

# Terms and Conditions

Processing Terms and Conditions  
Funds Transfer Instructions  
Card Brand Rules  
ATM/Debit Network Rules  
TMS Products and Services  
TMS Equipment Agreement  
TMS Card Compromise Assistance Plan Agreement  
American Express OptBlue<sup>SM</sup> Program Agreement

Provided by



[www.tsysmerchantsolutions.com](http://www.tsysmerchantsolutions.com)

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

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## PROCESSING TERMS AND CONDITIONS

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

- A. WHEREAS, TMS works with one or more financial institutions, including BANK, who are Members of VISA, Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD"), and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, and other financial service card organizations, including certain ATM/Debit networks (together herein known as "CARD(S)");
- B. WHEREAS, TMS and/or its affiliates have a relationship with the Discover Network ("DISCOVER"), and American Express Travel Related Services Company, Inc. ("AMERICAN EXPRESS"), and other financial service card organizations, including certain ATM/Debit networks (collectively included in the definition of "CARDS" above). VISA, MASTERCARD, DISCOVER, AMERICAN EXPRESS, ATM/Debit Networks, and the other financial service card organizations and their related international entities shall be collectively known as "CARD BRANDS";

**Notice: Depending on MERCHANT's authorization and settlement composition, the reference to DISCOVER and AMERICAN EXPRESS in this AGREEMENT may not apply.**

- C. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and have TMS process and provide related support services and have BANK sponsor and pay MERCHANT for the resulting transactions ("SALES") pursuant to the terms and conditions set out below. For purposes of this AGREEMENT, ATM/Debit transactions shall mean those transactions processed on an ATM/Debit network ("NETWORK(S)") in an on-line real time environment requiring the entry of a personal identification number ("PIN"), and
- D. WHEREAS, MERCHANT may desire to be sponsored as a participant in certain NETWORKS, under the terms of the rules and regulations of each such NETWORK;
- E. WHEREAS, CARD BRANDS, NETWORKS, TMS, and BANK each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated herein by this reference and shall be referred to as the "RULES"; and
- F. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing; and
- G. MERCHANT understands that TMS is a registered agent of BANK with respect to the CARD BRANDS sponsorship;
- H. WHEREAS, all applicable ADDENDA are attached hereto and are made a part of this AGREEMENT.

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

### **1. GENERAL:**

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

## 1.6 Security Standards.

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

## **2. SPECIFIC OPERATING PROCEDURES:**

- 2.1 MERCHANT agrees that it will comply with all Card Acceptance Procedures in the RULES for each SALE, including, but not limited to the following:
  - A. MERCHANT agrees that it will obtain and record a valid positive authorization for all SALES in accordance with the RULES before submitting them to TMS for processing;

- B. MERCHANT must be able to prove, by evidence of a terminal capture of the magnetic stripe or chip or a signed SALES DRAFT (as defined in the RULES) showing imprint of the CARD, that the CARD was present at the time of SALE, unless specifically set up for Card Not Present transactions; and
- C. Failure to read the magnetic stripe or chip on the card may result in a DISCOUNT rate tier downgrade or a CHARGEBACK.
- 2.2 TMS, BANK and/or third party banks with which TMS or BANK have a relationship are members of certain NETWORKS and are willing to sponsor MERCHANT as a participant in such NETWORKS ("SPONSOR") as set forth in the Merchant Application. Additional NETWORKS may be available from time to time. TMS and BANK do not warrant the continuing availability of any NETWORK. MERCHANT agrees to pay TMS the then current FEES for any NETWORK added or deleted after the effective date of this AGREEMENT. MERCHANT hereby delegates to TMS and/or BANK the authority to decide to which NETWORK a given debit transaction will be routed.
- 2.3 MERCHANT agrees to accept valid CARDS of each of the selected NETWORKS and any minimums, maximums or surcharges imposed by MERCHANT will be in accordance with the NETWORKS, RULES and LAWS. MERCHANT agrees to comply with Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.
- 2.4 TMS may provide MERCHANT access through MERCHANT's terminals to the NETWORKS as set forth herein.
- 2.5 MERCHANT must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which MERCHANT totals and settles all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to TMS and BANK. In all cases, MERCHANT must present the record within three (3) business days after the transaction date, unless otherwise permitted by the RULES. Transactions contained in an untimely Batch Out may incur higher rates, be refused, be held for a one hundred eighty (180) day period, or become subject to a CHARGEBACK. MERCHANT is responsible for re-submitting a Batch Out or a sales ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. TMS and/or BANK are not liable to MERCHANT for higher rates or for amounts TMS and/or BANK did not collect, including but not limited to amounts collected by third party service providers.

### **3. PAYMENT OF SUMS DUE:**

- 3.1 MERCHANT agrees to pay TMS and/or BANK the fees set forth in the Merchant Application and all other sums owed to TMS and/or BANK for SALES and SERVICES as set forth in this AGREEMENT as amended from time to time ("FEES"). FEES include but are not limited to all CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to TMS and/or BANK by any affiliated entities of MERCHANT.
- 3.2 As set out in the Merchant Application and the Rate Descriptions, discount ("DISCOUNT") is a FEE charged as a percentage of gross SALES submitted by MERCHANT, which generally includes "Processing," "Authorizations," "Assessments," and "Interchange." Assessments and Interchange are the standard fees that the CARD BRANDS charge for the clearing of SALES transactions and are subject to change by the CARD BRANDS. Neither TMS nor BANK have direct control over these fees. Any adjustment in Interchange and Assessments by the CARD BRANDS may result in an adjustment to MERCHANT's DISCOUNT. TMS will notify MERCHANT in writing of any change in FEES caused by action of CARD BRANDS prior to any such change becoming effective. If permitted by the CARD BRANDS, notice to MERCHANT of any change in FEES caused by CARD BRANDS may be less than thirty (30) days.
- 3.3 DISCOUNT is quoted by TMS based on the information supplied by MERCHANT as set forth in the Merchant Application. MERCHANT agrees that the FEES are based on the term of this AGREEMENT, the method of processing, and the information set forth in the Merchant Application. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, TMS and/or BANK may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change, unless prohibited by the CARD BRANDS. MERCHANT agrees to pay such amended and/or additional FEES.
- 3.4 MERCHANT agrees that FEES not listed in the AGREEMENT will be charged at TMS's and/or BANK's current rate.
- 3.5 The FEES may be amended by TMS and/or BANK on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.6 MERCHANT agrees to pay TMS and/or BANK for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that neither TMS nor BANK is in any way financially responsible for CHARGEBACKS. Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS. MERCHANT's obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.
- 3.7 If the CARD BRANDS or a regulatory body governing TMS and/or BANK should levy a fine or penalty or assess a charge to TMS and/or BANK as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.8 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions set out herein, authorizes both TMS and BANK to make deposits and withdrawals from the DESIGNATED ACCOUNT. MERCHANT hereby grants to TMS and BANK a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT's (or any related entity under MERCHANT's control) obligations to TMS or BANK under this AGREEMENT. If required by TMS and/or BANK, MERCHANT agrees to cooperate with TMS and/or BANK and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount specified by TMS and/or BANK and MERCHANT agrees to deposit funds into the DESIGNATED ACCOUNT so that the minimum balance required by TMS and/or BANK is maintained. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. TMS may recoup and debit from the DESIGNATED ACCOUNT all non-VISA and non-MASTERCARD related FEES and other obligations due to TMS under this AGREEMENT or

any other agreement MERCHANT or MERCHANT's related entities have with TMS without prior notice to MERCHANT. BANK may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to BANK and/or TMS under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with BANK without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the DESIGNATED ACCOUNT, if any, shall be paid to MERCHANT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from TMS and/or BANK with respect to the DESIGNATED ACCOUNT. MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due TMS or BANK under this AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a RESERVE ACCOUNT, as defined below, is established, MERCHANT authorizes TMS and/or BANK to make withdrawals from the DESIGNATED ACCOUNT to replenish the RESERVE ACCOUNT as necessary.

- 3.9 MERCHANT agrees to provide TMS and BANK with a deposit in the amount of money required by TMS and/or BANK ("RESERVE ACCOUNT"), if determined necessary by TMS and/or BANK: (i) at the time this AGREEMENT is executed; (ii) if in the opinion of TMS and/or BANK, information received or discovered about MERCHANT reflects an adverse change in status; (iii) in the event that any information requested by TMS and/or BANK is not received; (iv) upon the notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of this AGREEMENT. BANK may withhold the payment for SALES in an amount reasonably determined by TMS and/or BANK as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, TMS and/or BANK may require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with BANK in the name of BANK and under the sole control of BANK, and MERCHANT grants to TMS and BANK a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to TMS and BANK under this AGREEMENT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT, or for such longer period if determined necessary by BANK and/or TMS in their reasonable discretion to protect BANK and/or TMS from future risk of loss. Both TMS and BANK may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to TMS or BANK under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the RESERVE ACCOUNT, if any, shall be paid to MERCHANT.
- 3.10 BANK agrees to pay MERCHANT for SALES less FEES owed to TMS and BANK by MERCHANT. BANK shall recoup and deduct FEES from incoming transactions or recoup and debit the same from MERCHANT's DESIGNATED ACCOUNT or the RESERVE ACCOUNT. MERCHANT agrees that BANK has the right to deduct these FEES at any time including on a daily basis if necessary. BANK is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to TMS and BANK after MERCHANT becomes insolvent, ceases to do business, or dissolves.
- 3.11 Both TMS and BANK have the right of recoupment and set-off. This means that both TMS and BANK may recoup and offset any outstanding or uncollected amounts owed to TMS or BANK under this AGREEMENT from: (i) any amounts BANK would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts TMS or BANK may owe MERCHANT under this AGREEMENT or any other agreement.
- 3.12 If MERCHANT does not pay any sums due within thirty (30) days from date of notice, TMS and/or BANK will charge, and MERCHANT agrees to pay, a late fee of one and one-half percent (1.5%) per month on the balance outstanding or the highest amount allowed by law. If MERCHANT breaches AGREEMENT or if TMS and/or BANK identifies suspicious or irregular activity related to SALES or SERVICES, TMS may refuse to process (and BANK may refuse to sponsor) SALES or to provide SERVICES and/or BANK may hold funds pending the cure of such breach or resolution of such activity.
- 3.13 If TMS or BANK takes any action against MERCHANT to collect any FEES or monies due to TMS or BANK from MERCHANT, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney fees, to the extent allowed by law.
- 3.14 If MERCHANT is a participant in a TMS third party program including, but not limited to, Agent Bank and/or CARD BRAND programs, and MERCHANT subsequently leaves such third party, TMS may amend the FEES or terminate the AGREEMENT.

#### **4. TERM OF AGREEMENT:**

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

#### **5. TERMINATION OF AGREEMENT:**

- 5.1 This AGREEMENT may be terminated by TMS or BANK at any time effective upon thirty (30) days written notice.
- 5.2 MERCHANT may terminate this AGREEMENT as follows:
- A. upon TMS's or BANK's default of any material obligation to MERCHANT thereunder and the failure of TMS or BANK to cure such default within thirty (30) days after written notice of such default;
  - B. upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM; or
  - C. on thirty (30) days notice of termination accompanied by payment to TMS of the ACCOUNT CLOSURE FEE.
- 5.3 In order to protect the CARD BRANDS, TMS, and BANK, TMS or BANK may terminate this AGREEMENT effective immediately for any of the following reasons:
- A. insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT's assets for the benefit of MERCHANT's property creditors, or if any part of MERCHANT's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter;
  - B. upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM;
  - C. if MERCHANT fails to pay any FEES when due;

- D. if MERCHANT has misrepresented or omitted any material information provided to BANK and/or TMS;
- E. if MERCHANT is in breach of the AGREEMENT or the RULES;
- F. if MERCHANT, after TMS's or BANK's request, fails to send copies of SALES DRAFTS to TMS or BANK;
- G. if MERCHANT submits for processing SALES that were not originated as a result of a direct SALE transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");
- H. if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of SALES in that or any prior month;
- I. in the event of a material change of MERCHANT's business as described in the Merchant Application ("BUSINESS");
- J. in the event the CARD BRANDS identify MERCHANT, its principal, or associated parties under any program designed to monitor merchants, or MERCHANT creates circumstances that cause harm or loss of goodwill to BANK or the VISA system;
- K. if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT; or
- L. in the event that Guarantor (if designated) gives notice of its intention to withdraw the Guaranty.

Notwithstanding anything to the contrary herein, this AGREEMENT shall terminate automatically without prior notice to MERCHANT in the event the sponsorship agreement between TMS and BANK is terminated.

In the event this AGREEMENT is terminated by BANK for any reason, or as a result of the sponsorship agreement between TMS and BANK being terminated, TMS and MERCHANT agree that TMS may, in its sole discretion, elect to continue under the terms of this AGREEMENT as between TMS and MERCHANT, should TMS be able and willing to find a suitable replacement sponsor bank for MERCHANT. Should TMS so elect, the AGREEMENT shall continue under its then current terms in full force and effect as between TMS and MERCHANT, with BANK removed as a PARTY. If TMS is unable or unwilling to do so, then the AGREEMENT shall terminate as between TMS and MERCHANT as well.

#### 5.4 Effect of Termination of the AGREEMENT:

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

### **6. BANKRUPTCY:**

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

### **7. INFORMATION AND DOCUMENTATION:**

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

- 7.6 MERCHANT will notify TMS immediately of any change in ownership, corporate or "d/b/a" name, location address, or the information contained on MERCHANT's imprinter plates.
- 7.7 If MERCHANT participates in any TMS third party program, MERCHANT agrees that TMS may report information as required to such third party.
- 7.8 MERCHANT is solely responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, SALES and any other customer information in accordance with this AGREEMENT, LAWS, and RULES.

**8. PROCESSING RESTRICTIONS:**

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

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

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its: (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent establishment" on its web site along with MERCHANT's country of domicile, either a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.
- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to TMS and BANK in accordance with the then current RULES and requirements of TMS, BANK, and CARD BRANDS. If MERCHANT is using a third party's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the third party is providing the customer service, then such third party is a separate entity and is not an agent of TMS or BANK. MERCHANT understands the AGREEMENT is between TMS, BANK, and MERCHANT. Disputes involving a third party shall be dealt with independently from TMS and BANK. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify TMS at the address set out in the AGREEMENT. MERCHANT must pay TMS and BANK regardless of any disputes it has with any third party. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to TMS and BANK, MERCHANT must disclose the relationship to TMS and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by TMS and BANK. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. Neither TMS nor BANK are liable for SALES they did not receive. MERCHANT understands that in the event MERCHANT rents TMS's terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.
- 9.3 MERCHANT agrees that neither TMS nor BANK is responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that TMS and BANK are not responsible for and are not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. MERCHANT should contact the third party for service of this equipment. MERCHANT shall not allow any third party to install, remove, or modify any terminal software application of TMS without the express written consent of TMS. MERCHANT agrees TMS can only process and BANK can only sponsor SALES received by TMS and BANK, and any third party is responsible for ensuring SALES are formatted and transmitted to TMS and BANK in accordance with the then current requirements of TMS, BANK, and CARD BRANDS. TMS and BANK may increase FEES if a third party presents SALES transactions not in accordance with the then current CARD BRANDS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by TMS and BANK. MERCHANT authorizes TMS to remotely access any Point of Sale equipment or software used by MERCHANT in connection with processing SALES, at any time without prior notice to or consent from MERCHANT, regardless of whether such equipment or software has been rented or sold to MERCHANT by TMS or a third party. Such access may entail maintenance, repair, upgrade, or risk mitigation functions performed on the equipment or software.
- 9.4 MERCHANT shall assume full liability and shall indemnify and hold TMS, BANK, and CARD BRANDS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

**10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:**

- 10.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. TMS and BANK shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. TMS and BANK shall

not be liable for any services or products of third parties. In any event, TMS's and BANK's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid to TMS by MERCHANT in the month prior to the incident giving rise to liability. In no event shall CARD BRANDS, or the CARD BRANDS' contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL TMS, BANK, THE CARD BRANDS, OR THE CARD BRANDS' CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR TMS AND BANK WERE ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

- 10.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY TMS, BANK, CARD BRANDS, AND CARD BRANDS' CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. TMS AND BANK ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

#### **11. WARRANTIES AND INDEMNITIES:**

- 11.1 MERCHANT understands that TMS and BANK merely provide processing and sponsorship services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, TMS and BANK do not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the CARD BRANDS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to TMS and BANK.
- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to BANK and does by this reference assign all its rights, title, and interest to payment for such SALES to BANK so that TMS and BANK may process SALES under the AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.
- 11.4 MERCHANT agrees to indemnify and hold harmless TMS, BANK, SPONSORS, and CARD BRANDS, including the CARD BRANDS' contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. TMS, BANK, SPONSORS, or the CARD BRANDS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify TMS, BANK, SPONSORS, and the CARD BRANDS for reasonable attorney fees or any other necessary expenses incurred by TMS and BANK by reason of such defense.
- 11.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 11.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

#### **12. NOTICES:**

- 12.1 All notices required under this AGREEMENT from MERCHANT shall be written paper notices effective, unless otherwise stated in AGREEMENT, upon the earlier of actual receipt thereof or the third (3rd) business day following such notices being deposited postage prepaid in the United States Postal System.
- 12.2 All written paper notices shall be sent to the following addresses, which may be changed by any PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:

If to TMS or BANK:

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

If to MERCHANT:

At the address set out in the Merchant Application or such alternative address as designated in writing by MERCHANT.

- 12.3 MERCHANT consents to receiving electronically rather than in paper form all notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at TMS's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Application. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that MERCHANT has such access. MERCHANT understands that there are costs related to access DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 12.1 and 12.2. MERCHANT acknowledges and agrees that notices hereunder,



whether electronic or paper, may be provided to MERCHANT in the form of messages attached to MERCHANT's monthly billing statements to the extent permitted by LAWS and RULES.

### **13. MISCELLANEOUS:**

13.1 **Assignment.** Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of TMS and BANK. TMS and BANK may each assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT. Without limiting the generality of the foregoing, MERCHANT shall not assign, transfer or encumber its present or future payment rights under this AGREEMENT or connected with a RESERVE ACCOUNT, if any; nor shall TMS or BANK be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless BANK consents in writing.

13.2 **Governing Law; Expenses Associated with Legal Process.** The PARTIES acknowledge and agree that this AGREEMENT and any Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this AGREEMENT and any Guaranty contained herein. All reasonable expenses (including, without limitation, reasonable attorneys fees) that TMS and/or BANK incurs in responding to legal process from third parties related to a claim against or investigation of MERCHANT (of which TMS and/or BANK is not a party to or subject of the applicable legal process) shall be reimbursed to TMS and/or BANK by MERCHANT.

13.3 **Arbitration.** THE PARTIES AGREE THAT ANY DISPUTE REGARDING, ARISING OUT OF, OR RELATING TO THIS AGREEMENT, ANY TRANSACTION GOVERNED BY THIS AGREEMENT, ANY GUARANTY CONTAINED HEREIN, OR THE PARTIES' RELATIONSHIP, INCLUDING THE SCOPE AND VALIDITY OF THIS AGREEMENT OR ANY GUARANTY CONTAINED HEREIN (INCLUDING THE VALIDITY AND SCOPE OF THE ARBITRATION OBLIGATIONS UNDER THIS SECTION, WHICH THE PARTIES ACKNOWLEDGE IS TO BE DETERMINED BY AN ARBITRATOR AND NOT A COURT), MUST BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION UPON A PARTY'S SUBMISSION OF A DISPUTE TO ARBITRATION UNDER THE AUTHORITY OF THE FEDERAL ARBITRATION ACT WHICH IS ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES.

MERCHANT agrees that any arbitration must be resolved on an individual basis and not a class-wide basis and that any dispute covered by this section may not be brought in a representative capacity or consolidated with any other proceeding against TMS or BANK. MERCHANT does not have the right to participate in a representative capacity or as a member of any class of claimants pertaining to any dispute subject to arbitration under this AGREEMENT.

Unless otherwise agreed to in writing by the PARTIES, the arbitration proceedings will be held in Omaha, Nebraska. In all cases, the arbitration shall be decided by a panel of three (3) arbitrators to be selected in accordance with the American Arbitration Association's Commercial Arbitration Rules. The arbitration proceedings and arbitration award shall be maintained by the PARTIES as strictly confidential but shall not be deemed to prohibit disclosure: (1) as required by court order or subpoena; (2) to the extent necessary to confirm, vacate or enforce the award; (3) to CARD BRANDS and NETWORKS for any reason at the sole discretion of BANK; (4) for disclosure in confidence to the PARTIES respective attorneys, tax advisors and senior management; and (5) to state and federal regulatory agencies with jurisdiction over BANK. The arbitrator(s) shall require the PARTIES to only: (1) disclose documents that they intend to rely on in presentation of their case at the hearing; and (2) depose only those witnesses that are knowledgeable about the relevant, material facts of the case

The arbitrators must follow the law and not disregard the terms of this AGREEMENT. The decision of the arbitrators will be final and binding on all parties to the dispute. The PARTIES agree that the United States District Court for the District of Nebraska has exclusive jurisdiction to enter any judgment upon the arbitration award.

If the arbitration obligations contained in this AGREEMENT are rendered void or unenforceable for any reason, MERCHANT agrees to all of the following: MERCHANT agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this AGREEMENT or any action, lawsuit, claim, counterclaim or other action relating to or arising under this AGREEMENT and/or any transaction governed by this AGREEMENT. This waiver of right to trial by jury is given knowingly, voluntarily and intentionally by MERCHANT and is intended to encompass each instance and each issue as to which the right to a trial by jury would otherwise be available. TMS and BANK are hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by MERCHANT. MERCHANT also covenants not to bring or participate in any class action against TMS or BANK based upon any claims arising from or related to this AGREEMENT. If a class proceeding is initiated against TMS or BANK, MERCHANT may not join that proceeding or participate as a member of that class. The PARTIES further agree that in the event the arbitration obligations contained in this AGREEMENT are rendered void or unenforceable for any reason that any and all actions, claims, suits or proceedings arising out of or relating to this AGREEMENT or any Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating to this AGREEMENT or any Guaranty contained herein.

13.4 In all cases, if MERCHANT brings any claim against TMS or BANK for any reason, MERCHANT shall commence the action within one (1) year of the date the error or incident giving rise to such action occurred. Notwithstanding the foregoing, if the one-year time limitation is prohibited or invalid under any applicable law, then no suit or action may be commenced or maintained unless it is commenced within the shortest applicable statute of limitations. The provisions of this section will continue in full force and effect after and notwithstanding the expiration or termination of this AGREEMENT.

13.5 **Waiver.** No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.

13.6 **Force Majeure.** TMS and BANK are not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.

13.7 **Entire Agreement.** This AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.

13.8 **Costs.** Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.

- 13.9 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.
- 13.10 Amendment. This AGREEMENT may be amended or modified by TMS or BANK effective upon thirty (30) days written notice. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.
- 13.11 Authority. By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.
- 13.12 P-Card. To the extent applicable, TMS and BANK agree not to use any information supplied by MERCHANT in the Purchasing Card Information that is required for acceptance of purchasing cards, in its decision as to whether to accept MERCHANT for processing. MERCHANT agrees to hold TMS and BANK harmless from any and all claims relating to the collection, processing, dissemination, and use or misuse of the information contained in the Purchasing Card Information. MERCHANT acknowledges that the information from the Purchasing Card Information will be sent to MERCHANT's corporate customers who pay with a purchasing card. MERCHANT agrees that TMS AND BANK are not responsible for any actions or omissions of others regarding this information.
- 13.13 Taxes. MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes, including penalties and interest, which may be assessed in connection with the services and related products provided under this AGREEMENT. The FEES set forth in the AGREEMENT are exclusive of any and all applicable taxes or assessments, whether designated as sales taxes, use taxes, ad valorem taxes, GST/HST taxes, VAT taxes or by some other name or designation, and including any interest or penalties thereon, which may be levied or assessed by any governmental or taxing jurisdiction in connection with the performance of services or provision of materials to MERCHANT by TMS. In the event of the payment of or for any such tax, assessment or expense by TMS, MERCHANT shall in turn pay TMS for such items.
- 13.14 Disclosure of Merchant Identification Number ("MID). For security reasons, MERCHANT must disclose its MID thereby authorizing TMS and BANK to make changes to its account. TMS and BANK may request from MERCHANT additional information to further verify MERCHANT's identity. TMS and BANK may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT authorizes TMS and BANK to share information regarding the MERCHANT's account with the person disclosing the MID. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.
- 13.15 Information. MERCHANT authorizes TMS and BANK to release and use MERCHANT's information, in connection with offering or providing business products and services, to third parties that provide services to TMS, BANK, or MERCHANT or to any third party that requests and has a reason to know such information, including but not limited to the CARD BRANDS, and any third-party having regulatory control over the PARTIES.
- 13.16 Counterparts/Facsimile. This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes TMS and BANK and their affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.
- 13.17 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and TMS or BANK may be monitored and recorded.
- 13.18 Binding Agreement. This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is approved by BANK; and (ii) TMS has received a negative response to its inquiry of the CARD BRANDS' programs designed to monitor merchants. The commencement of transaction processing under this AGREEMENT shall constitute BANK's approval and its signature to this AGREEMENT.
- 13.19 Products and Services. TMS may from time to time add products and/or services to the SERVICES. MERCHANT acknowledges and agrees that BANK and its affiliates have no obligation or liability whatsoever for (1) such products and services, (2) any actions or omissions of TMS with respect to such products and services, or (3) any claims or disputes arising out of the foregoing. At MERCHANT's request, TMS may provide such additional products and/or services to MERCHANT at TMS's then current rate. MERCHANT agrees to abide by all parameters set by TMS for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. TMS has made reasonable efforts to secure information and abide by the CARD BRANDS' security guidelines but TMS does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify TMS immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. TMS shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. TMS or MERCHANT may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.
- 13.20 Communication. MERCHANT authorizes TMS and/or BANK and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by TMS and BANK, its affiliates, or any third party that TMS or BANK shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold TMS and BANK, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.

- 13.21 **Disclosure.** The CARD BRANDS require that the following be disclosed to MERCHANT: (i) BANK is in control of TMS's performance under this AGREEMENT; (ii) BANK must pre-approve all FEES; (iii) the AGREEMENT may not be amended without TMS's and BANK's express written consent; (iv) TMS will not have access to MERCHANT's CARD BRAND related funds; (v) TMS may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party, any right or obligation of TMS set forth in this AGREEMENT; and (vi) BANK may not waive the foregoing requirements.

#### FUNDS TRANSFER INSTRUCTIONS

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

#### CARD BRAND RULES

**NOTICE: This information is a summary of common CARD BRAND regulations; however card acceptance, processing and chargeback procedures are subject to change. Capitalized Terms not defined herein shall have the meaning ascribed to them in the CARD BRANDS' regulations. If there are any differences between the CARD BRANDS' regulations and these RULES, the CARD BRANDS' regulations will prevail in every instance. To the extent these RULES or the CARD BRANDS' regulations conflict with applicable local, state, or federal laws, rules, or regulations, such local, state, or federal laws, rules or regulations shall govern. The CARD BRANDS publish summaries of the regulations for merchants. Some of these summaries may be accessed at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com). The AMERICAN EXPRESS OptBlue<sup>SM</sup> Program Merchant Operating Guide, which is incorporated into the AMERICAN EXPRESS OPTBLUE<sup>SM</sup> PROGRAM AGREEMENT by reference, may be accessed at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).**

#### CARD BRAND CARD ACCEPTANCE PROCEDURES

##### 1. Honor All CARDS:

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

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

**2. Sales Transactions:**

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

**3. SALES DRAFTS:**

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

**4. Security Features:**

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.
- 4.2 When an Electronic Cash Register ("ECR") or Electronic Draft Capture ("EDC") terminal reads the magnetic stripe/chip on the CARD, MERCHANT must check the CARD account number on the terminal (if displayed) against the account number embossed on the CARD or follow such other security check as is mandated by TMS and BANK from time to time. If the CARD is read with a terminal that displays the CARD number and the SALES DRAFT is printed, MERCHANT shall verify that the account number

displayed on the terminal match the embossed numbers on the face of the CARD. In the event that they do not match, the SALE must not be completed. Failure to follow these checks and procedures will expose MERCHANT to CHARGEBACKS.

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

**5. Authorization:**

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

**6 Returned Merchandise and Adjustments:**

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

**7. Cash Transaction:**

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

**8. Use of Promotional Materials and Marks:**

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

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

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

**CHARGEBACKS**

**10. General:**

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

**11. CHARGEBACK Reasons:**

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

**12. CHARGEBACK Monitoring Programs:**

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

**13. Other CARD BRAND Monitoring Programs:**

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

**14. CARD BRAND Registration Programs:**

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

**UNIQUE BUSINESS REQUIREMENTS**

**15. Card Not Present Merchants:**

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

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

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

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

**17. T&E Services:**

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

**18. Pre-authorized Health Care Transactions:**

- 18.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:
- A. a request for the services to be charged to the cardholder's account;
  - B. assignment of insurance benefits to the MERCHANT;
  - C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
  - D. duration of time, not to exceed one (1) year, for which permission is granted; and
  - E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.
- 18.2 MERCHANT must:
- A. retain a copy of the order form during the period it is in effect;



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

**19. Recurring Transactions:**

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

**20. Employee Purchases:**

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

**MISCELLANEOUS RULES**

**21. Liability of MERCHANT:**

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

**22. Supply of Information:**

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



## ATM/DEBIT NETWORK RULES

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

### ATM/DEBIT NETWORK CARD ACCEPTANCE PROCEDURES

#### **1. Discrimination:**

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

#### **2. SALES DRAFTS:**

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

#### **3. SALES DRAFTS - Distribution and Storage of Information:**

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

### CHARGEBACKS

#### **4. General:**

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

telephone. The MERCHANT will, on request of the NETWORK, cooperate fully with the NETWORK and the card-issuing participant in order that the participant may comply with the error resolution procedures.

**5. Monitoring Programs:**

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

**OPERATIONAL REQUIREMENTS**

**6. MERCHANT Name and Address:**

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

**7. Equipment:**

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

**8. Left CARDS:**

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

**9. Security Features:**

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

**TMS PRODUCTS AND SERVICES**

**Important Note: MERCHANT acknowledges and agrees that BANK and its affiliates have no obligation or liability whatsoever for: (1) the TMS Products and Services, (2) any actions or omissions of TMS with respect to the TMS Products and Services, or (3) any claims or disputes arising out of the foregoing.**

**TSYS InfoCenter**

- 1. MERCHANT may not access TSYS InfoCenter without the express written consent of TMS.
- 2. TSYS InfoCenter displays information related to the MERCHANT'S transaction processing activity between the MERCHANT and TMS via a web interface.
- 3. TMS will provide MERCHANT access to TSYS InfoCenter for the person(s) listed in the TSYS InfoCenter Access Application form(s) signed and submitted by MERCHANT. Access will be provided through a web site designated by TMS. MERCHANT agrees to pay all FEES associated with the TSYS InfoCenter product as stated in the completed and signed TSYS InfoCenter Access Application form(s). The PARTIES agree that any completed and signed TSYS InfoCenter Access Application form which is submitted shall be fully incorporated and made part of the AGREEMENT.
- 4. MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.
- 5. Information is encrypted by Secure Sockets Layer (SSL) technology. TMS has made reasonable efforts to secure information, but does not guarantee security. MERCHANT is responsible for protecting access to TSYS InfoCenter. Access to and uses of password protected areas of TSYS InfoCenter are restricted to authorized users only. It is the MERCHANT's obligation to immediately notify TMS if its PIN has been lost or stolen or if there has been unauthorized access.
- 6. MERCHANT may terminate the use of TSYS InfoCenter Web Site or any authorized user of the website by providing TMS with written notification of said termination. The PARTIES agree that said written termination(s) shall be fully incorporated and made part of the AGREEMENT. MERCHANT is fully responsible for terminating MERCHANT employee access. TMS may terminate MERCHANT access to the TSYS InfoCenter web site immediately upon notice to MERCHANT and said termination(s) shall be incorporated into the AGREEMENT.

7. TMS is not liable for any direct, indirect, incidental, consequential, or special damages arising out of or in any way connected with access to or use of TSYS InfoCenter, even if TMS has been advised of the possibility of such damages, including liability associated with any viruses which may infect MERCHANT's computer(s).
8. THE SERVICE AND CONTENT FROM OR THROUGH TSYS INFOCENTER ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED (INCLUDING BUT NOT LIMITED TO THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE). THE INFORMATION HEREIN MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. TMS ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT CONTAINED ON THIS SITE.
9. MERCHANT's access to and use of TSYS InfoCenter is subject to all LAWS, as well as, all CARD BRANDS' rules and regulations. TMS reserves the right to seek all remedies available at law and in equity for violations of the AGREEMENT or any other applicable law, rule or regulation, including the right to block access from a particular Internet address to the designated web site.

### **PAYMENT ACCEPTANCE APPLICATIONS**

TSYS® Acquiring Solutions, LLC ("TSYS") shall provide certain services and support for the Payment Acceptance Applications.

MERCHANT agrees to pay the fees as set out in the applicable Enrollment form(s) and as may be amended from time to time. MERCHANT agrees to abide by all parameters set out in any specifications or documentation as amended from time to time. MERCHANT agrees to provide the information requested in the Enrollment form(s).

MERCHANT agrees to be bound by the following:

1. MERCHANT shall only use the products and/or services indicated above for MERCHANT's internal business purposes.
2. Title and ownership of the Payment Acceptance Applications remain with TSYS.
3. MERCHANT may not (a) alter or modify the Payment Acceptance Applications, (b) reverse engineer, decompile, disassemble, or in any way attempt to derive the source code for the Payment Acceptance Applications, or (c) transfer the Payment Acceptance Applications to any third party or make the Payment Acceptance Applications available to any third party as part of any time-sharing or service bureau arrangement.
4. MERCHANT will not export or re-export the Payment Acceptance Applications without the appropriate United States or foreign government licenses.
5. All express and implied warranties regarding the products and/or services by TSYS and its suppliers to MERCHANT are disclaimed.
6. All consequential, special, and indirect damages are disclaimed on behalf of TSYS and its suppliers.
7. For U.S. Government End Users: The products and/or services indicated above are "commercial items," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically are "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the products and/or services indicated above are provided to U.S. Government end users (a) only as commercial end items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

### **TSYS MERCHANT INSIGHTS ESSENTIALS**

MERCHANT agrees to pay the applicable FEES listed on the Merchant Application for the TSYS Merchant Insights Essentials product. However, MERCHANT understands and agrees that the TSYS Merchant Insights Essentials product is offered by Oto Analytics, Inc. d/b/a Womply ("WOMPLY"), and not by BANK or TMS. TMS, BANK, and their affiliates are in no way responsible for the actions, inactions, performance or nonperformance of WOMPLY, or for disputes or resolving disputes of any kind arising from the products and services provided by WOMPLY. MERCHANT understands and agrees that MERCHANT's access to the TSYS Merchant Insights Essentials product is subject to WOMPLY'S acceptance of MERCHANT as a customer, and MERCHANT's agreement to WOMPLY's End User License Agreement. MERCHANT hereby authorizes TMS and/or WOMPLY to contact MERCHANT via phone, email, facsimile, or mail in regards to the products and services hereunder.

#### **TMS EQUIPMENT AGREEMENT**

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

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

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

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

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

1. TMS agrees to sell or rent to MERCHANT and MERCHANT agrees to buy or rent from TMS the EQUIPMENT described in the AGREEMENT or as added from time to time via MERCHANT's request through TMS's customer service center. MERCHANT's payment for EQUIPMENT or delivery of the EQUIPMENT to MERCHANT will constitute MERCHANT's acceptance of the applicable following terms and conditions. Payment for EQUIPMENT and any related fees shall be due and payable on the EFFECTIVE DATE of this EQUIPMENT AGREEMENT if purchasing EQUIPMENT, monthly if renting, or upon an otherwise agreed upon date or payment schedule. MERCHANT agrees to pay the fee(s) set out in the AGREEMENT and as added from time to time. MERCHANT is responsible for all sales, use, excise and other taxes, including penalties and interest, that may result from this transaction. The FEES set forth in this EQUIPMENT AGREEMENT are exclusive of any and all applicable taxes or assessments, whether designated as sales taxes, use taxes, ad valorem taxes, GST/HST taxes, VAT taxes or by some other name or designation, and including any interest or penalties thereon, which may be levied or assessed by any governmental or taxing jurisdiction in connection with the performance of services or provision of materials to MERCHANT by TMS. In the event of the payment of or for any such tax, assessment or expense by TMS, MERCHANT shall in turn pay TMS for such items. MERCHANT hereby authorizes TMS to debit payment from the MERCHANT's designated account established under the AGREEMENT for items ordered herein if payment does not accompany order.
2. Upon payment by MERCHANT to TMS of the entire purchase amount required herein, TMS shall sell, transfer and assign the purchased EQUIPMENT to MERCHANT for MERCHANT's use and benefit. All risks or expenses of loss, damage, or repair to the EQUIPMENT shall be borne by MERCHANT upon such transfer of title.
3. If MERCHANT is renting EQUIPMENT, MERCHANT agrees to pay TMS a monthly rental fee ("RENTAL FEE") for the EQUIPMENT until such time said EQUIPMENT is returned to TMS, which will be debited monthly from the MERCHANT's DESIGNATED ACCOUNT established under the AGREEMENT or billed separately to merchant if the DESIGNATED ACCOUNT no longer exists. If MERCHANT is purchasing the EQUIPMENT via multiple payments and terminates the EQUIPMENT AGREEMENT prior to completing the monthly purchase payments, then MERCHANT agrees to immediately pay the remainder of the purchase price or, if MERCHANT returns the EQUIPMENT under the conditions specified herein, MERCHANT agrees to pay TMS's then current RENTAL FEE for the length of time MERCHANT had the use of the EQUIPMENT.
4. MERCHANT agrees to pay the RENTAL FEE on a per month basis as rental for the EQUIPMENT. TMS may amend the RENTAL FEE on thirty (30) days written notice to MERCHANT. Submission by MERCHANT of SALES after such notice period shall be evidence that MERCHANT has received the amended RENTAL FEE and has agreed to such amended RENTAL FEE. MERCHANT is supplied with monthly reports by TMS regarding the EQUIPMENT. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to TMS within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
5. The PARTIES agree to each of the terms and conditions set forth herein and acknowledge that such provisions are binding upon each of them, their successors, heirs and assigns.
6. MERCHANT understands that a telephone jack and other equipment may be required for its phone system to be compatible with EQUIPMENT at MERCHANT's expense.
7. Upon expiration or termination of the EQUIPMENT AGREEMENT, MERCHANT agrees to remove the rental EQUIPMENT from its locations and deliver it to TMS at MERCHANT's cost in the same condition as when the rental EQUIPMENT was installed, normal wear and tear excepted. The PARTIES agree that the rental EQUIPMENT is and will remain personal property of TMS.
8. MERCHANT hereby assumes the entire risk of loss, damage or destruction of the EQUIPMENT from any cause whatsoever, until the delivery of the rental EQUIPMENT to TMS. If the rental EQUIPMENT is damaged, lost, or not returned to TMS, MERCHANT shall, at the option of TMS, repair the rental EQUIPMENT at MERCHANT's expense or pay TMS the current replacement cost of the rental EQUIPMENT.
9. MERCHANT hereby grants to TMS the right, during normal business hours, to enter any location under MERCHANT's control for the purpose of inspecting, repairing, or replacing rental EQUIPMENT.
10. MERCHANT shall and does hereby agree to indemnify and hold TMS, its agents, employees, successors and assigns harmless from any and all liability, damages or loss (including attorney fees and costs) arising out of the ownership, selection, possession, leasing or renting, operation (regardless of where, how and by whom operated), control, use, condition (including, but not limited to, latent and other defects, whether or not discoverable by TMS) maintenance, delivery and return of the EQUIPMENT. This indemnification and the obligations contained herein shall survive termination or expiration of EQUIPMENT AGREEMENT.
11. MERCHANT shall keep rental EQUIPMENT insured against all risks for not less than replacement costs of rental EQUIPMENT, naming TMS as an additional insured as its interest may appear.
12. If this EQUIPMENT AGREEMENT is terminated, TMS shall have the right to enter MERCHANT's locations for the purpose of recovering rental EQUIPMENT.
13. Neither MERCHANT nor any third party is authorized to make any alterations, repairs or changes including programming changes to rental EQUIPMENT. Any personal property attached to rental EQUIPMENT shall become part of the EQUIPMENT. TMS will provide maintenance service to rental EQUIPMENT during the term of the EQUIPMENT AGREEMENT. MERCHANT shall not allow any other person or entity to maintain or tamper with rental EQUIPMENT without the express written consent of TMS.
14. MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. TMS shall not otherwise be liable for any error, omission, delay, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, any use of EQUIPMENT or services provided by TMS pursuant to this or any other agreement. In any event, TMS's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the aggregate of monthly RENTAL FEES paid to TMS by MERCHANT in the six-month period prior to the incident giving rise to liability. IN NO EVENT SHALL TMS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR TMS WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. TMS is not responsible for any loss or

damages whatsoever sustained by MERCHANT arising as a result of any acts of God, strikes, flood, weather, shortages of parts or supplies or other events beyond its reasonable control.

15. TMS, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OF CONTRACT PERTAINING THERETO; THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE; THE ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT. UPON SALE OF THE EQUIPMENT TO MERCHANT, TMS HEREBY ASSIGNS, TO THE EXTENT POSSIBLE, ALL WARRANTIES AND RIGHTS OF TMS WITH RESPECT TO THE EQUIPMENT PROVIDED BY THE MANUFACTURER OF THE EQUIPMENT. TMS DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE MANUFACTURER'S WARRANTY.
16. Except as expressly provided herein, MERCHANT may not assign its rights or delegate its responsibilities regarding rental EQUIPMENT under this EQUIPMENT AGREEMENT without the prior written consent of TMS, which will not be unreasonably withheld.
17. The PARTIES acknowledge and agree that this EQUIPMENT AGREEMENT was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this EQUIPMENT AGREEMENT, including, without limitation, the validity, interpretation, construction, performance and enforcement of the EQUIPMENT AGREEMENT. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this EQUIPMENT AGREEMENT, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this EQUIPMENT AGREEMENT shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this EQUIPMENT AGREEMENT. If MERCHANT brings legal action against TMS for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.
18. No delay or failure by either PARTY to exercise any right under EQUIPMENT AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of fact or any other right, unless expressly provided herein.
19. Neither PARTY shall be responsible for the costs incurred by the other for negotiating or implementing this EQUIPMENT AGREEMENT and MERCHANT shall be responsible for installation of the EQUIPMENT.
20. The obligations of all PARTIES hereto incurred prior to the effective date of termination of EQUIPMENT AGREEMENT shall survive such termination.
21. In the event that any portion of EQUIPMENT AGREEMENT shall be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of the same and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of the same so as to render it valid, reasonable and enforceable.
22. This EQUIPMENT AGREEMENT may only be amended or modified by a subsequent written agreement by and between the PARTIES hereto.
23. MERCHANT hereby represents that the entering into of this EQUIPMENT AGREEMENT has been duly authorized by MERCHANT and that this EQUIPMENT AGREEMENT constitutes a legal, valid and binding obligation of MERCHANT, and is enforceable against MERCHANT in accordance with its terms.
24. This EQUIPMENT AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements and negotiations whether oral or written.

#### **TMS CARD COMPROMISE ASSISTANCE PLAN AGREEMENT**

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

#### **Card Compromise Assistance Plan**

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

#### **I. SCOPE OF AGREEMENT FOR DATA SECURITY EVENT EXPENSES**

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

## II. DEFINITIONS

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

## III. DUTIES IN THE EVENT OF A DATA SECURITY EVENT

- A.** Before TMS agrees to support TMS’s contractual obligations to MERCHANT under this **CCAP**, MERCHANT shall notify TMS in writing as soon as practicable within the **Notice Period** of an actual or alleged **Data Security Event** first discovered by MERCHANT during the **CCAP** term. Notice must include at a minimum:
1. MERCHANT’s name and all of MERCHANT’s **MIDs** alleged to have been breached;
  2. A description of the **Data Security Event**;
  3. The potential number of **Cardholders** affected by the **Data Security Event**; and
  4. A copy of all notices and correspondence sent and/or received by MERCHANT, concerning the **Data Security Event**.
- B.** All notices shall be sent to TMS at the following address:

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

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

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

#### IV. ADDITIONAL OBLIGATIONS

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

- A.** Merchant shall allow TMS and/or our insurers to examine and audit all of its records that relate to the matters covered by this **CCAP**. TMS and/or its insurers may conduct the audits during regular business hours during the term of the **CCAP** and within three (3) years after the term of this **CCAP** ends; and
- B.** MERCHANT shall pay all amounts payable when due to TMS under this **CCAP** or any other written agreement to which MERCHANT and TMS are a party, including the Merchant Transaction Processing Agreement to which this **CCAP** has been attached. MERCHANT shall also be responsible for the giving and receiving of timely notices as required under the **CCAP**, including, but not limited to, notice of a **Data Security Event** and any claim arising out of such **Data Security Event**.

#### V. EXCLUSIONS

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

- A.** any **Data Security Event** arising out of MERCHANT allowing any party (other than its employees or TMS) to hold or access **Cardholder Information**;
- B.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by MERCHANT's:
  - 1. directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or
  - 2. employees (other than officers) if any of MERCHANT's elected or appointed officers possessed knowledge of any such:
    - a) dishonest, fraudulent, malicious, or criminal or malicious act, error or omission;
    - b) intentional or knowing violation of the law or the **CCAP**, or
    - c) gaining of any profit or advantage to which MERCHANT is not legally entitled;prior to or at the time (a), (b) or (c) above were committed;
- C.** any **Data Security Event** caused by or resulting, directly or indirectly, from an act, error or omission of TMS, including, without limitation: (i) the disclosure of any **Cardholder Information** by TMS its employees or any person or entity to whom TMS provides **Cardholder Information**; or (ii) any failure of the TMS's operating environment security, computer system equipment or payment processing network; provided however, this exclusion does not apply to the actual or alleged failure of TMS to monitor the operations of, or the security procedures or computer systems used by, MERCHANT;
- D.** any **Security Event Expenses** arising out of or resulting from a claim, suit, action or proceeding against MERCHANT that is brought by or on behalf of any federal, state or local government agency;
- E.** any **Data Security Event** relating to MERCHANT if MERCHANT has experienced a prior **Data Security Event** unless MERCHANT was later certified (or re-certified) as PCI compliant by a qualified security assessor;
- F.** any **Data Security Event** involving MERCHANT if MERCHANT: (i) is categorized by any **Card Brand** as "Level 1"; or (ii) MERCHANT processed more than six million (6,000,000) **Bank Card** transactions during the twelve month period prior to MERCHANT's enrollment into this **CCAP**;
- G.** any expenses, other than **Security Event Expenses**, incurred by MERCHANT, arising out of or resulting, directly or indirectly, from a **Data Security Event**, including without limitation, expenses incurred to bring MERCHANT into compliance with the PCI Data Security Standard or any similar security standard;
- H.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom;
- I.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from any of the following:
  - 1. fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;

2. strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; or
3. electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; a failure of telephone lines, data transmission lines, satellites or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under TMS's operational control;
- J.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** (including nuclear materials), or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or in any way respond to or assess the effects of **Pollutants**;
- K.** any **Data Security Event** that was not properly reported to TMS during the **Notice Period**;
- L.** any **Data Security Event** occurring before the effective date of this **CCAP** between TMS and MERCHANT, or after the termination of **CCAP**;
- M.** any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- N.** any: (1) gaining of a profit or advantage to which the TMS or MERCHANT is not legally entitled; or (2) MERCHANT's expenses or charges (other than **Security Event Expenses**), including employee compensation and benefits, overhead, over-charges or cost over-runs;
- O.** any **Data Security Event** first discovered by MERCHANT after the effective date and time of the expiration, cancellation or non-renewal of this **CCAP** regardless of when the **Data Security Event** actually occurred;
- P.** any **Security Event Expenses** arising out of or resulting, directly or indirectly, from the infringement of copyright, patent, trademark, trade secret or other intellectual property rights; or
- Q.** any **Security Event Expenses** alleging, arising out of or resulting, directly or indirectly, from any discrimination against any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy.
- R.** any fines or assessment levied against MERCHANT that are not the direct result of a **Data Security Event**;
- S.** any **Data Security Event** arising out of any software not under license to MERCHANT; provided, however, this exclusion shall not apply to a **Data Security Event** arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data on MERCHANT's computer system or to collect data in transit to or from MERCHANT's computer system; or
- T.** any **Data Security Event** arising out of a breach in a computer system in which MERCHANT shares a common database(s), operating system(s) and/or software application(s) on a single piece of equipment at a single location with one or more legal entities who share no legal relationship to one another.

#### VI. LIMITS TO SCOPE OF PAYMENTS

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

Annual <b>Data Security Event</b> Limit:	\$ 1,000,000
Annual Per <b>Merchant</b> Limit:	\$ 1,000,000
Annual Per <b>MID</b> Limit:	\$ 100,000

**B.** On an annual basis, the most TMS will pay for the total of all **Security Event Expenses** and **Post Event Services Expenses** arising out of or related to any single **Data Security Event** during the term of the **Program** and reported to TMS within the **Notice Period** is the Annual **Data Security Event** Limit noted above, regardless of the number of merchants or **MIDs** involved with or impacted by such **Data Security Event**.

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

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

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

#### VIII. OTHER PROVISIONS AFFECTING SCOPE OF ASSISTANCE

##### **A. Coverage Territory**

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



## B. Term and Termination of the CCAP

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

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

## C. Opting-Out of the CCAP

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

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

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

For more information on the **CCAP**, please visit [www.royalgroupservice.com/ccap](http://www.royalgroupservice.com/ccap).

## D. Legal Action Against TMS

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

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

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

## E. Subrogation

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

## F. Payments Where MERCHANT Has Insurance Coverage

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

## G. Assignment

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

## H. Changes

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

## I. Reimbursement

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

## J. Title of Paragraphs

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

## K. Cancellation

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

## L. Organizational Changes

If during the **CCAP** term:

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

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

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

### **AMERICAN EXPRESS OPTBLUE<sup>SM</sup> PROGRAM AGREEMENT**

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

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

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

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

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

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

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

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

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

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

The following terms and conditions apply to MERCHANT's participation in the AMERICAN EXPRESS OptBlue<sup>SM</sup> Program ("AMERICAN EXPRESS CARD ACCEPTANCE"):

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

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

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

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

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

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

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

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

MERCHANT'S refund policies for AMERICAN EXPRESS SALES must be at least as favorable as its refund policy for purchase on any Non-Credit Payment Forms (as that term is defined in the AMERICAN EXPRESS RULES), and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with LAWS. MERCHANT may not bill or attempt to collect from any cardholder for any AMERICAN EXPRESS SALE unless a CHARGEBACK has been exercised, MERCHANT has fully paid for such CHARGEBACK, and it otherwise has the right to do so.

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