



Merchant Agreement

**Registered Agent of
Westamerica Bank, Santa Rosa, CA
and
JPMorgan Chase Bank, Columbus, OH**

FDIC Insured

MERCHANT AGREEMENT

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MERCHANT AGREEMENT

PRELIMINARY MATTERS

Parties to Agreement:

- "Merchant" The Merchant identified on the Merchant Application that applied for IMS services.
- "Guarantor(s)" The Guarantor(s) of Merchants obligations under the Agreement, as set forth in the Merchant Application.
- "IMS" Intuit Payment Solutions offerings are delivered by Innovative Merchant Solutions, LLC, an Independent Sales Organization and Merchant Services Provider for Bank, with headquarters in Woodland Hills, California and its subsidiaries
- "Bank" The Member FDIC insured Bank designated by IMS that settles your transactions under this Agreement
- "ODFI" The Originating Depository Financial Institution designated by IMS on behalf of which debit and credit transactions are submitted to the Federal Reserve or other check and ACH settlement systems.

Acceptance of Terms by Merchant and Guarantor(s):

Merchant and Guarantor(s), as applicable, have completed and submitted to IMS and Bank an application for services that provides information about Merchant's business and processing needs (the "Merchant Application"). As part of the Merchant Application, Merchant and Guarantor(s) have certified that they have read, understand and agree that the terms of this Agreement (the "Agreement") will be binding upon them when and if IMS and Bank approve Merchant's application to receive requested services.

ARTICLE I. GENERAL PROVISIONS.

The General Provisions set out in Article I govern the relationship between IMS, Bank and Merchant for all services provided by IMS. The subsequent sections of the Agreement define the terms of service for different IMS service offerings and shall apply to Merchant at such time that the Merchant commences receiving such services. From time to time IMS may offer bundled services as part of a branded offering. The Agreement sections applicable to such branded service offerings are set forth on Exhibit A. All Capitalized Terms not defined within the body of the Agreement have the meanings set forth on Exhibit B to this Agreement.

1.01 Compliance with Laws, Rules and IMS Guidelines.

- (a) Compliance with Law. Merchant agrees to comply with all laws, rules and regulations applicable to Merchant, Merchant's business and the transactions and services contemplated under this Agreement, including without limitation, state and federal banking laws, payments systems laws, OFAC and Bank Secrecy laws, consumer protection laws, uniform commercial codes, foreign exchange regulation, postal regulations.
- (b) Rules. Merchant agrees to comply with and be subject to all applicable rules, regulations and guidelines of any third party, as they may exist from time to time and as applicable to the services under this Agreement, including without limitation: MasterCard International, Inc., ("MasterCard"), Visa U.S.A., Inc. ("VISA"), JCB, International ("JCB"), Discover® Network ("Discover Network"), American Express OnePointSM program (AXP), the national and regional automated clearing house networks ("NACHA") and any other network or clearing system through which transactions hereunder may be processed.
- (c) IMS Guidelines. Merchant agrees to comply with all rules, guidelines, policies and procedures applicable to the services provided under this Agreement provided to Merchant

by IMS from time to time. Merchant understands and agrees that IMS may change these rules, guidelines, policies and procedures at any time, with or without notice to Merchant. Merchant agrees to check IMS' website periodically for any such changes.

- (d) Links to Information. Additional information and links to locations where Merchant can see or obtain copies of the Rules and IMS guidelines is located at <http://usa.visa.com/merchants/index.html> and <http://www.mastercard.com/us/merchant/support/rules.html>, <http://nacha.org> and <http://payments.intuit.com/legal.jsp>.
- (e) Verification Obligation. Upon request, Merchant will provide IMS and Bank with information necessary to verify Merchant's compliance with its obligations.

1.02 Enforcement of Bank Rights by IMS. To the maximum degree permitted by law and by the rules and regulations of MasterCard, VISA, AXP, JCB, Discover Network, and NACHA, it is the intention of the parties that the rights of Bank set forth in this Agreement or arising from this Agreement, may be exercised by IMS.

1.03 Warranties of Merchant. Merchant hereby represents and warrants to IMS and Bank at the time of submission of the Merchant Application and during the term of this Agreement that:

- (a) All information contained in the Merchant Application or any other documents delivered to IMS and/or its Bank in connection therewith is true and complete and accurately reflects Merchant's business, financial condition and principal partners, owners or officers.
- (b) Merchant is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on the business.
- (c) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, constitutes a valid and binding obligation of Merchant and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject.
- (d) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so.
- (e) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.
- (f) Unless Merchant notifies IMS in writing and is approved (either on the Merchant Application or otherwise) and is approved by IMS, no other processing relationship for any of the services offered by IMS under this Agreement may exist between Merchant and another Card processing institution, for any business run or owned by Merchant.

1.04 Notifications Regarding Changes in Merchant's Business or Application Information.

- (a) Change of business or ownership: The approval of Merchant's application is based upon the information supplied by Merchant in the application process. If the nature, ownership, or volume of Merchant's business will change substantially, Merchant must notify us in advance of that fact, and, in such an event, Company reserves the right to discontinue the relationship and terminate the contract, or to require that Merchant submit a new application and enter into a new and different contract. A failure to provide Company with at least thirty (30) days' advance written notice of (i) any transfer, sale, or liquidation of any substantial part of Merchant's total assets; (ii) any change in the basic nature of Merchant's business, including selling different products or services not related to its current

business; (iii) any change in ownership or transfer of control of Merchant's business; (iv) Merchant's forming any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any substantial interest in Merchant's business; or (v) a change in business operations that will likely cause account activity to exceed Merchant's approved monthly volume, is grounds for immediate termination for cause.

- (b) Merchant must immediately notify IMS of any Bankruptcy, receivership, insolvency, levy or similar action initiated by or against Merchant or any of its principals. Merchant will include IMS and/or its Bank on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing.
- (c) Merchant must notify IMS in writing of any changes to the information in the Merchant Application, including but not limited to a material change to Merchant's financial condition (within three days of such occurrence), any additional location or new business, a change in the business location or contact information, both physical and email addresses, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and how sales are completed. Merchant must also notify IMS in writing if Merchant sells or closes its business. Except for a change to the financial condition, all such notices must be received by IMS seven days before the change. Merchant will also provide updated information to IMS upon request.
- (d) Merchant must immediately notify IMS in writing if Merchant is threatened with or becomes party to any action, suit or proceeding at law or in equity that could substantially impair its right to carry on its business or adversely affect its financial condition or operations.
- (e) Merchant must provide separate notification regarding changes to service providers used by Merchant in connection with IMS-provided services, including but not limited to American Express, and equipment leasing companies.

1.05 Credit and Financial Inquiries: Additional Locations: Inspections.

- (a) Merchant authorizes Bank and IMS to make, at any time during which Merchant owes any obligation to IMS and/or Bank, any credit inquiries which, in their discretion, may be necessary or prudent. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, principal owners or officers. If requested to do so by Bank or IMS, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or IMS may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices.
- (b) Merchant agrees to permit Bank or IMS at any time from time to time, to inspect locations to confirm that Merchant has adhered or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and licenses or permits (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement.
- (c) Merchant may process transactions only at locations and websites approved by IMS. Additional locations may be added, subject to IMS' approval. Either Merchant or IMS may delete any location by providing notice as provided in this Agreement.
- (d) Representatives of IMS and/or its Bank may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any payment transactions processed by IMS.

1.06 Guarantor Notifications and Authorizations. The decision of IMS to enter into and continue

processing payment transactions for Merchant is based on the financial condition of Guarantor and the ability of Guarantor to guarantee Merchant's obligations. Accordingly, Guarantor must provide IMS with information regarding changes in his or her contact information and financial circumstances. Guarantor agrees to take the actions required under Section 1.04(b) through (e). Guarantor also authorizes IMS to make ongoing inquiries about Guarantor as detailed in Section 1.5. For purposes of understanding Guarantors obligations and authorizations under this Section, Guarantor will apply the provisions of Section 1.04 and 1.05 to Guarantor by substituting the term Guarantor in place of Merchant where it appears in such sections.

1.07 Account.

- (a) Merchant will establish and maintain an Account at a depository institution approved by IMS and/or Bank. Merchant will maintain sufficient funds in the Account to satisfy all obligations, including the fees, Chargebacks and Returns contemplated by this Agreement. Merchant irrevocably authorizes IMS and/or its Bank to debit the Account for fees, Chargebacks, Returns, fines and any other penalties or amounts owed under this Agreement. In the event the Account lacks sufficient funds Merchant and Guarantors authorize IMS and/or Bank, without notice, to debit any bank account in their name(s) or the name of any affiliated entity. Merchant must obtain prior consent from IMS and/or its Bank to change the Account. If Merchant does not obtain such consent, IMS and/or its Bank may immediately terminate this Agreement and may take other action necessary to protect their interests.
- (b) IMS and/or its Bank will settle all transactions to the Account subject to the terms of this Agreement. Merchant authorizes IMS and/or its Bank to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry.
- (c) IMS or Bank, in its sole discretion shall grant Merchant provisional credit for Transaction amounts, subject to receipt of final payment by IMS and/or its Bank and subject to all Chargebacks and other amounts owed to IMS and/or its Bank under this Agreement.
- (d) Merchant will promptly examine all merchant statements relating to the Account and immediately notify IMS and/or its Bank in writing of any errors. The standard delivery method for Monthly Statements is in an electronic, online version. A hard copy version is available upon request for which additional fees may apply. Merchant's written notice must include: (i) Merchant name and Account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by IMS within 30 days after Merchant received the periodic statement containing the asserted error. Merchant may not make any claim against IMS and/or its Bank for any loss or expense relating to any asserted error for 60 days immediately following receipt of Merchant's written notice. During that 60 day period, IMS and/or its Bank will be entitled to investigate the asserted error and Merchant will not incur any cost or expense in connection with the asserted error without notifying IMS.
- (e) Merchant authorizes IMS and/or Bank to initiate debit/credit entries to the Account, as the Account may be changed from time to time and to any other account maintained by Merchant at any institution that is a receiving Bank of ACH, all in accordance with this Agreement. In the event Merchant changes the Account, this authorization will apply to the new Account. This authorization will be effective until both: (i) IMS has received written notification from Merchant terminating this authorization, and (ii) all obligations of Merchant to IMS and/or Bank have been paid in full. Merchant will provide to IMS and its Bank a voided Account check and will fill in the Account numbers on the Merchant's ACH Business Application.
- (f) If the Account is closed or is otherwise unavailable to IMS and/or Bank for ACH debit, Merchant and/or Guarantors consent to IMS locating additional deposit accounts or assets by using any means legally available. In this event Merchant and/or Guarantors waive all rights

to their privacy in favor of IMS and/or Bank until such time as all unpaid Chargebacks and fees owed to IMS and/or Bank have been paid in full.

1.08 Reserve Account. In addition to any other rights granted to IMS and/or Bank under this Agreement, Merchant hereby authorizes IMS and/or Bank to establish a Reserve Account, with or without prior notice to Merchant, at any time prior to, or after termination of this Agreement, to ensure the recovery of any liabilities owed them or reasonably anticipated by IMS and/or Bank in their sole discretion to be owed by Merchant pursuant to this Agreement. IMS or Bank may also require as a condition of providing continued Services, that Merchant fund and maintain an interest bearing account with Bank (hereinafter called "Bank Reserve Account") as security against any costs, losses or expenses incurred by Bank or IMS in connection with the provision of Services to Merchant. Merchant's obligation to maintain such Bank Reserve Account shall survive the termination of this Agreement by a period of 270 days (or longer depending on Merchant's product and business practices) during which time Bank's or IMS' security interest shall continue. Unless the context clearly indicates otherwise, all references in this Agreement to "Reserve Account" apply to both the "Reserve Account" and "Bank Reserve Account." In addition Merchant further agrees:

- (a) Liabilities to be paid from the Reserve Account include, but are not limited to those arising out of actual and/or potential post termination Chargebacks, as well as any and all post-termination fees, charges and expenses due or anticipated to be due IMS and/or Bank from Merchant.
- (b) The Reserve Account shall be in such amount IMS and/or Bank deem reasonable under the circumstances. The Reserve Account may be funded and/or replenished by IMS and/or Bank by withholding or withdrawing from, or freezing all or any part of, the Account and/or any other deposit accounts maintained by Merchant and/or Guarantor at any Bank wherever found by any means available. Unless IMS and/or Bank agree(s) otherwise in writing with Merchant, the Reserve Account shall not bear interest.
- (c) IMS and/or Bank may enforce its security interest in the Reserve Account without notice or demand being first made to Merchant. IMS' and/or Banks right to sums owed it by Merchant pursuant to this Agreement, shall in no way be limited by the balance or existence of the Reserve Account. IMS' rights with respect to the Reserve Account, as well as the security interest granted IMS and/or Bank under this Agreement, shall survive the termination of this Agreement.
- (d) IMS and/or Bank may exercise their rights under this Agreement to collect any amounts due to IMS and/or Bank including, without limitation, rights of set-off and recoupment. Merchant shall have no right to withdraw funds or debit the Reserve Account.
- (e) It is stipulated and agreed that the funds placed in the Account, or the Reserve Account are trust fund monies held and "earmarked" for the benefit of IMS and/or Bank as that term has been defined by case law as applied within the United States Bankruptcy Courts. In the event of Bankruptcy proceedings IMS and/or Bank may exercise their rights under this Agreement to debit the Account or the Reserve Account for amounts due IMS and/or Bank regardless of the pre-petition or post petition nature of the amount due IMS and/or Bank. In the event of a Bankruptcy proceeding Merchant also agrees that it will not contest any Motion For Relief From the Automatic Stay which IMS and/or Bank may file to debit the Account and/or Reserve Account.
- (f) IMS and/or Bank may retain funds in the Reserve Account for as long as Merchant may be liable to make payments under the Agreement. Funds are typically retained in the Reserve Account for a minimum of 270 days from the date of the oldest transaction in question or the date of termination, whichever is longer, and may be retained longer depending on the nature of the Merchant's transaction activity. IMS and/or Bank will have sole control of the Reserve Account. In the event of a Bankruptcy proceeding IMS and/or Bank do not consent to the assumption of this Agreement. Nevertheless if this Agreement is assumed Merchant

agrees that in order to establish assurance of future performance within the meaning of 11 U.S.C. Sec 365, as amended from time to time, Merchant must establish a Reserve Account in an amount satisfactory to IMS and/or Bank.

- 1.09 Recoupment and Set-Off.** IMS and/or Bank have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Account, and (ii) any other amounts merchant may owe Bank and/or IMS under this Agreement or any reporting, or any other agreement.
- 1.10 Security Interest.** To secure Merchant's performance under this Agreement, including without limitation Merchant's obligations arising out of Chargebacks or Returns, Merchant hereby grants pursuant to the California Uniform Commercial Code, to IMS and Bank a security interest in Merchant's electronic terminal, printer, imprinter and imprinter plate. Further, Merchant and/or Guarantor(s) grants to IMS and/or Bank, a security interest in all Sales Drafts, ACH deposits, credit drafts, and in all deposit accounts and Reserve Accounts, regardless of source, wherever found, standing in the name of Merchant and/or Guarantor(s), including any affiliated companies of Merchant and/or Guarantor, whether established or designated and maintained pursuant to this Agreement or not, as well as in the proceeds of those deposits. In the event of Merchant's default in payment of Chargebacks or Returns, Merchant and Guarantor(s) stipulate: (i) that all personal Bank accounts standing in their names shall be subject to this Agreement and ACH debit, and (ii) all ACH debits, whether made against Merchant's Account or a Guarantor's personal account shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system, and (iii) Merchant and/or Guarantor irrevocably consent to IMS and/or Bank's using any means available to locate such deposit accounts until such time as all amounts due have been paid. IMS and/or Bank may enforce this security interest as applicable by:
- (a) Making an immediate debit/charge via the ACH system to any deposit account standing in the name or names of Merchant and/or Guarantor(s), without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the Automated Clearing House (ACH) system;
 - (b) Freezing the entire Account, without notice or demand of any kind, upon IMS and/or Bank's and IMS' determination that Merchant has breached any term of this Agreement;
 - (c) Taking possession of any or all of Merchant's Sales Drafts, verification and confirmation of Transactions;
 - (d) Taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters and imprinter plates.
 - (e) By placing a receiver within Merchant's place of business without notice or bond to intercept and collect all income derived from Merchant's operations until such time as any indebtedness owed to IMS and/or Bank arising under this Agreement has been satisfied in full;
 - (f) By obtaining either a writ of attachment or a writ of possession without bond pertaining to Merchant and/or Guarantor's personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that IMS and/or Bank determines to be necessary to preserve and protect this security interest. Merchant's and/or Guarantor's granting of this security interest in no way limits Merchant's liabilities to IMS and/or Bank under this Agreement.
- 1.11 Fiduciary Relationship.** As provided in California Financial Code Section 952 as it now exists and as it may be amended from time to time, whenever Merchant and/or Guarantor has a deposit held with any Bank that arose from or is subject to this Agreement, to which, pursuant

to this Agreement, Merchant is not entitled, Merchant's entitlement to such deposit shall be as a fiduciary of IMS and/or Bank until any claim by IMS and/or Bank against Merchant has been resolved. Merchant agrees that its failure to repay, within five (5) calendar days of notification by IMS and/or Bank, funds to which Merchant is not entitled to, shall result in a presumption that Merchant intends to misappropriate such funds. Merchant further agrees that in the event IMS and/or Bank seeks to enforce its rights herein in a court of competent jurisdiction, that any Receivership, Temporary Restraining Order, Preliminary Injunction, Writ of Attachment or Writ of Possession may be issued against Merchant without bond.

1.12 Guarantors. As a primary inducement to IMS and its Bank to enter into this Agreement with Principal and/or the signed Guarantor(s), whether by signing the Merchant Application Agreement form or by acknowledging consent by electronic means, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to IMS and its Bank pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that IMS and its Bank may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by IMS, its Bank or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of IMS and/or Bank. Guarantor(s) understand that the inducement to IMS and its Bank to enter into this Agreement is consideration for this guaranty, and that this guarantee remains in full force and effect even if the Guarantor(s) receives no additional benefit from the guaranty.

1.13 Payment of Fees and Other Amounts Owed.

- (a) Merchant shall pay to IMS and/or Bank the fees and charges set forth on the Merchant Application, Schedule of Fees and fee provisions of this Agreement. Merchant agrees that IMS may collect its fees and other amounts owed under this Agreement by netting against the proceeds of Merchant's processing activity. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. IMS and/or Bank have the right to change fees as set forth in this Agreement.
- (b) Merchant will immediately pay IMS and/or Bank any amount incurred by IMS attributable to this Agreement or any other agreement between Merchant and IMS or any subsidiary or affiliate of IMS, including but not limited to equipment fees, Chargebacks, Returns, fines imposed by a third party, non-sufficient fund fees and ACH debits that overdraw the Account, Reserve Account, or are otherwise dishonored. Merchant authorizes IMS and/or Bank to debit via ACH the Account, the Reserve Account any other Account Merchant has with IMS, an affiliate or subsidiary of IMS, its Bank or at any other financial institution for any amount Merchant owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Merchant and IMS or any subsidiary or affiliate, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse IMS and/or Bank for the amount owed, Merchant will immediately pay IMS and/or Bank such amount.
- (c) In addition to IMS and Bank's other remedies under this Agreement, if any amounts owed by Merchant under this Agreement and not paid when due, Merchant shall pay IMS and Bank a Late Payment Fee, as set forth in the Merchant Application or Schedule of Fees, plus a finance charge equal to one and one-half percent (1.5%) per month on the unpaid amount, or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such Late Payment Fee and finance charges will not excuse or cure any breach or default for late payment.

1.14 General Fees. If fees are not listed on the Merchant Application or Schedule of Fees to the

contrary, the following fees are applicable. Additional fees specific to each service offering are set forth in the Fee sections of the Article of this Agreement defining the terms of that service offering. For your convenience Exhibit C of this Agreement contains a cross reference to fees and charges applicable to services provided under this Agreement.

Providing Any Documentation	\$2.00 per page
Checking Account (DDA) Change	\$25.00 per change
Business Name Change Fee	\$75.00 each
Chargeback/Retrieval	\$20.00 each
Bank Return Fee	\$25.00 per item
Third Party Payment Admin Fee	\$150*
Voice Authorizations	\$0.95 each
Voice Authorizations (w/ live operator)	\$1.75 each
Referral Authorizations	\$2.00 each
Annual Fee	\$75.00

* IMS may charge a fee to implement legally enforceable requests for payment of Merchant funds to parties other than Merchant, such as tax levies, payments to secured parties or other legally enforceable payment requests of a similar nature.

As set forth above, IMS may modify all fees payable by Merchant under the Agreement, including those detailed in the Merchant Application, Schedule of Fees or the body of the Agreement, by providing notice to Merchant of changes to such fees.

1.15 Term: Termination.

- (a) *Termination Generally.* This Agreement shall become effective upon acceptance by IMS and Bank. Any party may terminate this Agreement or one or more services delivered under this Agreement at any time with or without cause by providing written notice to the other parties and such termination will become effective on the date specified by such notice. If Merchant terminates this Agreement, Bank and IMS shall have thirty (30) days from date of receipt of the notice to close Merchant's account. IMS or Bank may terminate this Agreement immediately without prior notice if Bank's Merchant Acceptance Criteria changes. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. If Merchant has applied for credit card processing and the Merchant Account is approved by Bank, and if Merchant exercises its option to terminate this Agreement, then Merchant will pay to IMS a termination fee in the amount set forth in the Merchant Application. If your Merchant Application references a "standard termination fee," a fee of \$295 will apply upon your termination of services.
- (b) *Termination for Merchant Misconduct.* IMS or Bank may also terminate this Agreement immediately without prior notice if (i) they have reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, IMS or Card Issuers, (iii) Merchant appears on any Card Association's or Payment Network's security reporting. **An administrative account closure fee of \$500 will be charged to Merchants who are terminated for the reasons set forth in this subsection.**
- (c) IMS or Bank may terminate this Agreement immediately without prior notice if (i) they have reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, IMS or Card Issuers, (iii) Merchant appears on any Card Association's or Payment Network's security reporting, or (iv) Bank's Merchant Acceptance Criteria changes. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination of this Agreement. An administrative account closure fee of \$500 will be charged to Merchants who are terminated for the reasons set forth in subparts (i) through (iii) of this section.

- (d) Merchant will be assessed a software recovery fee if it: (i) received a free promotional copy of QuickBooks or Quicken software upon entering in this Agreement, and (ii) terminated this Agreement, in its sole discretion, within two years of acceptance by Bank. Such software recovery fee shall be determined by IMS in its sole discretion, but will be no greater than the then current direct price charged by Intuit to the public to purchase the QuickBooks or Quicken software. This software recovery fee shall be in addition to any termination fee set forth in the Merchant Application.
- (e) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, Bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank and IMS under this Agreement shall become immediately due and payable, without the necessity of any notice, declaration or other act by Bank or IMS. Notwithstanding such termination, Bank at its sole discretion, may determine that consent to Merchant's subsequent assumption of this Agreement is in Bank's and IMS' best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank and comply with the applicable federal or state laws governing such assumption.

1.16 Effect of Termination: All of Merchant's obligations under this Agreement which arise or are incurred prior to the effective date of termination, shall survive the expiration or termination of this Agreement.

1.17 Third Parties.

- (a) Merchant may be using special services or software provided by a third party to assist Merchant in processing transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for insuring compliance with the requirements of any third party in using their products. This includes making sure Merchant has and complies with any software updates and ensuring that such software satisfies all security standards required under the Rules (including PA DSS and PCI DSS), as set forth more fully below. IMS has no responsibility for any transaction until that point in time IMS receives data about the transaction.
- (b) Merchant will notify IMS prior to the use of any electronic authorization or data capture terminal or software provided by any entity other than IMS or its authorized designee ("third party terminals") to process transactions. If Merchant elects to use such third party terminals, Merchant agrees that the third party provider of the terminal is Merchant's agent and Merchant is liable for the acts and omission of its agent and the terminals for failing to comply with the Rules, this Agreement and any applicable federal and state law.
- (c) IMS may provide Merchant with reference links to websites operated by third parties ("Third Party Websites"). These links are provided as a convenience only. Such Third Party Websites are not under the control of IMS. IMS is not responsible for the content of any Third Party Website or any link contained in a Third Party Website. IMS does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites, and the inclusion of any link is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by IMS of any information contained in any Third Party Website. Access to any Third Party Website is at Merchant's own risk, and Merchant acknowledges and understands that linked Third Party Websites may contain terms and privacy policies that are different from those of IMS. IMS is not responsible for such provisions, and expressly disclaims any liability for them.

1.18 Limitation of Liability.

- (a) MERCHANT AGREES AND ACKNOWLEDGES THAT NEITHER IMS, BANK NOR THE ODFI, AS APPLICABLE SHALL HAVE LIABILITY, EITHER IN TORT, CONTRACT OR IN COMBINATION THEREOF, FOR CLAIMS ARISING FROM TRANSACTIONS PROCESSED UNDER THIS AGREEMENT EXCEPT IN THE CASE OF GROSS OR WILLFUL MISCONDUCT ON THE PART OF

IMS, BANK OR ODFI. ANY SUCH CLAIMS ARE SUBJECT TO LIMITATIONS SET FORTH BELOW AND IN NO EVENT SHALL IMS, BANK OR ODFI BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES OR LOST BUSINESS OPPORTUNITIES.

- (b) THE LIABILITY, IF ANY, OF IMS AND/OR BANK, UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO IMS AND/OR BANK DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGEBACKS, RETURNS AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH WAS INVOLVED, THE AGGREGATE AMOUNT OF IMS AND/OR BANK'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED. IN NO EVENT WILL THE LIABILITY OF IMS AND OR BANK UNDER THE AGREEMENT EXCEED \$50,000.
- (c) EXCEPT AS EXPRESSLY PROVIDED HEREIN, IMS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. IMS DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. IMS FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. IMS FURTHER EXPRESSLY DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED ACCESS OF FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND IMS' REASONABLE CONTROL.

1.19 Indemnification by Merchant. Merchant agrees to indemnify and hold harmless IMS and/or Bank and ODFI, as applicable, and their affiliates, employees, agents, representatives, members, or stockholders, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) arising out of or relating to:

- (a) any dispute between Merchant and a Cardholder or Checkwriter or customer, or any Sales Draft or ACH deposit paid for by Bank or ODFI;
- (b) any actual or alleged action or omission by Merchant that would constitute a breach of any representation, warranty, or obligation of Merchant set forth in this Agreement;
- (c) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers;
- (d) the reliability, accuracy, or legitimacy of payment data submitted by Merchant;
- (e) any alleged infringement of another party's intellectual property rights by Merchant;
- (f) a failure of Merchant to maintain the confidentiality of Cardholder or Checkwriter information;
- (g) any action IMS or Bank takes against the Account under the Agreement. Merchant will also indemnify and hold harmless the institution at which Merchant maintains the Account for acting in accordance with any instruction from IMS and/or Bank regarding the Account.

If Merchant is an agency or instrumentality of a state of the United States and is precluded by the law of Merchant's state from entering into indemnification obligations, then the obligations under this Section shall apply only to the extent permitted by such state law. This section will

survive termination of this Agreement.

1.20 Confidential Information.

- (a) Obligations of IMS: IMS shall comply with the Rules in how it treats Merchant transaction information. IMS may disclose information relating to Merchant's sales to financial institutions, Networks and third parties that need the information for a purpose relating to this Agreement and to the IMS agent or referral source, if any, that played a role in establishing Merchant's relationship with IMS solely for the purpose of computing payment due to such persons. IMS may also disclose information regarding the Merchant as part of an investigation by IMS into Merchant's compliance with its obligations under this Agreement if IMS determines there is cause to make such an inquiry, or to the extent required by a court or governmental authority, or otherwise as required by law.
- (b) Obligations of Merchant: Except to the extent specifically permitted by the Rules, the operating rules of NACHA or this Agreement, Merchant shall not disclose any information relating to any Card or POS Transaction, or any Cardholder or Checkwriter, to any person or entity other than IMS, IMS' employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information except to complete the transaction or as otherwise required or authorized under this Agreement or by law. Merchant shall treat all documents provided by IMS relating to this Agreement as confidential and proprietary and protect them with the same degree of care as Merchant would protect its own confidential and proprietary information, and not less than reasonable care.
- (c) Proprietary IMS Information. Merchant agrees that this Agreement, and all other user information provided by IMS, the process utilized by IMS for providing services, and all written communications concerning services hereunder are confidential and proprietary information of IMS. Merchant agrees that neither it nor any of its employees, agents, representatives, or independent contractors will disclose any such confidential, proprietary information to any person or entity that is not a party to this Agreement without the express written consent of IMS.

1.21 Safeguarding of Information.

- (a) Merchant shall be in full compliance with rules, regulations, guidelines and procedures adopted by any Card Association or Payment Network relating to the privacy and security of Cardholder and Card transaction data, including without limitation PA DSS and the PCI DSS, as they may be amended from time to time. Information pertaining to such requirements may be found at <https://www.pcisecuritystandards.org>. Additional information regarding security requirements is located at www.innovativemerchant.com.
- (b) **Merchant shall be liable for all fines, charges and penalties that may be assessed by any Card Association or Payment Network as a result of Transactions made by Merchant or Merchant's noncompliance with the preceding** requirements. Merchant also acknowledges that it may be prohibited from participating in payment network programs if it is determined that Merchant is non-compliant. Merchant acknowledges that it may be subject to, and IMS and/or Bank retain the right, to conduct or cause to be conducted an audit to verify Merchant's compliance with the foregoing security requirements. Merchant must notify IMS and/or Bank within twenty-four (24) hours after becoming aware of (i) any suspected or actual data security breach or (ii) any noncompliance by Merchant with the security requirements set forth herein. Merchant shall, at its own expense, (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data by an authorized assessor acceptable to IMS and Bank; (ii) take all such remedial actions recommended by such investigation or by IMS, Bank or Visa or MasterCard; and (iii) cooperate with IMS and Bank in the investigation and resolution of any security breach.

- (c) Merchant will not, under any circumstances, disclose any Cardholder's account number nor any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card to any person other than IMS or its Bank, or as required by law. Merchant agrees not to store, distribute, copy or otherwise manipulate card account numbers or PINs that appear, are encoded or are otherwise associated with Cards. All electronic commerce Merchants must provide Cardholders with a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. Further, Merchant agrees to store any material containing Cardholder account information in a secure manner or destroy such information at the proper time in a fashion that renders the data unreadable, and unrecoverable. Neither Merchant nor any of its agents shall retain or store the full contents of any track on the Magnetic-Stripe, or equivalent data on the Contactless Payment chip, subsequent to Authorization of a Transaction.
- (d) Merchant must notify IMS of any third party agent of Merchant that will have any access to Cardholder data.
- (e) Merchant understands and agrees that due to requirements of law, Card receipts may not contain (i) more than the last five digits of the credit card account number; and (ii) that the Card receipt may not contain the expiration date.
- (f) If Merchant sells goods or services on the Internet, Merchant's web site must contain Merchant's consumer privacy policy and a description of Merchant's method of safeguarding consumer transaction data.

1.22 Account Access Password.

- (a) If Merchant receives a user identification name or password from IMS to access IMS' database or use services offered by IMS, Merchant will: (i) keep the user identification name and password confidential; (ii) not allow any other entity or person to use the user identification name or password or gain access to IMS' database; (iii) be liable for all action taken by any user of the user identification name or password; and (iv) promptly notify IMS if Merchant believes the user identification name or password have been used inappropriately or the confidentiality of the information made available through their use has been compromised.
- (b) Merchant agrees that any loss incurred as a result of any party gaining access to Merchant's bank account or IMS' website using information which that party was not authorized to obtain or using such information in a manner not permitted by this Agreement (including but not limited to improper or unauthorized use of the Merchant's ID number and PIN) shall be the responsibility of Merchant.

1.23 Privacy. IMS and its parent company, Intuit Inc., will have access to the data associated with your use of the service. IMS and Intuit will handle this information in accordance with their privacy policies. For details about IMS's privacy policies, please refer to the IMS Privacy Statement, accessible via www.innovativemerchant.com.

1.24 Feedback. IMS may provide you with a mechanism to provide feedback, suggestions and ideas about IMS products and services ("Feedback"). Merchant agrees that IMS may, in its sole discretion, use the Feedback in any way, including in future modifications of the products and services and any related advertising and promotional materials. Merchant grants IMS a perpetual, worldwide, fully transferable, non-revocable, royalty free license to use, reproduce, modify, create derivative works from, perform, distribute and display for any purpose any information Merchant provides to IMS in the Feedback.

1.25 Equipment.

- (a) Sale of Equipment by IMS. IMS may sell equipment to Merchant or provide equipment to Merchant as part of promotional offers that require Merchant to process merchant services

for a specified period of time. Merchant agrees to pay the purchase price and related sales tax for any equipment supplied by IMS as provided under the terms of the offer made by IMS to Merchant. If Merchant accepts a promotional offer from IMS that includes free or discounted processing equipment conditioned upon Merchant maintaining services with IMS for a specified period, and Merchant terminates its services with IMS prior to the stated time, Merchant will pay to IMS the full purchase price of the equipment provided by IMS together with all applicable shipping, handling and sales taxes.

- (b) Leased Equipment. IMS does not lease equipment. Any equipment lease entered into by Merchant is between the Merchant and an independent leasing company. However, Merchant is required to verify with IMS the terms of any equipment lease it has entered into in connection with equipment it has obtained for processing transactions under this Agreement. IMS will make reasonable attempts to contact the Merchant and complete the verification. If the lease cannot be successfully verified after these attempts, IMS will debit via ACH the Merchant's Account for the purchase price of the equipment along with shipping and handling fees and sales tax.
- (c) Equipment Returns. Merchant may return equipment for a period of 30 days from the date of receipt. Equipment returns may be subject to a 20% restocking fee.
- (d) Equipment Support. From time to time at Merchant's request IMS may provide assistance to Merchant to facilitate the exchange of inoperable equipment. IMS may charge shipping or other fees for such services. Merchant is responsible for any repair or equipment replacement costs for the equipment being serviced.
- (e) Disclaimer of Equipment Warranties. Merchant understands that IMS is not manufacturer of equipment used to process electronic payment transactions. Merchant agrees that any representations or warranties regarding such equipment are between Merchant and the manufacturer of such equipment. IMS EXPRESSLY DISCLAIMS ANY WARRANTIES REGARDING SUCH EQUIPMENT.
- (f) Equipment Swaps. Occasionally to meet specific programming requirements, especially in the case of debit card processing, IMS will be required to swap a Merchant's pre-existing piece of equipment with one provided by IMS. In return for the IMS equipment, Merchant must send to IMS Merchant's existing equipment of same type and function. This swap must be completed within 30 calendar days from the date Merchant receives IMS' equipment or the price of equipment, shipping and handling will be debited from Merchant Account. Equipment cannot be returned for a refund after 90 days from date of this debit. Returns after 90 days will be refused.
- (g) Loaner Equipment. Merchant may be offered equipment as a loan from IMS, to use exclusively while processing with IMS. Merchant agrees to return the equipment in good and working condition upon termination. This return must be completed within 14 business days from the date Merchant terminates the account or the price of equipment, shipping and handling will be debited from Merchant Account. Equipment cannot be returned for a refund after 90 days from date of this debit. Returns after 90 days will be refused.

1.26 Modifications to Agreement. IMS or Bank may from time-to-time amend any provision of this Agreement, including those relating discount rates or other fees and charges payable by Merchant, whether such amounts are set forth in the Merchant Application, Schedule of Fees or Fee sections of the Agreement. IMS will provide notice to Merchant of the amendment, and unless specified otherwise, the amended agreement shall become effective at the start of the first billing cycle after IMS has provided notice. Amendments due to changes in either a Card Association's or Payment Network's fees, interchange, assessments, Rules, gift card systems or any law or judicial decision will become effective at such time that IMS may specify, which may be sooner than the beginning of the next billing cycle following the date of notice.

1.27 Additional Services Offered by IMS. From time to time, IMS may offer to Merchant additional

products and services which may or may not be related to the processing of credit card Transactions. In the event of such offers, Merchant shall indicate its desire to IMS to decline such offers or be deemed to have accepted the offers and be liable for payment therefore.

- 1.28 Merchant Dispute Notification.** Merchant is responsible for the timely reconciliation of all issues related to Services provided under this Agreement. Merchant must submit any dispute to IMS in writing within 60 days of the initial posting of the disputed item to the Merchant Account or appearance of the disputed item on the Merchant's statement.

Notices; Consent to Electronic Communications. By applying for services and confirming that it has read the Merchant Agreement, Merchant is confirming to IMS that it has the means to access the internet through its own service provider and download or print electronic communications. Merchant agrees to the receipt of electronic communications by email or by the posting of such information by IMS at one or more of IMS' sponsored websites, such as <https://merchantcenter.intuit.com/innovative>. Such communications may pertain to the services delivered by IMS, the use of information Merchant may submit to IMS, changes in laws or Rules impacting the service or other reasons, such as amendment of the Merchant Agreement. In addition, all notices and other communications required or permitted under this Agreement by IMS or Bank to Merchant may also be delivered by IMS or its Bank to Merchant either by FAX, overnight carrier or first class mail, postage or other charges prepaid, addressed and transmitted as set forth below. All notices and other communications required or permitted under this Agreement by Merchant to IMS and/or Bank shall be delivered by Merchant to IMS by overnight carrier or certified mail, postage or other charges prepaid, addressed and transmitted as set forth below. Notice by FAX or e-mail shall be deemed delivered when transmitted. Notice by mail or overnight carrier shall be deemed delivered on the first business day after mailing or delivery to the carrier. Following are the addresses for the purposes of notices and other communications hereunder, which may be changed by written notice in accordance with this section:

- (a) If to IMS and/or Bank, addressed and transmitted as follows:

Innovative Merchant Solutions
21215 Burbank Blvd., Suite 100
Woodland Hills, CA 91367
Attn: Merchant Services

- (b) If to Merchant, at the address provided as the billing address, or the FAX number or e-mail address and to the contact listed on the Merchant Application.

- 1.29 Further Assurances.** At any time or from time to time upon the request of Bank or IMS, Merchant will execute and deliver such further documents and do such other on, acts as Bank or IMS may reasonably request in order to effectuate fully the purposes of this Agreement.

- 1.30 Force Majeure.** Any delay in or failure of performance by IMS or Bank under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond their reasonable control, including, but not limited to, acts of God, power outages, failures of the Internet, failures of banking or ACH networks.

- 1.31 Choice of Law, Jurisdiction.** The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in California and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California. This Agreement will be governed by California law, without regard to its conflicts-of-law principles, and applicable federal law. The parties hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in California Superior Court in Santa Clara County, California and/or United States District Court for the Northern District of California. The parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of California or United States federal law.

- 1.32 Jury Waiver.** In the event any controversy or claim between or among the parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each party hereby waives its respective right to trial by jury of such controversy or claim.
- 1.33 Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or any part thereof, the prevailing party shall be entitled to recover its reasonable attorneys' and experts' fees and costs in addition to any other legal and/or equitable remedies to which it is entitled.
- 1.34 Publicity.** Merchant agrees that IMS may issue a press release or similar public announcement referencing Merchant as a customer of IMS. Merchant also grants to IMS a limited license to use Merchant's and its affiliates' names, logos, trademarks, service marks or copyrights in any advertising, promotional or instructional materials for IMS or its affiliates' services.
- 1.35 Intellectual Property.** IMS retains all right, title and interest in and to the services and any related technology utilized by it under or in connection with this Agreement, including but not limited to all associated intellectual property rights. No title to or ownership of any of the foregoing is granted to Merchant or any other entity or person under this Agreement. Merchant will not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of the IMS services or related technology.
- 1.36 Taxes.** Merchant shall promptly pay when due any and all liability or expense relating to the payment of federal, state, and local taxes (other than taxes based in whole or in part upon income attributable to IMS).
- 1.37 Rights Cumulative.** All rights and remedies existing in this Agreement are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.
- 1.38 Headings.** The headings listed after each section number in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.
- 1.39 Waiver.** Failure by Bank or IMS to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. All waivers must be signed by the waiving party.
- 1.40 Entire Agreement.** This Agreement, including the Merchant Application, the Schedule of Fees, the Rules, and Exhibits to this Agreement expresses the entire understanding of the parties with respect to its subject matter and except as provided herein. Reference to "this Agreement" also includes all documents incorporated into this Agreement by reference.
- 1.41 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.
- 1.42 Assignment.** This Agreement may be assigned by IMS, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of IMS and/or Bank. If Merchant nevertheless assigns this Agreement without such consent, the Agreement will be binding upon the assignee. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, and personal representatives for an individual, otherwise its permitted successors and assigns. If Merchant sells its business and the new owners incur Chargebacks or Returns, absent notification and consent by IMS, both the new owner and the original owner and all Guarantors will be held personally liable for all liabilities of the Merchant before and after the sale of the business.
- 1.43 Authorization of Agreement.** Merchant represents and warrants that the person signing or electronically authorizing the Agreement is duly authorized to bind Merchant to all provisions of this Agreement and that such person is authorized to execute any documents and to take any

action on behalf of Merchant which may be required by IMS now or in the future. Merchant will execute a separate Entity Certification if requested to do so by IMS. Merchant, by its signature, upon its first transmission of Transactions, or first payment of fees acknowledges that it agrees to be bound by this Merchant Agreement as it may be modified from time to time.

- 1.44 Relationship of the Parties.** The parties are independent contractors and nothing in this Agreement shall make them joint ventures, partners, employees, agents or other representatives of the other party.
- 1.45 Export Restrictions.** Merchant acknowledges that any software provided to it by IMS in connection with delivering services is subject to the U.S. Export Administration Regulations (15 CFR, Chapter VII). These laws include restrictions on destinations, end users and end use.
- 1.46 Counterparts.** If copies of this Agreement or any amendments are to be physically signed, this Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.
- 1.47 General.** Merchant is responsible for its employee's actions while in its employ. The parties do not intend to confer any benefits on any person or entity other than Merchant, IMS and/or Bank. Merchant is also responsible for procuring, maintaining and servicing all equipment and software necessary to allow it to engage with IMS systems to process transactions through IMS, as well as for all related Internet, telecommunication, mobile phone (including sms charges and mobile data plan fees) and other similar fees.
- 1.48 Survival.** All Sections of this Agreement that by their nature should survive termination or expiration will survive, including, without limitation, accrued rights to payment, indemnification obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

ARTICLE II. CARD TRANSACTION SERVICES.

The following terms and conditions govern card processing services provided by IMS to Merchant.

2.01 Advertising.

- (a) Merchant will prominently display the promotional materials provided by IMS and its Bank in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of IMS and its Bank.
- (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease their use and return any inventory to IMS and its Bank upon termination of this Agreement.
- (c) Merchant shall not use any promotional materials or Marks associated with Visa, MasterCard, AXP, Discover Network or JCB in any way which implies that Visa, MasterCard, AXP, Discover Network or JCB endorses any goods or services other than Card services.

2.02 Warranties of Merchant Regarding Card Transactions. Merchant hereby represents and warrants to IMS and Bank at the time of execution and during the term of this Agreement that:

- (a) Each Sales Draft presented to IMS' Bank for collection is genuine and is not the result of any fraudulent transaction and is not being deposited on behalf of any business other than Merchant. Further, Merchant warrants that each Sales Draft is the result of a Card

Transaction for the bona fide purchase of goods or services by the Cardholder in the total amount stated on the Sales Draft.

- (b) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby.
- (c) Merchant has complied with IMS and its Bank's procedures accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC 1601), or other relevant state or federal statutes or regulations.
- (d) Any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted.

2.03 Honoring Cards.

- (a) If Merchant elects to accept Card payments, Merchant will accept without discrimination, all valid Cards properly presented by Cardholders for payment for goods or services.
- (b) Merchant may establish a minimum transaction size for accepting Card transactions so long as such amount does not exceed \$10, or such other amount established by law, and such minimum transaction size requirement does not discriminate between card issuers or between payment card networks.
- (c) Merchant may offer discounts or in-kind incentives for payment by the use of cash, checks, debit cards, or credit cards, provided that the terms of the discount or in-kind incentives do not differentiate on the basis of the issuer of the card or payment network.
- (d) Merchant shall not accept a Card as payment (other than for a mail order, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an imprint or otherwise use the physical Card to complete the Transaction.

2.04 Card Acceptance. When accepting a Card, Merchant will follow the steps provided by IMS and its Bank for accepting Cards and will:

- (a) Determine in good faith and to the best of its ability that the Card is valid on its face.
- (b) Obtain Authorization before completing any Transaction. Where Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder.
- (c) Obtain an Imprint of the Card unless the Sales Draft is electronically generated from a swiped transaction or is the result of an Internet, mail, phone or preauthorized order.
- (d) If your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the cardholder's signature on the imprinted draft before processing the sales draft.
- (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes).
- (f) Obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card.
- (g) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a

point-of-sale terminal, at the time of the sale.

- (h) Offer the Sales Draft to IMS' Bank for purchase according to the Bank's procedures and the terms of this Agreement.
- (i) Legibly reproduce without alteration of the original transaction receipt, the Cardholder's name, account number, expiration date and the Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. Also, for MasterCard transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card.

2.05 Authorization.

- (a) Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a Voice Authorization from the designated authorization center, and will legibly print the authorization number on the Sales Draft. Fees for voice authorizations are as set forth in the schedule of fees.
- (b) Merchant shall not request Authorization for a Transaction unless Merchant intends to submit a Transaction for the authorized amount.
- (c) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee of payment.
- (d) Merchant will not attempt to obtain Authorization on an expired Card. Transactions will be deemed invalid on Cards that are expired, whether or not Authorization has been obtained.

2.06 Unusual and Suspicious Transactions; Account Monitoring.

- (a) Merchant acknowledges that IMS and/or Bank will monitor Merchant's daily deposit activity for purposes of monitoring compliance with this Agreement. Merchant agrees that Merchant's deposit activity will remain consistent with the "approved" monthly volume and average ticket amount approved on the Merchant Application and/or by IMS. IMS may require additional documentation if the Merchant should exceed "approved" monthly volume or average ticket, and Merchant agrees promptly to provide such documentation upon request. Merchant agrees that IMS may, in its sole discretion, elect not to process volumes over the approved monthly volume or overlimit transactions, and/or to close the account for cause in the event of overlimit or excessive activity. Merchant further agrees that IMS may, in its sole discretion suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity and that such suspension may subject Merchant to additional suspension fees as set forth herein. IMS and/or Bank will make good faith efforts to notify Merchant as promptly as is commercially reasonable. **IMS and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.**
- (b) **In the event of suspension arising from a suspicious or unusual Transaction, Merchant agrees that Merchant's account may be charged a Security Processing Fee of \$100 per suspended Transaction, and, if the suspended Transaction or unusual or suspicious activity exceeds \$3,000, an additional \$100 Investigative Fee may be assessed for each such event.**
- (c) If a batch is suspended by IMS, Merchant acknowledges that the consumer's product or service must be delivered just as if the Merchant has been paid. Further, if a batch or a transaction is suspended, Merchant acknowledges that fees associated with the transactions will be charged including security fees.
- (d) Merchant's presentation to IMS of Excessive Activity will be a breach of the Agreement and a

cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of Transactions or returns in excess of 3% of the average monthly dollar amount of Transactions or (ii) processing an Average Ticket above the amount approved by IMS. Merchant authorizes, upon the occurrence of Excessive Activity, IMS and/or Bank to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

- 2.07 Forms.** Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by IMS.
- 2.08 Retention and Retrieval of Cards.** Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions upon making a request for Authorization. In carrying out such obligation Merchant will not breach the peace or cause any injury to any person or property.
- 2.09 Personal Information.** Merchant may not require Cardholders to provide any personal information as a condition of honoring a Card unless such information is required for delivery of the goods or services or Merchant has reason to believe that the person presenting the Card may not be the actual Cardholder.
- 2.10 Records; Requests for Copies.** Merchant shall retain a paper or microfilm copy of all Sales Drafts and Credit Vouchers and if a mail, phone order or preauthorized order is involved, the Cardholder's signed Authorization for the Transaction for at least three (3) years after the date of the Transaction. Within three (3) business days of receipt of any written or verbal request by IMS and/or Bank, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof and any other documentary evidence reasonably requested by IMS and/or Bank. A failure of Merchant to deliver the requested documentation in the required time frame may result in the transaction in question being charged back to the Merchant Account and the Merchant losing further representation rights.
- 2.11 Multiple Transaction Records; Partial Payments:** Merchant shall include all goods and services purchased in a single Transaction at one time on a single Sales Draft, except: (i) for purchases in separate departments of a multiple department store; (ii) for installment payment; or (iii) for delayed or amended charges governed by rules for travel and entertainment merchants and transactions.
- 2.12 Telephone Orders "TO", Mail Orders "MO", Preauthorized Orders "PO" and Installment Orders "IO".**
- (a) Unless Merchant has been approved by IMS or its Bank to accept Internet, mail and phone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place. If Merchant is found to be accepting mail orders, telephone orders, or Internet Transactions without such consent, such charges are subject to chargeback, as provided in this Agreement. When allowed, telephone and Internet orders are permitted only to the extent that the contact is initiated by the Cardholder.
- (b) If authorized to accept payment by Internet, mail, phone or pre- authorized order, the Sales Draft may be completed without the Cardholder's signature or an imprint, but in such case Merchant shall create a Sales Draft containing Cardholder account number, expiration date, transaction date, an authorization number, the sale amount and the letters "MO", "TO", "PO", or "IO" as appropriate. In addition, the Merchant's business name, city and state must be included. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an imprint and the Cardholders signature.

- (c) For Approved MO, TO, PO, and IO Merchants, the Merchant must use reasonable procedures to verify that each Card sale is made to a purchaser who actually is the Cardholder or the authorized user of the Card. AVS is recommended and in some cases required. AVS is not a guarantee for payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent transaction.
- (d) Unless approved in writing by IMS and acknowledged by Bank, Merchant shall not process sales prior to delivery of product or service. If the product is being shipped, the customer must be given the shipping date of the product once the sale is processed.
- (e) Merchant may limit acceptance of returned merchandise or establish a policy to make price adjustments for any transactions. If a Merchant refund policy prohibits returns under certain circumstances, the Merchant may still receive a Chargeback relating to such sales pursuant to Association rules and regulations.
- (f) Merchant must not accept credit card sales via "electronic mail" over the Internet.
- (g) For any recurring transactions, Merchant must obtain a written, or other form of request from Cardholder for such goods and services to be charged to the Cardholder's account, which request must specify the transaction amounts to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not complete any recurring transaction after receiving a cancellation notice from the Cardholder, the Bank, or a response to an Authorization request, which indicates that the Card is not to be honored. Merchant shall type or legibly print the words "Recurring Transaction" on the signature line of the Sales Draft. Merchant shall provide a copy of written request to Cardholder's Bank upon request, and shall retain a copy of written request for one year after the agreement between Merchant and Cardholder is terminated. For multi-year agreements, Merchant shall renew written request with Cardholder annually during the 12th month of the current agreement.

2.13 Lodging and Vehicle Rental Transactions.

- (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Some lodging Merchants are eligible to participate in Visa's Advanced Deposit Service Program. Merchants participating in this service must adhere to the Advanced Deposit Service Program rules as set forth by Visa.
- (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

2.14 Returns and Adjustments: Credit Vouchers.

- (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. If applicable, Merchant must disclose to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms).
- (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature on the sales draft and

issued at the time of sale.

- (c) If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. Merchant will not refund cash to a Cardholder who paid for the item by Card.
- (d) Credits must be made to the same Card account number on which the original sale Transaction was processed.
- (e) If Merchant accepts any goods for return or terminates or cancels any services, in conjunction with each such transaction, Merchant shall have sufficient funds in its account available to IMS and/or bank to cover the amount of the transaction and any related fees.

2.15 Cash Payments. Merchant shall not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of a Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

2.16 Cash Advances.

- (a) Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party. Merchant agrees that any such deposit shall be grounds for immediate termination.
- (b) Merchant, shall not under any circumstances obtain Authorization for, nor process a sale on any card that Merchant is not authorized to use. Processing Merchant's own card is grounds for immediate termination.

2.17 Duplicate Transactions. Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks which may result therefrom.

2.18 Deposit of Fraudulent Transactions. Merchant shall not accept or deposit any fraudulent Transaction and may not present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source. Merchant shall not deposit Transactions evidencing sales that were solicited by outbound telemarketing activities. If Merchant deposits any such transactions IMS and/or Bank may hold funds and/or demand a Reserve Account. Perpetrators of fraudulent transactions will be referred to law enforcement officials and may be subject to Card Association penalties.

2.19 Collection of Pre-Existing Debt. Merchant shall not present any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

2.20 E-Commerce Address Notification. Merchant must display the address of its permanent establishment on its Website. This address should include the country of domicile and should be located either on the checkout screen used to present the total purchase amount to the Cardholder, or within the sequence of Web pages the cardholder accesses during the checkout process.

2.21 Automatic Payment Plan Card Sales.

- (a) Merchant must be approved by IMS to charge customers via an Automatic Payment Plan. Any transactions in violation of this provision are subject to Chargeback to Merchant.

- (b) If a Merchant uses the Internet or another electronic process to receive a Cardholder approval of the Automatic Payment Plan, the Merchant must retain all electronic evidence of the Cardholder's approval of the Automatic Payment Plan. The Cardholder's approval, whether written or electronic, must include all of the following information:
- (i) Cardholder's name, address and Card Number;
 - (ii) Amount of each Automatic Payment Plan Card Sale, unless the amount can vary;
 - (iii) Timing or frequency of payments;
 - (iv) Length of time over which the Cardholder permits the Merchant to bill Automatic Payments to the Card Account;
 - (v) Merchant's Merchant Number;
 - (vi) Card expiration date;
 - (vii) Total amount of Automatic Payments to be billed to Card Account, including taxes and tip(s), if an installation agreement;
 - (viii) A general description of the transaction
 - (ix) Merchant's business name and customer service telephone number that the Cardholder may call to obtain customer assistance from the Merchant or to revoke approval of the Automatic Payment Plan.
- (c) The first Automatic Payment Plan Card Sale must contain a positive response from the Address Verification System (AVS). If the first payment does not contain this information, all subsequent payments are subject to Chargeback to the Merchant.

2.22 Settlement of Transactions. Bank shall accept from Merchant all valid Sales Drafts deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card issuers for collection against Cardholder accounts. Settlement of all Sales Drafts is subject to this Agreement and the Rules. IMS and/or Bank shall provisionally credit the value of collected Sales Drafts to Merchant's Account and reserve the right to adjust amounts so credited to reflect the value of Chargebacks, fees, penalties, late submission charges, the difference in currency exchange if the Chargeback amount is greater than the original sale, issuer claims, and items for which Bank did not receive final payment for any reason. IMS and/or Bank may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all the terms and conditions of this Agreement; (b) the Cardholder disputes his liability to IMS and/or Bank for any reason, including but not limited to those Chargeback rights enumerated in the Rules; (c) the transaction giving rise to the Sales Draft was not directly between Merchant and Cardholder, or (d) the transaction is outside the parameters indicated on the Merchant Application. Merchant will pay IMS and Bank for any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by them.

2.23 Processing Limits. IMS may limit the dollar amount of Sales Drafts that it will process for Merchant. This limit may be changed by IMS from time to time with or without notice to Merchant. If Merchant exceeds the limit established by this Agreement, IMS may suspend processing, charge overlimit fees, hold the funds over the cap and/or return to Merchant all Sales Drafts evidencing funds over the cap.

2.24 Endorsement. The presentment of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with IMS and/or Bank's acceptance procedures and shall constitute an

endorsement by Merchant to IMS and/or Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of Bankruptcy Code 11 U.S.C. Section 365, as amended from time to time. Merchant acknowledges that its obligation to IMS and/or Bank for all amounts owed under this Agreement arise out of the same transaction as IMS Bank's obligation to deposit funds to the Account.

- 2.25 Transmission Method.** If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet IMS requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to IMS or its Bank in the form IMS from time to time specifies or is required under the Rules. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided IMS and/or Bank with at least 30 days prior written notice of Merchant's intention to change the means of such delivery or otherwise to alter in any material respect Merchant's medium of transmission of data to IMS.
- 2.26 Prohibited Payments.** Unless specifically authorized in writing by IMS and/or Bank, Merchant shall not collect or attempt to collect from a Cardholder amounts owed for any Transaction and shall promptly deliver to Bank any payment Merchant receives, in whole or in part from a Cardholder for any Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.
- 2.27 Chargebacks.** All Chargebacks are due upon presentation to Merchant. In the case of a failure to pay a Chargeback upon such presentment, in addition to any other remedies which may be exercised by IMS and/or Bank, Merchant agrees to pay a late charge of one and one half percent (1.5%) per month or portion thereof, or the highest amount allowable by law, whichever is less, on all unpaid Chargebacks. IMS and/or Bank are authorized to deduct the amount of any Chargebacks and fees from any settlement amounts due to Merchant or from the Reserve Account, if any, or collect by any other means. Merchant understands and agrees that Sales Transactions are subject to Chargeback for a variety of reasons under the Rules, or if Merchant has breached this Agreement, including without limitation, for the following reasons:
- (a) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Bank within the required time-frames.
 - (b) The Sales Draft does not contain the Imprint of a valid unexpired Card.
 - (c) A valid Authorization number has not been correctly and legibly recorded on the Sales Draft.
 - (d) The Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated for a single sale.
 - (e) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, or receive a required credit adjustment, or disputes the quality of the goods or services purchased.
 - (f) The price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment.
 - (g) The Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number.
 - (h) IMS reasonably believes in its discretion that Merchant has violated any provision of this

Agreement.

- (i) IMS reasonably determines that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, or offset for any reason whatsoever, including without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees.
- (j) Merchant fails to provide a Sales Draft or legible copy thereof to IMS and/or Bank in accordance with this Agreement.
- (k) Merchant shall not initiate a Transaction in an attempt to collect a Chargeback.

2.28 American Express; Additional Cards.

- (a) AXP OnePoint Program. If Merchant qualifies and does not request otherwise, IMS will enroll Merchant in the American Express OnePoint program to accept AXP cards. In accepting AXP cards under this program, Merchant is agreeing to the terms of the AXP Acceptance Agreement (<https://merchantcenter.intuit.com/innovative>) as that agreement may be amended from time to time. Under this program IMS will provide primary support services for AXP transactions and such transactions will be reported to Merchant in a single statement with other transaction information.
- (b) Direct Relationship with AXP. In some situations Merchant's seeking to accept AXP cards may enter into a direct merchant agreement with AXP. In these situations IMS facilitates the flow of information between Merchant and AXP, but does not provide primary support for AXP transactions.
- (c) Additional Cards. From time to time IMS may also notify you that you are able to accept other types of payment cards under the relationship with IMS ("Additional Cards"). The terms of this Agreement will apply to Additional Card transactions. IMS will notify Merchant orally and/or in writing of the fees applicable to Additional Card transactions. Merchant's acceptance of Additional Cards and transmission of Additional Card transactions to IMS will constitute Merchant's agreement to the terms of this Agreement with regard to Additional Cards.

2.29 Fees and Discount Percentages. The Schedule of Fees and/or Merchant Application set forth discount rates and other fees that apply to different types of Card Transactions. This section describes how IMS determines which transaction types qualify for the different transaction rates. Also, unless stated differently in the Schedule of Fees or the Merchant Application, the fees noted below will apply to Card Transactions. Additional charges that may occur from time to time include chargeback fees, representment fees and retrieval fees. A monthly minimum fee will be deducted unless you have met your minimum processing volume. The standard delivery method for Monthly Statements is in an electronic, online version that will be generated each month and located at <https://merchantcenter.intuit.com/innovative>. The Qualified Discount Rate will be deducted daily. If Merchant has 2-tiered pricing with Qualified and Non-Qualified Rates only, transactions listed in the Mid-Qualified category will be charged the Qualified rate.

- (a) Qualified Discount Rate. The Qualified Discount Rate will be charged on transactions that have the following attributes: Swiped Consumer Signature credit or debit cards where the full magnetic stripe has been read.
- (b) Mid-Qualified Discount Rate. The Mid-Qualified Discount Rate will be charged on transactions that have the following attributes and have not qualified to be charged the Qualified Rate: Keyed Consumer Signature credit or debit cards with matching AVS response for "card present" transactions; keyed Consumer Signature credit or debit cards with valid AVS response and order number for "card not present" transactions; Discover Network transactions with valid CVV, AVS and order number; swiped Consumer "Added Value" cards where the full magnetic stripe has been read; keyed Consumer "Added Value" cards with matching AVS response for "card present" transactions; keyed Consumer "Added

Value” cards with valid AVS response and order number for “card not present” transactions.

- (c) Non-Qualified Discount Rate. The Non-Qualified Discount Rate will be charged on transactions that have the following attributes and have not qualified to be charged the Qualified or Mid-Qualified Rate: Business, Corporate, Purchase, International, or Government cards; keyed Consumer credit and Signature debit cards where AVS is not present or missing any of the required data elements; batches not closed within one calendar day of transaction; all “High End Value”, Rewards, World Card, or other such rewards cards as defined by the card issuers; any Pre-Authorized sale that is not processed/captured within 7 business days.
- (d) AVS Fees. Automated AVS responses obtained through a POS or similar device are charged at a rate of \$0.10 each. AVS responses obtained from a live operator are charged at a rate of \$2.00 each.
- (e) Batch Header Fee. A Merchant is billed a batch header fee for each time a batch is transmitted to the Host for settlement. The batch header fee charged is equivalent to the transaction fee indicated on the application. If no transaction fees are indicated the batch header fee is 20¢.
- (f) Transaction Fee. A Merchant is billed a transaction fee each time communication is made with the Host. This fee is assigned by the Agent or sales representative at the time the Merchant applies for an account.
- (g) Visa International Assessment Fee. Visa charges an international service assessment fee of **.4%** for all international transactions. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.
- (h) MasterCard Cross Border Fee. MasterCard charges a cross border assessment fee of .40% on all cross-border transactions for non-U.S. issued MasterCard, credit or debit card transactions processed. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.
- (i) MasterCard Acquirer Support Fee. MasterCard charges an acquirer support fee of .55% on all U.S. region acquired transactions for cards issued outside the U.S. region. This fee will be passed to your account for all international transactions you process. This fee is in addition to the discount rate.

2.30 Effect of Termination.

- (a) In the event of termination for any reason, Merchant expressly authorizes IMS and/or Bank to withhold settlement of Transactions and other payment transactions of Merchant in the process of being settled.
- (b) At the discretion of IMS and/or Bank, collected funds may be placed in a Reserve Account (defined below) until Merchant pays any equipment and processing termination fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, IMS and/or Bank reserve the right to require Merchant to deposit additional amounts in the Reserve Account based upon Merchant’s processing history and/or anticipated risk of loss to Bank into the Reserve Account. The Reserve Account shall be maintained for a minimum of 270 days after the termination date or the date of the oldest transaction, and for a reasonable time thereafter during which Cardholder disputes may remain valid under the Rules. Any balance which remains in the Reserve Account after such period will be returned to Merchant. IMS and/or Bank may debit the Reserve Account for all amounts owed by Merchant under this Agreement.
- (c) Merchant expressly acknowledges that MATCH (formerly known as the Combined Terminated Merchant Files or “CTMF”) is a file maintained by MasterCard and accessed by

Visa, and the Consortium Merchant Negative File, maintained by Discover Network, containing the business names and the identification of principals of Merchant which have been terminated for one or more reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized transactions, excessive Chargebacks/Retrievals or highly suspect activity. Merchant acknowledges and agrees that IMS and/or Bank are required to report Merchant and the names and identification of its principals to MATCH and the Consortium Merchant Negative File if Merchant is terminated for any such reason. Merchant consents to such reporting to the Card Associations and Payment Networks by IMS and/or Bank and waives any claims which Merchant may raise against IMS or Bank as a result of such reporting. Merchant also consents to IMS reporting incidents of fraud, counterfeit paper, unauthorized transactions, excessive Chargebacks/Retrievals or highly suspect activity to the NCN.

- (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to IMS and/or Bank which are made after the termination date.
- (e) Following termination, Merchant shall upon request provide IMS and/or Bank with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination.
- (f) Effective immediately upon termination whether by Merchant, by Bank or by IMS, Merchant must cease the use of all Card Association and Payment Network signage which indicates the acceptance of those cards under this Agreement.

ARTICLE III. DEBIT CARD SERVICES

The following terms and conditions govern debit card processing services provided by IMS to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services, or subsequently elects to receive such services from IMS.

3.01 Services. Bank shall sponsor Merchant for membership in the debit card network that Merchant has selected. Merchant acknowledges that sponsorship does not guarantee acceptance. IMS shall process and settle Merchant's debit card transactions.

3.02 Debit Fees. Merchant agrees to pay IMS the fees for Debit Transactions as set forth in the Merchant Application as well as the following fees. Payment and modification of fees will be handled as set forth in Article I of the Agreement. Merchant acknowledges that in addition to the Debit Transaction Fee set forth on the Merchant Application, each debit transaction will also be charged the Network Fee on a per transaction and per network basis for the Networks accessed and utilized by the Merchant. These fees are subject to change from time to time to conform to the interchange provisions set forth by the Debit Networks. To review the most recent revision of all Network Fees, please refer to http://www.innovativemerchant.com/support/debit_fee_sched.php

3.03 Merchant Obligations.

- (a) Unless otherwise authorized by IMS, Merchant shall utilize IMS' compatible terminals, PIN pads or systems capable of processing all Automatic Clearing House (ACH) debit card transactions as well as online debit card transactions.
- (b) In connection with debit card transactions Merchant shall comply with all applicable laws, regulations and rules and regulations of the applicable debit card network.
- (c) Merchant shall be responsible for all paper copies of debit card transactions, in accordance with the applicable debit card network rules. Within one business day of the day of the transaction, Merchant shall balance each location to the system for each business day that such location is open.

- (d) Merchant shall be responsible for all telephone message unit costs, if any, which may be incurred by Merchant for the debit card services as well as expenses related to installation of and training in the use of terminals.
- (e) Merchant shall be responsible for entering data correctly. If an entry is made incorrectly, IMS shall use its reasonable efforts to assist Merchant in correcting the entry, but cannot guarantee that the effort will be successful.

3.04 PIN Security.

- (a) Merchant is expressly prohibited from requesting PIN numbers verbally or in writing as a condition of a sale. Merchant may not document or retain PIN numbers in any fashion at any time.
- (b) POS terminals must be positioned so as to be reasonably secure from observation by third parties. Merchant's security cameras must not be able to view the PIN pad. Pin Entry Device (PED) shielding will be considered as one of the possible prevention methods.
- (c) The operational placement and use of the Tamper Resistant Security Module (TRSM) must be within its intended physical and logical environment. POS terminals designed for indoor use are not suitable for outside use. The modification of TRSMs from their original manufactured specifications must be restrained.

ARTICLE IV. ELECTRONIC CHECK SERVICES

The following terms and conditions govern electronic check processing services provided by IMS to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application or thereafter.

- 4.01 Description of Service.** Under this service, Merchant may submit to IMS, for collection and payment, checks Merchant receives from its customers in payment of goods or services sold by Merchant. IMS will submit such checks or electronic images thereof (each an "Item") to a check clearing system for payment, and will deliver the collected proceeds thereof to Merchant via an ACH credit to a bank account designed by Merchant. These payment activities are referred to in this Agreement collectively as "Check Transactions."
- 4.02 Fees.** Merchant agrees to pay IMS the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. Payment of fees and changes to fees are subject to the terms of Article I of this Agreement.
- 4.03 Establishing Service.** Merchant is responsible for obtaining such hardware and software as may be necessary to utilize the service, and will only use such equipment which is approved by IMS. IMS will provide Merchant with the programming information necessary to process Check Transactions. Merchant agrees that IMS is not responsible for any damages which may be incurred by Merchant or any third party as a result of any failure of electronic processing equipment. If Merchant requests programming information for processing equipment not provided by IMS, IMS in its sole discretion may elect to fulfill such request and Merchant agrees to pay IMS a reprogramming charge in an amount determined by IMS. Merchant must also comply with customer notifications regarding electronic check processing by complying with IMS Guidelines and directions provided in customer welcome kits, including posting of notification decals, as applicable.
- 4.04 Eligible Checks.** Merchant agrees only to submit "Eligible Checks" to IMS for processing as Check Transactions. To be an "Eligible Check" the check must:
 - (a) be drawn on the Checkwriter's personal or business account, and must not be drawn on an account of Merchant or an affiliate or principal of Merchant;

- (b) be drawn on a United States financial institution in U.S. currency;
- (c) be a first-party check made payable to Merchant;
- (d) not have been previously negotiated;
- (e) not have been previously voided;
- (f) contain a pre-numbered serial number, except in the case of permitted Checkwriter not present transactions processed via the ACH network in compliance with all other authorization and other requirements;

Merchant acknowledges that credit card convenience checks, starter checks, traveler's checks, payroll checks and third party checks are not "Eligible Checks."

4.05 Additional Requirements:

- (a) Merchant will initiate Check Transactions only for original paper checks in its possession that are Eligible Checks;
- (b) Before scanning a check, Merchant will endorse the check with the legend "For Deposit Only";
- (c) Merchant will only create check images and submit Items from locations in the United States or United States territories, and all checks must be in U.S. dollars and drawn on a bank in the United States;
- (d) For each electronic image of an Item, all information from the front and back of the check, including the MICR information and payment amount, must be accurate and legible and must accurately represent all information on the front and back of the check at the time of conversion to an electronic image. Merchant will use key entry, as necessary, to correct any errors so that the electronic information submitted is accurate;
- (e) Merchant will not redeposit any Item previously transmitted by Merchant with IMS or any other bank; and
- (f) Merchant will employ commercially reasonable security measures and firewalls sufficient to protect transmissions and storage to ensure no unauthorized access to or duplicate presentation of Items.

Sections (a) through (d) of this section do not apply to permitted Checkwriter not present transactions processed via the ACH network in compliance with all other authorization and other requirements

4.06 Settlement. Subject to its rights under this Section, IMS shall credit Merchant's account for cleared Items for which it has received payment, generally within two business days of receipt, if the Item is submitted by the applicable cut-off time. Settlement may take longer, for example due to operational and clearing system delays, risk factors and other factors. Settlement activities will be set forth on online reporting tools made available to Merchant. Merchant authorizes IMS to submit ACH debits against Merchant's Account for any Item that was previously paid and later returned or dishonored, plus any amounts owed by Merchant under this section.

4.07 Merchant Account. Even if a check is an Eligible Check, IMS may, in its sole discretion, decline to accept the check for processing. IMS also may require Merchant to establish and fund a Reserve Account, as described further in Article I of this Agreement, to protect IMS and its banks of risk for Items submitted by Merchant. If funds in the Merchant Account are insufficient to cover Returns, immediately upon request from IMS, Merchant will deposit sufficient funds in Merchant Account to cover such Returns.

- 4.08 Transaction Risk Assumed by Merchant.** Merchant acknowledges that Items are subject to risk of non-payment, such as for insufficient funds or fraud. Merchant bears full risk of non-payment of Items, and agrees that IMS and its agents assume no liability therefore.
- 4.09 Compliance with Laws, Rules and IMS Guidelines.** Merchant shall comply with the terms of Article I in connection with its activities under this section.
- 4.10 Acknowledgments and Warranties of Merchant.** Merchant further agrees as follows:
- (a) Once an electronic image of an Item is transferred to IMS, Merchant will no longer have any rights with regard to the Item, provided that if an Item for which Merchant was paid is subsequently dishonored or reversed, Merchant will retain the rights to the original check. Merchant represents and warrants that no person will receive a transfer, presentment, or return of, or otherwise be charged for, the Item (either the original Item, or a paper or electronic representation of the original Item) such that the person will be asked to make payment based on an Item that has already been paid;
 - (b) Merchant waives all rights to bring a claim, including without limitation a claim of conversion, against IMS, any bank which is an agent of IMS, and the ODFI, for Items submitted for processing; and
 - (c) Merchant agrees that it has no right, title or interest in any funds or bank account owned or controlled by IMS, including without limitation, any clearing account into which check proceeds are deposited.
- 4.11 Implied Termination.** If Merchant does not use Check Services for a period of 60 days or more, at IMS' request, Merchant may be required to requalify for the continuation of Check Services.

ARTICLE V. CHECK VERIFICATION SERVICES

The following terms and conditions govern Check Verification services provided by IMS to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services or thereafter.

- 5.01 Description of Service.** IMS provides Check Verification services for Merchant's use in assessing risk before accepting Checkwriter checks. These services entail Merchant submitting information about the proposed payment account and Checkwriter to IMS, which IMS cross-references against IMS' National Check Network® database and/or other risk management systems that contain check payment information to help better understand the payment risk.
- 5.02 Fees.** Merchant agrees to pay IMS the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment of such fees, and changes to the fees, are set forth in Article I of this Agreement.
- 5.03 Verification Information.** Merchant seeking Verification Information for a proposed check transaction must present to IMS the MICR information, and if requested by IMS, the Checkwriter's Drivers License Information. Merchant agrees to only submit information that it believes in good faith is complete and accurate. IMS will evaluate the information upon receipt and will provide Merchant with a response based on its analysis of the information submitted. IMS will provide to Merchant information describing the meaning of the responses provided to Merchant. Merchant may use this information in determining whether to accept the payment in the form presented.
- 5.04 Merchant Bears Payment Risk.** Merchant understands and acknowledges that the Check Verification response provided by IMS does not guarantee Merchant will receive payment for the check. Merchant understands and agrees that except for payments expressly covered by Check Guarantee Services subscribed to by Merchant, it bears the full risk of non-payment for checks it accepts.
- 5.05 Denial Notices.** If Merchant elects to decline a check based on Verification Service information

it receives, Merchant must provide to Checkwriter a Denial Notice in the form approved by IMS. This notification contains IMS and/or IMS affiliate contact information to facilitate Checkwriter's inquiries relative to the nature of the checking account information in the databases used by IMS for verification.

- 5.06 Use of Verification Information.** Merchant agrees to utilize Verification Services in conjunction with bonafide business transactions directly between Merchant and Checkwriters and that response data received by Merchant shall be used for this service and for no other purpose. Merchant further agrees that it will take all reasonable steps to prevent disclosure of any Checkwriter information to any party other than the Checkwriter and IMS. Merchant acknowledges that it has received and read the notice information prepared by the Federal Trade Commission that is attached to this Agreement and also located at <http://www.ftc.gov/os/2004/11/041119factaapph.pdf> describing Merchant's obligations under law when using Checkwriter information.
- 5.07 Submission of Checkwriter Information.** To enhance the effectiveness of the Check Verification service, IMS continuously collects and enhances information regarding checkwriting activity. Merchant authorizes IMS to update data sources used by IMS with Checkwriter information obtained by IMS in conjunction with the Verification Services provided to Merchant. Merchant agrees and acknowledges that such information may be utilized by other merchants. Merchant acknowledges that it has received and read the notice information prepared by the Federal Trade Commission that is attached to this agreement and also located at <http://www.ftc.gov/os/2004/11/041119factaapph.pdf> describing Merchant's obligations under law when supplying Checkwriter information.
- 5.08 Special Indemnification Applicable to Verification Services.** Merchant agrees to indemnify, defend, and hold IMS and its affiliates harmless from any and all claims, complaints, damages, court costs and related expenses, including attorney's fees, arising out of or related to: (1) inaccurate Checkwriter information provided by Merchant to IMS; and (2) any acts or omissions of or failure to comply with applicable law by Merchant, its employees and agents in connection with the Verification Services
- 5.09 Posting of NCN Decal.** Merchant agrees to conspicuously post a decal at each of its point of sale locations indicating that it utilizes the NCN database.
- 5.10 Non-guarantee of Accuracy.** Merchant acknowledges and agrees that IMS does not guarantee the completeness or accuracy of and disclaims all representations and warranties, express or implied, in the information provided Merchant under this service.

ARTICLE VI. CHECK GUARANTEE SERVICES

The following terms and conditions govern Check Guarantee Services provided by IMS to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services thereafter.

- 6.01 Description of Services.** IMS will assume the risk of payment for certain types of properly processed check transactions for a Merchant who applies and is accepted by IMS to receive Check Guarantee Services. IMS has sole discretion to decide the types of transactions that qualify for such services. IMS will attempt to collect, on Merchant's behalf, checks that were not eligible for guarantee.
- 6.02 Payments by IMS.** For Check Guarantee Services, IMS will pay Merchant via an ACH transaction the full amount of Check Transactions that meet the conditions for guarantee as set forth in this Agreement.
- 6.03 Fees.** Merchant agrees to pay IMS the fees for Check Transactions as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment for and changes to fees will be governed by Article I of this Agreement.

6.04 Guarantee Conditions. For checks to be eligible for Check Guarantee Services, Merchant must comply with the following obligations:

- (a) Compliance with Electronic Check Services Terms. Merchant must process check transactions electronically and comply with the provisions of the Electronic Check Services portion of this Agreement
- (b) Compliance with Verification Services Terms. Merchant must submit information regarding check transactions to IMS for payment risk evaluation and comply with the provisions of the Verification Services portion of this Agreement.
- (c) All Checks Included in Guarantee Service. Merchant must submit all personal and business checks it receives, that are capable of meeting the Check Guarantee requirements, to IMS for inclusion in the transactions being processed as part of the Check Guarantee Services.
- (d) Individual Check Requirements. In addition to the requirements set forth in the Electronic Check Services section of this Agreement, Merchant must ensure that all checks it processes as part of the Check Guarantee Program meet the following conditions:
 - (i) *Preprinting.* Checkwriter's name and complete MICR line information must be preprinted on the check by the check printer.
 - (ii) *Amounts Must Match.* The numerical dollar amount and the written dollar amount on the check must be identical.
 - (iii) *Date.* The date written on the check must be the same as the date on which the Transaction occurred.
 - (iv) *Signature.* Checkwriter must sign the check and the signature in the signature block must not be substantially different from the name imprinted on the check. The signature must reasonably correspond to the signature on Checkwriter's driver's license.
 - (v) *Alterations Initialed.* Any alterations of the check must be initialed by the Checkwriter.
 - (vi) *Address Information.* Checkwriter must have its complete residence address and residence phone number (including area code) preprinted or legibly printed on the check. The residence address must be within the United States. If the preprinted address is a P.O. Box, general delivery, APO, FPO, etc., the street address from the Checkwriter's driver's license must be legibly printed on the check by Merchant
- (e) Check Presentment Requirements.
 - (i) *Checkwriter Must Present Check to Merchant.* The check must have been presented by the Checkwriter whose name is imprinted on the check. The Checkwriter's physical appearance must reasonably correspond to the image and physical description of Checkwriter on his or her driver's license.
 - (ii) *Date of Presentment.* Merchant must submit the check for approval on the date that the Transaction occurs. Pre-dated and post-dated checks do not qualify.
 - (iii) Driver's License Information. Merchant must collect and submit electronically by either swiping driver's license or accurately hand keying into the current driver's license information during authorization to IMS.
- (f) Approval Response by IMS. The check and required Checkwriter information must be read

electronically in a manner approved by IMS and submitted electronically to IMS as an electronic Check Guarantee transaction for approval and receive an approved authorization response.

- (g) Underlying Transaction Disputes. A check transaction that is otherwise eligible for a Check Guarantee payment by IMS may become ineligible for a number of reasons related to the Transaction. For example, the following matters will disqualify an otherwise eligible check guarantee Transaction:
- (i) The Checkwriter claims that Merchant did not deliver the goods and services for which the check was issued.
 - (ii) The Checkwriter claims that the goods and services for which the check was issued were returned to the Merchant.
 - (iii) The Checkwriter claims that the goods and services provided by Merchant are defective or otherwise unsatisfactory. This includes but is not limited to a check on which the Checkwriter has placed a stop payment.
 - (iv) The Checkwriter claims that Merchant accepted full or partial payment or some other form of security to secure payment of the check.
 - (v) The Checkwriter claims that the check was negotiated, in full or in part, for (1) cash or cash equivalent (i.e. money order, travelers check, etc.), (2) payment on an open account, (3) as a replacement for a check or debt already owed to the Merchant, or (4) for goods and services substantially different from those generally provided by Merchant as described on the Application.
 - (vi) The Transaction for which the check was issued is determined to be illegal or invalid.
 - (vii) The Checkwriter claims that the Merchant agreed to delay settlement of the Transaction.

6.05 No Attempted Circumvention. Merchant agrees not to take any action to circumvent IMS' ability to assess the risk of the transaction for Check Guarantee approval. For example, Merchant may not submit multiple smaller amount checks in lieu of a single check with a large dollar volume.

6.06 Assignment and Transfer of Ownership of Returns. Merchant assigns to IMS all of its rights and interests in all Transactions for which Merchant has received payment of the Guarantee amount from IMS. Such rights include the right to forward the check to a collection agency or legal service for collection and to collect any Return Check Service Charges. Merchant further agrees to execute all documents reasonably required by IMS to evidence the transfer of such interests.

6.07 Chargeback of Guarantee Amount. If IMS determines that it paid to Merchant a guarantee payment for a Transaction that was subsequently shown to be ineligible for a guarantee payment, Merchant agrees that IMS may initiate a debit to the Merchant Account in the amount of such ineligible payment. In addition to the conditions under which a check may become ineligible for guarantee payment as set forth above, the following additional conditions may result in a reversal of a guarantee payment:

- (a) Merchant has made an error in processing the check. Such errors include, but are not limited to key-entry error of the check amount or the Checkwriter driver's license information.
- (b) Merchant Account was not current.

(c) Merchant did not deliver to IMS a legible copy of the signed Checkwriter receipt within five business days of IMS' request for evidence of the signed authorization.

- 6.08 Merchant Bears Payment Risk for Transactions that are Not Eligible Check Guarantee Transactions.** Merchant understands and agrees that it bears the risk of non-payment for Transactions that are not eligible for guarantee payments initially, or that become ineligible as provided in this Agreement. Response provided by IMS does not guarantee Merchant will receive payment.
- 6.09 Forwarding of Ineligible Returns.** IMS will automatically provide ACH or Agency Collection Services, as applicable, (together "Collection Services") for Returns that are not eligible for guarantee. These services will be provided in accordance with the Collection Services terms and standard collection service fees will apply to such activities. Merchant agrees to comply with the Collection Services terms, including the obligation to post notice of Returned Check Service Charge.
- 6.10 Risk Management Settings.** Merchant acknowledges that IMS maintains a proprietary risk management system. IMS is not representing that a check is "good" or "bad" nor is IMS making a credit decision or assessing a particular Checkwriter's creditworthiness. Merchant hereby acknowledges and agrees that IMS may make adjustments to the risk management settings, without notice to Merchant, as IMS deems necessary, and Merchant agrees to indemnify IMS for any claim by Merchant or a third party as a result of such adjustments.
- 6.11 Checkwriter Information.** Merchant agrees that all information relating to Checkwriter obtained by Merchant in connection with Check Guarantee Services will be used only for the business purposes contemplated by this Agreement. Merchant further agrees that it will take all reasonable steps necessary to prevent disclosure of any Checkwriter information to any party other than the Checkwriter and IMS, in accordance with the terms of this Agreement.
- 6.12 Compliance with Guarantee Conditions.** Merchant further acknowledges and agrees that Merchant's strict compliance with all Guarantee Conditions is material to Merchant avoiding Chargebacks under this Agreement.
- 6.13 Returned Check Service Charges.** Merchant agrees that in addition to the fees set forth in this Agreement, IMS shall be entitled to retain all Returned Check Service Charges on Check Guarantee Services.

ARTICLE VII. ACH REPRESENTMENT SERVICES

The following terms and conditions govern ACH Representment Services provided by IMS to Merchant in connection with other IMS offerings. Such services may be a component of a larger offering as detailed in offering documentation.

- 7.01 Description of Services.** IMS will resubmit for payment to Merchant all Returns that result from Insufficient Funds or Uncollected Funds. Should IMS be successful in collecting the re-initiated Check Transaction, IMS will remit 100% of the face amount of the collected Check Transaction to Merchant within five days of re-initiation. If an ACH Representment Service transaction that IMS has funded is subsequently reversed, IMS will reverse the payment made to the Merchant and Merchant will be liable to IMS for such amount.
- 7.02 Not a Guarantee of Payment.** Merchant understands that payment of Returns does not constitute a guarantee, and that Checkwriter has the right to contest the Check Transaction.

ARTICLE VIII. COLLECTION SERVICES

The following terms and conditions govern Collection Services provided by IMS and licensed collection agencies acting on behalf of IMS to Merchant in connection with other IMS-supplied Electronic Check

services. The following terms and conditions will apply when a Merchant who applies to receive such Collection Services in combination with another Electronic Check service offering is accepted by IMS for Collection Services. IMS will automatically provide Collection Services for ineligible guarantee returns for Merchants who subscribe to the IMS Electronic Check Guarantee Services.

- 8.01 Description of Services.** A Merchant that receives Collection Services appoints IMS as its agent to seek payment on behalf of Merchant for Returns that are not successfully paid through ACH Representation Services as well as Returns that are returned by Checkwriters' banks for reasons other than non-sufficient funds or uncollected funds.
- 8.02 Fees.** Merchant agrees to pay IMS the fees for Collection Services as set forth in the Merchant Application or Schedule of Fees for the offering that includes these services. The payment of such fees and changes to the fees are subject to the terms of Article I. IMS will also retain thirty percent (30%) of the face amount of the Returns collected from the Checkwriter as a result of IMS Agency Collection activities.
- 8.03 Types of Checks Eligible for Collection Services.** IMS will attempt to collect ineligible Returns received for a reason code other than for stolen or forged checks, or checks for which numeric and written amounts differ. Checks will be automatically submitted for collection by IMS check systems, without any action by Merchant. Merchant grants to IMS the right to seek collection of a check submitted to it for collection for a minimum of 90 days from the date of receipt. Such right shall survive termination of the Collection Services, or the entire Merchant Agreement.
- 8.04 Merchant will Not Independently Pursue Collection of Checks Submitted to IMS for Collection.** Merchant agrees not to seek collection of payments for unpaid checks which have been submitted to IMS for collection. If the Checkwriter of a check that has been turned over to IMS for collection makes payments directly to Merchant for a check subject to collection activities, Merchant agrees to promptly pay IMS the fee to which IMS would have been entitled if the Checkwriter had made such payment to IMS.
- 8.05 Merchant Cooperation in Collection Activities.** Merchant agrees to cooperate fully with IMS in obtaining payment for checks submitted to IMS for collection, including providing transaction documentation, providing documentation of the products or services rendered, and supplying any other reasonably required information.
- 8.06 Assignment of Collection Activities.** Merchant acknowledges and agrees that IMS may assign accounts to another collection service or legal service without written consent from the Merchant.
- 8.07 Special Indemnification Applicable to Collection Services.** Merchant agrees to indemnify, defend and hold IMS and its affiliates harmless from any damages, court costs and related expenses, including attorney's fees if Merchant accepts payment or returned check service charges for an outstanding and unpaid check submitted to IMS for collection without obtaining instructions or authorization from IMS for doing so.
- 8.08 Right to Cease Collection Activity.** IMS retains the right, in its sole discretion, to cease collection activity on any Return for any reason.

ARTICLE IX. INTERNET GATEWAY SERVICES

The following terms and conditions govern Internet Gateway Services provided by IMS to Merchant. The following terms and conditions will apply when a Merchant who applies to receive such Internet Gateway Solutions is accepted by IMS to receive such services.

- 9.01 Description of Services.** IMS provides Internet Gateway Services for Merchant's use in processing electronic payment transactions over the Internet.

9.02 Fees. Merchant agrees to pay IMS the fees for Internet Gateway Services as set forth in the Merchant Application or Schedule of Fees. The payment of such fees and any changes to such fees are subject to the General Fees section of this Agreement. If not set forth otherwise in the preceding locations, the following fees will apply for Internet Gateway Services:

Gateway Access Fee	\$25.00 per month
Credit Card Transaction Fee	\$ 0.10 per transaction
Reject Fee	\$15.00
Service Reactivation Fee	\$25.00 per occurrence

9.03 IMS Obligations. IMS will provide the Internet Gateway Services to Merchant , in all material respects, in accordance with the applicable service documentation made available to Merchant by IMS, and in accordance with applicable laws and regulations and the terms of this Agreement.

9.04 Service for Merchant Only. Merchant agrees that it will only use the Internet Gateway Services for its account as described to IMS in the Merchant Application, and that it will not submit payment data to IMS or otherwise process orders on behalf of any other entity or individual.

9.05 Information Submitted by Merchant. Merchant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to Merchant as further described in Article I of this Agreement. IMS will rely on information it receives from Merchant and may assume that all such information was transmitted by or on behalf of Merchant. Merchant agrees to upgrade its systems and take reasonable steps to implement recommendations by IMS that relate to authentication of Merchant's identity at the time of running transactions. Such measures may include, but are not limited to: (a) additional passwords, (b) use of IMS issued certificates provided to the SSL connection, and (c) registration of Merchant servers used to run transactions.

9.06 Data Privacy and Security. Merchant understands and acknowledges that it must comply with all obligations set forth in Article I for the safeguarding of information when using Internet Gateway services.

9.07 License to Use Innovative Gateway Solutions Marks. So long as Merchant receives Internet Gateway Services from IMS, IMS grants to Merchant a limited revocable license to use the Innovative Gateway Solutions Marks on Merchant's web site in connection with Merchant's offering of payment options to Merchant's customers. The preceding license relates only to the Innovative Gateway Solutions Marks, as such marks are made available at www.innovativegateway.com, and all such usage must conform to the IMS trademark usage guidelines located at www.innovativegateway.com.

9.08 Special Limited Remedy for Internet Gateway Services. All of the limitations on warranties and liabilities of IMS set forth in Article I apply to the Internet Gateway Services, however, Merchant's sole remedy for a breach by IMS of its warranties as they relate to Internet Gateway Services shall be an obligation of IMS to use commercially reasonable efforts to repair, or at its option replace, the Internet Gateway Services. Merchant acknowledge that IMS does not warrant that such efforts will be successful. If IMS' efforts are not successful, Merchant may terminate this Agreement in accordance with its terms. The foregoing shall constitute Merchant's sole remedy, and IMS' sole liability, for IMS' breach of any warranty for Internet Gateway Services.

9.09 Third Party Programs. Merchant acknowledge that the Internet Gateway Services provided by IMS are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs. Merchant will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. IMS makes no warranty, express or implied, with regard to any such third-party software.

9.10 Disclaimer. IMS ALSO EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE INDIVIDUAL MERIT AND LEGITIMACY OF ORDERS FORWARDED FROM YOU AND FOR ANY AND ALL CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM CONCLUSIONS DRAWN FROM THE DATA PROVIDED BY THE FRAUDSCREEN.NET SERVICE.

ARTICLE X. GIFT CARD SERVICES

The following terms and conditions govern Gift Card Services provided by IMS to Merchant. The following terms and conditions will apply when a Merchant who applies to receive such Gift Card Services is accepted by IMS for Gift Card Services.

10.01 Description of Services. IMS shall provide for the electronic processing of gift card transactions and purchases made by customers of Merchant who hold an approved card ("Gift Card").

10.02 Fees. Merchant agrees to pay IMS the fees for Gift Card Services as set forth in the Merchant Application or Schedule of Fees. The payment of such fees and any changes to such fees, are subject to the terms of the General Fees section of this Agreement. IMS will begin charging Gift Card Service fees for Merchants upon the earlier of the date when activity begins under the account, or beginning two months after Merchant has been approved, even if gift cards have not been ordered by Merchant. If an ACH transaction is rejected, Merchant will pay IMS a per-item reject processing fee of \$25.

10.03 IMS Obligations. IMS will provide the following "Gift Card Services" for Merchant:

- (a) IMS will electronically confirm that the Gift Card presented to Merchant by the presenter of the gift card ("Gift Card Holder") is an active account on the IMS electronic Gift Card processing system ("Gift Card System") and has sufficient funds that can be reserved or removed to pay for the Gift Card Holder's purchase. Merchant understands and agrees that an authorization by IMS indicates only the availability of sufficient value on a Gift Card account at the time of authorization and does not warrant that the person presenting the Gift Card is authorized to use such Gift Card;
- (b) IMS will provide for the electronic debiting of the Gift Card Holder's account when the Gift Card Holder has made a purchase, and the electronic crediting of the Gift Card Holders account when value is added to the Gift Card Holders account;
- (c) IMS will maintain an accessible electronic record of transactions as described above for a period of 60 days; and
- (d) IMS will supply to and accept from the Merchant all information and data reasonably required from time to time in connection with the Gift Card Services.

10.04 Merchant's Duties. In addition to satisfying its obligations under other sections of the Agreement, Merchant will do the following as a condition of receiving Gift Card Services:

- (a) Merchant will accept for processing by IMS any transaction initiated by a customer utilizing Gift Cards without discrimination with regard to the customer who initiated the transaction or the terminal at which a transaction was initiated;
- (b) Merchant may only be used to purchase goods or services of Merchant, except where Merchant is required by law to exchange Gift Cards for cash;
- (c) Merchant must use individual care and discretion to verify the identity of Gift Card Holder;
- (d) Merchant will supply to IMS all information and data reasonably required from time to time by IMS to

- (e) perform the Services, including the location of POS terminals and Gift Card Holder data and content as may be agreed upon by the parties from time to time and within such time or times as may be reasonably necessary to perform the Services promptly and in a proficient manner;
- (f) Merchant will maintain all transaction records and other records required by law or regulation to maintain in connection with the operation of the electronic point of sale processors (Card Terminals);
- (g) Merchant will obtain, operate, and maintain at its own expense the Card Terminal; Merchant will be responsible for the accuracy and adequacy of all data transmitted by it or on its behalf for processing by or storage of information on IMS Gift Card System;
- (h) Merchant will maintain sufficient "back-up" information and data to reconstruct any information or data loss due to any system malfunction and for reconciling its records with reports provided by IMS and promptly notifying IMS of any discrepancies;
- (i) Merchant will make both personal and IMS records available to IMS, all within such time or times and in such form or manner as may be reasonably necessary to enable IMS to perform the Services promptly and in a proficient manner;
- (j) Merchant will at its sole cost and expense be responsible for the sale and other distribution of Gift Cards and for associated marketing or advertising;
- (k) Merchant is responsible for obtaining authorizations in advance of each transactions, and for any losses it may incur in conducting transactions when an authorization is not obtained, as well as for any erroneous or fraudulently obtained authorizations;
- (l) Merchant will bear the risk of any loss, theft, alteration or damage to, or fraudulent or improper or unauthorized use of any Gift Card or Card Terminal upon the time of delivery of Gift Cards ordered through IMS, and at all times if ordered through a third party (with consent of IMS).

10.05 No Surcharge. Merchant agrees not to charge its customers increased fees, surcharges, or any other premium payments for Gift Card transactions, the use of the POS Terminals or the operation of the system unless such surcharges are permitted by applicable laws or regulations.

10.06 Limit on Gift Card Liabilities. IMS may impose a cap on the dollar amount of outstanding Merchant Gift Card liabilities, which IMS may change from time to time with or without notice. Should Merchant exceed the limit established by IMS, IMS may suspend processing, establish a Reserve Account, or take other actions as deemed necessary by IMS to guarantee the repayment of outstanding gift card liabilities.

10.07 Termination:

- (a) Termination by IMS. IMS may terminate the Gift Card Services as provided under Article I of the Agreement.
- (b) Termination by Merchant. Merchant may terminate the Gift Card Services if IMS materially breaches its obligations under the Agreement or if the operation and administration of the Gift Card System, is held to be illegal by any applicable judicial or regulatory authority.
- (c) Effect of Termination. Following the effective date of the termination of the Gift Card Service, neither party shall have any further rights with respect to each other except for those that arose prior to the effective date of the termination, including the mutual confidentiality provisions. Merchant shall not be entitled to a refund of any fees, charges, or other amounts paid to IMS. Merchant shall remain liable for, and shall continue to be

responsible for, meeting all financial and other obligations arising from its participation (including the payment of any and all applicable fees, charges, and other amounts) that may have arisen prior to the termination date. Each party shall cease the use of all materials and properties provided by the other; however the owning party must request in writing within ten days of the termination date that the materials be returned. Merchant shall notify its customers of any balance owed to the customer by the Merchant. Any chargebacks arising from the unused portion of Gift Card after termination are the sole responsibility of Merchant.

10.08 Gift Card System Downtime. Merchant understands and agrees that in the event that the Gift Card System is not able to verify transactions, IMS will not process gift card transactions and the Merchant accepts sole responsibility for any transactions it authorizes under such circumstances. Merchant will indemnify and hold harmless IMS from and against any and all damages, loss, liability, consequential damage, expense, claim or obligation arising in connection with unauthorized transactions.

10.09 Merchant Comply with Bankcard Obligations. Additional rules, policies, procedures, restrictions and laws will apply to those Gift Cards activated through the use of, or purchased by, a bankcard. Each of these provisions have been outlined in a separate bankcard Agreement with your bankcard service provider, but should be considered as relevant and applicable in relation to Gift Card transactions processed through the Gift Card System.

ARTICLE XI. ACCOUNT UPDATER SERVICE

The following terms and conditions govern the Account Updater Service provided by IMS to Merchant. The following terms and conditions will apply when a Merchant who applies to receive Account Updater Services is accepted by IMS and the account updater service provider for such service.

11.01 Description of Services. The Account Updater Service enables Merchant to electronically obtain updated account information from participating Card Associations and card Issuers for Customers with whom Merchant has an ongoing business relationship.

11.02 Fees. Merchant agrees to pay IMS the fees for Account Updater Services as set forth in the Merchant Application or Schedule of Fees. Payment and modification of fees will be handled as set forth in General Fees section of this Agreement.

11.03 IMS Obligations. IMS will provide the Account Updater Services to Merchant, in all material respects, in accordance with the applicable service documentation made available to Merchant by IMS and in accordance with applicable laws and regulations and the terms of this Agreement. IMS will provide Merchant with information on file exchange formats and layouts necessary to enable data exchanges under the program. IMS will transfer Merchant requests to participating Card Associations under the system and provide Merchant with updated account information it receives from participating Card Associations under the program within two business days of its receipt by IMS. IMS will also notify Merchant of any error corrections it receives from Card Associations regarding information requested by Merchant.

11.04 Merchant Eligibility. Merchant must meet the following requirements to receive Account Updater Services:

- (a) Merchant must be a U.S. merchant that has not been disqualified from processing with Card Associations and is in compliance with the Rules.;
- (b) Merchant must have a valid business need to receive updated account information, including but not limited to: subscription services, "Express checkout services," Membership (club) services, or recurring payment services;
- (c) Merchant must not be in a high risk business category as defined by participating Card Associations.

11.05 Merchants Obligations. In connection with the Account Updater Service, Merchant must:

- (a) Comply with any Card Association account updater terms of use provided by Card Associations from time to time;
- (b) Submit inquiries only for those accounts with which the Merchant has an ongoing customer relationship;
- (c) Request an account update for every eligible customer in its database at least once every 180 calendar days;
- (d) Update its customer account database within 5 business days of receiving an update from IMS or Card Associations, including any error corrections, and use such updated information in subsequent Card transactions;
- (e) Comply with the IMS specified account inquiry record and inquiry file layouts to facilitate data interfaces and correct any operational errors within 5 business days of receipt of an error notification from IMS or a Card Association;
- (f) Not request authorization on accounts that have returned a response of "Closed Account"; and
- (g) Not submit inquiries on behalf of any other entity.

ARTICLE XII. ELECTRONIC BENEFITS TRANSFER (EBT) SERVICES

The following terms and conditions govern Electronic Benefits Transfer (EBT) Services provided by IMS to Merchant, regardless of whether Merchant applies to receive such services at the time of its initial application for electronic payment services, or thereafter.

12.01 Applicability of Quest Rules. Merchant acknowledges that it will adhere to the Quest Operating Rules and Regulations as modified by Quest from time to time.

12.02 EBT Fees. If fees are not listed on Merchant Application to the contrary, the following fees are applicable. Payment and modification of fees will be handled as set forth in General Fees section of this Agreement.

- (a) Transaction Fee \$ 0.12 per transaction
- (b) Monthly Fee \$10.00 per month

EXHIBIT A

APPLICATION OF AGREEMENT TERMS TO IMS BUNDLED SERVICE OFFERINGS*

[Reserved for Future Use]

EXHIBIT B

DEFINITIONS

"Account" means a Bank account maintained by Merchant as set forth in Article I of the Agreement for the crediting of collected funds and the debiting of fees and charges under the terms of this Agreement.

"ACH" means the Automated Clearing House.

"ACH Network" means a funds transfer system that provides for the clearing of electronic entries for participating financial institutions.

"Agreement" means the Terms & Conditions, the Merchant Application, the Rules, the ACH Authorization and any supplementary documents indicated herein, as amended from time to time.

"Authorization" means a request to make a Card Transaction which is transmitted to the Card Issuer.

"AVS" (Address Verification System) means a system to verify the cardholder's Zip code and address.

"Card" means (i) a valid credit card in the form issued under license from MasterCard, Visa, Visa International, Inc., JCB ("Bank Card") or a Payment Network such as Discover Network, or (ii) any other valid credit card accepted by Merchant by agreement with IMS and Bank.

"Card Association" means MasterCard, Visa, Discover Network, JCB or any other Card Issuers that provides Cards that are accepted by Merchant by agreement with IMS and its Bank.

"Cardholder" means the person to whom a Card has been issued and whose name is embossed upon the face of the Card.

"Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.

"Chargeback" means the procedure by which and the value of, a Sales Draft (or disputed portion thereof) is returned to the Merchant by the Card Issuer.

"Checkwriter" means a customer who writes a check or authorizes an ACH debit or credit in conjunction with the purchase of goods and services from Merchant.

"Credit Voucher" means a document produced by a Merchant evidencing a refund or price adjustment for the credit to a Cardholder's account.

"Discover Network" means the payment network known as Discover Network.

"Driver's License Information" means: name, ID number and state code either swiped or hand keyed.

"Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically printing a Sales Draft.

"JCB" means JCB, International.

"MasterCard" means MasterCard International, Incorporated.

"MICR" means the magnetic ink character recognition which is imprinted on a check.

"NACHA" means National Automated Clearing House Association.

"NCN"- means National Check Network®" -- the national Checkwriter database maintained by IMS affiliates that may be utilized by IMS or its affiliates in providing services to Merchant.

"ODFI" means the Originating Depository Financial Institution designated by IMS on behalf of which debit and credit transactions are submitted to the Federal Reserve or other check and ACH settlement systems.

"Password" means unique alphanumeric access code provided to access information, software, database, and other content owned or licensed by IMS.

"Payment Card Industry Data Security Standard, or "PCI DSS" means the set of security standards relating to security of credit card data adopted by the Card Associations.

"Payment Network" means the procedures and systems used to settle process and certain financial transactions, such as Discover Network.

"Retrieval" means a Card Issuer's or Card Holder's request for a Transaction receipt.

"Return" means a Checkwriter check that was returned unpaid.

"Returned Check Service Charge" means a fee charged to Checkwriter for a transaction that is returned unpaid by the Checkwriter's bank.

"Rules" means the rules and regulations of any Card Association or Payment Network, as amended from time to time.

"Sales Draft" means the paper form, approved in advance by IMS, whether such form is electronically or manually imprinted, evidencing a sale Transaction.

"Settlement" means the debiting or crediting of funds to the designated bank account of Merchant resulting from Merchant Transactions under this Agreement.

"Transaction" means any retail sale of goods and services, or credit for such, from Merchant for which the customer makes payment through the use of any Card.

"Visa" means Visa U.S.A., Inc. or Visa International, Inc.

"VISA POS" – means the service of providing electronic check conversion using direct bank access for a portion of the check verification and clearing.

"Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction.

Innovative Check Solutions –

The following terms apply to Merchants who signed up for Innovative check Solutions offerings

By initialing and signing, or acknowledging consent by electronic means, the Innovative Merchant Solutions Merchant Application and/or Agreement, I represent that I have read this Agreement and that the business entity indicated on the application above agrees to be bound by all Innovative Check Solutions terms and conditions contained herein and confirms your offer to enter into an Agreement.

Your signature verifies all information on this application, including all Innovative Check Solutions terms and conditions contained herein and confirms your offer to enter into an agreement. Check Center's acceptance of your application, accepted by Check Center in your confirmation letter, forms the entire agreement.

APPLICATION/SERVICE AGREEMENT

UPON ACCEPTANCE BY AN OFFICER OF INNOVATIVE CHECK SOLUTIONS ("Check Center"), this Application, and any Premiums accepted by Check Center in your Confirmation letter, shall constitute a binding Agreement between YOUR STORE(s) and Check Center.

YOUR STORE(s) COVERED: YOUR STORE(s) shall include all Agents, Representatives, and/or Employees. YOUR STORE(s) covered by this Agreement shall have a unique Check Center store number and shall be billed individually.

CHECK ACCEPTANCE: Only YOUR STORE(s), covered by this Agreement, shall contact Check Center to request approval numbers for all U.S., Canadian, Puerto Rican or Guamanian checks, drawn in U.S. dollars, and presented to YOUR STORE(s) for goods or services purchased at the time of approval by the check writer. Based on Check Center's experience, the information in Check Center's computer files, and the information provided by YOUR STORE(s), Check Center shall inform YOUR STORE(s) whether Check Center will issue an approval number on each such check. YOUR STORE(s)' decision to accept or reject any check shall be made solely at YOUR STORE(s)' own discretion. Upon YOUR STORE(s)' acceptance of an approved check(s), YOUR STORE(s) hereby assigns all right, title and interest in and to such check(s) to Check Center.

WARRANTY: Check Center warrants the accuracy of its information. Check Center will pay YOUR STORE(s), up to the approval limit, the approved amount of any check covered by this Agreement, which amount shall not exceed the face amount of the check, when the information received from Check Center proves inaccurate and provided confidential and shall hold Check Center harmless from any loss, damage, costs, or reasonable attorney's fees incurred as a result of communication in any manner of such information by YOUR STORE(s).

SERVICE RATES: YOUR STORE(s) shall pay monthly to Check Center, in consideration for the information YOUR STORE(s) receives from Check Center, the fees indicated in the Merchant Application/Agreement, which will never be less than fifty cents per call, plus eleven cents per transaction. The service rate, plus the total per transaction charge, will be applied to the check amount of all checks called into Check Center. Check Center shall have, and YOUR STORE(s) acknowledges that Check Center shall have, the right to set off against any amount payable by Check Center to YOUR STORE(s) under any provision of this Agreement, any amounts owed Check Center by YOUR STORE(s), or any damages sustained by Check Center as a result of YOUR STORE(s)' violation, breach or non-performance of its obligations under this Agreement.

PAYMENTS: YOUR STORE(s) agrees to permit Check Center to debit Merchant's account for check guarantee services according to the terms of the agreement between YOUR STORE and Check Center's ACH agent. YOUR STORE(s)' payment will be delinquent if not received within two weeks of the statement date. It is understood that all payments due under this Agreement will be debited from YOUR STORE(s)' bank account. By selecting Innovative Check Solutions, I hereby authorize Check Center to automatically debit the bank account listed below for all payments due under this

Agreement. (Must also attach copy of voided check). If I change bank accounts I will provide Check Center with the new bank account information and authority to debit such new account prior to implementing any such bank charge.

SUBMISSION: YOUR STORE(s) shall mail any dishonored check covered under this Agreement, and all additional paperwork, to Check Center within thirty (30) calendar days of the approval date. All checks covered under this Agreement shall be deposited on Check Center's behalf to YOUR STORE(s)' bank account within three business days. Any dishonored check received by Check Center shall be processed within thirty (30) calendar days of receipt.

TERMS AND CONDITIONS: YOUR STORE(s)' compliance with the terms and conditions of this Agreement, to include the Agreement in its entirety, is an express condition to Check Center's obligation to pay YOUR STORE(s) when its information proves inaccurate and Check Center reserves for itself sole discretion to determine if YOUR STORE(s) has complied with the terms and conditions of this Agreement. This agreement has an initial one year term and will renew automatically in successive one year terms. However, all the terms and conditions of this Agreement, to include the Agreement in its entirety, may be changed by Check Center at any time upon ten (10) calendar days written notice. Such changes shall supersede any previous terms and conditions. YOUR STORE(s) may terminate this Agreement upon such change(s) solely by written notice of your intentions to do so within the ten (10) calendar days of Check Center's notice of change. This Agreement includes your Confirmation letter, which collectively forms the entire Agreement between YOUR STORE(s) and Check Center with respect to the subject matter hereof, and supersedes any prior Agreement, oral or written between YOUR STORE(s) and Check Center and/or its representative(s). YOUR STORE(s) agrees that the failure by Check Center to enforce any terms or conditions of this Agreement is not a waiver of any terms or conditions herein contained.

DEFAULT: Should YOUR STORE(s) become delinquent, or fail to comply with the terms and conditions of this Agreement, then Check Center may at its option: add to the normal payment cycle of any dishonored checks which would otherwise be paid by Check Center under this Agreement the number of days that YOUR STORE(s) was delinquent in paying any fee when due, void all approvals given to YOUR STORE(s) for checks not previously paid; demand immediate payment for all amounts owed under this Agreement, immediately terminate this Agreement; or any of the above. Should any employee of YOUR STORE(s) engage or participate, directly or indirectly, as principle or accessory, in any activity for the purpose of improperly obtaining any approval numbers, then this Agreement shall be immediately terminated, all approval numbers voided, and the total amount due for all YOUR STORE(s) covered by this Agreement shall become due and payable immediately. Check Center shall have, and YOUR STORE(s) acknowledges that Check Center has, the right to bill YOUR STORE(s) a 1.5% interest fee per month, or the highest amount allowable by law, whichever is less, on any amount owed by YOUR STORE(s) to Check Center that becomes delinquent. YOUR STORE(s) acknowledges that the assessment of any late fee and/or the acceptance of any payment from YOUR STORE(s) does not waive any rights that Check Center may have under this Agreement. If legal action is taken by Check Center to enforce this Agreement, then Check Center shall have the right to court costs and reasonable attorney's fees as determined by the court. YOUR STORE(S) AND CHECK CENTER ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.

YOUR STORE(s) WARRANTIES: As a condition to Check Center's warranty to the accuracy of its information, YOUR STORE(s) represents and warrants to Check Center that each and every check assigned to Check Center by YOUR STORE(s) is properly payable, and that with respect to such checks, the customer of YOUR STORE(s) has no valid defense to payment as determined in the sole discretion of Check Center, or claim against YOUR STORE(s), whether legal or equitable, based on federal, state or local laws, statutes, regulations, rules or ordinances. Check Center hereby reserves the absolute right to charge back any checks which have previously been paid, if upon further review by Check Center, such checks fail to meet any conditions or provisions set forth in the Agreement, as determined solely by Check Center. In the event that any customer of YOUR STORE(s) asserts a valid defense against payment of any dishonored check, disputes payment or asserts a valid claim against YOUR STORE(s), or YOUR STORE(s) accepts any payment on any dishonored check, or a check is

charged back, YOUR STORE(s) agrees to reimburse Check Center the amount paid by Check Center for the dishonored check, including reasonable attorney's fees, and agrees to indemnify and hold Check Center harmless from any and all claims made by such customer. Such amounts shall be due within ten (10) calendar days notice to YOUR STORE(s). YOUR STORE(s) shall take any and all measures necessary to assist Check Center in locating, recovering damages from, and prosecuting any person who has tendered a dishonored check to YOUR STORE(s), including the submission to Check Center of work orders, credit applications and any additional paperwork. YOUR STORE(s) agrees to post any and all notices required by law to consumers regarding check services, check charges or consumer fees charged for dishonored checks. YOUR STORE(s) agrees not to use any competitive check approval service during the term of this Agreement. YOUR STORE(s) agrees that Check Center may use YOUR STORE(s)' name in its promotional and advertising material.

VENUE: This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that any action for the enforcement of the terms and conditions of this Agreement shall be brought in the Courts of Sonoma County, California. YOUR STORE(s) agrees that this Agreement was formed in Sonoma County, California upon acceptance by Check Center.

The Warranty by Check Center does not apply to:

1. Any check not properly made and completed in its entirety at the time of its acceptance to include:
 - a. The Check Center approval number.
 - b. The check writer's valid U.S. Motor Vehicle Driver's License number and state of issuance, State Identification Card, or U.S. Military I.D. used to approve the check.
 - c. The current U.S. residence address and telephone number of the account holder. If Post Office box is used, or telephone number is not imprinted, the correct residence address and telephone number must be written on the check.
 - d. YOUR STORE(s) as the payee.
2. Any two party, travelers, employee, or credit card check. The check must be drawn on a demand deposit account (DDA).
3. Any postdated, predated, undated, or redeposited check. The date of the check must accurately coincide with the date of the approval number and sale.
4. Any counter check, temporary check, unpersonalized check or photo-copy of a check.
5. Any company check approved with a driver's license I.D. Company checks must be approved with the company phone number as answered or listed in the company's name for Check Center's warranty to apply. The I.D. of the person presenting the check must also be imprinted or written on the check.
6. Any stolen check where YOUR STORE(s) failed to compare the signature on the check against the signature on the current valid identification as displayed by the person presenting the check at the time of the transaction.
7. Any check accepted as a replacement of any previously dishonored payment, payment for accounts receivable or on credit or account.
8. Any check upon which YOUR STORE(s) has accepted partial payment for or any one particular sale or transaction, return of merchandise or entered into an agreement for payment.

9. Any check for which the check writer is not the purchaser of the goods or services at the time of approval.
10. Any check for which a refund is negotiated at any given time.
11. Any check with uninitiated changes to the originally inserted information on the check.
12. Any check for which an approval number has previously been sought from Check Center or any competitive Check or Inquiry Service.
13. Any check accepted for the purchase of a motor vehicle, except as noted below.

MOTOR VEHICLE LEASING AND SALES: The parties agree that the following conditions will also apply: YOUR STORE(s) covered by this Agreement shall contact Check Center to request an approval number for each check presented to YOUR STORE(s) when: 1) such check(s) represent the down payment on a motor vehicle. 2) The down payment represents less than thirty-five percent (35%) of the cash price of the vehicle, excluding trade-in and manufacturer's rebate, and 3) the sale is financed by a finance company that does not have common ownership with YOUR STORE(s).

Exhibit C

Index of Fees

Section	Description
1.13 (c)	Payment of fees and Other Amounts Owed; Late Payment Fee
1.14	General Fees
1.15 (b)	Term: Termination; Termination for Merchant Misconduct
1.15 (d)	Term: Termination; Software Recovery Fee
1.21 (b)	Safeguarding of Information
1.25 (a) – (g)	Equipment
2.06 (b)	Unusual and Suspicious Transactions; Account Monitoring
2.27	Chargebacks
2.29	Fees and Discount Percentages
3.02	Debit Fees
9.02	Internet Gateway Services: Fees
10.02	Gift Card Services: Fees
12.02	EBT Fees

December 2010