

# Merchant Program Agreement

Terms & Conditions and Merchant Operating Guide

## Compass Bank Merchant Program Agreement

This Merchant Agreement (the "Agreement") is by and between Compass Bank ("Bank") and the merchant identified below ("Merchant"). By signing or otherwise submitting a Merchant Services Account Application and Fee Schedule (the "Fee Schedule"), Merchant is considered to have signed this Agreement. By presenting any card item to Bank, Merchant signifies its acceptance of this Agreement and the terms and conditions herein.

### RECITALS.

Bank is a member of VISA Incorporated ("VISA"), MasterCard International Incorporated ("MasterCard"), and DFS Services LLC ("Discover<sup>®</sup> Network"), and provides services ("Merchant Program") to businesses accepting cards issued under the VISA, MasterCard, and Discover Network programs (each, a "Network"), as well as certain other credit cards, charge cards and debit cards issued by similar card sponsors or issuers ("Other Card Sponsors"), including American Express, Carte Blanche, Diner's Club, JCB, Interlink and Maestro. The Networks and the Other Card Sponsors are referred to herein as "Card Associations." Each Network and certain Other Card Sponsors issue operating rules and regulations, as amended from time to time (collectively the "Operating Regulations") which govern the relationship between Bank and such Card Associations and which affect the relationships among Bank, Merchant and persons ("Cardholders") who hold such credit or debit cards as are agreed upon by Bank and Merchant, and bear one or more logos owned or controlled by a Network or Other Card Sponsor ("Cards"). The Operating Regulations are incorporated herein and made a part of this Agreement by this reference.

Under the terms of this Agreement, Merchant agrees to participate in Merchant Program and to honor valid Cards when presented as payment for goods and services. Notwithstanding the forgoing, Merchant is not required to accept Cards from Other Card Sponsors, but may do so at its option. Bank will arrange for payment to Merchant for amounts arising from valid Card transactions, where such indebtedness arises from transactions that comply with the terms of this Agreement and represent bona fide sales or leases of goods and services to Merchant's customers.

THEREFORE, in consideration of the representations and agreements by Merchant and guarantors set out in the application on the Fee Schedule, which is incorporated into and forms part of this Agreement, and the mutual promises contained in this Agreement, Merchant and Bank agree as follows:

### 1. MERCHANT SALES.

**A. Honoring Cards.** Subject to the Operating Regulations and to Merchant Operating Guide (as defined in Section 2.A below), Merchant will promptly honor without discrimination any valid Cards properly presented for payment for goods and services provided by Merchant under the terms of this Agreement and under the terms of any agreement between Merchant and any Other Card Sponsor.

**B. Advertising.** Merchant will adequately display Card service marks ("Marks") and promotional materials available from Bank or Other Card Sponsors to inform the public which Cards will be honored at Merchant's place(s) of business. Merchant's right to use or display Card Marks will continue while this Agreement remains in effect or until Merchant is notified by Bank, a Network, or an Other Card Sponsor to cease their use and display. Merchant may use the Marks on promotional, printed or broadcast materials only to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that any Card Association endorses any goods or services of Merchant. Merchant may not refer to any Card in stating eligibility for its products, services, or membership.

**C. Prohibitions.** Merchant shall not charge Cardholder a service, finance, carrying charge or other amount for any Card transactions in addition to the price and other amounts that would have been charged for the transaction had it been for cash. Merchant will not make cash advances on Cards or honor Cards for any purpose other than bona fide sales or leases of merchandise or services or both made in the ordinary course of Merchant's business consistent with current practices. Merchant will not establish minimum or maximum transaction amounts for sales to Cardholders as a condition for transactions with Cards.

### 2. AUTHORIZATIONS AND PREPARATION OF CARD ITEMS.

**A. Merchant Operating Guide.** Merchant acknowledges receiving a copy of the Operating Guide (the "Merchant Operating Guide"), which is incorporated herein and made a part of this Agreement by this reference. Merchant agrees to follow all procedures set forth in Merchant Operating Guide, as it may be amended from time to time, including without limitation, the authorization procedures and the procedures for preparation of Card Items to be presented to Bank. As used in this Agreement, the term "Card Item" means sales drafts, credit vouchers, and similar documents and items used in connection with processing Card transactions, whether physically imprinted or electronically printed; and Card "transaction" refers to credits as well as debits to Cardholders.

**B. Liability for Card Transactions.** MERCHANT ASSURES THAT THE PERSON INITIATING ANY CARD TRANSACTIONS CONDUCTED WITHOUT A CARD BEING PHYSICALLY PRESENT, INCLUDING WITHOUT LIMITATION TELEPHONE, MAIL ORDER, INTERNET, RECURRING AND OTHER TRANSACTIONS, IS THE PROPER HOLDER OF THE CARD, EVEN WHEN AUTHORIZATION HAS BEEN OBTAINED FROM BANK OR AN APPROPRIATE AUTHORIZATION CENTER. IN OTHER WORDS, SHOULD THE PROPER CARDHOLDER DISPUTE ENTERING INTO THE TRANSACTION CONDUCTED WITHOUT A CARD BEING PHYSICALLY PRESENT, THE TRANSACTION MAY BE CHARGED BACK TO MERCHANT PURSUANT TO SECTION 4.A(xi) BELOW, WHETHER OR NOT THE TRANSACTION WAS AUTHORIZED.

**3. TRANSMISSION, PRESENTMENT AND PAYMENT OF CARD ITEMS.**

**A. Certain Transactions Authorized and Transmitted Only.** The Cards for which Bank will provide authorization and transmission only are designated on the Fee Schedule. Notwithstanding any other term or provision hereof, with respect to the Cards for which Bank is to provide authorization and transmission only (including Discover, American Express, Carte Blanche, Diner's Club and JCB), Bank's only involvement is and shall be to receive from Merchant's locations transactions arising from the use of such Cards and to transmit them to the applicable Other Card Sponsor. Bank will not pay for nor settle with Merchant for transactions involving such Cards and shall have no further obligation or responsibility with respect thereto. Merchant shall be responsible for obtaining any consent required by the Other Card Sponsors which issue such Cards, shall comply with all terms and provisions of its agreements with such Other Card Sponsors and any applicable Operating Regulations, and shall indemnify Bank from any loss, cost or damage with respect thereto. The provisions of the remaining subparagraphs of this Section 3 shall not apply to Card Items arising from use of Cards designated for authorization and transmission only, but shall apply to all other Card Items.

**B. Presentment of Card Items.** Merchant agrees to present all Card Items electronically to Bank, and to follow the procedures set forth in the Merchant Operating Guide in presenting Card Items to Bank. Merchant shall not deliver to Bank, directly or indirectly, any Card Item where there is, or would be upon presentment, breach of any warranty of presentment under the provisions of this Agreement as to that Card Item. Merchant agrees to bear the entire risk of loss or destruction of Card Items until Bank receives such Card Items in a format acceptable to it. Merchant's right to review, question or dispute Merchant's delivery of Card Items to Bank or Bank's receipt of any Card Items delivered from Merchant shall be limited to a period of ninety (90) calendar days following the transaction date of the Card Item.

**C. Endorsement of Card Items.** The electronic presentment of any Card Item to Bank will be deemed an endorsement of such Card Item by Merchant to Bank, and Bank is hereby authorized to place Merchant's electronic or physical endorsement on, or to process on Merchant's behalf without any endorsement, any such Card Item at any time. Subject to Bank's right to revoke provisional credit, and subject to Merchant's duty to repay Bank for chargebacks under Section 4, the presentment to Bank of any Card Items by Merchant for payment by Bank shall be final as to Merchant, so that Merchant has no right, title or interest in and to Card Items presented to Bank, or to any copy thereof.

**D. Bank's Right to Payment on Presented Items.** Except as provided below in this subsection, Bank will have the sole right to receive payment on Card Items presented to Bank; Merchant agrees not to sue, not to attempt to collect on such Card Items, in any manner, and not to receive any funds on account of any Card Items presented to Bank; if Merchant nevertheless receives any funds on a Card Item presented to Bank, Merchant will hold the funds in trust for the benefit of Bank and pay them to Bank promptly on receipt. In any case where Bank shall have charged back a Card Item to Merchant and Merchant shall have paid Bank for such Card Item, these restrictions will not apply.

**E. Representations and Warranties of Presentment.** As to each Card Item presented to Bank and as to the transaction evidenced by any such Card Item, Merchant represents and warrants to Bank that:

- (i) the Card Item represents a bona fide sale or lease of merchandise or services provided by Merchant to customers presenting their Cards for use in payment therefor in the ordinary course of Merchant's business;
- (ii) the Card transaction does not represent a refinancing of an existing debt of the Cardholder;
- (iii) unless Bank shall have previously agreed in writing, the Card used in the Card transaction was not issued to Merchant, any owner of Merchant (if a proprietorship), any general partner of Merchant (if a partnership) or any officer of Merchant (if a corporation);
- (iv) the transaction and the authorization, preparation and presentment of the Card Item comply with the terms and conditions set out in the applicable Operating Regulations and this Agreement, including the Merchant Operating Guide;
- (v) the Card Item has not previously been presented to Bank or any other bank or processor of Card transactions;

(vi) the Card Item arises out of bona fide sale or lease of merchandise or services permitted by law to be sold or leased by Merchant, and the transaction otherwise complies with all governmental rules and regulations binding upon or applicable to Merchant;

(vii) Merchant has no knowledge or notice of information to indicate that the enforceability or collection of the subject Card Item is in any manner impaired;

(viii) Merchant has no knowledge or notice of information to indicate that the transaction is fraudulent or not authorized by the Cardholder;

(ix) the person who presents a Card or Card number for use in a Card transaction (whether in person, by telephone or by mail) is in fact the Cardholder to whom the Card was issued or has been duly authorized by the Cardholder to use the Card in the transaction with Merchant;

(x) the Card Item does not arise out of any gambling transaction consummated over the Internet; and

(xi) the information on the Card Item is accurate and correct, and the Card Item is free from any alteration not authorized by the Cardholder.

**F. Clearing Account.** Merchant will maintain a demand deposit account in good standing (the "Account") at Bank or, if Bank so permits, at another financial institution ("Third Party Bank") approved by Bank to which settlement for all Card Items processed by Bank under this Agreement will be made as described below. (If Merchant has multiple locations and if expressly permitted by Bank Merchant may establish more than one such account, all of which are collectively referred to herein as the "Account.") The provisions of any agreement entered into between Merchant and Bank with respect to the Account or the establishment thereof are supplementary to and not in substitution for the provisions of this Agreement.

**G. Reserve.** Merchant agrees to maintain at all times during the term of this Agreement and for a period of nine (9) months after the termination of this Agreement a minimum balance in the Account sufficient to cover all chargebacks, fees and other charges reasonably expected to be due or to become due to Bank of such period, as determined in Bank's absolute discretion (the "Reserve"). Bank shall have the right to change the amount of the Reserve from time to time in good faith based upon the chargeback experience of Merchant or other factors reasonably considered by Bank by giving written notice of such change to Merchant, so that the balance of the Reserve will be sufficient in the reasonable judgment of Bank to cover chargebacks, fees and charges as they occur during the term of this Agreement and for a period of nine (9) months after termination of this Agreement.

**H. ACH Authorization.** If Merchant requests and Bank, in its sole discretion, permits the Account to be established at a Third Party Bank, Merchant must take all action necessary to insure that Bank has the right to credit and debit the Account at any time, without prior notice to Merchant or the Third Party Bank. Merchant hereby authorizes Bank (i) to present automated clearing house ("ACH") debits to the Third Party Bank Account(s) (as designated by Merchant either in the application portion of the Fee Schedule or from time to time to Bank) for payment to Bank of amounts due Bank hereunder, and (ii) to present ACH credits for payment of amounts owed by Bank to Merchant. Merchant's authorization to make debits as aforesaid shall be irrevocable during the term of this Agreement and thereafter until all amounts owed by Merchant to Bank shall be fully paid and satisfied. The initial designation of Merchant's Account is set out in the Fee Schedule or application. Merchant shall promptly notify Bank in writing of any change in the information relating to Account that might affect the consummation of the ACH transactions authorized hereby.

**I. Credit to Merchant.** Upon presentment of a Card Item to Bank, in the form specified by Bank, and subject to the terms, conditions, warranties, and Merchant's obligations set out in this Agreement, and subject to applicable Operating Regulations, Bank will process such Card Item through the appropriate clearing system. Upon receipt of settlement of credit by Bank for such Card Item, Bank will cause the Account to be credited on a daily basis with an amount equal to the credit received by Bank in respect of the Card Item processed, net of any fees and refund credits issued to Cardholders, and all other adjustments received for posting that day, but Bank shall have no responsibility to Merchant for the failure of any Third Party Bank to properly account to Merchant for any amounts so credited nor for Merchant's inability to obtain such funds from the Third Party Bank for any reason. All credit to the Account from time to time shall be provisional and is subject at all times to hold, reversal and/or chargeback pursuant to this Agreement. If Bank either suspects or has reason to believe that Merchant has breached any agreement, representation or warranty under or pursuant to this Agreement, Bank may suspend making payments or credits to Merchant hereunder pending Bank's investigation and resolution of any such matter.

**J. Reservation of Rights.** Bank reserves the right to withhold payments for Card transactions or to chargeback the Card Item (as provided in Section 4 below) if, for any reason, Bank questions the validity or collectability of that transaction. Merchant shall have no recourse against Bank for these actions.

#### 4. CHARGEBACKS, SECURITY INTEREST, DISCOUNTS AND FEES TO BANK.

**A. Chargebacks.** If Merchant has received payment for a Card Item, upon demand by Bank, Merchant will repay to Bank the amount of the subject Card Item if Bank reasonably determines that any of the following circumstances has occurred:

- (i) any Card Item for which Bank credited the Account fails or allegedly fails in any manner to comply with the terms and conditions of this Agreement (including, but not limited to the Merchant Operating Guide and/or warranties of presentment contained herein), with applicable Operating Regulations, or with any law, statute, or governmental regulation, which failure or alleged failure results in a chargeback to Bank by the Card issuer;
- (ii) any Cardholder asserts any dispute, claim, counterclaim, defense or set-off against Merchant respecting any merchandise or service or both purchased or leased by use of a Card, whether or not such assertion is valid;
- (iii) the Card Item or any material information it contains is illegible, incomplete, or unsigned or is not presented to Bank within the required time limits;
- (iv) the Card Item contains a counterfeit or altered account number, or the Card had expired or was invalid on the transaction date (regardless of whether an authorization code was obtained for the transaction), or the Card is damaged and prevents the use of the security features such as photo, signature or magnetic stripe;
- (v) the required authorization of the transaction (either by voice authorization or electronically) was not obtained, or a valid authorization code is not correctly and legibly printed on the Card Item;
- (vi) an imprint of the Card was required at the time of the transaction but was not obtained, including when the Card's magnetic stripe cannot be read during the process of completing a transaction;
- (vii) the Card Item is a duplicate of an item previously paid;
- (viii) the Cardholder disputes the execution of the Card Item, the sale, delivery, quality or performance of the merchandise or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Cardholder's account;
- (ix) the price of the merchandise or services shown on the Card Item differs from the amount shown on the copy of the Card Item delivered to the Cardholder at the time of the transaction;
- (x) the Card Item has been charged back to Bank for any reason by or through VISA, MasterCard, Discover Network or Other Card Sponsor, as applicable; or otherwise charged back for any reason under applicable Operating Regulations;
- (xi) the Card Item was prepared without a card being physically present, including without limitation telephone, mail order, internet, recurring and other transactions, and the proper holder of the Card, according to the Card issuer, disputes entering into or otherwise authorizing the transaction; or
- (xii) Bank has requested copies of Card Items or other records referred to in Section 7.C of this Agreement, and Merchant has failed to provide the copies in the time period allowed.

Merchant authorizes Bank to obtain such repayment by debiting from the Account for the face amount of such Card Item and crediting such amount to Bank, all without prior notice to or consent of Merchant. Bank will send a chargeback advice to Merchant after debits occur. To the extent that Operating Regulations permit a merchant to dispute a chargeback, Merchant shall submit any such dispute to Bank within fifteen (15) calendar days following receipt of a chargeback advice from Bank. Merchant's failure to dispute a chargeback within the above-specified period shall constitute a waiver of all rights of Merchant to dispute the chargeback. If Merchant has multiple locations, Merchant shall, upon execution of this Agreement, designate one or more of its locations as the location(s) for handling chargebacks and chargeback disputes and notify Bank of the designated location(s). Merchant hereby consents to extensions of time granted, or compromises made by Bank, with any Cardholder liable on any Card Item or with the issuer of the Card. It is expressly agreed and understood that Bank will make no inquiry into Cardholder complaints concerning the quality or quantity of merchandise or service to which Card Items relate.

**B. Security Interest and Right of Offset.** Merchant hereby grants to Bank a security interest in the Account and in all deposits, regardless of source, made to the Account, as well as the proceeds of such deposits, and to any other deposits of Merchant in Bank or the Third Party Bank, to secure the repayment to Bank of all obligations of Merchant arising under this Agreement and any agreements of Merchant related to this Agreement. Bank may enforce its security interest by (i) making an immediate withdrawal from or freezing the Account without notice or demand of any kind and/or (ii) taking possession of any deposits made to the Account, without notice or demand of any kind, upon Bank's reasonable determination that Merchant is obligated to repay Bank under Section 4.A, that Merchant is obligated to pay any amount under Section 4.C or 9.A, or that a breach of any term or

condition of this Agreement has occurred. Merchant agrees to execute any statement or notice and obtain any consents or waivers from the Third Party Bank necessary for Bank to preserve and perfect its security interest under this paragraph.

**C. Merchant Discount, Fees and Fines; Cardholder Credits and Chargebacks.** As compensation for the Merchant Program provided by Bank, Merchant shall pay Bank the fees set forth on the Fee Schedule. The various fees and charges listed on the Fee Schedule are referred to herein as “Merchant Discount and Fees.” Interchange qualification requirements, as defined by the Operating Regulations, shall be used to determine Merchant Discount and Fees for Card Items. Merchant will have higher Merchant Discount and Fees for Card Items which do not meet the best rate qualification criteria. Merchant hereby authorizes Bank, from time to time as it may determine, to debit the Account the amounts owed by Merchant hereunder, including, without limitation, Merchant Discount and Fees, Cardholder credits, chargebacks and any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on Merchant from time to time by a Card Association pursuant to its Operating Regulations or by Bank pursuant to this Agreement, but Bank’s right to debit the Account shall not be Bank’s exclusive remedy to collect amounts due it. Without limiting the generality of the foregoing, Bank shall have the right to pass through any fines to Merchant and impose any additional reserves, sanctions or other requirements upon Merchant which may be imposed by any Card Association with respect to Card transactions involving Merchant or otherwise arising in connection with this Agreement. Any fines passed through to Merchant shall be in addition to damages incurred by Bank and reimbursed by Merchant. Merchant will reimburse Bank or the Third Party Bank, as the case may be, within one (1) business day after receipt of notice of the occurrence of any overdrafts that may result from Bank’s debiting of the Account. To the extent the Account does not have a sufficient balance to pay amounts due Bank under this Agreement, then upon notice from Bank, Merchant shall immediately pay Bank all such amounts due, together with (a) an “insufficient funds,” “overdraft” or “return item” charge in accordance with Bank’s then effective fee schedule applicable to non-consumer deposit accounts maintained at Bank to the extent permitted by applicable law, (b) interest on the amount of the overdraft, return item or declined ACH from the date of occurrence until the date paid, such interest to be calculated at the lower of (i) 1.5% per month or (ii) the highest rate permitted by applicable law. Merchant’s right to review, question or dispute discount and fees shall be limited to a period of ninety (90) calendar days following the date of the statement and/or notice.

## 5. THIRD-PARTY VENDORS.

**A. Forms.** Bank or its designee shall make available for purchase by Merchant the forms and supplies used to create Card Items, such as roll paper, ribbons, sales and credit drafts, and other transactions between Merchant and Cardholders, and between Merchant and Bank, if any, at the then current price determined by Bank.

**B. Equipment.** Merchant may select terminals, printers and other equipment (“Equipment”) for use in processing Card transactions and other related payment services either from a vendor referred by Bank (“Referred Equipment Vendor”) or from another vendor of Merchant’s choosing (“Other Equipment Vendor”) provided that any such Other Equipment Vendor and the Equipment sold/leased by it shall have been first approved by Bank and the equipment has been certified and is supported by Bank’s service providers. Merchant hereby authorizes Bank to make ACH debits to Merchant’s Account for any Equipment purchase, installment or lease payments due to the Referred Equipment Vendor in the manner described in Section 3.H; and Bank shall be fully exonerated in relying on any billing or other statement of charges submitted to it by the Referred Equipment Vendor.

**C. Software.** Merchant may select software and related user materials (“Software”) for use in processing Card transactions from Bank (“Referred Software Vendor,”) or from another vendor of Merchant’s choosing (“Other Software Vendor”); provided, however, that the Other Software Vendor and the Software supplied by it shall have been first approved by Bank. Any such Other Software Vendor shall be the agent of Merchant for delivery of Card transactions to Bank or Bank’s service providers. Merchant shall be liable to Bank for any loss, damage, cost or fee resulting from any failure of any Software, including that acquired from a Referred Software Vendor, to comply with applicable Operating Regulations, including any failure which results in a chargeback to Merchant.

**D. Effect of Bank Consent.** Bank’s right to approve Merchant’s use of an Other Equipment Vendor or Other Software Vendor and Bank’s selection of Referred Equipment Vendors and Referred Software Vendors, (collectively, the “Third-Party Vendors”) are intended solely for the benefit of Bank. No such approval, consent or selection shall be construed as a representation or warranty by Bank regarding the ability of such Third Party Vendors to comply with Operating Regulations or to provide Software, Equipment or services meeting Merchant’s needs. Bank reserves the right to revoke its consent to Merchant’s use of any Software or Equipment or other vendor at any time. Notwithstanding any consent or recommendation by Bank to Merchant regarding Equipment, Software or Third-Party Vendors, the selection and use of any thereof shall be strictly at Merchant’s risk.

## **6. REPRESENTATIONS AND WARRANTIES.**

Merchant represents and warrants to Bank as follows:

- A.** Merchant has all necessary registrations and approvals required to perform its duties under this Agreement, and Merchant has not been asked to leave or been terminated for cause by any other provider of merchant services similar to Merchant Program as provided by Bank.
- B.** The information which Merchant has provided to Bank concerning its business, including, but not limited to, the information set out in Merchant Application which is attached hereto, is true and correct, the financial information which Merchant has provided to Bank is true and correct as of the date of preparation thereof and, since the date thereof, there has been no material adverse change in the financial condition of Merchant.
- C.** If Merchant is other than an individual or sole proprietorship (as indicated in the Merchant Services Account Application and Fee Schedule), Merchant is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and every other jurisdiction in which it is required to do so. Merchant has full power and authority to own, lease and operate its business and properties and to enter into and perform this Agreement. Merchant is qualified to do business and is in good in each jurisdiction where the nature of the activities conducted by it or the character of the properties owned or leased by it makes such qualification necessary.
- D.** All organizational action on the part of Merchant necessary for the authorization, execution, delivery and performance of this Agreement has been taken. This Agreement (when the Fee Schedule was or is signed by or on behalf of Merchant) constitutes or will constitute a legal, valid and binding obligation of Merchant enforceable in accordance with its terms. The signing person is duly authorized to execute any document or take any action on behalf of Merchant under or pursuant to this Agreement.

## **7. COVENANTS OF MERCHANT.**

- A.** Merchant agrees to observe and comply with applicable Operating Regulations and the Merchant Operating Guide, as they are in effect from time to time, and such other procedures as Bank may prescribe for Card transactions under this Agreement. This Agreement is expressly made subject to such rules, regulations, and procedures. Merchant agrees to maintain in good standing all registrations and approvals required by Operating Regulations, as they may be in effect from time to time, throughout the term of this Agreement, including without limitation, the payment of any registration fees, dues or assessments as may be required by any Card Association from time to time.
- B.** Merchant will comply with applicable laws and regulations with respect to sales by Merchant and acceptance of Card Items.
- C.** Merchant agrees: (i) to preserve all records pertaining to Card transactions and Card Items for two (2) years from the date of origination of such items, and allow Bank to examine, copy, and verify such items, (ii) within five (5) calendar days following receipt of Bank's retrieval request, to send copies of Card Items and records pertaining to any Card transaction to Bank by first-class mail or electronic medium, and (iii) to execute and to file such statements and notices as Bank may request to preserve or protect the interests of Bank under this Agreement.
- D.** Merchant agrees that, if Merchant is performing electronic commerce processing and accepting Cards for good or services sold over the Internet, Merchant will post its consumer data privacy policy and its method of transaction security in public view on its website.
- E.** Merchant will not disclose to third parties (other than to Merchant's agents for the purpose of assisting Merchant in completing the transaction or as specifically required by law) any Cardholder's account information, account number or other personal information, without obtaining the prior written consent of the Cardholder on a document other than a Card Item. In the case of electronic databases where Cardholder's account information, account number or other personal information related to the Card transaction is contained, this information must be returned to Bank or proof of destruction of this data, by an authorized signer of Merchant, must be provided to Bank when Merchant is no longer in business. Under no circumstances can Cardholder-related information be sold, given or transferred to any third party. Merchant will adopt procedures to store and maintain Card Items, records and dated information in a safe, secure and confidential manner. At such time as Merchant is no longer required to preserve records pertaining to Card transactions, Merchant shall destroy such records (including Card imprints, transaction records and carbons) in a manner rendering data unreadable. Merchant shall notify and provide Bank with particulars within one (1) Business Day following Merchant's receipt of information indicating or suggesting that there has been a breach of Merchant's data system or paper records that has or may have resulted in an unauthorized disclosure of any information regarding one or more Card transactions or Cardholders, and in connection with any such breach or suspected or possible breach, will cooperate with Bank and law enforcement officials in any reasonable way.

F. Merchant agrees to furnish to Bank upon seven (7) days notice such financial statements and information concerning Merchant or its affiliates as Bank may from time to time request. Merchant authorizes Bank to make such inquiries and obtain such reports as Bank deems appropriate to verify information furnished to Bank, including, without limitation, obtaining credit reports, verification of information contained therein, and verification of references. Upon not less than three (3) business days prior notice given to Merchant and during Merchant's normal business hours, Bank or its duly authorized representatives may inspect the business premises of Merchant and may examine that part of the books and records of Merchant that pertain to Card transactions and Merchant's practices regarding Card transactions.

G. Merchant agrees to provide Bank thirty (30) days' prior written notice of its intent to:

(i) Liquidate and/or transfer or sell any 10% or more of its total assets;

(ii) Change the basic nature of its business or its capital structure;

(iii) Change the location of its business headquarters; or

(iv) Add or delete any services Merchant acquires from Bank under this Agreement, including without limitation, Merchant's decision to commence or to terminate acceptance of any type of Card for which Bank provides Merchant Program.

H. Merchant will promptly notify Bank of any change of title or position (including any termination of employment) of the persons who have signed this Agreement or the Fee Schedule.

I. Merchant shall promptly notify Bank of the addition or deletion of Merchant locations.

J. During the term of this Agreement, Merchant will use Bank as its sole source for processing and crediting Card Items and for obtaining authorizations for Card transactions except as otherwise agreed by Bank and Merchant in writing.

K. Merchant will not use any authorization system made available to Merchant under this Agreement in connection with any transaction as to which Merchant does not intend or expect to consummate a Card transaction with the Cardholder.

L. Merchant agrees that it will not accept Card transactions that are illegal in the jurisdiction where Merchant is located, in the jurisdiction where the transaction is consummated, or in any other jurisdiction affected by the Card transaction. Merchant will not accept any Card transaction in connection with any Internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction. BANK reserves the right to withhold payments for Card transactions or to chargeback the Card Item (as provided in Section 4 below) if, the BANK, in its sole and absolute discretion, believes such Card Item is related to an illegal transaction or an Internet or online gambling transaction. Merchant shall have no recourse against BANK for these actions.

## **8. MODIFICATION.**

This Agreement and the materials incorporated in this Agreement by reference constitute the entire Agreement between Bank and Merchant with respect to the subject matter of this Agreement. All modifications or amendments of this Agreement must be in writing to be effective. Bank may modify, add provisions to or delete provisions from ("Change") this Agreement at any time (including but not limited to any of Merchant Discount and Fees set out on the Fee Schedule and the Merchant Operating Guide) by giving to Merchant not less than fifteen (15) days' prior written or electronic notice of such Change. Notwithstanding the foregoing, any Change to this Agreement which is necessary to prevent noncompliance with applicable law or Operating Regulations shall be effective on the date required by such Operating Regulations or law. Tendering of any Card Item by Merchant after the effective date of any Change constitutes acceptance of such change. If Merchant does not wish to accept any Change, Merchant must cease tendering Card Items prior to the effective date of such Change and notify Bank in writing of Merchant's intention to terminate participation in the Program, as provided in and subject to Section 11 below.

## **9. INDEMNITY; LIMITED LIABILITY.**

**A. Merchant's Indemnification.** Merchant shall indemnify Bank, the respective Card Associations and the participants therein against any and all claims, demands, losses, damages, liability, actions, costs, judgments, arbitration awards and expenses (including reasonable attorneys' fees), to which such parties may be subjected arising in whole or in part from any Card transaction involving Merchant (including, but not limited to, any chargebacks under applicable Operating Regulations), any act or omission of Merchant in connection with any such transaction, use of any Third-Party Vendor, any breach of this Agreement by Merchant, Merchant's or any Third-Party Vendor's violation of applicable laws or Operating Regulations, any return of goods, price adjustment or other dispute with or claim by a Cardholder with Merchant (whether or not such Cardholder's claim is valid), including, but not limited to, claims or losses of any Cardholder or of any third party, or any breach of Merchant's data or paper records system that has or may have resulted in an unauthorized disclosure of any information regarding one or more Card transactions or Cardholders. Without limiting the generality of the foregoing, Merchant agrees that it shall be solely responsible for

its actions in honoring or refusing to honor Cards and in retaining Cards in accordance with Merchant Operating Guide; and Merchant will indemnify, defend and hold the Card Associations, Bank and other members of the Card Associations harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof.

**B. Limitation of Remedies.** Bank will use due care in its performance under the Agreement and it will, at its own expense, correct any data in which (and to the extent that) errors have been made by Bank's personnel, or by malfunctions of Bank-supplied Software or Equipment which are not due to Merchant's error, acts or omissions. However, the expense to Bank of correcting such data shall constitute Bank's only responsibility in connection with such errors or in connection with any other performance or nonperformance by Bank under this Agreement. If Bank undertakes to correct any error caused by a Third-Party Vendor, Bank shall not have any liability with respect thereto. Bank's liability to Merchant with respect to any Card transaction shall not in any event exceed the amount of that transaction, and Bank SHALL IN NO EVENT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE AND FURTHER, INCLUDING INJURY TO PROPERTY. Bank shall have no responsibility or liability whatsoever for errors or omissions caused by any Merchant or third party providing services, software or equipment to Merchant for use in Card transactions. If Merchant engages Bank or its designee to load Software on Equipment, which may involve reconfiguring other software used by Merchant, Merchant agrees that the Bank's sole responsibility in connection therewith shall be to use good faith efforts to reconfigure Merchant-provided software and/or the Software so that they will function together. In the event of malfunction of the Software and/or Merchant-provided software as a result of such reconfiguration or attempted reconfiguration, the Bank's sole responsibility shall be to use good faith efforts to correct any malfunction and/or otherwise reasonably to cooperate with Merchant to correct any malfunction, BUT IN NO EVENT SHALL Bank BE LIABLE FOR ANY LOSS OF PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE AND FURTHER, INCLUDING INJURY TO PROPERTY, INCURRED AS A RESULT OF ANY SUCH MALFUNCTION.

**C. Limitation of Warranties.** THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND BANK DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SOFTWARE OR EQUIPMENT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT BANK KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, BANK EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN MERCHANT WITH RESPECT TO THE SOFTWARE, EQUIPMENT, OR ANY PART THEREOF.

## **10. ASSIGNMENT.**

Merchant shall not transfer, assign or otherwise convey this Agreement or its rights or obligations hereunder without the prior written consent of Bank, and any purported assignment without Bank's consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. If Bank shall assign this Agreement to another bank or processor which is a member of a Network and that such assignee assumes the obligations of Bank hereunder, the assignor shall have no further duties or obligations to Merchant hereunder, and the assignee shall succeed to the rights, duties and obligations of Bank hereunder.

## **11. TERM; TERMINATION.**

**A.** Unless terminated as hereinafter provided, the initial term of this Agreement (the "Initial Term") shall be three (3) years. This Agreement shall be automatically renewed as of the day following the end of such Initial Term and at each subsequent anniversary thereof for successive renewal terms of one (1) year each. Either party shall have the right however, to terminate this Agreement without cause effective as of the last day of the Initial Term or any subsequent anniversary thereof by giving at least sixty (60) days prior written notice of termination to the other party. Merchant agrees that, in order for Merchant to terminate this Agreement prior to the end of the Initial Term or any subsequent renewal term, Merchant must pay any Early Termination Fee applicable pursuant to the Fee Schedule.

**B.** This Agreement shall be terminated automatically (i) in the event of the insolvency, bankruptcy, or appointment of a receiver for the other party to this agreement, (ii) if a Network prohibits Merchant from presenting Card Items to Bank, in accordance with its respective Operating Regulations, (iii) if at any time Bank reasonably determines, in its absolute discretion, that there is an unacceptable level of risk from the processing of Merchant's Card transactions, or (iv) upon the termination of Bank's membership in a Card Association (provided that termination of Bank's membership with a particular Card Association shall terminate this

Agreement only with respect to such services and this Agreement shall remain in effect with respect to all non-terminated Card Associations).

**C.** Notwithstanding the foregoing, Bank shall have the right to terminate this Agreement at any time effective immediately by giving notice of such termination to Merchant if (i) Merchant shall be in default of any of its duties or obligations hereunder (including, but not limited to, its obligation to comply with applicable provisions of the Operating Regulations), (ii) Bank shall reasonably deem itself insecure in the prospect of payment by Merchant of amounts due Bank hereunder, or (iii) Merchant shall default in the prompt payment or performance of any other liabilities or obligations from time to time owed to Bank.

**D.** Any liability of a party arising prior to termination of this Agreement shall survive termination of this Agreement, including, without limitation: (i) Merchant's obligations to pay chargeback liabilities for all transactions that occurred prior to the termination of the Agreement, even if the chargeback is processed or presented after the date of termination; and (ii) all of Merchant's existing obligations, warranties, and agreements with respect to Card Items delivered before such termination, credit vouchers executed in connection therewith, and continuing obligations imposed by governmental regulations or Operating Regulations. Notwithstanding anything in this Agreement to the contrary, Bank's security interest in the Account granted by Merchant in Section 4 of this Agreement, Bank's right to debit the Account as set forth in Section 4 of this Agreement, Bank's general right of setoff, and Merchant's indemnification obligations set forth in Section 9 of this Agreement shall survive the termination of this Agreement. The right of Merchant to generate and submit Card Items under this Agreement representing debits, and to use equipment, advertising, and forms provided under this Agreement, other than in fulfilling Merchant's continuing obligations as hereinabove specified, will cease immediately upon termination of this Agreement. Within thirty (30) days after termination of this Agreement Merchant shall return all promotional materials, forms, Software and Equipment acquired from Bank (other than forms, Software and Equipment purchased from Bank) and all related materials provided under this Agreement to the address specified in this Agreement for notices to Bank.

## **12. NOTICES.**

All notices provided for under this Agreement shall be in writing and shall be sent by personal delivery, by nationally recognized overnight courier service (marked for next day delivery), by U.S. mail, to the party hereto to whom notice is being given at the address set forth on the Fee Schedule (marked to the attention of the person indicated with such address), or to such other person and address as either party hereto shall designate to the other by written notice given in the foregoing manner. Bank may also send notices under this Agreement to Merchant electronically to the Merchant's e-mail address in Bank's records. Any notice by personal delivery or email shall be effective upon receipt. Any notice by overnight courier service shall be effective on the date specified for such delivery. Any notice by U.S. mail shall be effective upon receipt or three (3) days after mailing, whichever is earlier.

## **13. GOVERNING LAW.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of Alabama (without regard to internal principles of conflicts of law) and applicable federal law; provided, however, if Bank assigns this Agreement to a successor, subsidiary or affiliated corporation, or to a third party, after notice has been provided to Merchant, the Agreement shall be governed, construed and enforced from the effective date of assignment by the laws of the state in which that assignee maintains its principal offices.

## **14. VENUE OF ACTIONS.**

No suit or action shall be commenced by Merchant, by any guarantor, or by any successor, personal representative or assignee of any of them, with respect to any of the matters to which this Agreement relates or any transactions entered into or processed under or pursuant to this Agreement, other than in a state or federal court of competent jurisdiction in and for Jefferson County, Alabama, and not elsewhere. Nothing contained in this paragraph shall prohibit Bank from instituting suit in any court of competent jurisdiction for the enforcement of its rights hereunder.

## **15. WAIVER OF RIGHT TO TRIAL BY JURY.**

EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, OR ANY TRANSACTIONS ENTERED INTO OR PROCESSED UNDER OR PURSUANT TO THIS AGREEMENT, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS

WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NOT APPLICABLE IN CALIFORNIA.

**16. NO WAIVER.**

Failure on the part of Bank to assert any of its rights or to assert against Merchant any of Merchant's duties, responsibilities, obligations or liabilities under this Agreement or the Merchant Operating Guide, on either an occasional or continuing basis shall not be construed as a waiver thereof by Bank, and such rights, duties, responsibilities, obligations or liabilities may be asserted by Bank at any time.

**17. INDEPENDENT CONTRACTOR.**

Neither party will be acting as the agent of the other in connection with any of the matters herein provided. Rather, each party is an independent contractor with respect to the other party.

**18. FORCE MAJEURE.**

Neither Bank nor Merchant shall be responsible for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, equipment failures, strikes, riots, war, nonperformance of Bank's or Merchant's vendors or suppliers, acts of God or other causes over which Bank or Merchant has no control. Merchant acknowledges, however, that delays, non-performance or malfunctions, whether or not resulting from causes beyond the control of either party hereto, may result in charging of higher rate of Merchant Discount and Fees under the Fee Schedule and that Merchant shall not be excused or relieved from paying such higher rate even if such delay, non-performance or malfunction is beyond Merchant's control.

**19. EXHIBITS.**

The Fee Schedule, Merchant Operating Guide, and any exhibits or schedules referenced herein or attached hereto, are hereby incorporated as part of this Agreement.

**20. ENTIRE AGREEMENT.**

This Agreement, together with all materials incorporated herein by reference and any addenda signed by the parties, sets forth the full and complete understanding of the parties with respect to Card transactions.

**21. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS.**

**A. Qualification of Merchant System.**

**(i) Compliance.** Merchant will successfully validate compliance with any and all security and compliance requirements related to Cardholder data. Merchant acknowledges and understands that such security and compliance requirements are evolving, and Merchant shall adhere to the then-current set of requirements.

**(ii) Requirements.** The current set of security and compliance requirements are the Payment Card Industry Data Security Standards (PCI DSS) as defined by VISA USA, MasterCard International, and Discover Network. The PCI DSS currently requires merchants to successfully complete the PCI questionnaire and pass, on a quarterly basis, vulnerability scans of all external facing systems that store, process or transmit Cardholder information. Merchant understands that the Cardholder copy of transaction receipts must be truncate, so as to display no more than the last five (5) digits of the Card number and displaying no expiration date of the Card and that Merchant is fully responsible for contacting Bank should merchant not be in compliance with this requirement. Merchant shall secure and protect all transaction receipts by various measures, including but not limited to limiting access to transaction receipts to certain individuals within the business that requires the information contained on the receipt for legal business practices and securing transaction receipts from potential theft.

**(iii) Actions.** Merchant is required by the PCI DSS to engage a qualified security assessor to perform the PCI compliance validation. Merchant shall provide, and authorizes the qualified security assessor to release, any and all information and documentation, in a timely fashion, to include vulnerability scan reports, related to the PCI assessment to both Bank and the Card Associations. Merchant is required to select a qualified security assessor as deemed approved by the Bank and the Payment Card Associations to perform compliance validation for Merchant, as well as provide a cost effective and efficient reporting structure to communicate Merchant's compliance status. See the following Network websites for current set of PCI requirements and authorized PCI assessors.

- [www.visa.com](http://www.visa.com)
- [www.mastercard.com](http://www.mastercard.com)
- [www.discovernetwork.com](http://www.discovernetwork.com)

**(iv) Failure To Comply.** If Merchant fails to achieve or maintain PCI Compliance, this Agreement maybe terminated at the sole discretion of Bank at any time due to the increased risk to Cardholder data and possible subsequent Card Association fines. If Merchant fails to maintain compliance for any reason, then Merchant shall within thirty (30) days take the appropriate action to address any and all non-compliant findings with the questionnaire, vulnerability scans or other requirements.

**(v) Responsibility Of Merchant.** Merchant acknowledges that PCI compliance may not prevent a breach of or intrusion into any of Merchant systems and environment, and possible subsequent Payment Card Association fines. Merchant further acknowledges that the PCI compliance does not replace a merchant's own information security program, and that it is the sole and exclusive responsibility of Merchant to be vigilant in maintaining and updating its security posture on a continuous basis to protect card holder data.

## **B. Breach Of Data.**

**(i) Notification.** In the event of a suspected or confirmed breach of Cardholder data, Merchant is required to immediately notify Bank. Merchant acknowledges and agrees to comply with the Card Association requirements related to a breach of Cardholder data which may include engaging an authorized Card Association Independent Incident Response Assessor (see the VISA link above and click on "If Compromised"). Merchant shall provide and authorizes the Independent Incident Response Assessor to release any and all information and documentation related to the Incident Response Investigation, as expeditiously as possible as required by the Card Association, to the Bank, Card Association, and/or law enforcement.

**(ii) Merchant Cooperation.** Merchant agrees to fully cooperate with such investigation to include complying with all Card Association and Bank requirements and which includes, but is not limited to, mitigation efforts to contain any further unauthorized release of Cardholder data. Merchant further acknowledges and understands that any Service Provider that Merchant utilizes to store, process or transmit Cardholder data on its behalf is also required to be PCI compliant. (See VISA link above and click on "CISP Complaint Service Providers").

## **C. Fines & Penalties.**

Merchant is solely responsible for any fines or penalties levied by the Card Association related to the use of any non-complaint Service Provider, non-compliant POS software application and/or the breach of Cardholder data. Merchant further acknowledges and understands that any Point of Sale (POS) Software Application that Merchant utilizes to store, process or transmit Cardholder data on its behalf is also required to meet VISA's Payment Application Best Practices (PABP) (See VISA link above and click on "List of CISP Validated Payment Applications").

# **Merchant Operating Guide**

## **1. IDENTIFICATION PROCEDURES.**

**A. Card Security Features.** Before honoring any Card, Merchant shall;

- (i) Check the effective date (if any) and the expiration date on the Card;
- (ii) Examine any Card security features included on the Card (such as a hologram) to detect counterfeits or tampering, **DO NOT ACCEPT ANY CARD THAT HAS HAD ITS SECURITY FEATURES REMOVED OR ALTERED;**
- (iii) Compare the first four digits of the embossed account number on any VISA Card to the four digits printed below the account number on the Card, compare the account number, if any, printed on the signature panel of any MasterCard, or the three digit number printed on the signature panel of any Discover Network Card to the account number embossed on the Card, and for all Cards compare the account number displayed on the electronic data capture terminal and/or printed on the Card Item to the account number embossed on the Card.
- (iv) Verify the unique embossed symbol located next to the expiration date: **V** on each Classic, Business and Gold VISA Card, and **K** on each MasterCard and **D** on each Discover Network Card.
- (v) Verify the signature panel on the back of the Card has a repetitive pattern of the "VISA" or "MasterCard" word mark and "Discover Network," when held under an ultraviolet light, the word Discover or Discover Network will appear on the front of all

Cards. If the signature panel on the Card is blank, Merchant must authorize the transaction and also review positive photo identification bearing the Cardholder's signature (such as an unexpired passport or driver's license) to validate the Cardholder's identity. Merchant must indicate the positive identification, including any serial number and expiration date, on the Card Item. The Cardholder is required to sign the signature panel of the Card prior to completing the transaction. A signature panel with the words "See I. D." or equivalent language is considered blank.

Merchant shall not complete a Card transaction if it detects any of the above listed situations. In the case of counterfeits or tampering (subparagraph (ii) above) or if the numbers are not the same (subparagraph (iii) above), or if a Card, the Cardholder, or a transaction seems suspicious Merchant should hold the Card if it can do so safely. Using a telephone, call the voice authorization number provided by Bank, and ask for a "**Code 10**" authorization. An operator will tell Merchant what to do.

**B. Cardholder Identification.** Merchant acknowledges that it understands that there is an increased risk in completing a sale under circumstances where the Cardholder fails to present a Card to Merchant, and that Bank discourages Card transactions under such circumstances. Merchant will exercise reasonable diligence to determine that the authorized signature on any Card presented corresponds to the signature on the Card Item and that the Cardholder resembles the person depicted in any picture which appears on the Card, if any. Merchant will not honor Cards presented by persons other than the proper person as evidenced by the authorized signature on the Card. If a transaction is completed by Merchant without a Card being physically presented, Merchant shall establish the true identity of the Cardholder as the authorized holder of such Card by obtaining evidence of his identity and noting such evidence on the applicable Card Item. The fact that Merchant has obtained authorization for the transaction does not avoid the need for such identification. Except as above provided and except in cases where Merchant is suspicious that fraudulent or unauthorized use of a Card is being made or attempted, Merchant shall not require Cardholders to provide personal information, such as home or business telephone numbers, address or drivers license number as a condition to honoring the Card.

## 2. AUTHORIZATION PROCEDURES.

**A. Authorizations.** Merchant will obtain authorization from Bank or its designee either by telephone, dial terminal or electronically for each Card transaction. Merchant will record the authorization number given by Bank or its designee on the Card Item and will complete the transaction only after receiving the necessary authorization. Merchant will not complete any Card transaction which Bank or its designee refuses to authorize. The fact that an authorization code is obtained does not affect Bank's rights to revoke payment or otherwise require repayment of the transaction under the terms of this Agreement. In no event shall the fact that an authorization code was obtained by Merchant be deemed to be Bank's representation that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder or an authorized user of the Card.

**B. Transactions When the Cardholder and the Card are Not Present.** For any transaction in which both the Card and the Cardholder are not present, Merchant MUST use the Address Verification Service (AVS). This includes mail, telephone or other non-present situations that Merchant may need to ensure the transaction is not fraudulent. Such situations could result in a loss to Merchant in the form of a chargeback. The process of AVS is to include a portion of the Cardholder's billing street address and Zip code in the authorization request. Along with the authorization response, Merchant will receive a code that the address has matched in whole or in part. Although AVS is not a substitute for an authorization or a guarantee against loss, AVS information can be used to make an informed decision about the Cardholder and the transaction before releasing Merchant's goods or services, thereby reducing the risk of loss to Merchant. In any event, it is Merchant's responsibility to ensure it knows its customer is the true and correct Cardholder.

**C. Transactions When the Card Will Not Read Using a Terminal.** For any transaction in which the magnetic strip of the Card is unreadable using an electronic terminal, Merchant should consider using the Address Verification Service (AVS). In many situations an unreadable Card could be a counterfeit Card. Such situations could result in a loss to Merchant in the form of a chargeback. The process of AVS, for this purpose, is to include the Cardholder's billing Zip code in the authorization request. Along with the authorization response, Merchant will receive a code that the code has matched. Although AVS is not a substitute for an authorization or a guarantee against loss, AVS information can be used to make an informed decision about the Cardholder and the transaction before releasing Merchant's goods or services, thereby reducing the risk of loss to Merchant. In any event, it is Merchant's responsibility to ensure it knows its customer is the true and correct Cardholder.

**D. Retaining Cards.** If so requested by Bank or other designated person from whom authorization is requested, Merchant will endeavor to retain the Card by reasonable and peaceful means. Merchant agrees that it shall be solely responsible for its actions in retaining Cards.

**E. Special Authorization Procedures.** The following are specific authorization procedures for certain types of merchants:

- (i) mail/phone order transactions may obtain authorizations on any day up to seven (7) calendar days prior to the transaction date (shipment date is considered to be the transaction date). This authorization will be valid if the Card Item amount is within 15 percent of the authorized amount, provided that the additional amount represents only shipping costs.
- (ii) restaurant authorizations are valid if the Card Item amount is plus or minus 20 percent of the authorized amount.
- (iii) automated fuel dispenser transactions must obtain an authorization for the exact amount of the Card Item or use the Status Check Procedure. The Status Check Procedure requires Merchant to request an authorization for \$1 and the Card Item amount to be no more than \$50.

### 3. PREPARATION OF CARD ITEMS.

**A. Execution.** For each transaction covered by this Agreement, Merchant will make a record of the transaction by preparing a paper Card Item on forms approved by Bank.

- (i) The Card Item shall legibly contain the Cardholder's name, account number, expiration date, Merchant's name and place of business, the date of transaction, the amount, identification of merchandise or services and such other information as shall be required by Bank or Card Association. In the case of a Card Item related to certain business credit cards, an accounting code provided by the Cardholder will need to be listed. When a Card is present at the time of the transaction but the data contained on the magnetic stripe cannot be read by an electronic card reader, the Card Item must include a physical imprint of the data embossed on the front of the Card. If the physical imprint does not contain the embossed characters from the Card, DO NOT complete the transaction.
- (ii) Merchant will obtain the signature of the Cardholder on the Card Item, but the Cardholder shall not be required to sign the Card Item until the total transaction amount is known and indicated on the Card Item. In the case of transactions by mail or telephone in lieu of such signature, Merchant shall write "mail order," or "telephone order" as applicable.
- (iii) Merchant will deliver a true and complete copy of the Card Item to the Cardholder at the close of each transaction unless otherwise agreed in writing by Bank.

**B. Special Preparation of Card Items.** Merchant will include all items of goods and services purchased or leased in a single transaction in the total amount of a single Card Item except when the balance of the amount due is paid by the Cardholder at the time of sale in cash or by check or both, or when the Cardholder elects to participate in one of the special transactions as defined below. The following are special procedures for Merchants who have received specific written authorization from Bank to perform these type of transactions:

- (i) As used herein, a "Delayed Delivery Transaction" means a transaction in which the first Card Item is completed as a deposit for the goods or services and payment of the balance is tendered by completion of a second Card Item. The latter Card Item will be conditioned upon delivery of merchandise or performance of services. Authorization is required for each Card Item, and separate authorization numbers will be assigned to each Card Item. Merchant will note on the Card Items the words "Delayed Delivery Deposit" and "Delayed Delivery Balance," as appropriate, and both the authorization date and the transaction date. Duration between deposit and balance can not exceed one year.
- (ii) As used herein, an "Installment Transaction" means a transaction from a mail/ telephone Merchant in which payment is spread equally over multiple Card Items. Authorization is required for each Card Item, and separate authorization numbers will be assigned to each Card Item. Duration of an Installment Transaction can not exceed one year. In offering Cardholders the Installment Transaction option, the following conditions must be met.
  - a. Written disclosure of the terms to the Cardholder, including but not limited to, whether the Installment Transaction is limited to certain goods or services, the shipping/handling charges and any applicable tax, and
  - b. ensure that the sum of all the Installment Transaction does not include any finance charge or exceed the total price of the goods or service, and
  - c. the first installment must not be deposited until the shipment date and each interval is 30 calendar days or more apart or on the monthly anniversary of the shipment date.
- (iii) As used herein, a "Recurring Transaction" means a payment for goods or services of an ongoing nature to a Cardholder. Authorization is required for each Card Item, and separate authorization numbers will be assigned to each Card Item. Merchant will note on the Card Items the words "Recurring Transaction" and both the authorization date and the transaction date. In offering Cardholders a Recurring Transaction the following conditions must be met.

- a. Obtain from the Cardholder, in written form, an authorization for goods or services to be applied to their account. The written form can be a preprint order form but must include the transaction amount, frequency of the recurring transaction, and the duration of time for which the Cardholder permission is granted. Duration of the Cardholder's permission cannot exceed one year.
  - b. Subsequent order forms are required for each renewal or additional recurring transaction. Merchant shall retain the order forms and will make available to Bank upon request.
  - c. Merchant must not include partial payments for goods or services in a single Recurring Transaction, include any financial charges, or complete a Card Item after receiving a negative response or cancellation notice from the Cardholder.
  - d. If the Card Item will be varying amounts, the order form must allow the Cardholder to specify a minimum and maximum amount per transaction, unless the Cardholder will be notified of the amount and the date of each transaction at least ten (10) calendar days prior to the each scheduled Card Item date. The Cardholder may choose to receive notification for every transaction, only when the amount is outside of the amounts specified on the order form, or when the amount will differ from the most recent amount by more than an agreed-upon amount.
- (iv) As used herein, a "Preauthorized Health Care Transaction" means a transaction for goods or services for which the Cardholder has provided written permission to the health care Merchant to process Card Items. Authorization is required for each Card Item, and separate authorization numbers will be assigned to each Card Item. Merchant will note on the Card Items the words "Preauthorized Health Care." In offering Cardholders a Preauthorized Health Care Transaction, the following conditions must be met.
- a. Obtain from the Cardholder, in written form, a request for the service, an assignment of the Cardholder's insurance benefits to the health care Merchant and an authorization for the health care Merchant to deposit a Card Item for only that portion of the bill due subsequent to Merchant's receipt of any applicable insurance payment. The written form can be a preprint form. Duration of the Cardholder's permission cannot exceed one year.
  - b. Subsequent order forms are required for each renewal or additional Preauthorized Health Care Transaction. Merchant shall retain the order forms and will make available to Bank upon request.

**C. Customer Credit and Refunds.** Merchant will make no cash refunds to purchasers on Card transactions except for an Express Payment Services Transaction or when the recipient received the purchase as a gift from the Cardholder. If a price adjustment is allowed or any merchandise is returned, Merchant will complete a Card Item evidencing a credit to the Cardholder's account. Merchant shall deliver such Card Item to Bank within 24 hours after preparation of such Card Item. Merchant will not present a Card Item representing a credit to a Cardholder's account where there has not previously been presented to Bank a Card Item representing a debit in an amount equal to or greater than the Card Item representing the credit. Merchant shall be required to give credit on returns of merchandise unless the Card Item issued at the time the merchandise was purchased bears these words legibly printed in letters approximately 1/4 inch high near the space provided for the Cardholder's signature:

- (i) "No Refund," in which case Merchant is permitted to decline to make refunds to Cardholder; or
- (ii) "Exchange Only," in which case Merchant is permitted to allow the Cardholder to make only immediate exchanges for other merchandise purchased from Merchant ; or
- (iii) "In-Store Credit Only," in which case Merchant is permitted to allow a store credit, for use only in Merchant's place of business. In the case of "In-Store Credit Only" transactions, Merchant shall institute internal procedures which shall keep accurate account of amounts due the Cardholder.

#### 4. PRESENTMENT OF CARD ITEMS.

**A. Delivery of Merchandise and Performance of Services.** Except in the special cases discussed above, Merchant shall not present a Card Item to Bank until the merchandise has been delivered, the services have been fully performed and Merchant has otherwise performed all of its obligations to the Cardholder in connection with the transaction.

**B. Presentment.** All presentments of Card Items by Merchant to Bank will be by electronic transmission in the form and manner approved by Bank. Card Items shall be presented within twenty-four (24) hours of the transaction date shown on the Card Item. Merchant shall balance and transmit the Card transactions contained in each terminal daily except on days when Merchant's place of business is closed.

#### 5. EXPRESS PAYMENT SERVICE.

**A. Service Availability.** The Express Payment Service is limited to restaurants, motion picture theaters, and parking facilities. In all cases Merchant must have written approval from Bank to use this service.

**B. Processing Requirements.** Merchant must process all Express Payment Service transactions at a magnetic-strip reading terminal, the transaction cannot be key entered to qualify for this service. For each transaction the Card Item must contain the Card Account Number, transaction date, and the transaction amount.

- (i) For transactions of \$25 or less, Merchant is not required to obtain the Cardholder's signature on the Card Item, or to provide a receipt for the transaction to the Cardholder, unless the Cardholder requests one. Merchant must prominently display at least one sign advising Cardholders that transaction receipts are available upon request.
- (ii) Transactions greater than \$25 do not qualify for Express Payment Service and need to comply with the Operating Procedures for such transactions.

## **6. TRANSACTIONS REQUIRING A PERSONAL IDENTIFICATION NUMBER (PIN).**

**A. Compliance.** Merchant will comply with the applicable Operating Regulations and with applicable federal, state and local law, rules and regulations, including, without limitation, the Electronic Funds Transfer Act and Regulation E of the Board of Governors of the Federal Reserve System. Transactions using a PIN must have the Cardholder and Card present at the time of the transaction. Only the Cardholder can input information into a PIN pad.

**B. Execution.** If the electronic terminal requests the Cardholder to enter their personal identification number (PIN) the following procedures need to be followed by Merchant.

- (i) Each transaction requiring a PIN must be submitted for on-line electronic authorization initiated by the use of a magnetic stripe reader to read the full unaltered contents of the Card.
- (ii) The Cardholder shall be required to enter his or her PIN through a PIN pad, approved by Bank, located at the point-of-sale.
- (iii) Each PIN pad shall be situated so as to permit Cardholders to input their PINs without revealing them to other persons, including Merchant personnel.
- (iv) Merchant shall instruct its personnel that;
  - a) they shall under no circumstances ask any Cardholder to disclose his or her PIN;
  - b) they nevertheless shall not create or maintain any record of such PIN and shall not disclose such PIN to any other person.
- (v) For each Card Item, in which a PIN was used, a receipt in conformity with Regulation E shall be made available to the Cardholder.
- (vi) If a Card Item, in which a PIN was used, is discovered to be in error after the Cardholder is no longer present, Merchant's only solution will be to contact Bank by means of a written request from Merchant to Bank. The request for adjustment must reference a settled Card Item in which a PIN was used. The adjustment must be completed within forty-five (45) calendar days after the date of the original Card Item.

## **7. PROCEDURES IN EVENTS OF DISPUTE.**

To assist in the resolution of any dispute arising from the use of Merchant Operating Procedures, Merchant shall retain for 9 months, and make available within ten (10) days of Bank's request, all pertinent records pertaining to each transaction in question, including but not limited to Card Items, order forms, itemized bills, authorization requests and other related documents. Merchant will have 90 calendar days from the date of their statement to dispute any transaction, discount, or other items.