such information, including but not limited to the ASSOCIATIONS, and any third-party having regulatory control over the PARTIES.
- 13.15 Counterparts/Facsimile. This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes TMS and BANK and their affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.
- 13.16 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and TMS or BANK may be monitored and recorded.
- 13.17 Binding Agreement. This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is signed or approved by an authorized Agent of BANK; and (ii) TMS has received a negative response to its inquiry of the ASSOCIATIONS' programs designed to monitor merchants.
- 13.18 Products and Services. TMS may from time to time add products and/or services to the SERVICES. At MERCHANT's request, TMS may provide such additional products and/or services to MERCHANT at TMS's then current rate. MERCHANT agrees to abide by all parameters set by TMS for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. TMS has made reasonable efforts to secure information and abide by the ASSOCIATIONS' security guidelines but TMS does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify TMS immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. TMS shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. TMS or MERCHANT may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.
- 13.19 Communication. MERCHANT authorizes TMS and/or BANK and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by TMS and BANK, its affiliates, or any third party that TMS or BANK shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold TMS and BANK, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.
- 13.20 Disclosure. The ASSOCIATIONS require that the following be disclosed to MERCHANT: (i) BANK is in control of TMS's performance under this AGREEMENT; (ii) BANK must pre-approve all FEES; (iii) the AGREEMENT may not be amended

without TMS's and BANK's express written consent; (iv) TMS will not have access to MERCHANT's ASSOCIATION related funds; (v) TMS may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party, any right or obligation of TMS set forth in this AGREEMENT; and (vi) BANK may not waive the foregoing requirements.

FUNDS TRANSFER INSTRUCTIONS

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

ASSOCIATION RULES

NOTICE: This information is a summary of common ASSOCIATION regulations; however card acceptance, processing and chargeback procedures are subject to change. Capitalized Terms not defined herein shall have the meaning ascribed to them in the ASSOCIATIONS' regulations. If there are any differences between the ASSOCIATIONS' regulations and these RULES, the ASSOCIATIONS' regulations will prevail in every instance. To the extent these RULES or the ASSOCIATIONS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern. The ASSOCIATIONS publish summaries of the regulations for merchants. Some of these summaries may be accessed at www.visa.com and www.mastercard.com, while AMERICAN EXPRESS and DISCOVER regulations may be accessed at www.tsystransactionssummary.com. Regulations for the AMERICAN EXPRESS OnePoint program may be accessed at www.americanexpress.com/onepoint.

ASSOCIATION CARD ACCEPTANCE PROCEDURES

1. Honor All CARDS:

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

- 2) MERCHANT is participating in the Visa Cash Back Service, as further specified in the VISA regulations.
- I. Accept a Visa Card or Visa Electron card for the purchase of Scrip;
 - J. Accept a Visa electron Card for Manual Cash Disbursement;
 - K. Accept a Visa TravelMoney Card for a Manual Cash Disbursement;
 - L. Accept a card to collect or refinance an existing debt that has been deemed uncollectible by the merchant providing the associated goods or services. (Note: A transaction that represents a payment on an existing obligation must be identified by the appropriate indicator in the Authorization Request and Clearing Record.);
 - M. Enter into interchange a transaction that represents collection of a dishonored check;
 - N. Require a cardholder to waive his or her rights to dispute the transaction as a condition of the SALE; or
 - O. Establish a minimum or maximum transaction amount as a condition for honoring a Visa Card or Visa Electron Card, except as permitted by the RULES.

2. Sales Transactions:

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

3. SALES DRAFTS:

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

4. Security Features:

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.
- 4.2 When an Electronic Cash Register ("ECR") or Electronic Draft Capture ("EDC") terminal reads the magnetic stripe on the CARD, MERCHANT must check the CARD account number on the terminal (if displayed) against the account number embossed on the CARD or follow such other security check as is mandated by TMS and BANK from time to time. If the CARD is read with a terminal that displays the CARD number and the SALES DRAFT is printed, MERCHANT shall verify that the account number displayed on the terminal match the embossed numbers on the face of the CARD. In the event that they do not match, the SALE must not be completed. Failure to follow these checks and procedures will expose MERCHANT to CHARGEBACKS.

- 4.3 In the event that the terminal is programmed to require MERCHANT to key the last four (or more) digits of each CARD used for a SALE, and the terminal indicates that the numbers keyed are not the same as those present on the card, the SALE must not be completed.
- 4.4 In order to protect the integrity of the ASSOCIATIONS' systems, BANK may hold funds settled by MERCHANT in the event of a breach of AGREEMENT, irregular SALES activity, or receipt of detrimental financial information.

5. Authorization:

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

6 Returned Merchandise and Adjustments:

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

7. Cash Transaction:

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

8. Use of Promotional Materials and Marks:

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

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

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

responsible for payment for SALES for any ASSOCIATIONS unless and until TMS and BANK have received payment for such SALES from the ASSOCIATIONS.

CHARGEBACKS

10. General:

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

11. CHARGEBACK Reasons:

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

12. CHARGEBACK Monitoring Programs:

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

13. Other Association Monitoring Programs:

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

14. ASSOCIATION Registration Programs:

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

UNIQUE BUSINESS REQUIREMENTS

15. Card Not Present Merchants:

- 15.1 MERCHANT may not accept Card Not Present SALES unless AGREEMENT specifically refers to Card Not Present SALES. If this is not the case, MERCHANT should contact TMS and BANK if they wish to accept Card Not Present SALES and provide descriptions of product types and marketing methods. TMS and BANK may refuse MERCHANT permission to accept Card Not Present SALES.
- 15.2 If MERCHANT is specifically authorized by TMS and BANK to accept Card Not Present SALES, no SALE shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the cardholder.
- 15.3 Card Not Present SALES do not require the cardholder's signature on the SALES DRAFT. MERCHANT is required to obtain the valid dates for each CARD used for a SALE. The expiration date must be submitted as part of the Authorization inquiry.
- 15.4 If MERCHANT supplies goods and/or services under a Pre-Authorization Order ("PO"), it shall not charge a cardholder for goods after receiving notice from a cardholder that the authorization for goods or services is canceled.
- 15.5 The receipt of a valid Authorization does not protect MERCHANT from CHARGEBACKS on SALES for the Unauthorized Purchaser reason code. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code.
- 15.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.
- 15.7 Card Not Present MERCHANTS are encouraged to investigate the CHARGEBACK protection attributes of the various Address Verification Services and Card Verification Value Services available from ASSOCIATIONS.
- 15.8 MERCHANT, or its agent, shall implement and maintain all of the security requirements specified in PCI. MERCHANT shall immediately notify TMS and BANK of the use an agent. MERCHANT shall immediately notify TMS and BANK of any suspected or confirmed loss or theft of material or records that contain account information and both:

- A. demonstrate its ability to prevent future loss or theft of account or transaction information; and
- B. allow the ASSOCIATIONS, or an acceptable independent third party, to verify this ability by conducting a security review.

15.9 Electronic Commerce Merchants (VISA):

- A. VISA makes the 3-D Authentication system available to Electronic Commerce Merchants as a way to reduce fraud in Internet Transactions. Electronic Commerce Merchants may elect to implement 3-D Secure. Electronic Commerce Merchants that process 3-D Secure Transactions must comply with requirements specified in the: (i) VISA Operating Regulations; (ii) the VISA 3-D Secure: Merchant Implementation Guide and (iii) VISA Cardholder Information Security Program.
- B. A web site operated by an Electronic Commerce Merchant must contain all of the following information: (i) a complete description of the goods or services offered; (ii) the merchant's returned merchandise and refund policy; (iii) the merchant's customer service contact, including electronic mail addresses and/or telephone number; (iv) the transaction currency; (v) any export or legal restrictions (if known); (vi) the merchant's delivery policy; (vii) the address of the merchant's permanent establishment; (viii) the merchant's consumer data privacy policy; and (ix) the security method for the transmission of payment data.
- C. Electronic Commerce Merchants must offer cardholders a secure transaction method, such as: (i) Secure Sockets Layer (SSL), or (ii) 3-D Secure.

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

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

17. T&E Services:

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

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

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

- 17.2 Visa Reservation Service: Any MERCHANT who accepts CARDS to guarantee reservations must do so in accordance with the following requirements:

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

18. Pre-authorized Health Care Transactions:

- 18.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:

- A. a request for the services to be charged to the cardholder's account;
- B. assignment of insurance benefits to the MERCHANT;
- C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
- D. duration of time, not to exceed one (1) year, for which permission is granted; and
- E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.

- 18.2 MERCHANT must:

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

19. Recurring Transactions:

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

20. Employee Purchases:

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

MISCELLANEOUS RULES

21. Liability of MERCHANT:

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

22. Supply of Information:

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

ATM/DEBIT NETWORK RULES

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

ATM/DEBIT NETWORK CARD ACCEPTANCE PROCEDURES

1. Discrimination:

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

2. SALES DRAFTS:

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

3. SALES DRAFTS - Distribution and Storage of Information:

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

CHARGEBACKS

4. General:

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

5. Monitoring Programs:

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

- 5.3 In the event that MERCHANT is identified under these PROGRAMS as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on Lost, Stolen, or Counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated on notice by TMS and BANK.

OPERATIONAL REQUIREMENTS

6. MERCHANT Name and Address:

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

7. Equipment:

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

8. Left CARDS:

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

9. Security Features:

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

TMS – PRODUCTS AND SERVICES

TSYS InfoCenter

1. MERCHANT may not access TSYS InfoCenter without the express written consent of TMS.
2. TSYS InfoCenter displays information related to the MERCHANT'S transaction processing activity between the MERCHANT and TMS via a web interface.
3. TMS will provide MERCHANT access to TSYS InfoCenter for the person(s) listed in the TSYS InfoCenter Access Application form(s) signed and submitted by MERCHANT. Access will be provided through a web site designated by TMS. MERCHANT agrees to pay all FEES associated with the TSYS InfoCenter product as stated in the completed and signed TSYS InfoCenter Access Application form(s). The PARTIES agree that any completed and signed TSYS InfoCenter Access Application form which is submitted shall be fully incorporated and made part of the AGREEMENT.
4. MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.
5. Information is encrypted by Secure Sockets Layer (SSL) technology. TMS has made reasonable efforts to secure information, but does not guarantee security. MERCHANT is responsible for protecting access to TSYS InfoCenter. Access to and uses of password protected areas of TSYS InfoCenter are restricted to authorized users only. It is the MERCHANT's obligation to immediately notify TMS if its PIN has been lost or stolen or if there has been unauthorized access.
6. MERCHANT may terminate the use of TSYS InfoCenter Web Site or any authorized user of the website by providing TMS with written notification of said termination. The PARTIES agree that said written termination(s) shall be fully incorporated and made part of the AGREEMENT. MERCHANT is fully responsible for terminating MERCHANT employee access. TMS may terminate MERCHANT access to the TSYS InfoCenter web site immediately upon notice to MERCHANT and said termination(s) shall be incorporated into the AGREEMENT.
7. TMS is not liable for any direct, indirect, incidental, consequential, or special damages arising out of or in any way connected with access to or use of TSYS InfoCenter, even if TMS has been advised of the possibility of such damages, including liability associated with any viruses which may infect MERCHANT's computer(s).
8. THE SERVICE AND CONTENT FROM OR THROUGH TSYS INFOCENTER ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED (INCLUDING BUT NOT LIMITED TO THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE). THE INFORMATION HEREIN MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. TMS ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT CONTAINED ON THIS SITE.
9. MERCHANT's access to and use of TSYS InfoCenter is subject to all LAWS, as well as, all ASSOCIATIONS' rules and regulations. TMS reserves the right to seek all remedies available at law and in equity for violations of the AGREEMENT or any other applicable law, rule or regulation, including the right to block access from a particular Internet address to the designated web site.

TMS EQUIPMENT AGREEMENT

Important Note: BANK is not a party to the following agreement. MERCHANT acknowledges and agrees that BANK and its affiliates are in no way responsible for the actions, inactions, performance or nonperformance of TMS, or for disputes or resolving disputes of any kind arising from this agreement.

THIS Equipment Agreement ("EQUIPMENT AGREEMENT"), by and between TMS, and "MERCHANT," the name of which is set forth in the AGREEMENT, as defined herein, shall become effective as of the date TMS executes ("EFFECTIVE DATE") the Merchant Transaction Processing Agreement (the "AGREEMENT").

WHEREAS, TMS and MERCHANT shall hereinafter be referred to as the "PARTIES"; and

WHEREAS MERCHANT desires to purchase or rent equipment from TMS in order to accept and process specified credit card transactions.

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

1. TMS agrees to sell or rent to MERCHANT and MERCHANT agrees to buy or rent from TMS the EQUIPMENT described in the AGREEMENT or as added from time to time via MERCHANT's request through TMS's customer service center. MERCHANT's payment for EQUIPMENT or delivery of the EQUIPMENT to MERCHANT will constitute MERCHANT's acceptance of the applicable following terms and conditions. Payment for EQUIPMENT and any related fees shall be due and payable on the EFFECTIVE DATE of this EQUIPMENT AGREEMENT if purchasing EQUIPMENT, monthly if renting, or upon an otherwise agreed upon date or payment schedule. MERCHANT agrees to pay the fee(s) set out in the AGREEMENT and as added from time to time. MERCHANT is responsible for all sales, use, excise and other taxes, including penalties and interest, that may result from this transaction. MERCHANT hereby authorizes TMS to debit payment from the MERCHANT's designated account established under the AGREEMENT for items ordered herein if payment does not accompany order.
2. Upon payment by MERCHANT to TMS of the entire purchase amount required herein, TMS shall sell, transfer and assign the purchased EQUIPMENT to MERCHANT for MERCHANT's use and benefit. All risks or expenses of loss, damage, or repair to the EQUIPMENT shall be borne by MERCHANT upon such transfer of title.
3. If MERCHANT is renting EQUIPMENT, MERCHANT agrees to pay TMS a monthly rental fee ("RENTAL FEE") for the EQUIPMENT until such time said EQUIPMENT is returned to TMS, which will be debited monthly from the MERCHANT's DESIGNATED ACCOUNT established under the AGREEMENT or billed separately to merchant if the DESIGNATED ACCOUNT no longer exists. If MERCHANT is purchasing the EQUIPMENT via multiple payments and terminates the EQUIPMENT AGREEMENT prior to completing the monthly purchase payments, then MERCHANT agrees to immediately pay the remainder of the purchase price or, if MERCHANT returns the EQUIPMENT under the conditions specified herein, MERCHANT agrees to pay TMS's then current RENTAL FEE for the length of time MERCHANT had the use of the EQUIPMENT.
4. MERCHANT agrees to pay the RENTAL FEE on a per month basis as rental for the EQUIPMENT. TMS may amend the RENTAL FEE on thirty (30) days written notice to MERCHANT. Submission by MERCHANT of SALES after such notice period shall be evidence that MERCHANT has received the amended RENTAL FEE and has agreed to such amended RENTAL FEE. MERCHANT is supplied with monthly reports by TMS regarding the EQUIPMENT. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to TMS within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
5. The PARTIES agree to each of the terms and conditions set forth herein and acknowledge that such provisions are binding upon each of them, their successors, heirs and assigns.
6. MERCHANT understands that a telephone jack and other equipment may be required for its phone system to be compatible with EQUIPMENT at MERCHANT's expense.
7. Upon expiration or termination of the EQUIPMENT AGREEMENT, MERCHANT agrees to remove the rental EQUIPMENT from its locations and deliver it to TMS at MERCHANT's cost in the same condition as when the rental EQUIPMENT was installed, normal wear and tear excepted. The PARTIES agree that the rental EQUIPMENT is and will remain personal property of TMS.
8. MERCHANT hereby assumes the entire risk of loss, damage or destruction of the EQUIPMENT from any cause whatsoever, until the delivery of the rental EQUIPMENT to TMS. If the rental EQUIPMENT is damaged, lost, or not returned to TMS, MERCHANT shall, at the option of TMS, repair the rental EQUIPMENT at MERCHANT's expense or pay TMS the current replacement cost of the rental EQUIPMENT.
9. MERCHANT hereby grants to TMS the right, during normal business hours, to enter any location under MERCHANT's control for the purpose of inspecting, repairing, or replacing rental EQUIPMENT.
10. MERCHANT shall and does hereby agree to indemnify and hold TMS, its agents, employees, successors and assigns harmless from any and all liability, damages or loss (including attorney fees and costs) arising out of the ownership, selection, possession, leasing or renting, operation (regardless of where, how and by whom operated), control, use, condition (including, but not limited to, latent and other defects, whether or not discoverable by TMS) maintenance, delivery and return of the EQUIPMENT. This indemnification and the obligations contained herein shall survive termination or expiration of EQUIPMENT AGREEMENT.
11. MERCHANT shall keep rental EQUIPMENT insured against all risks for not less than replacement costs of rental EQUIPMENT, naming TMS as an additional insured as its interest may appear.
12. If this EQUIPMENT AGREEMENT is terminated, TMS shall have the right to enter MERCHANT's locations for the purpose of recovering rental EQUIPMENT.
13. Neither MERCHANT nor any third party is authorized to make any alterations, repairs or changes including programming changes to rental EQUIPMENT. Any personal property attached to rental EQUIPMENT shall become part of the EQUIPMENT. TMS will provide maintenance service to rental EQUIPMENT during the term of the EQUIPMENT AGREEMENT. MERCHANT shall not allow any other person or entity to maintain or tamper with rental EQUIPMENT without the express written consent of TMS.

14. MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. TMS shall not otherwise be liable for any error, omission, delay, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, any use of EQUIPMENT or services provided by TMS pursuant to this or any other agreement. In any event, TMS's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the aggregate of monthly RENTAL FEES paid to TMS by MERCHANT in the six-month period prior to the incident giving rise to liability. IN NO EVENT SHALL TMS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR TMS WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. TMS is not responsible for any loss or damages whatsoever sustained by MERCHANT arising as a result of any acts of God, strikes, flood, weather, shortages of parts or supplies or other events beyond its reasonable control.
15. TMS, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OF CONTRACT PERTAINING THERETO; THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE; THE ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT. UPON SALE OF THE EQUIPMENT TO MERCHANT, TMS HEREBY ASSIGNS, TO THE EXTENT POSSIBLE, ALL WARRANTIES AND RIGHTS OF TMS WITH RESPECT TO THE EQUIPMENT PROVIDED BY THE MANUFACTURER OF THE EQUIPMENT. TMS DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE MANUFACTURER'S WARRANTY.
16. Except as expressly provided herein, MERCHANT may not assign its rights or delegate its responsibilities regarding rental EQUIPMENT under this EQUIPMENT AGREEMENT without the prior written consent of TMS, which will not be unreasonably withheld.
17. The PARTIES acknowledge and agree that this EQUIPMENT AGREEMENT was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this EQUIPMENT AGREEMENT, including, without limitation, the validity, interpretation, construction, performance and enforcement of the EQUIPMENT AGREEMENT. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this EQUIPMENT AGREEMENT, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this EQUIPMENT AGREEMENT shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this EQUIPMENT AGREEMENT. If MERCHANT brings legal action against TMS for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.
18. No delay or failure by either PARTY to exercise any right under EQUIPMENT AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of fact or any other right, unless expressly provided herein.
19. Neither PARTY shall be responsible for the costs incurred by the other for negotiating or implementing this EQUIPMENT AGREEMENT and MERCHANT shall be responsible for installation of the EQUIPMENT.
20. The obligations of all PARTIES hereto incurred prior to the effective date of termination of EQUIPMENT AGREEMENT shall survive such termination.
21. In the event that any portion of EQUIPMENT AGREEMENT shall be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of the same and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of the same so as to render it valid, reasonable and enforceable.
22. This EQUIPMENT AGREEMENT may only be amended or modified by a subsequent written agreement by and between the PARTIES hereto.
23. MERCHANT hereby represents that the entering into of this EQUIPMENT AGREEMENT has been duly authorized by MERCHANT and that this EQUIPMENT AGREEMENT constitutes a legal, valid and binding obligation of MERCHANT, and is enforceable against MERCHANT in accordance with its terms.
24. This EQUIPMENT AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements and negotiations whether oral or written.

TMS CARD COMPROMISE ASSISTANCE PLAN AGREEMENT

Important Note: BANK is not a party to the following agreement. MERCHANT acknowledges and agrees that BANK and its affiliates are in no way responsible for the actions, inactions, performance or nonperformance of TMS, or for disputes or resolving disputes of any kind arising from this agreement.

Card Compromise Assistance Plan

This Card Compromise Assistance Plan ("CCAP") sets forth the terms and conditions by which TMS will assist MERCHANT for certain losses related to a **Data Security Event**. TMS's obligations to MERCHANT under this CCAP do not constitute the issuance of a policy, certificate, or contract of insurance between TMS and MERCHANT. TMS has chosen to obtain insurance, from a licensed insurance broker, to support TMS's contractual obligations to MERCHANT under this CCAP. Words and phrases that appear in boldface are defined as above or in Clause II or elsewhere in this CCAP. In the event of any conflict between this CCAP and any other written agreement between TMS and MERCHANT (including but not limited to the Merchant Transaction Processing Agreement), the terms of this CCAP shall control only with respect to matters addressed in this CCAP. Both TMS and MERCHANT agree that this

CCAP is offered solely by TMS; and not First National Bank of Omaha (“BANK”). BANK does not have any liability or responsibility for the **CCAP**.

I. SCOPE OF AGREEMENT FOR DATA SECURITY EVENT EXPENSES

TMS shall pay Merchant for all reasonable **Security Event Expenses** and **Post Event Services Expenses** resulting from a **Data Security Event** first discovered by MERCHANT during the **CCAP** and reported to TMS within the **Notice Period**.

II. DEFINITIONS

- A. ACDR Fines** means amounts contractually assessed against MERCHANT either directly by a **card association**, or indirectly through a financial institution who has sponsored MERCHANT into the **Card Associations** for **Bank Card** processing, to cover partial collection of losses experienced by a **Bank Card** issuer as a result of a **data security event**, including the Account Data Compromise Recovery (“**ADCR**”) process and similar processes.
- B. Bank Card** means a financial transaction card, including a debit card, credit card or prepaid card, issued by a **Card Association** or a financial institution as a member of a **Card Association**.
- C. Cardholder** means a natural person or entity to which a **Bank Card** has been issued.
- D. Cardholder Information** means the data contained on a **Bank Card**, or otherwise provided to MERCHANT, that is required by the **Card Association** or MERCHANT in order to process, approve and/or settle a **Bank Card** transaction.
- E. Card Association** means each of Visa International, MasterCard Worldwide, Discover Financial Services, JCB, American Express and any similar credit or debit card association that is a participating organization of the PCI Security Standards Council.
- F. Card Association Assessment** means a monetary assessment, fee, fine or penalty levied against MERCHANT by a **Card Association** as the result of: (i) a **Data Security Event**; or (ii) a security assessment conducted as the result of a **Data Security Event**. The **Card Association Assessment** shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a **Data Security Event** by the applicable rules or agreement in effect as of the inception date of this **CCAP** for such **Card Association**. **Card Association Assessment** also means **Compliance Case Costs** and **ADCR Fines**. **Card Association Assessment** does not include **Chargeback** recovery, **Chargeback** fines or **Chargeback** expenses assessed directly against MERCHANT.
- G. Card Replacement Expenses** means the costs that MERCHANT is required to pay by the **Card Association** to replace compromised **Bank Cards** as the result of (i) a **Data Security Event** or (ii) a security assessment conducted as the result of a **Data Security Event**.
- H. Chargeback** means the procedure by which a **Bank Card** transaction is returned to MERCHANT who is then responsible for the amount of such transaction.
- I. Compliance Case Costs** means costs and expenses incurred by a card issuer in monitoring and addressing **Bank Card** accounts which are reasonably believed to be compromised or at risk as a result of a **Data Security Event** and for which reimbursement is requested pursuant to rules of a **Card Association**. **Compliance Case Costs** do not include **Chargeback** amounts.
- J. Data Security Event** means the actual or suspected unauthorized access to or use of **Cardholder Information**, arising out of MERCHANT’s possession of or access to such **Cardholder Information**, which has been reported: (a) to a **Card Association** by MERCHANT and/or a financial institution who is sponsoring MERCHANT into the **Card Association**; or (b) to MERCHANT by a **Card Association**. All **Security Event Expenses** and **Post Event Services Expenses** resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of a single **Data Security Event**.
- K. Forensic Audit Expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a **Card Association** or the PCI Security Standards Council to determine the cause and extent of a **Data Security Event**.
- L. MID** means a Merchant Identification Number assigned by TMS to MERCHANT, which is a unique number assigned to a location where MERCHANT accepts **Bank Cards** for payment.
- M. Notice Period** means the thirty (30) day period commencing immediately upon the discovery by MERCHANT of a **Data Security Event**. However in no event shall the **Notice Period** extend past the termination date of the **CCAP**.
- N. Pollutants** means, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- O. Post Event Services Expenses** means reasonable fees and expenses incurred by MERCHANT with TMS’s prior written consent, for any service specifically approved by TMS in writing, including without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of TMS or MERCHANT within one (1) year following discovery of a **Data Security Event** covered under the **CCAP** to a **Cardholder** whose **Cardholder Information** is the subject of that **Data Security Event** for the primary purpose of mitigating the effects of such **Data Security Event**.
- P. Security Event Expenses** means **Card Association Assessments**, **Forensic Audit Expenses**, **Card Replacement Expenses** and **Post Event Services Expenses** that MERCHANT is obligated to pay in connection with a **Data Security Event**.

III. DUTIES IN THE EVENT OF A DATA SECURITY EVENT

A. Before TMS agrees to support TMS's contractual obligations to MERCHANT under this **CCAP**, MERCHANT shall notify TMS in writing as soon as practicable within the **Notice Period** of an actual or alleged **Data Security Event** first discovered by MERCHANT during the **CCAP** term. Notice must include at a minimum:

1. MERCHANT's name and all of MERCHANT's **MIDs** alleged to have been breached;
2. A description of the **Data Security Event**;

3. The potential number of **Cardholders** affected by the **Data Security Event**; and

4. A copy of all notices and correspondence sent and/or received by MERCHANT, concerning the **Data Security Event**.

B. All notices shall be sent to TMS at the following address:

TSYS Merchant Solutions, LLC
Attention: Legal Department / CCAP Event
1601 Dodge Street, Floor 23 East
Omaha, NE. 68102-1637

C. Under all circumstances, MERCHANT shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any **Data Security Event** without TMS's prior written consent. If MERCHANT elects to do so, it will be at MERCHANT's own expense.

C. MERCHANT shall take reasonable steps to prevent a **Data Security Event** to the extent arising from the **Program** and to mitigate the loss arising out of a **Data Security Event**, including without limitation, following the procedures required by a **Card Association** in the event of a **Data Security Event**. In all events, Merchant shall not take any action, or fail to take any action, without TMS's prior written consent, which prejudices TMS's rights under this **CCAP**.

IV. ADDITIONAL OBLIGATIONS

In addition to all other duties and obligations contained elsewhere in this **CCAP**:

A. Merchant shall allow TMS and/or our insurers to examine and audit all of its records that relate to the matters covered by this **CCAP**. TMS and/or its insurers may conduct the audits during regular business hours during the term of the **CCAP** and within three (3) years after the term of this **CCAP** ends; and

B. MERCHANT shall pay all amounts payable when due to TMS under this **CCAP** or any other written agreement to which MERCHANT and TMS are a party, including the Merchant Transaction Processing Agreement to which this **CCAP** has been attached. MERCHANT shall also be responsible for the giving and receiving of timely notices as required under the **CCAP**, including, but not limited to, notice of a **Data Security Event** and any claim arising out of such **Data Security Event**.

V. EXCLUSIONS

The **CCAP** does not and will not apply to:

A. any **Data Security Event** arising out of MERCHANT allowing any party (other than its employees or TMS) to hold or access **Cardholder Information**;

B. any **Security Event Expenses** arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by MERCHANT's:

1. directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or

2. employees (other than officers) if any of MERCHANT's elected or appointed officers possessed knowledge of any such:

a) dishonest, fraudulent, malicious, or criminal or malicious act, error or omission;

b) intentional or knowing violation of the law or the **CCAP**, or

c) gaining of any profit or advantage to which MERCHANT is not legally entitled;

prior to or at the time (a), (b) or (c) above were committed;

C. any **Data Security Event** caused by or resulting, directly or indirectly, from an act, error or omission of TMS, including, without limitation: (i) the disclosure of any **Cardholder Information** by TMS its employees or any person or entity to whom TMS provides **Cardholder Information**; or (ii) any failure of the TMS's operating environment security, computer system equipment or payment processing network; provided however, this exclusion does not apply to the actual or alleged failure of TMS to monitor the operations of, or the security procedures or computer systems used by, MERCHANT;

D. any **Security Event Expenses** arising out of or resulting from a claim, suit, action or proceeding against MERCHANT that is brought by or on behalf of any federal, state or local government agency;

- E.** any **Data Security Event** relating to MERCHANT if MERCHANT has experienced a prior **Data Security Event** unless MERCHANT was later certified (or re-certified) as PCI compliant by a qualified security assessor;
- F.** any **Data Security Event** involving MERCHANT if MERCHANT: (i) is categorized by any **Card Association** as “Level 1”; or (ii) MERCHANT processed more than six million (6,000,000) **Bank Card** transactions during the twelve month period prior to MERCHANT’s enrollment into this **CCAP**;
- G.** any expenses, other than **Security Event Expenses**, incurred by MERCHANT, arising out of or resulting, directly or indirectly, from a **Data Security Event**, including without limitation, expenses incurred to bring MERCHANT into compliance with the PCI Data Security Standard or any similar security standard;
- H.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom;
- I.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from any of the following:
 1. fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;
 2. strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; or
 3. electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; a failure of telephone lines, data transmission lines, satellites or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under TMS’s operational control;
- J.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** (including nuclear materials), or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or in any way respond to or assess the effects of **Pollutants**;
- K.** any **Data Security Event** that was not properly reported to TMS during the **Notice Period**;
- L.** any **Data Security Event** occurring before the effective date of this **CCAP** between TMS and MERCHANT, or after the termination of **CCAP**;
- M.** any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- N.** any: (1) gaining of a profit or advantage to which the TMS or MERCHANT is not legally entitled; or (2) MERCHANT’s expenses or charges (other than **Security Event Expenses**), including employee compensation and benefits, overhead, over-charges or cost over-runs;
- O.** any **Data Security Event** first discovered by MERCHANT after the effective date and time of the expiration, cancellation or non-renewal of this **CCAP** regardless of when the **Data Security Event** actually occurred;
- P.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from the infringement of copyright, patent, trademark, trade secret or other intellectual property rights; or
- Q.** any **Security Event Expenses** alleging, arising out of or resulting, directly or indirectly, from any discrimination against any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy.
- R.** any fines or assessment levied against MERCHANT that are not the direct result of a **Data Security Event**;
- S.** any **Data Security Event** arising out of any software not under license to MERCHANT; provided, however, this exclusion shall not apply to a **Data Security Event** arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data on MERCHANT’s computer system or to collect data in transit to or from MERCHANT’s computer system; or
- T.** any **Data Security Event** arising out of a breach in a computer system in which MERCHANT shares a common database(s), operating system(s) and/or software application(s) on a single piece of equipment at a single location with one or more legal entities who share no legal relationship to one another.

VI. LIMITS TO SCOPE OF PAYMENTS

A. The following limits on payment amounts shall apply under this **CCAP**:

Annual Data Security Event Limit:	\$ 1,000,000
Annual Per Merchant Limit:	\$ 1,000,000
Annual Per MID Limit:	\$ 100,000

B. On an annual basis, the most TMS will pay for the total of all **Security Event Expenses** and **Post Event Services Expenses** arising out of or related to any single **Data Security Event** during the term of the **Program** and reported to TMS within the **Notice**

Period is the Annual **Data Security Event** Limit noted above, regardless of the number of merchants or **MIDs** involved with or impacted by such **Data Security Event**.

C. On an annual basis, the most TMS shall pay for the total of all **Security Event Expenses** and **Post Event Services Expenses** arising out of or related to MERCHANT is the Annual Per **Merchant** Limit noted above, regardless of the number of **Data Security Events** first discovered by MERCHANT during the term of the **Program** and reported to TMS within the **Notice Period**.

D. On an annual basis, the most TMS shall pay for the total of all **Security Event Expenses** and **Post Event Services Expenses** arising out of or related to any **MID** is the Annual Per **MID** Limit noted above, regardless of the number of **Data Security Events** first discovered by MERCHANT during the term of this **CCAP** and reported to TMS within the **Notice Period** and subject to the Annual Per **Merchant** Limit set forth in Section VI (A) above.

E. All **Security Event Expenses** and **Post Event Service Expenses** resulting from the same, continuous, related or repeated **Data Security Events** shall be subject to the terms, conditions, exclusions and above payment of this **CCAP** as in effect at the time the first such **Data Security Event** is first discovered by MERCHANT.

VIII. OTHER PROVISIONS AFFECTING SCOPE OF ASSISTANCE

A. Coverage Territory

Subject to its terms, conditions and exclusions, this **CCAP** applies to a **Data Security Event** occurring, and **Security Event Expenses** incurred, anywhere in the world during the term of the **CCAP**.

B. Term and Termination of the CCAP

The Initial Term of this **CCAP** shall commence on the latter of: (i) August 1, 2011; or (ii) the EFFECTIVE DATE of the Merchant Transaction Processing Agreement, and shall continue to be in effect unless terminated as set out below.

This **CCAP** shall be deemed terminated immediately: (i) in the event MERCHANT and TMS cease to be parties to a Merchant Transaction Processing Agreement; (ii) if TMS elects, in its sole determination, to discontinue offering the **CCAP** in whole or in part for any reason; or (iii) MERCHANT informs TMS of its decision to "Opt-Out" of the **CCAP**, provided however, that it meets the criteria for doing so as set forth in Section C below.

C. Opting-Out of the CCAP

At any time after MERCHANT has provided documentary proof to TMS that it is validated as PCI compliant by a qualified security assessor, MERCHANT shall have the ability to "Opt-Out" of this **CCAP** and decline the Card Compromise Assistance provided by it. If however MERCHANT is later identified by TMS as no longer validated as PCI compliant for any reason, MERCHANT will immediately be re-enrolled back into this **CCAP** (provided they are still eligible to participate) and subject to payment of the fee applicable to non-validated merchants. To validate compliance, please go to www.validatepci.com. Once MERCHANT receives validation, you are then eligible to Opt-Out of this **CCAP**. Please note that it may take TMS up to 30 days to confirm that MERCHANT has validated compliance.

By Opting-Out of this **CCAP**, MERCHANT understands that under the terms of the Merchant Transaction Processing Agreement with TMS that MERCHANT is solely responsible for all expenses, fines, assessments, and penalties that arise in the event that a data breach is suspected or occurs at one or more of my merchant location(s). MERCHANT also understands and agrees that following Opt-Out the **CCAP** will not be available to help pay any of the above mentioned expenses, fines, assessments, and penalties in the event of a suspected or actual breach of one or more of MERCHANT's locations.

In order to Opt-Out, please contact TMS either by telephone at (800) 228-2443, or via email at customerservice@tsys.com. If contacting TMS via phone, please follow the instructions on the voice prompt to Opt-Out. If you are contacting TMS via email, please include your doing-business-as name, contact information and all of your MIDs. In addition, please include the phrase "Opt-Out of CCAP" in the subject line.

For more information on the **CCAP**, please visit www.royalgroupservice.com/ccap.

D. Legal Action Against TMS

No person or organization has a right under this **CCAP**:

1. to join TMS as a party or otherwise bring TMS into a suit asking for damages from MERCHANT; or
2. to sue TMS on this **CCAP** unless all of its terms have been fully complied with by MERCHANT.

In any event TMS will not be liable for amounts that are not payable under the terms of this **CCAP** or that are in excess of the applicable limits on payments under Clause VI above.

E. Subrogation

In the event of any payment under this **CCAP**, TMS or any insurers of TMS shall be subrogated to the extent of such payment, to all rights of recovery of MERCHANT arising out of a covered **Data Security Event**. MERCHANT shall do whatever is necessary, including signing documents, to help TMS obtain any recovery TMS may seek. To the extent TMS makes a payment to MERCHANT under this **CCAP** and, prior or subsequent to such payment, MERCHANT receives any amount from any other person or entity in connection with or arising out of the **Data Security Event** with respect to which TMS made such payment, MERCHANT shall immediately remit such amount to TMS up to the amount of TMS's payment to MERCHANT.

F. Payments Where MERCHANT Has Insurance Coverage

This **CCAP** shall only cover qualifying expenses hereunder to the extent such expenses are not otherwise covered by any policies of primary or secondary insurance maintained by merchant.

G. Assignment

This **CCAP** and any rights provided hereunder are not assignable without TMS's written consent. Any assignment without such a consent shall be deemed null and void.

H. Changes

Changes to the provisions of this **CCAP** shall be made only by a written amendment issued by TMS and made a part of this **CCAP**.

I. Reimbursement

Payments made under this **CCAP** to or on behalf of MERCHANT shall be repaid to TMS by MERCHANT in the event and to the extent that MERCHANT shall not be entitled to such payment.

J. Title of Paragraphs

The titles of the various clauses and paragraphs of this **Assistance Agreement** and endorsements, if any, attached to this **Assistance Agreement**, are inserted solely for convenience or reference and are not to be deemed in any way to limit or expand the provisions to which they relate, and are not part of this **Assistance Agreement**.

K. Cancellation

There shall be no payment for any **Data Security Event** first discovered by MERCHANT after the effective date and time of the expiration, cancellation or non-renewal of this **CCAP** regardless of when the **Data Security Event** actually occurred.

L. Organizational Changes

If during the **CCAP** term:

- (1) MERCHANT shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire securities or voting rights which result in ownership or voting control by other entities or persons of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of MERCHANT's directors;

(any of such events being a "**Transaction**"), then this **CCAP** shall continue in full force and effect as to **Data Security Events** occurring on or after the date of this **CCAP** between MERCHANT and TMS and prior to the effective time of the **Transaction** presuming that MERCHANT and TMS remain parties to a Merchant Transaction Processing Agreement; provided that such **Data Security Event** is first discovered prior to the effective time of the **Transaction** and otherwise reported to TMS during the **Notice Period** and in accordance with the terms and conditions of this **CCAP**. There shall be no assistance afforded by any provision of this **CCAP** for any **Data Security Event** that is first discovered, or that occurs, on or after the effective time of the **Transaction**, unless: (i) within thirty (30) days of such **Transaction** TMS have been provided with full particulars of the **Transaction**, the related entities and any other information requested by TMS; and (ii) MERCHANT or its successor, has agreed to any additional payment amounts and amendments to this **CCAP** required by TMS in connection with such **Transaction**.

Post-**Transaction** assistance as described above is also conditioned upon MERCHANT or its successor timely paying all amounts that may be required to be paid under this **CCAP** and all other written agreements then in effect between TMS and merchant (including but not limited to the Merchant Transaction Processing Agreement) to which this **CCAP** is attached.

THIRD PARTIES - PRODUCTS AND SERVICES

Important Note: TMS and BANK are not a party to the following agreement. MERCHANT acknowledges and agrees that TMS and BANK and their affiliates are in no way responsible for the actions, inactions, performance or nonperformance of American Express, or for disputes or resolving disputes of any kind arising from this agreement.

American Express Card Acceptance Agreement

Agreement for American Express® Card Acceptance and American Express OnePoint® Program

The Agreement is by and between **American Express Travel Related Services Company, Inc.**, a New York corporation, and **you, the Merchant**. By accepting the American Express® Card, you agree to be bound by the Agreement.

General Provisions

1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS

- a. **Scope of the Agreement.** The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent TSYS Merchant Solutions, LLC and its agents, assigns or affiliates (collectively referred to as "TMS"), among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you *alone*. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

- b. **Other Parts of the Agreement.**
- i. **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We have the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j below. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of "Merchant Regulations" or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent TMS (telephone: 1.800.228.2443). We may charge you a fee for each copy that you request.
- ii. **Schedule A.** Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.
- c. **Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.
- *Affiliate* means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.
 - *Agreement* means the General Provisions, the Merchant Regulations, and any accompanying schedules and exhibits, collectively.
 - *American Express Card or Cards* mean (i) any card, account access device, or payment device or service bearing our or our Affiliates' Marks and issued by an Issuer or (ii) a Card Number.
 - *Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.
 - *Charge* means a payment or purchase made on the Card. *Card Present Charge* means a Charge for which the Card is presented at the point of sale. *Card Not Present Charge* means a Charge for which the Card is not presented at the point of sale (e.g., Charges by mail, telephone, fax or the Internet), is used at unattended Establishments (e.g., customer activated terminals, called CATs), or for which the transaction is key-entered. *Disputed Charge* means a Charge about which a claim, complaint, or question has been brought.
 - *Chargeback* (sometimes called "full recourse" or "Full Recourse" in our materials), when used as a verb, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.
 - *Claim* means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom, except for the validity, enforceability, or scope of Section 7.d of the General Provisions..
 - *Credit* means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.
 - *Discount* means the amount that we charge you for accepting the Card, which amount is: (i) a percentage (*Discount Rate*) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).
 - *Entity* means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.
 - *Establishments* means any or all of your and your Affiliates' locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.
 - *General Provisions* means the provisions set out in the Agreement other than the provisions in the Merchant Regulations or any accompanying schedule or exhibit hereto.
 - *Marks* mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
 - *Merchant Number* (sometimes called the "Merchant ID" or "Establishment" or "SE" number in our materials) means a unique number we assign to your Establishment.
 - *Merchant Regulations* means the American Express Merchant Regulations – U.S., which are available at www.americanexpress.com/merchantpolicy and can be accessed by entering your Merchant Number.
 - *Other Agreement* means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.
 - *Other Payment Products* mean any charge, credit, debit, stored value, prepaid or smart cards, account access devices, or other payment cards, services, or products other than the Card.
 - *Reserve* means a fund established and/or collateral held by us as security for your or any of your Affiliates' obligations to us or any of our Affiliates under the Agreement or any Other Agreement.
 - *United States* or *U.S.* means the fifty United States of America and the District of Columbia.
 - *We, our, and us* mean American Express Travel Related Services Company, Inc.
 - *You and your* (sometimes called the "Merchant", "Service Establishment," or "SE" in our materials) mean the individual or Entity accepting the Card under the Agreement, and (as applicable) its Affiliates conducting business in the same industry.
- d. **List of Affiliates.** You must provide to our agent a complete list of your Affiliates in the region specified in Section 1.a of the General Provisions that conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

2. ACCEPTING THE CARD

- a. **Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use. You are jointly and severally liable for the obligations of your Establishments under the Agreement.

- b. **Transaction Processing and Payments.** Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.
- i. **Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit, that must comply with our Technical Specifications, as described in the Merchant Regulations or otherwise provided by our agent. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.
- ii. **Authorization.** For every Charge, you must obtain from and submit to us an Authorization Approval code for all Charges. Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) that you will be paid for the Charge, or (iv) you will not be subject to Chargeback.
- iii. **Submitting Charges and Credits.** Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.
- iv. **Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations or as otherwise provided to you in writing by us. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.
- v. **Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Bank Account), or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our or our agent's failure to demand payment does not waive our Chargeback rights.
- vi. **Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

3. PROTECTIVE ACTIONS

- a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in Section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount, in our reasonable judgment, proportional to the risk to us and our Affiliates arising from such event.
- b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties owning 25% or more of such interests as of the effective date of the Agreement), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of Section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.
- c. **Application of Reserve.** We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees and our cost of handling Disputed Charges.
- d. **Other Protections.** We may take other reasonable actions to protect our rights and the rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, offsetting any amounts due to you under the Agreement against amounts that you owe us or our Affiliates under the Agreement or any Other Agreement, or charging you fees for Disputed Charges.
- e. **Providing Information.** You must provide to us promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements.

4. NOTICES

- a. **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited

mail courier service; or by electronic mail (*e-mail*); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

- b. **Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at:

American Express Travel Related Services Company, Inc. c/o
TSYS Merchant Solutions, LLC
Attention: Legal Department
1601 Dodge Street, 23E
Omaha, NE 68102-1637

- c. **Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, and assigns, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to perform under the Agreement, or failure in the provision of your goods or services.
- b. **Limitation of Liability.** In no event shall we or our Affiliates, agents, successors, or assigns be liable to you for any incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based in contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory) arising out of or in connection with the Agreement, even if advised of such potential damages. Neither you nor we (and our agent) will be responsible to the other for damages arising from delays or problems caused by telecommunications carriers or the banking system, except that our (and our agent's) rights to create Reserves and exercise Chargebacks will not be impaired by such events.

6. TERM AND TERMINATION

- a. **Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 4.a above.
- b. **Grounds for Termination.** In addition to our rights in sections 3.a and 6.a of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.
- c. **Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.
- d. **Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

7. DISPUTE RESOLUTION

We value our Merchant relationships. Most Merchant concerns can be resolved by contacting our agent, TMS, at 1.800.228.2443. Please be prepared to provide them with any information you have about the matter, including any efforts you may have made to address or resolve the matter. In the event our agent is unable to resolve a complaint to your satisfaction, this section explains how Claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision. Your agreement to this Dispute Resolution provision does not preclude you from bringing your concerns to the attention of any appropriate governmental agencies.

- a. **Notice of Claim.** Before filing a lawsuit or beginning a mediation or arbitration regarding a Claim, you and we agree to send a written notice (Claim notice) to each party against whom the Claim is asserted. This provides the parties an opportunity to resolve the Claim informally or through mediation. The Claim notice must describe the nature and basis of the Claim and state the specific amount or other relief demanded. Notice to us must include your name, your Merchant name, address, and Merchant Number and be sent to our notice address set forth in section 4.b of the General Provisions. If the Claim proceeds to arbitration, the amount of any relief demanded by you or us in a Claim notice shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled on the Claim.
- b. **Mediation.** In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement.
- i. **Initiation of Mediation.** Before beginning a mediation, you or we must first provide the Claim notice described above. Within thirty days after sending or receiving a Claim notice, you or we may submit the Claim to JAMS (1-800-352-5267,

jamsadr.com) or the American Arbitration Association ("AAA") (1-800-778-7879, adr.org) for mediation, or to an alternative mediator mutually agreed upon in writing by you and us.

ii. Conduct of Mediation. You and we agree to cooperate in selecting a mediator from a panel of neutrals and in scheduling the mediation proceedings. We will pay the fees of the mediator.

iii. Confidentiality/Tolling. All communications made for the purpose of, in the course of, or pursuant to the mediation shall be confidential, and no evidence of any such communication shall be admissible for any purpose or subject to discovery. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled from thirty days following the sending of the Claim notice for sixty days or until termination of the mediation, whichever is earlier.

iv. Termination. Either you or we may terminate the mediation at any time following the first mediation proceeding. Your or our submission or failure to submit a Claim to mediation shall not affect your or our right to elect to resolve a Claim through arbitration.

c. Arbitration. You or we may elect to resolve any Claim by individual arbitration. Claims are decided by a neutral arbitrator.

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

i. Initiation of Arbitration. Before beginning an arbitration, you or we must first provide the Claim notice described above. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within 30 days after receiving notice of our selection. Contact JAMS or AAA to begin an arbitration or for other information. Claims also may be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located or New York, NY, at your election.

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

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

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

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

vi. **Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of the General Provisions is not subject to the requirements of this section. This section is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

vii. **Governing Law/Arbitration Procedures/Entry of Judgment.** This section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty days of any objecting party's submission. If your Claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If the amount of the award exceeds \$100,000, either party can appeal that award to a three-arbitrator panel administered by the selected

arbitration organization which shall reconsider de novo any aspect of the initial award requested and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. Judgment upon an award rendered by the arbitrator or by a panel of arbitrators on appeal may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

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

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

x. **Additional Arbitration Awards.** If the arbitrator rules in your favor for an amount greater than any final offer we made before arbitration, the arbitrator's award will include: (1) any money to which you are entitled, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees.

d. **Definitions.** For purposes of section 7 of the General Provisions only, (i) *we*, *our*, and *us* include any of our Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) *you* and *your* include any of your Affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing.

e. **Continuation.** This section will survive termination of this Agreement, any legal proceeding to collect a debt, any bankruptcy and any sale of you or your assets (in the case of a sale, its terms will apply to the buyer). If any portion of this Dispute Resolution section, except as otherwise provided in the *Limitations on Arbitration* subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Dispute Resolution section, the Agreement or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

8. MISCELLANEOUS

a. **Confidentiality.** You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

b. **Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

c. **Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement, and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under the Agreement; (viii) all information that you provided in connection with the Agreement is true, accurate, and complete; and (ix) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. **Compliance with Laws.** You shall comply with all applicable laws, regulations, and rules.

e. **Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consents to the exclusive jurisdiction of such court and waives any Claim of lack of jurisdiction or forum non conveniens.

f. **Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) references to a "party" means us, on the one hand, and you, on the other hand; (vii) the term "may" (unless followed by "not") means "has the right, but not the obligation, to;" (viii) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from

time to time; (ix) any reference to a website or a URL (or both) refers to its successor website or URL; (x) all captions, headings, and similar terms are for reference only; and (xi) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of the Merchant Regulations, and the provisions of any accompanying schedules or exhibits shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: any accompanying schedules or exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

- g. **Assignment.** You shall not assign the Agreement, or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.
- h. **Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.
- i. **Savings Clause.** Other than as set forth in the last sentence of section 7.c above, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.
- j. **Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail or other electronic communication does not constitute such a signed writing.
- (1) **Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:
- a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
 - a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.
- Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.
- (2) **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).
- k. **Entire Agreement.** The Agreement is the entire agreement between you and us regarding the subject matter hereof and supersedes any previous agreements, understandings, or courses of dealing regarding the subject matter hereof.
- l. **Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.
- m. **No Third-Party Beneficiaries.** Except for the indemnitees specified in Section 5.a of the General Provisions, the Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns. The parties reserve the right to amend or terminate the Agreement without the consent of those indemnitees.
- n. **Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.
- o. **Independent Contractors.** You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By:



Schedule A

Other Important Provisions for Card Acceptance American Express OnePoint Program

1. OVERVIEW OF AMERICAN EXPRESS ONEPOINT PROGRAM

a. **Eligibility; Transition to Our Standard Card Acceptance Program.** Our American Express OnePoint Program provides integrated Card acceptance services to eligible Entities through our agents, including First National Bank of Omaha. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to so be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.

b. **Program Services.** We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms "we," "our," or "us" also may refer to our agent above, as the context requires. **Please direct all inquiries and notices under the American Express OnePoint Program to our agent:**

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

c. **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for, or certain fees or assessments do not apply in, the American Express OnePoint Program, references in the Merchant Regulations to those industries may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about specific industries under the program.

2. DOING BUSINESS WITH AMERICAN EXPRESS

a. **Certain American Express Terms Not Applicable.** Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with our systems and you must not provide Payment Services or otherwise act as a Payment Service Provider.

b. **Merchant Number; Your Merchant Information.**

Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

3. AUTHORIZATION

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

4. SUBMISSION

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or credit originated. You must not submit Charges and Credits on paper.

5. SETTLEMENT

a. **Settlement Amount.** Our agent will pay you according to your payment plan, as de-scribed below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions rejections, and withholdings, from this payment to you (or debit your Bank Account), but if it cannot, then you must pay it promptly upon demand.

b. **Discount.** Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.

c. **Payment Plan.** During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Bank Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Bank Account.

6. PROTECTING CARDMEMBER INFORMATION

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

7. RISK EVALUATION

a. **Prohibited/High Risk Merchants and Activities.** Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.

b. **Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising Chargeback under any of our Chargeback programs, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and set-off against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our agent immediately of the occurrence of any event described in Section 3.b.vii of the General Provisions.

8. INQUIRIES AND CHARGEBACKS

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or offsetting against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

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