



MERCHANT APPLICATION AND AGREEMENT

Disclosure Page

Merchant Services Provider Contact Information

Name: Fidelity Information Services, LLC, Attn: FIS Merchant Services
Address: 11000 West Lake Park Drive-LL, Milwaukee, WI 53224
Customer Service #: 1-800-552-5828
Application Inquiry #: 1-800-552-5828
Sales Office #: 1-800-552-5828

Member Bank (Acquirer) Information

Acquirer Name: Wells Fargo Bank, N.A.
Acquirer Address: 1200 Montego Way, Walnut Creek, CA 94598
Acquirer Phone: 1-925-746-4167

Important Member Bank (Acquirer) Responsibilities

- The Bank is the only entity approved to extend acceptance of Payment Network products directly to a Merchant.
- The Bank must be a principal (signer) to the Merchant Agreement.
- The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- The Bank is responsible for and must provide settlement funds to the Merchant.
- The Bank is responsible for all funds held in reserve that are derived from settlement.

Important Merchant Responsibilities

- Ensure compliance with cardholder data security and storage requirements.
- Maintain fraud and chargebacks below Payment Network thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Payment Network Rules.
- Retain a signed copy of this Disclosure Page.
- You may download "Visa Regulations" from Visa's website at:
http://usa.visa.com/merchants/operations/op_regulations.html
- You may download "MasterCard Regulations" from MasterCard's website at:
<http://www.mastercard.com/us/merchant/support/rules.html>

The responsibilities above do not replace the terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Bank is the ultimate authority should the Merchant experience any problems.

Merchant Information

Business Legal Name (Printed): _____

Business Address: _____

Business Phone: _____

Signature of Business Principal: _____

Printed Name of Business Principal: _____

Title: _____

Date: _____



CARDHOLDER INFORMATION SECURITY AGREEMENT

The Visa U.S.A. Inc. ("VISA"), MasterCard International, Inc. ("MasterCard") and Discover Financial Services ("Discover") payment card networks, and other payment card networks or systems (collectively, the "Payment Network(s)") each require that its member banks exercise reasonable care in protecting cardholder information, and that member banks and their agents abide by the Operating Rules established by such Payment Network.

The undersigned ("Merchant") receives Card Transaction processing services from Fidelity Information Services, LLC ("Service Provider"). Service Provider desires to assure that cardholder information is collected, processed, transmitted or stored in a safe and secure manner, using procedures consistent with the respective requirements of the Payment Networks, and requires that Merchant agree to the terms of this Cardholder Information Security Agreement in order to continue to receive such services from Service Provider.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Merchant agrees as follows:

1. Cardholder Information. For purposes of this Cardholder Information Security Agreement, the term "Cardholder Information" is defined as any information containing or evidencing either (a) a Cardholder's personal information or data; including without limitation, a Cardholder's name, card account number, debit card PIN numbers, address, social security number, or any other evidence of the Cardholder's credit, debit or other card type, or (b) information relating to transactions consummated with credit or other types of cards, including both electronic, written and other forms of data, and further including any encryption keys or algorithms used to secure any of the foregoing (the disclosure of which could lead to the disclosure of any other Cardholder Information). The term Cardholder Information also includes other, similar terms used in this Cardholder Information Security Agreement, including "cardholder data" and "card transaction information".

2. Security Requirements. Merchant agrees that it will abide by and fully comply with the Security Requirements, which are incorporated herein by reference, and with all related compliance requirements thereunder with respect to any Cardholder Information or other information containing cardholder or personal information which Merchant may receive or transmit. Service Provider or any Payment Network may periodically request that Merchant certify its compliance with the Security Requirements, including copies of security compliance assessments and reports, processes, procedures, technology and policies, and Merchant will promptly comply with such requests; provided that such requests will not require the disclosure of any information prohibited from being disclosed pursuant to Applicable Law. Merchant will promptly notify Service Provider of a material change in status to any of its security compliance assessments and reports, processes, procedures, technology and policies. Merchant agrees that Service Provider, any Payment Network, and their respective agents may, at Service Provider's or the Payment Network's discretion, periodically perform information security compliance reviews and audits (including vulnerability scans) of Merchant. Such reviews and audits may include onsite inspections and passive internet scans to detect vulnerabilities. Nothing in this Section will be construed as limiting Merchant's obligations to comply with the Security Requirements and this Section. While Service Provider or a Payment Network or their respective agents may, at Service Provider's or the Payment Network's discretion, periodically perform a review of Merchant's security as described above, Merchant is solely responsible for its compliance with the Security Requirements and this Section.

3. Applicable Law. Merchant further agrees to comply with Applicable Law and to protect the security and confidentiality of the Cardholder Information, and all other "nonpublic personal information" and "customer information", as those terms are defined in the Gramm-Leach-Bliley Act and the regulations thereunder (the "GLB"). Merchant agrees that it will implement and at all times maintain appropriate measures designed to ensure the confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of such information, and protect against unauthorized access or use of such information, as required by the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information", promulgated pursuant to Section 504 of the GLB.

4. Limitations on Use of Cardholder Information. Merchant agrees that it will use Cardholder Information only for payment transaction processing, settlement, and funding. Merchant may not retain any CID or any CVV Data (regardless of whether such data is in written, electronic or other form) captured in connection with any card transaction. The CID and CVV Data may not be recorded on transaction documentation or any other evidence of the card transaction, including in any records maintained by Merchant or its agents.

5. Third Party Agents. Merchant represents and warrants that it will immediately, or within three (3) business days at the latest, notify Service Provider in writing if it uses or intends to use the services of any subcontractor or other third party that will access, transmit or store Cardholder Information on behalf of Merchant.

6. Nondisclosure. Merchant agrees that, unless otherwise permitted by this Cardholder Information Security Agreement or with Service Provider's written permission, except as may be required and authorized by the Applicable Law, it will not sell, transfer, or disclose to any person other than Service Provider and/or the respective Payment Networks, any Cardholder Information or other information containing cardholder or personal information which Merchant may receive or transmit. Merchant further agrees to implement any agreements with third parties to which Merchant provides access, to Cardholder Information (as permitted by this Cardholder Information Security Agreement or agreed to by Service Provider in writing) obligating said third parties to adhere to the terms of this Cardholder Information Security Agreement and the regulations referenced herein.

7. Ownership of Cardholder Information. Merchant acknowledges and agrees that it has no ownership of or right to use the Cardholder Information. Merchant has the right to access and use Cardholder Information only as authorized by the respective Payment Networks and only as defined in the Terms and Conditions of the Merchant Agreement.

8. Liability. Merchant acknowledges and agrees that it shall be liable for and that neither Acquirer nor Service Provider shall be liable for any losses, claims or damages, including fines and penalties from any Payment Network, arising out of or related to Merchant's (or its employees', representatives', agents', contractors' or subcontractors') failure to abide by and fully comply with this Cardholder Information Security Agreement. To the extent permitted by Texas law, if Service Provider or Acquirer becomes responsible to a Payment network or any other third party for any damages, liabilities or fines arising from any act or omission of Merchant, Merchant agrees to be responsible for any such damages, liabilities or fines.

9. Non-retention of Cardholder Information. Cardholder Information will not be retained subsequent to the authorization of the transaction, other than essential information (cardholder name, account number, expiration date and extended service code) necessarily required for bona fide purposes in connection with the transaction, and only for the length of time the information is required for such purposes, which must be stored in a secure environment to which access is limited to persons who have a need to know such information. Without limiting the generality of the foregoing, in no event shall Merchant store or retain the contents or information recorded on the magnetic tracks of any card, any PIN data, or the CVV2 (VISA), CVC2 (MasterCard), or CID (Discover/American Express) data of any card subsequent to obtaining an authorization.

10. Security Failures. (a) Notice. Merchant shall notify Service Provider as soon as reasonably practicable and in no event more than twenty-four (24) hours after becoming aware of (i) any suspected or actual data security breach in any of its systems or databases used to conduct or in any way process card transactions or to store Cardholder information, including websites or electronic links used to conduct card transactions, and (ii) any noncompliance by Merchant with the Security Requirements. Such breaches shall include third party incursions that could in any way result in access to card transaction information, card account information or Cardholder Information. The foregoing obligations are in addition to any data security breach notification obligations that may be applicable to Merchant under Applicable Law. During the term of this Cardholder Information Security Agreement and for a minimum of twelve (12) months following the termination of this Cardholder Information Security Agreement, Merchant will fully cooperate with Service Provider, the Payment Network(s), and others in investigations of suspected theft, loss or disclosure of cardholder data, and any violation of failure to comply with Applicable Law or the Operating Rules. (b)

Investigation. Merchant must perform or cause to be performed an independent investigation (including a forensics analysis) of any data security breach; perform or cause to be performed any remedial actions recommended by any such independent investigation; and cooperate with Service Provider and/or the applicable Payment Network(s) in the investigation and resolution of any data security breach. Merchant must provide Service Provider and/or the applicable Payment Network with the following information concerning any suspected or actual data security breach: (i) the date of such breach, (ii) details concerning the data compromised (e.g., card numbers and expiration dates, cardholder names and addresses), (iii) the method of such breach, (iv) Merchant's security personnel contacts, (v) the name of any person (including any law enforcement agency) assisting Merchant with its investigation of such breach, and (vi) any other information which Service Provider reasonably requests from Merchant and/or its agents concerning such breach, including any forensics report(s). Merchant will provide the information listed in (i)-(vi) as soon as is reasonably practicable and the information listed in (i)-(v) shall in any event be provided to Service Provider and/or the applicable Payment Network within forty-eight (48) hours of Merchant's initial notification to Service Provider of such breach. Merchant and its agents must provide Service Provider and/or the applicable Payment Network with copies of any reports concerning such breach as soon as practicable. Merchant must not issue, and must prevent its agents from issuing, any press release or other public announcement concerning such breach until after Merchant has provided Service Provider with the information requested in (i)-(v) above.

(c) **Inadequacies.** Merchant must cooperate with Service Provider to ensure that appropriate security measures and procedures are implemented by a mutually agreeable deadline if Service Provider notifies Merchant that its or any of its agent's security procedures in connection with card transactions are inadequate or do not comply with the Security Requirements. (d) **Service Provider's and Payment Network Rights upon Noncompliance with Security Requirements.** If a Payment Network determines or reasonably suspects, in its reasonable discretion, that Merchant or any of its agent's security procedures, including with respect to card transactions, are inadequate or otherwise do not comply with the Security Requirements regardless of whether Service Provider has received certification from Merchant of compliance with the Security Requirements, the Payment Network may assess fines and fees for each discrete event of noncompliance, including for each failure to comply with a Security Requirement regardless of whether the Payment Network, an issuer, cardholder, or any other party has experienced damage as a result of such noncompliance. Merchant is responsible for the full amount of any such fees and/or fines. Additional fees and/or fines may be assessed during the period that such noncompliance remains uncured. Merchant's ability to accept or process card transactions may also be terminated by Service Provider or suspended until such time as Merchant has adopted security procedures that comply with the Security Requirements regardless of whether any party has experienced damage as a result of such noncompliance. In addition, a Payment Network may contact Merchant if it determines or reasonably suspects that Merchant is not in full compliance with the Security Requirements. If Merchant does not ensure that Merchant complies with the Security Requirements by a mutually acceptable deadline, Service Provider or the Payment Network may terminate the Merchant Agreement and Merchant's ability to accept cards and/or the Payment Network may assess fees or fines for which Merchant will be responsible. Merchant is responsible for any disputes resulting directly or indirectly from its failure to comply with the Security Requirements and/or this Section and any resulting costs, expenses, damages or other losses experienced by Service Provider, a Payment Network, and/or any card issuer or cardholder. (e) **Data Security Breaches.** Merchant is financially responsible for unauthorized or fraudulent transactions and any damages that Service Provider, a Payment Network, a card issuer and/or a cardholder incurs as a result of the theft, loss or unauthorized use or disclosure of Cardholder Information or card transaction information by Merchant or its agents. Merchant is also solely responsible for any fines (the "Data Security Breach Fees") assessed by a Payment Network for each data security breach incident at Merchant or one of its agents. usa.visa.com/merchants/risk_management/cisp.html, www.mastercard.com/sdp, www.discovernetwork.com/merchants/data-security/disc.html

11. Audits; Onsite Assessments; Scans. Merchant will perform periodic information security self-audits and promptly remedy any deficiencies. To the extent required by any Payment Network, Merchant will complete any required self-assessment questionnaire, engage an independent security assessor approved by the relevant Payment Network to perform an onsite review of Merchant's compliance with Payment Network requirements and/or to perform any periodic system perimeter scans, copies of the results of each of which will be provided to Service Provider, together with any other documentation reasonably necessary to evidence compliance with applicable Operating Rules relating to the protection of Cardholder Information. In the event that Service Provider or any Payment Network determines a reasonable basis for concern regarding the adequacy of Merchant's procedures to protect Cardholder Information, or determines a reasonable basis to believe that Cardholder Information has been compromised during or as a result of the Merchant's possession of that information, Merchant will provide more formal assurance of compliance-and/or engage an independent security firm to verify or certify Merchant's policies and procedures relative to Cardholder Information security.

12. Additional Security Procedures. Notwithstanding other terms of this Cardholder Information Security Agreement or any agreement between the Merchant and any other party, Merchant agrees to follow appropriate procedures to protect the security of Cardholder Information received during the term of this Cardholder Information Security Agreement. Such procedures must include, but are not limited to, the following: (i) Merchant will install and maintain a working network firewall to protect data accessible via the Internet; (ii) Merchant will use and update anti-virus software; (iii) security patches will be kept up to date; (iv) Merchant will encrypt stored data and data sent over open networks; (v) Merchant will maintain an information security policy for employees and contractors; (vi) procedures will be maintained to restrict access to cardholder data on a limited "need to know" basis, (vii) all materials containing cardholder data will be rendered unreadable prior to discarding and will be discarded in a manner that ensures the complete destruction of cardholder data, (viii) Merchant will assign a unique ID to each person with computer access to data, and (ix) Merchant will ensure that unauthorized parties do not have access to any of its systems containing Cardholder Information.

13. Survival. Merchant's obligations under this Cardholder Information Security Agreement shall survive the termination of this Cardholder Information Security Agreement for all Cardholder Information received during the term of this Cardholder Information Security Agreement.

14. Term; Other Agreements. This Cardholder Information Security Agreement shall remain in effect until one (1) year following expiration of the Merchant Agreement. To the extent that this document conflicts with the provisions of any other agreement governing the business relationship between Merchant and Service Provider, the provisions of this Cardholder Information Security Agreement shall govern and, to the extent necessary, shall constitute an amendment to such other agreement. A breach of this Cardholder Information Security Agreement by Merchant shall constitute a breach of the Merchant Agreement.

15. Registration. At the request of Service Provider or any Payment Network, Merchant shall, at its sole expense, fulfill any registration requirements of the applicable Payment Network(s), or as required, assist Service Provider in such process, including without limitation registering any subcontractor with Service Provider, and will cooperate with same. Merchant further agrees that it will be solely responsible for any fees and costs, including recurring fees, whether assessed directly to Merchant, or by the Payment Network to Service Provider, in connection with said registrations.



TERMS AND CONDITIONS

RETAIN THIS COPY FOR YOUR RECORDS

In these Terms and Conditions ("Terms and Conditions"), "we", "us," and "our" means Fidelity Information Services, LLC for Discover Card Transactions, and Wells Fargo Bank, N.A. and Fidelity Information Services, LLC for all other Card Transactions. "You" and "your" means Merchant. "Cards" means the credit cards and debit cards enabled to process through a Payment Network as set forth in your Merchant Application. These Terms and Conditions, together with the Merchant Application, Cardholder Information Security Agreement and all schedules and attachment hereto (collectively, the "Merchant Agreement") establishes the terms and conditions on which you may accept Cards as payment for goods and services and we will provide transaction processing and settlement services. If we approve your Merchant Application, you will be provided with instructions on how you can access and obtain a copy of the Operating Rules and with such other requirements and directives we may require relating to your acceptance of Card Transactions. You agree that if you accept and process Card Transactions, you will comply with the Operating Rules for all Card Transactions you accept and process.

1. Card Transactions.

1.1 You are responsible to ensure that the Cardholder understands that you are responsible for the Card Transaction, including the goods or services that are the subject of the Card Transaction, dispute resolution, and performance of the terms and conditions. You must honor all Cards presented for payment except as otherwise provided under the Merchant Agreement and Operating Rules. The following requirements apply to all Card Transactions: (a) you cannot establish minimum or maximum amounts as a condition for accepting a Card, except as permitted by Applicable Law and/or the Operating Rules; (b) you cannot impose a surcharge or fee for accepting a Card, provided that you may impose a surcharge or fee for all like Card Transactions and you may provide a discount to customers for cash payments; (c) you cannot establish any special conditions for accepting a Card; (d) you cannot discourage, favor or discriminate against the use of a Card in relation to other credit cards or debit cards, except with respect to your own proprietary private label, loyalty, or gift cards; however, you may choose not to accept either U.S. issued debit Cards or U.S. issued credit Cards under the terms described in Section 1.3 of these Terms and Conditions; (e) you cannot discourage, favor or discriminate against the use of a Card issued by any particular Card issuer in relation to a Card issued by any other Card issuer; (f) you cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by us, except for a mail order/telephone order or delivery required transaction, and ZIP code for a Card-present key-entered transaction in order to obtain an Address Verification (AVS); (g) any tax required to be collected must be included in the total transaction amount and not collected in cash; (h) you cannot submit any Card Transaction representing the refinancing or transfer of an existing Cardholder obligation deemed uncollectible; (i) you cannot submit a Card Transaction or sale that has been previously charged back; (j) you must deliver at least one copy of the Sales Draft or credit draft to the Cardholder; (k) you cannot submit a Card Transaction or sale to cover a dishonored check. Failure to comply with any of the applicable Operating Rules may result in fines or penalties.

1.2 Prohibited Transactions. You may not accept Cards in payment for any Card Transaction that is illegal, not authorized by the Cardholder, fraudulent, or that may damage the goodwill of us or any Payment Network. "Factoring" which is the submission of Authorization Requests and/or Sales Data by a Merchant for Card Sales or Cash Advances transacted by another Person, is expressly prohibited. Factoring is considered Merchant fraud. If you submit Sales Data on behalf of another Person you will suffer any losses associated with any Dispute of the Card Sales. Also, if any fraud is involved, you could face criminal prosecution. You are prohibited from depositing Card Transactions originating from Cards of owners, partners, officers or employees of your business establishment except for Card Transactions that are routine in type, size and frequency for your business and that represent actual sales of goods or services. Submission of sales transactions on Cards in order to obtain a cash advance is strictly prohibited and may result in immediate cancellation of your merchant account. Cash disbursements to Cardholders are also prohibited. You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the exclusive right of the Card Issuer to receive such payments. You may not make any cash disbursements to a Cardholder as part of a Card transaction except to the extent expressly authorized by this Agreement or the applicable Payment Network Rules. You may not accept Cards at Terminals that dispense scrip.

1.3 Card Acceptance Requirements. You must check or obtain the "valid from" and expiration date on the Card and confirm that the Card is valid and not expired prior to completing a Card sale. The Card is valid through the last day of the month embossed on the Card, if present. If the Card has expired, you cannot accept that Card for a sale. If you are suspicious that the Card presenter is not an authorized user of the Card, you should call us at the telephone number we provide for such purpose. You have the right to limit

card acceptance to credit or debit cards with the appropriately executed contract addendum in place.

1.4 CID/CVV/CVC Requirements and Limitations. You must submit CID/CVV/CVC to us under the following circumstances: (a) the first installment of an Automatic Payment Plan, where the first installment is a Card Not Present sale; and (b) where we notify you that we require you to submit CID in all or a certain portion of your Authorization Requests. Your failure to include the CID/CVV/CVC in an Authorization Request where required by us, as described above, may result in a negative Authorization response and may increase the Interchange or Fees you are obligated to pay. If you do not submit CID/CVV/CVC with an Authorization Request for a Card Not Present sale, even where not required above, you may lose a Dispute of the Card Sale (and, in the case of an Automatic Payment Plan where the first installment is a Card Not Present sale, all installments under the plan may be subject to Dispute if you fail to submit CID/CVV/CVC with the Authorization request for the first installment). You are strictly prohibited from retaining, archiving or otherwise storing the CID/CVV/CVC in any form or format for any reason, including the recording of the CID/CVV/CVC on Transaction Documentation or the making of photocopies of the front or back of Cards. Records demonstrating that the CID/CVV/CVC was included in an Authorization Request will be maintained only by the applicable Payment Network.

1.5 Transaction Documentation. You must prepare Transaction Documentation for each Card Transaction and provide a copy of the Transaction Documentation to the Card presenter at the time of completion of the Card Transaction, in each case in accordance with the Operating Rules. The form and format of the Transaction Documentation you prepare must be acceptable to us. You shall ensure that the Transaction Documentation for each Card Transaction, whether electronically generated or manually printed on paper, is legible and contains all of the information required under these Terms and Conditions and the Operating Rules. You may not require a Cardholder to sign Transaction Documentation until the final Transaction amount is entered on the Transaction Documentation.

1.6 Cardholder Signature. Except in Card Not Present sales and other special circumstances described in the Merchant Agreement or the Operating Rules, Transaction Documentation must be signed by the Card presenter in the presence of your authorized representative or employee at the time of the Card Sale. The signature on the Transaction Documentation must reasonably match the signature appearing on the signature panel of the Card (unless the valid Card does not have a signature panel on the back of the Card) and the Cardholder's name as embossed on the front of the Card (except where the valid Card does not bear a Cardholder name on the front of the Card).

1.7 Verification of Signature on Card. In Card Present sales involving valid Cards bearing a signature panel on the back of the Card, you must verify that there is a signature on the signature panel on the back of the Card and verify that the name on the back of the Card is reasonably similar to the name embossed on the front of the Card (except where the valid Card does not bear a Cardholder name on the front of the Card). If the Card includes a photograph of the Cardholder, you must verify that the Cardholder resembles the photograph.

1.8 Unsigned Cards. If a Card bearing an unsigned signature panel is presented to you, you must request two pieces of identification, one of which must be government-issued picture identification. When you have confirmed that the person presenting the Card is the Cardholder, you must require the Cardholder to sign the back of the Card. If you are unable to positively identify the Card presenter as the Cardholder, or if you have reason to suspect fraud, you must call us.

1.9 Your Submission of Sales Data. You may submit Sales Data only for valid Card Transactions between you and a bona fide Cardholder. You must submit Sales Data to us no later than three (3) business days after the date of the Merchant Application W/ T&C 10/03/2013

Card Transaction except that (i) Sales Data may not be presented until goods are shipped, (ii) if you have received Authorization for delayed presentment, (iii) if you are required by Applicable Law to retain the Transaction Documentation or return it to the Cardholder upon timely cancellation, in which case you must present the Sales Data within ten (10) days of the Card Transaction date, and (iv) when you have multiple locations and use a central facility to accumulate and present Sales Data to us, in which case we must receive the related Sales Data within thirty (30) calendar days of the Card Transaction date. For Card Sales and Credits, the Card Transaction date is the date that you conduct the Card Sale or promise the Credit to the Cardholder. Except for Cardholder deposits for purchases, you may not send Sales Data for goods or services ordered by a Cardholder in a Card Sale until the goods or services have been delivered or furnished to the Cardholder. Sales Data for Card Sales submitted for Settlement more than thirty (30) calendar days after the Card Transaction date may be rejected, subject to higher Interchange and/or other Fees or subject to Dispute. The applicable Payment Network may withhold Settlement and/or assess higher Interchange and other Fees for any Sales Data sent to us that does not include all of the information required to be included.

1.10 Preparation and Transmission of Sales Data. You must prepare Sales Data for all Card Transactions as described in this Section 1.10, and transmit the Sales Data to us as described in this Section 1.10 and the Operating Rules. Additional requirements for the preparation and transmission of Sales Data apply for Card Not Present transactions and you must comply with these requirements. You must include all goods and/or services purchased or returned/refunded at one time and at one cash register on one Transaction Receipt or Transaction Slip, or in a single transmission of electronic Card Transaction data, and you must transmit the Sales Data relating to goods and/or services purchased or returned/refunded at one time and at a single cash register in a single electronic transmission of Sales Data unless otherwise approved by us in writing. Notwithstanding the foregoing, you may use separate Transaction Receipts or Transaction Slips or use multiple transmissions to submit electronic Card Transaction data, and you may submit Sales Data in multiple transmissions, for bona fide deposits, partial payments and Automatic Payment Plans that comply with any applicable requirements.

1.11 Unusable Sales Data. We will notify you if all or a portion of the Sales Data submitted by you cannot be processed due to invalid, missing or unreadable data. In the event that all or a portion of the Sales Data you submit is invalid, missing or unreadable, you are responsible for: (i) retrieving and resubmitting valid, readable Sales Data in proper form immediately; and (ii) the risk of any loss with respect to the Card Transactions described in the Sales Data, including for damage to or destruction of Sales Data, whether or not held by the applicable Payment Network, until complete, usable Sales Data is successfully received by the applicable Payment Network.

1.12 Submitting Electronic Sales Data. You are required to transmit Sales Data by electronic means in the form and format specified by us from time to time in the Operating Rules and to the location that we specify. All Sales Data transmitted by you must conform to these Terms and Conditions and the Operating Rules.

1.13 Record Retention. You must keep original copies of all mail/telephone order forms and other documentation relating to Card Transactions (including copies of Transaction Documentation) until the later to occur of (i) three hundred sixty five (365) calendar days following the Card Transaction date, or (ii) the resolution of any pending or threatened Disputes, claims, disagreements or litigation involving or relating to the Card Transaction. You must keep a microfilm or other copy of Sales Data for no less than three (3) years from the date of the Card Transaction. You must provide us with a copy of any Transaction Documentation, Sales Data or any other documentation retained by you within fifteen (15) calendar days of our request for such information. In addition, you are responsible for retaining copies of documentation for a period sufficient to enable you to respond to any Disputes that may be initiated with respect to Card Transactions. If you do not provide on your own behalf a copy of any Transaction Documentation, Sales Data or other documentation requested by us, the Card Transaction may be subject to Dispute, including Chargeback, or other Fees.

1.14 Special Rules for Particular Transactions. Additional terms, conditions, and requirements apply with respect to Card Not Present transactions, telecommunication Card Sales, Cash Over Transactions, Mail-Order and Telephone Order Sales, Automatic Payment Plans, delayed delivery sales, Automobile Rental Transactions, Airline and Cruise Line transactions, Hotel and Lodging Industry Transactions, Cash Advance Transactions, Card Sales in connection with store closings or liquidations, Electronic Commerce transactions, and other special categories (as such terms are defined in Section 28 of these Terms and Conditions or the Operating Rules). You are responsible to obtain from us the special rules pertaining to these transactions and any special rules that apply to other Card Sales that are not in-person Card Present transactions in full payment for same day delivery of retail goods and/or services. By submitting Sales Data in connection with any such Card

Transactions, you agree that you have received and agree to the special terms, conditions, and requirements relating to these transactions.

1.15 Returns. If you provide proper disclosure to a Cardholder at the time of the Card Transaction, you may establish a return policy under which you will: (a) not accept merchandise in return or exchange and issue no refunds; (b) only accept merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original Card Transaction; or (c) accept merchandise in return for in-store credit only; or (d) stipulate special circumstances agreed to by the Cardholder. Proper disclosure shall be deemed to have been given if the words "NO REFUND", "EXCHANGE ONLY" or "IN STORE CREDIT ONLY" appear on all copies of the Transaction Documentation in letters approximately 1/4 inch high and in close proximity to the space provided for the Cardholder's signature.

2. Authorization.

2.1 You must obtain an Authorization for all Card Sales that you submit to us. You must request Authorization of the entire amount of the Card Transaction before completing the Card Transaction. The Authorization code must be displayed on the transaction receipt or noted in the appropriate place on the Sales Draft. You may pay higher Interchange if you complete a Card Sale without receiving a positive Authorization, if you submit Sales Data to us regarding Card sales for which you did not receive a positive Authorization or if the Authorization code is not properly designated in the Sales Data. In addition, the Card Sale may be subject to Dispute and/or you may lose a Dispute of the Card Sale, as described in the Dispute Rules.

2.2 An Authorization only indicates the availability of credit on an account at the time the Authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback. If you fail to obtain an Authorization or if you submit a Card Transaction after receiving a decline (even if a subsequent Authorization attempt provides an approval), your transaction may be assessed fines or fees by the applicable Payment Network for which you will be responsible.

2.3 If you receive a Referral Code in response to an Authorization Request, you should contact us for additional information. A Referral Code is not a positive Authorization. If you subsequently complete a Card Sale where you received a Referral Code without subsequently receiving a positive Authorization and corresponding Authorization code, you may be obligated to pay higher Interchange for failure to receive a positive Authorization response. The Card Sale may be subject to Dispute and/or you may lose a Dispute of the Card Sale, as described in the Dispute Rules.

2.4 You may not attempt to obtain multiple Authorizations for a single Card Transaction. If a Card Sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other Authorization sources. Instead, request another form of payment. If you accept and process a Card Transaction that was declined, or attempt to submit multiple Card Transactions and/or multiple Authorizations, you are subject to a Chargeback, fines and/or cancellation of the Merchant Agreement.

2.5 If you conduct a Card sale using a POS Device to electronically capture data from the Card, the Authorization request you send to us must include all of the data specified in our Operating Rules, including the unaltered contents of track 1 or track 2 of the track data contained on the Card (which includes the Card Verification Value (CVV) data). In addition, the POS Device you use to conduct the Card Sale must be capable of receiving the full, unaltered Authorization response when sent. If a Card Sale is conducted using a POS Device but the Card cannot be read electronically, you must manually input the required Card Transaction information into the POS Device prior to submitting the Authorization request to us. In addition, you must imprint the Card on the Transaction Receipt. If your POS Device is unable to receive an electronic Authorization response, or if the online Authorization system is down, you should call the number we provide you to submit a voice Authorization request. When a positive voice Authorization response is granted, we will provide you with an Authorization code. You must manually enter this Authorization code in the POS Device in such a manner that the Authorization code is printed on the Transaction Receipt. If the Card Sale is not conducted using a POS Device, you shall to record the Authorization code in the appropriate box on the Sales Draft. We will notify you of any negative (or declined) Authorization response provided to us. In the event of a negative Authorization response, you may not comment to the Card presenter on the reason for the decline of the Authorization request. If the Card presenter requests information about the reason for the decline of the Authorization request, you should inform the Card presenter to contact the Card Issuer.

2.6 Occasionally in response to an Authorization request, we may, on behalf of an Issuer, direct you obtain certain information from the Card presenter to verify the Card presenter's identity. Also, in response to an Authorization request, we may, on behalf of an Issuer, occasionally direct you to take and

retain a Card from the Card presenter. In each such case, you will use reasonable and lawful attempts to comply with our request.

2.7 If a Card Sale is cancelled or the amount of the Card Sale changes following your receipt of Authorization for the Card Sale, you must cancel the Authorization by (i) processing a return using your POS Device (if the Authorization was obtained using a POS Device), or (ii) call us to request a cancellation of the Authorization (if the Authorization was a voice Authorization). An Authorization may be cancelled at any time within fifteen (15) calendar days of your receipt of the Authorization but must be cancelled before Sales Data relating to the Card Sale has been submitted to us. Once Sales Data relating to the Card Sale has been submitted to us, the Authorization cannot be changed. You may not contact the applicable Payment Network in an attempt to cancel an Authorization. You must contact us to cancel an Authorization, and we will contact the applicable Payment Network.

2.8 You must submit all Authorization requests in U.S. dollars.

3. Settlement of Card Transactions.

3.1 Subject to your compliance with all the terms and provisions of the Merchant Agreement and the Operating Rules, we will accept valid Transaction Documentation from you during the term of the Merchant Agreement and to promptly pay you the total amount represented by the Transaction Documentation. At our sole discretion, we may credit your account for the total amount of Card Sales less any applicable fees or, in a separate transaction, subsequently debit you or your account for applicable fees. The payments by us to you shall be deposited in the account designated in your Merchant Application or as you subsequently designate in writing.

3.2 In addition to any other remedies available to us under the Merchant Agreement, we may, without prior notice, suspend payment of any funds if we have reason to believe that you are in default of any obligation under the Merchant Agreement or there is any fraudulent activity related to the transactions that you submit to us.

3.3 To the extent the Automated Clearing House (ACH) settlement process is used to debit or credit your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association (NACHA). You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH settlement process and/or through direct instructions to (or such other arrangements as we deem appropriate) the financial institution where your Settlement Account is maintained for amounts due under the Merchant Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to make all such debits and credits to your account. This authority will remain in full force and effect until all monies due under the Merchant Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.

3.4 After you submit Sales Drafts and Credits, you will receive settlement funds through ACH credit. We will initiate a transfer of such applicable settlement funds through ACH to your Settlement Account. Settlement by ACH credit generally will take place the second banking day after we process the applicable Card Transactions.

3.5 If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been affected.

3.6 If after your Settlement Account has terminated, you fail to instruct us as to where to transmit funds that we are holding and that are due to you, we may deduct from those funds our reasonable costs associated with the maintenance of such funds on a monthly basis.

3.7 The following is a partial list of reasons for other debits to your Settlement Account. We may add to this list as required: (a) the applicable Payment Network fees, charges and fines assessed as a result of your transactions; (b) currency conversion errors; (c) fees and Chargebacks not previously charged; and (d) deposits posted in error. For additional reasons, refer to your Operating Rules which can be found on the worldwide web.

4. Chargebacks.

4.1 You are responsible for reimbursing us for any and all Chargebacks and Disputes by the Issuer and/or the Cardholder with respect to your Card Transactions and for related fees, for any reason, whether or not you have the right to contest the Chargeback under applicable Operating Rules.

4.2 Reasons that a Card Transaction may be Disputed or a Chargeback include, but are not limited to:

(a) a Cardholder disputes the validity of a Card Transaction; (b) a Cardholder disputes the quality or receipt of goods or services; (c) a copy of the Sales Draft was not provided when requested, or the copy provided was improperly completed or illegible in whole or in part; (d) a Credit was not provided to the

Cardholder; (e) the Card Transaction was not authorized by the Issuer at the time of Card Sale, or efforts were made to avoid a decline of the Authorization (such as, but not limited to, attempts to obtain an Authorization after receiving either a decline or a referral to a call center or splitting a sale across multiple transactions of the same Card); (f) the Sales Draft was not imprinted using an imprinting machine (an electronic swipe of the magnetic stripe on the Card may only substitute for a manual imprint if the transaction is electronically authorized by the terminal after the swipe. In situations where the account number is keyed into the terminal or where the terminal provides a referral response, a physical imprint of the Card on the Sales Draft is mandatory); and (g) all mail order/telephone order and Internet sales are at your risk and are subject to Chargeback.

4.3 You must maintain sufficient funds in your designated Settlement Account to cover all Chargebacks and related fees. For each Card Transaction accepted and processed by you, we have a contingent and unmatured claim against you for any amount we must pay as a result of your acceptance and processing of Card transactions, including, but not limited to, any Chargebacks, fees, discounts, customer credits and adjustments, charges, fines, assessments and penalties. All settlements or credits given or payment made by us to you in connection with your Card Transactions are provisional, and subject to revocation, Chargeback or refund, subject to the terms and conditions of the Merchant Agreement and the applicable Operating Rules. Your right to receive any amounts due from us is expressly subject and subordinate to our Chargeback, set-off, lien and security interest rights without regard to whether such Chargeback, set-off, lien and security interest rights are applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured. WE MAY, WITHOUT FURTHER NOTICE, ELECTRONICALLY DEBIT YOUR SETTLEMENT ACCOUNT TO COVER ALL SUMS OWING TO US PURSUANT TO THE MERCHANT AGREEMENT, INCLUDING, BUT NOT LIMITED TO, AMOUNTS OWING FOR CHARGEBACKS, RELATED FEES AND FINES IMPOSED BY THE APPLICABLE PAYMENT NETWORK.

5. Operation of Business.

5.1 Change in Business. You must notify us immediately of any change to the information included in your Merchant Application, including if you engage in, or in the future elects to engage in, any new lines or types of business activities not disclosed in your Merchant Application or if you change your business activities in any of the following ways: (i) change of ownership; (ii) change in type or kind of business; (iii) change in identity, including corporate/legal name or address; (iv) closing or liquidating business entirely or any locations; (v) change in processing method (i.e., Transaction Slips to POS Device); (vi) voluntary or involuntary party in a bankruptcy case; (vii) entry into a loan or other agreement with a third party that seeks to affect the Merchant Agreement; (viii) change to any entity that is a party to or guarantor of the Merchant Agreement, including by merger or acquisition; and (ix) change to or from a business that conducts exclusively retail sales to one that accepts Card Sales by mail, telephone order or Internet transactions.

You agree to notify us of any changes specified above, including any changes to the information in your Merchant Application. We may terminate Card acceptance by you and your sublicense to use the Program Marks if you fail to notify us of any such change. In addition, Card Sales by you relating to a new business activity of which we have not been notified may be rejected or subject to reversal or Chargeback, at any time at our sole discretion.

5.2 Compliance with Laws. You are responsible for operating your business and performing your obligations hereunder in compliance with Applicable Law.

5.3 Audits. We may, at our discretion, conduct or engage a third party to conduct examinations and audits of such your compliance with the applicable provisions of the Merchant Agreement or the Operating Rules. All such examinations and audits will be at your sole cost and expense. We may report the results of each such examination and audit to the applicable Payment Network. In addition to the foregoing, you agree that the applicable Payment Network shall have the right to visit you and review your retail locations, corporate offices and websites to verify your compliance with the terms of the Merchant Agreement and the Operating Rules, including the License, the display of the Program Marks, adherence to point-of-sale procedures and compliance with the Security Requirements. If an audit identifies a regular or repeated failure by you to comply with the obligations applicable to you, you agree to promptly notify us of your plan to cure such deficiency along with the implementation date of such cure.

6. Card Account Information. You may not request or use Card account information for any purpose that you know or should have known to be fraudulent or in violation of the Operating Rules. You must not ask a Cardholder to record a Card account number or other account information on the exterior of any order form or other similar device designed to be mailed. You may not disclose Card Transaction information except to us or our agent for the purpose of processing a Card Transaction or Chargeback, or to your loyalty program or fraud control service provider, or as required by Applicable Law.

8. Program Marks.

8.1 You are prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by us or as provided in this Section 8. Additionally, you shall not use the Program Marks other than to display decals, signage, advertising and other forms depicting the Program Marks that are provided to you by us pursuant to the Merchant Agreement or otherwise approved in advance in writing by us. You may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses must be approved in advance by us in writing. You shall not use the Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Program Marks. You recognize that you have no ownership rights in the Program Marks. You shall not assign to any third party any of the rights to use the Program Marks.

8.2 You must prominently display the Program Marks at the point of interaction to indicate that the merchant accept the applicable Payment Network's cards. If you are a remote services merchant, you must display the Program Marks wherever payment options are presented. We will provide you with the appropriate artwork in a format authorized by the applicable Payment Network. The Program Marks must be clearly visible to the public. The preferred location to post the Program Marks at a physical point of interaction is the entrance, nearby window or door of your business location, and on the first screen of an electronic point of interaction. Where it is not possible to post signage at the entrance of your location, posting the Program Marks so that they can easily and readily be seen within the location will satisfy the above requirement. Where it is not possible to post the Program Marks on the first screen of an electronic point of interaction, posting the Program Marks on the payment screen will satisfy this requirement. You must display each Program Mark in such manner and with such frequency as accorded any other Payment Network's Program Marks. You must limit your use or display of the Program Marks in accordance with the terms of the license granted under Section 8.1 and this Agreement or in accordance with any other specifications provided by us. We will provide you with signage displaying representations of the Program Marks that are consistent with the applicable Payment Network standards. We will provide approved displays to you for your use to inform the public that credit and debit cards are accepted. You shall prominently display the Program Marks that we provide. You may not indicate that any Payment Network endorses any of your products or services.

8.3 Your license to use the Program Marks shall terminate upon the earlier of (i) the termination of the Merchant Agreement, or (ii) delivery of notice by us to you of the termination of the license hereunder.

9. Confidentiality.

9.1 Confidential Information. We, the applicable Payment Network, or the applicable Payment Network's or our agents on behalf of the applicable Payment Network, ourselves, the applicable Payment Network's and our affiliates and prospective and current Issuers, including the applicable Payment Network Issuers, and each of their and our respective officers, directors, subcontractors and employees, agents and affiliates (in each case, a "Disclosing Party") may disclose or communicate, directly or indirectly, to you or your agents ("Receiving Party") information and data that the Disclosing Party deems as confidential or proprietary ("Confidential Information"). The term "Confidential Information" includes all information and materials pertaining to technology, trade secrets, know-how, products, facilities, processes, operations, suppliers, current and prospective customers, marketing objectives and plans, pricing and other information pertaining to the Disclosing Party's business affairs, and includes all information pertaining to us and the applicable Payment Network, our and their respective marketing and other business plans, profitability, market share and position, Card Transaction volumes, BINs, prospective and current Issuers, other acquirers of Card Transactions and/or merchants, and any information disclosed by a Disclosing Party to a Receiving Party prior to the execution of the Agreement in contemplation or anticipation of the entry into the Agreement, regardless of whether such disclosure was protected by a confidentiality agreement. The term "Confidential Information" also includes the terms of the Merchant Agreement and the Operating Rules, including documents incorporated by reference, each of the schedules, exhibits, appendices and amendments thereto and any material that is distributed or disclosed by the Disclosing Party in connection with exercising its rights or performing its obligations under the Merchant Agreement, regardless of whether such information is marked as "Confidential." The term "Confidential Information" includes information or data that is in oral, written or other visual form, or recorded on tape, electronic or other media. The terms of this Section 9 shall supersede any oral or written agreements between you and us governing confidentiality entered into prior to the execution of the Merchant Agreement and the terms of this Section 9 shall apply retroactively to the date of the first disclosure by the Disclosing Party of Confidential Information in contemplation of the entry into the Merchant Agreement. In the event of a conflict between the terms of this Section 9 and

the terms of any confidentiality agreement between you and us entered into prior to entry into the Merchant Agreement, the terms of this Section 9 shall govern. The term "Confidential Information" will exclude (i) information in the public domain or information that becomes available to the general public without restriction through no wrongful act or omission of the Receiving Party; (ii) information that is independently developed by the Receiving Party without reference to Confidential Information of the other party; or (iii) information that is known by the Receiving Party prior to disclosure by the Disclosing Party.

9.2 Limited Use.

You agree that Confidential Information will be used by you for the sole and exclusive purpose of performing the obligations and exercising the rights as granted or permitted under the Merchant Agreement. You must ensure that Confidential Information is kept confidential and is not disclosed, directly or indirectly, to any third party unless the Disclosing Party consents in writing to such disclosure, and then only upon the prior execution of a confidentiality agreement containing terms substantially similar to those in this Section 9 by the third party to whom the Receiving Party desires to disclose such information. Notwithstanding the foregoing, the Receiving Party may disclose strictly limited and necessary types of Confidential Information to its affiliates and/or agents that require access to such Confidential Information in order for the Receiving Party to perform its obligations under this Agreement, subject to the terms of Section 9.2 and provided that such Persons are bound to confidentiality terms substantially similar to those in this Section 9.

9.3 Permitted Disclosures.

Notwithstanding the above restrictions, the Receiving Party may disclose Confidential Information in response to a subpoena or order of a court or an agency or government authority of competent jurisdiction that is binding on the Receiving Party, and which compels the disclosure of Confidential Information, or (ii) in response to a valid public records request where the information is required to be disclosed by applicable public records laws, in each case provided that the Receiving Party will, to the extent permitted by Applicable Law, immediately notify the Disclosing Party of the receipt of a subpoena, public records request or order so as to permit the Disclosing Party to contest any such subpoena or order or to seek an appropriate protective order at the Disclosing Party's expense. To the extent required by specific circumstances, you may disclose certain limited and necessary terms of the Merchant Agreement and the Operating Rules, to (i) your regulators, examiners, auditors and counsel, or (ii) to proposed investors and financing sources and their advisors in connection with a merger or acquisition or proposed merger or acquisition or the like, provided such proposed recipients agree in writing to be bound by the obligations of confidentiality required by the Operating Rules and provided that you provide prompt written notice to the applicable Payment Network in advance of such disclosure. The disclosure of this Agreement and any related documents are subject to the Texas Public Information Act.

9.4 Return or Destruction of Confidential Information.

Upon the termination or expiration of the Merchant Agreement, all Receiving Parties will comply with the Disclosing Party's reasonable instructions regarding the disposition of Confidential Information, which may include the return or destruction of any and all Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof); provided that the Receiving Parties may retain a reasonable number of copies of any tangible property containing Confidential Information, subject to the terms of these Operating Rules, which may be used solely for regulatory and record-keeping purposes and may not be used for any other purpose.

10. Advertising and Publicity.

Except as otherwise explicitly permitted by these Terms and Conditions, you may not use the registered trademarks, service marks, logos or any proprietary information of the applicable Payment Network, us or the applicable Payment Network's or our affiliates without the prior written consent of the owner of such intellectual property and the prior review, by such owner, of the materials in which such marks, logos or proprietary information is proposed to be used, including in any press release. In your case, such materials shall include the types of media referred to in Section 7.2 in which the Program Marks or logos are displayed. Such consent shall not be unreasonably withheld or delayed. Neither party shall make any public statement or press release regarding the Program or the Merchant Agreement, without the prior written approval of the other party. Notwithstanding the foregoing, Merchant is permitted to take public action, as required by law, for approval of this Agreement.

11. **Fees; Adjustments.** You agree to pay charges and fees in the amount and in the frequency specified from time to time by us. You also agree to pay any fines imposed on us by the applicable Payment Network resulting from Chargebacks and any other fees or fines imposed by the applicable Payment Network with respect to your acts or omissions. We have the right to revise our fees and charges upon advance written notice to you and you shall pay such revised charges and fees. You agree that any objections to any such charges or fees that are not made and timely received by us as provided herein, shall be deemed waived by you.

12. Representations; Warranties.

12.1 For each Card Transaction submitted to us, you represent and warrant the following: (a) it is a lawful sale/rental not previously submitted and is only for the items sold or rented (including taxes, but without any surcharge); (b) it represents an obligation of the Cardholder for the Card Transaction amount; (c) it is not an amount charged subject to any dispute, set-off or counterclaim; (d) it is for merchandise or service actually delivered or performed at the same time you accepted and submitted the Card Transaction for processing (except for any delayed delivery or advance deposit transactions expressly authorized by this Agreement); (e) it is not the refinancing of an existing obligation of the Cardholder or arising from the dishonor of a personal check; (f) that you have no knowledge or notice that the transaction is improper, fraudulent or unauthorized; (g) that the Card Transaction is between you and the Cardholder; and (h) the Card Transaction is made in accordance with the Merchant Agreement, the Operating Rules.

12.2 THIS IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THE MERCHANT AGREEMENT.

13. **Term and Termination.** Merchant's ability to participate in our card processing program ("Program") shall begin as of the Effective Date and continue for an initial term ("Initial Term") of three (3) years from service installation and with an option to extend for two additional twelve (12) month terms (each a "Renewal Term") at your election upon no less than sixty (60) days notice to us. Written notice shall be deemed given on the date mailed by certified mail, return receipt requested. Telephonic notice shall be deemed given on the date the call is completed. In no event shall Merchant be required to deposit, or are we required to accept for deposit, any charge forms or credit forms after the termination date.

All obligations incurred or existing under the Merchant Agreement as of the date of termination shall survive such termination until such obligations are fully satisfied. Merchant expressly acknowledges that VISA and MasterCard maintain records containing information on Merchants terminated for one or more reasons specified in the Operating Rules. Such reasons generally include, but are not limited to, fraud, counterfeit paper, unauthorized transactions, breach of contract, excessive Chargebacks or highly suspect activity. Merchant acknowledges that we are required to report the Merchant business name and the name of its principals to VISA and MasterCard when Merchant is terminated due to one or more of the foregoing reasons. Merchant expressly agrees and consents to such reporting by Service Provider in the event of the termination of the Merchant Agreement due to one or more of such reasons.

14. **Security Interest.** Any failure by you to pay us, upon demand, the amount of any transaction that we have charged back to you or any other amount owed by you to us under the Merchant Agreement shall constitute a default by you. Upon any such default, we shall have all rights and remedies provided by law.

15. **Limitation of Liability.** OUR LIABILITY TO YOU WITH RESPECT TO ANY CARD TRANSACTION SHALL NOT EXCEED THE AMOUNT REPRESENTED BY THE TRANSACTION DOCUMENTATION IN CONNECTION WITH THAT CARD TRANSACTION LESS ANY APPLICABLE DISCOUNT RATE, PROVIDED THAT OUR TOTAL, AGGREGATE LIABILITY FOR ALL CLAIMS SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY YOU DURING THE THREE (3) MONTHS PRIOR TO THE MOST RECENT CLAIM. IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER.

16. **Entire Agreement; Compliance.** The parties intend that the Merchant Agreement shall constitute the entire agreement of the parties and may not be contradicted by evidence of any prior or contemporaneous agreement. You shall comply with Applicable Law as applicable to you and any Card Transaction, including, without limitation, all state and federal consumer credit and consumer protection statutes and regulations. You shall also comply with all operating instructions, rules and regulations as we or the applicable Payment Network may issue or amend from time to time. You shall pay, or reimburse us for our payments of, any fines or assessments imposed by the applicable Payment Network that arise out of your Card acceptance activities. The applicable Payment Network(s) Operating Rules are incorporated herein by reference and you agree to be bound by and comply with the same.

17. **Waiver.** No failure to exercise and no delay in exercising any right, remedy, or power under the Merchant Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any

other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

18. **Severability, Amendment, and Construction.** If any provision of the Merchant Agreement is declared illegal or void, it shall not affect the validity or enforceability of the remainder of this Agreement. The Merchant Agreement may be amended at any time by us upon advance written notice to you. Your continued use of the Services hereunder subsequent to any such change constitutes your acceptance of the change. The Merchant Agreement shall be construed and interpreted in accordance with the laws of the state of Texas and applicable federal law. All headings are for convenience only and do not control substantive provisions of the Merchant Agreement.

19. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto, their successors, and assigns. Notwithstanding the foregoing, you may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by other operation of law, any right or obligation under the Merchant Agreement without our written consent. Any purported assignment, transfer, or delegation in violation of this Section shall be null and void. We may subcontract or delegate our obligations hereunder to subcontractors or third parties at our sole discretion.

20. **Fines or Assessments.** If we are fined or assessed any sum by the applicable Payment Network, for your violations of such Payment Network's Operating Rules, you will immediately reimburse us for said amounts.

21. **Lawsuits, Venue, and Attorneys' Fee.** The parties agree that all lawsuits arising from this Agreement shall only be venued in in a court of appropriate jurisdiction in the state of Texas. If so awarded by the court, you shall be responsible for reasonable attorney's fees and other costs and expenses incurred by us in enforcing any rights we may have with regard to the Merchant Agreement and the documents referenced herein.

22. **Reserve Account.** In our sole discretion, we may require you to establish a Reserve Account to protect our interests based upon our estimate of the amount necessary to cover anticipated chargebacks, fees and other liabilities you owe us. To establish the Reserve Account, you authorize us to deduct funds from amounts due you by us, or charge a designated deposit account of yours with any other financial institution by Automated Clearing House or otherwise and place such funds in a Reserve Account. You hereby grant us a security interest in the funds in the Reserve Account as security for any existing or future obligation you owe us hereunder. The funds in the Reserve Account shall not be subject to the claims of any other party. You may not grant any lien or security interest in the Reserve Account. We may deduct a portion from each credit transaction deposited or transmitted by you to us or any other financial institution and place such funds into the Reserve Account. The Reserve Account shall be maintained for as long as we, in our sole discretion, deem necessary. You hereby expressly authorize any financial institution at which you maintain an account to transfer funds from such account to us upon our request to maintain funds in the Reserve Account of a level deemed appropriate by us. In our sole discretion, we may withdraw funds from the Reserve Account to satisfy your obligations to us hereunder. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request. You shall not receive any accrued interest on any funds held by us as a result of your processing of Card Transactions, including, but not limited to, funds held by us in a Reserve Account. Notwithstanding the foregoing, we shall be entitled to accrued interest on any such held funds.

23. Financial and Other Information.

23.1 Upon our request, you shall furnish to us copies of your financial statements, and /or such other financial information and reports reasonably requested by us. You authorize us to obtain, from time to time, credit, financial, and other information regarding you from other persons or entities, such as credit reporting agencies. You also authorize us to respond to requests from others for information regarding you. We have the right at any reasonable time to verify all sales and to audit your books, accounts, records, and other papers relative to credit transactions tendered to us hereunder.

23.2 From time to time, but no more than once annually unless exigent circumstances exist, we may determine that an inspection of your business location is necessary.

24.0 **Liability.** With respect to loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged injuries to persons or property arising out of any negligent act or omission by you or your employees or agents in the performance of this Agreement, you agree that you will cooperate with us in the defense of any action or claim brought against us seeking the foregoing damages or relief and that you will be responsible for any damages resulting from any negligent act or omission by you or your employees or agents in the performance of this Agreement.

To the extent permitted by Texas Law, You shall be solely responsible for all losses, liabilities, damages, and expenses experienced by us, our vendors and affiliates as well as any Payment Network and any Issuer resulting from your actions, including, but not limited to, any breach of any warranty, covenant or agreement or any misrepresentation by you under the Merchant Agreement, or arising out of you or your employees' acts or omissions, including as a result of your processing of Card Transactions or use of the Services.

25. Processing Related Equipment.

25.1 YOU WARRANT THAT ANY PROCESSING EQUIPMENT AND/OR SOFTWARE YOU OBTAIN IS FOR A COMMERCIAL PURPOSE AND IS NOT FOR PERSONAL USE. Unless otherwise provided for in a separate sales agreement, the sale of all processing equipment is between you and third parties, including, but not limited to, our independent sales agents and representatives.

25.2 YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU OBTAIN MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THE MERCHANT AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE THAT YOU HAVE OBTAINED.

25.3 We may upgrade or otherwise modify our computer system at any time without prior notice. You agree to provide us access to your processing equipment in the event that we deem it necessary as part of our upgrade or system modification.

26. Other Provisions.

26.1 No party shall be liable for any default or delay in the performance of its obligations under the Merchant Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including, without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this Section, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under the Merchant Agreement.

26.2 The headings contained in the Merchant Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of the Merchant Agreement.

26.3 If there are any inconsistencies between the Merchant Agreement and the Operating Rules, the Merchant Agreement will govern. If any part of the Merchant Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

26.4 The Merchant Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, supersedes any previous agreements and understandings and, except as expressly provided in the Merchant Agreement, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of the Merchant Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

26.5 The parties acknowledge that the applicable Payment Network's Operating Rules give such Payment Network certain rights to require termination or modification of the Merchant Agreement with respect to transactions involving Cards and the Payment Network and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable the applicable Payment Network Rules with respect to the Merchant Agreement's applicability to transactions involving such other Cards.

26.6 You may designate a third party as your agent for the purpose of delivering credit card transactions data-captured at POS Device by such agent for clearing and settlement. In such event, you agree that: (a) you must provide satisfactory notice to us if exercising use of third-party agent; (b) you understand and agree that the obligation of us to you to reimburse you for credit card transactions is limited to the amount (less fees) delivered by that

agent to us; and (c) you is responsible for any failure by your agent to comply with your responsibilities under the Merchant Agreement and the Operating Rules including but not limited to any violation which results in a Chargeback.

27. Merchant Chargeback Notification. As a merchant participating in the Program for Card acceptance, you must be aware of the Cardholder's right to chargeback a transaction. A chargeback occurs when a Cardholder disputes purchase for any number of reasons. Please be aware of the following:

- A chargeback is initiated by the Cardholder's issuing bank, not by us.
- The chargeback process is one which ordinarily favors the Cardholder rather than the merchant.
- A chargeback does not mean that you, as a merchant, are without recourse. What it may mean, however, is that you may have to pursue a private collection action against your customer.
- A Cardholder's right to charge back is very broad. The Cardholder simply has to file a written dispute with his/her issuing bank. The issuing bank must then charge the item back to the acquiring bank.
- An Authorization does not guarantee your Card Sale, should the Cardholder dispute the Card Sale.
- A Cardholder has significant rights to return merchandise. Please note the applicable provisions of the Operating Rules with respect to returns and disclosure of Merchant's return policy(ies). Should the cardholder claim he/she was not made aware of the disclosure (the merchant's return policy), a Chargeback will likely be initiated.
- The acquiring bank is simply the messenger when a chargeback is initiated by a cardholder. The acquiring bank must process the chargeback to the merchant's account per the applicable Payment Network Operating Rules.

28. Definitions. As used in the Merchant Agreement, the terms below will have the following meanings:

"Applicable Law" means any law, ordinance, statute, treaty, rule, judgment, decree, regulation, official directive, consent, approval, authorization, order or other determination or finding of any governmental authority applicable to or binding upon you or to which you are subject, whether federal, state, county, local, foreign or otherwise, including state usury laws, the Truth-In-Lending Act, the Fair Debt Collection Practices Act, the Federal Equal Credit Opportunity Act, the Fair Credit Reporting Act as amended by the Fair and Accurate Credit Transactions Act, the National Bank Act, the Bank Secrecy Act as amended by the USA PATRIOT Act together with implementing federal regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act and the United Nations Participation Act and related Executive Orders and implementing U.S. Department of the Treasury regulations, the Electronic Funds Transfer Act, the Telephone Consumer Protection Act, the Gramm-Leach-Bliley Act, the Foreign Corrupt Practices Act, the Anti-Boycott provisions of the Export Administration Act and implementing U.S. Department of Commerce regulations, the Federal Trade Commission Act, the Sarbanes-Oxley Act and implementing federal regulations, and Regulations B, E, P and Z of the Board of Governors of the Federal Reserve System.

"Authorization" means approval by, or on behalf of, the Issuer to validate a Card Transaction. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.

"Automatic Payment Plan" means an obligation, either of a fixed or variable amount, that is paid by a Cardholder with a series of charges to a Card account over a period time pursuant to an agreement between the Cardholder and the merchant.

"Card Not Present" means a Card Sale or Credit that occurs when neither the Card nor the Cardholder is present at the point-of-sale to conduct the Card Sale or Credit, including Internet, mail-order and telephone-order Card Sales and Credits.

"Card Present" means a Card Sale, Cash Advance or Credit that occurs where the Card and the Cardholder are present at the point-of-sale and the Card is used to conduct the Card Sale, Cash Advance or Credit, as evidenced by our receipt of Track Data in the Authorization request (except with respect to Biometric Card Transactions, which constitute Card Present sale but will not include CVV with the Authorization request).

"Card Sale" means a sale of goods or services to a Cardholder by a merchant, either in a Card Present environment or as a Card Not Present transaction, either of which is conducted pursuant to a merchant agreement where the amount of such sale is applied to a Card account and considered an obligation of the Cardholder.

"Card Transaction" means a transaction involving a Card, including any Card Sale, Cash Advance, Credit, Chargeback, Reversal or Correction.

"Cardholder" means the individual whose name is embossed on a Card (credit card or debit card, as applicable) and any authorized user of such Card.

"Chargeback" means the procedure by which a Sales Draft or other indicator of a Card transaction (or disputed portion thereof) is returned to Bank or the Issuing Bank, the liability for which is the Merchant's responsibility.

"Chargeback Fee" means a fee incurred each time a transaction is charged back to you.

"CID" or "Card Identification Data" means the three digit number that follows the complete or truncated Card Number in the signature panel or in a separate box directly to the right of the signature panel on the back of each Card.

"Credit" means a refund or price adjustment given for a previous purchase transaction.

"CVV" or "Card Verification Value" means the three digit number that follows the complete or truncated Card account number in the signature panel or in a separate box directly to the right of the signature panel on the back of each Card.

"Dial-Up Terminal" means an Authorization device which, like a telephone, dials an Authorization center for validation of transactions.

"Discount Rate" means an amount charged for processing credit Card transactions or signature debit Card Sales. Discount Rates are charged on all sales and refunds.

"Dispute" means a ticket retrieval request, request for a Chargeback, request for representment of a Card Transaction, or representment of a Card Transaction, as the context may require, by an Issuer, us or the applicable Payment Network, including supporting information and documentation provided by the Issuer or us in connection with any of the foregoing, and the applicable Payment Network's process of resolving or effecting any of the foregoing, including Dispute arbitration, as more fully described in the Dispute Rules.

"Dispute Rules" means the document that contains instructions and requirements relating to the resolution of Disputes relating to Card Transactions, including Chargebacks, Credits and corrections, as such document may be amended from time to time by the applicable Payment Network.

"Fees" means the fees and charges we or the applicable Payment Network assess for or related to the Services.

"Interchange" means a charge assessed by the applicable Payment Network and paid to the Issuer.

"Imprinter" means a manual or electric machine used to physically imprint the merchant's name and ID number as well as the Cardholder's name and Card number on a Sales Draft.

"Issuer" means the bank or other party that has issued a Card.

"Magnetic Stripe" means a stripe of magnetic information affixed to the back of a plastic credit or Debit Card. The magnetic stripe contains essential Cardholder and account information.

"Operating Rules" means the rules, regulations, bylaws, releases, interpretations and other requirements (whether contractual or otherwise) now or hereafter imposed, adopted or communicated by the applicable Payment Network, as such may be amended, modified or supplemented from time to time.

"Payment Network(s)" means Visa U.S.A. Inc. ("VISA"), MasterCard International, Inc. ("MasterCard") and Discover Financial Services ("Discover") payment card networks, and other payment card networks or systems

"Person" means an individual, partnership, joint venture, corporation, association, or other legal entity, however organized.

"POS Device" means an electronic point-of-sale device, cash register, or terminal and any necessary software, including a CAT and a self-service terminal, located at the physical premises of a merchant that is capable of electronically capturing data from Cards and receiving electronic evidence of Authorization responses and which may also be capable of transmitting electronic evidence of Sales Data.

"Program Marks" means any and all trademarks and service marks of a Payment Network which are provided to you or approved by us for your use in connection with the Services.

"Referral Code" means the message received from an Issuing Bank when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

"Reserve Account" means a fund established and managed by us in a depository selected by us to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges.

"Retrieval Request/Transaction Documentation Request" means a request for documentation related to a Card Transaction such as a copy of a Sales Draft or other Card Transaction source documents.

"Sales Data" means evidence of Card Sales and Credits in electronic format that is captured, prepared and/or transmitted by you for a Card Sale or Credit.

"Sales Draft" means evidence of a purchase of goods or services by a Cardholder from Merchant using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to the applicable Payment Network Rules.

"Security Requirements" means (i) the VISA's Cardholder Information Security Program ("CISP"), MasterCard's Site Data Protection Program ("SDP"), the Payment Card Industry ("PCI") PIN Security Requirements, the Payment Card Industry Data Security Standard ("PCI-DSS") located at www.pcisecuritystandards.org, in each case, as interpreted and communicated to Merchant by us and/or the Payment Network, and as may be amended and supplemented from time to time, which is incorporated herein by reference and all related compliance requirements, and (ii) any additional security requirements and all related compliance requirements promulgated by the applicable Payment Network from time to time.

"Services" means the activities undertaken by us to authorize, process and settle all United States Dollar-denominated Card Transactions undertaken by Cardholders at Merchant's location(s) in the United States, and all other activities necessary for us to perform the functions required by the Merchant Agreement for all Cards covered by the Merchant Agreement.

"Settlement Account" means an account at a financial institution designated by Merchant as the account to be debited and credited by us for Card transactions, fees, Chargebacks and other amounts due under the Merchant Agreement or in connection with the Merchant Agreement.

"Transaction Documentation" means, collectively, Transaction Receipts and Transaction Slips.

"Transaction Receipt" means a paper or electronic copy of Card Transaction data generated at the point -of -sale when the Card Transaction is conducted using a POS Device, a copy of which is provided to the Cardholder.

"Transaction Slip" means a form used by you to capture Card Transaction data in transactions where a POS Device is not used, one copy of which is provided to the Cardholder and one copy of which is provided to us for settlement of the Card Transaction, including a Sales Slip or a Credit Slip, as applicable or appropriate under the circumstances.