



Merchant Application and Agreement

Merchant #: 394750536594 MCC: 7992

MERCHANT NAME (DBA or Trade Name) DAYTONA BEACH GOLF COURSE
CORPORATE/LEGAL NAME (if Different) CITY OF DAYTONA BEACH
LOCATION ADDRESS 600 WILDER BLVD
CORPORATE ADDRESS (if Different) 301 S RIDGEWOOD AVE
CITY DAYTONA BEACH State FL Zip 32114
CITY DAYTONA BEACH State FL Zip 32114
Location Phone (386) 671-3500 Location Fax (386) 671-8115 Corporate Phone (386) 671-8060 Corporate Fax (386) 671-8065
CONTACT NAME PATRICIA BLISS CONTACT EMAIL ADDRESS BLISSPATRICIA@COODB.US CONTACT PHONE (386) 671-8060 FEDERAL TAX ID# 59-6000304
DOES THIS LOCATION CURRENTLY TAKE PAYMENT CARDS? No Yes (if yes please provide)
HAS MERCHANT OR OWNERS/PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING PAYMENT CARDS FROM ANY PAYMENT NETWORK FOR THIS BUSINESS OR ANY OTHER BUSINESSES? No Yes (if yes please explain)

PRINCIPLES
Principle #1 Name:
First: JAMES Middle Init: Last: CHISHOLM SSN: % Ownership: Title: CITY MANAGER
Home Address: City: State: Zip: Date of Birth:
Home Phone: (386) 671-8010 DL# / State: Email Address: CHISHOLMJAMES@COODB.US

Principle #2 Name:
First: Middle Init: Last: SSN: % Ownership: Title:
Home Address: City: State: Zip: Date of Birth:
Home Phone: DL# / State: Email Address:

TYPE OF BUSINESS: Individual/Sole Proprietorship Partnership Corporation LLC State: Non-Profit (Must Provide 503-C) Private Publicly Traded Government Board Run/Operated
Length of time in business: Years Months
Product or Service being offered:
NATURE OF BUSINESS: Retail Retail w/Tip Mail-Phone Order Internet Restaurant Fast Food Lodging QSR Convenience Public Sector Petroleum Utility Other
Seasonal Sales: Yes No If so, please indicate high volume months J F M A M J J A S O N D

Method of Acceptance: (Totals to equal 100%)
Credit Cards Swiped: 95% MOTO 0% Questionnaire (over)
Key Entered: 5% Internet: 0% (URL: )
Annual VMC Volume: \$ 925,000.00 Monthly Payment Card Volume: \$ 77083.00
American Express Volume:
Ave. Ticket: \$ 38.00 High Ticket: \$ 5000.00
Merchant's URL(s):
Merchant Name to appear on Statement: DBA Name Legal Name
Other:

DOES MERCHANT USE AN INDEPENDENT SERVICER THAT STORES, MAINTAINS OR TRANSMITS CARDHOLDER INFORMATION? No Yes (if yes, please provide)
NAME: EMONEY VERSION NUMBER: 4.7
DOES MERCHANT USE A FULFILLMENT HOUSE TO FULFILL PRODUCT? No Yes (if yes, please provide)
NAME: PHONE NUMBER:
HAS MERCHANT OR OWNERS/PRINCIPALS EVER FILED BUSINESS BANKRUPTCY and/or PERSONAL BANKRUPTCY? No Yes (if yes, please provide)
Explanation:

BANK ACCOUNT INFORMATION: Checking Account Savings Account Bank Name: TD BANK Attach voided check for the operating account where funds are to be deposited
Transit # (ABA Routing): Account # (DDA): Contact: Phone #:
\* By providing the above referenced information, you are authorizing Bank to initiate ACH debit and credit transactions to said account

SCHEDULE A: VISA/MASTERCARD/DISCOVER®/AMERICAN EXPRESS DISCOUNT RATES & FEES:
CARD FEES: INTERCHANGE (COST) PLUS: % Markup P/I Markup
OTHER FEES: Application Fee \$0.00 ECP/Net Fee \$0.00
Monthly Minimum Fee \$0.00 Changeback Fee \$15.00
Equipment Reprogramming Fee \$0.00 Annual PCI Fee \$150.00
PMoney Setup Fee \$0.00 Monthly PCI Fee \$0.00
Statement Fee \$5.00 EMoney Setup Fee \$0.00
ACH Fee \$0.00
EMoney User Fee \$0.00
EMoney Monthly Fee \$0.00
You have the option of accepting MasterCard credit cards, Visa credit cards, American Express credit cards, credit cards issued by Discover, MasterCard signature debit cards (MasterMoney Cards) or Visa signature debit cards (Check Cards), or debit cards issued by Discover. You may elect to accept any or all of these card types for payment. If you do not specifically indicate otherwise, your application will be processed to accept ALL MasterCard, American Express, Discover, and Visa card types.
Elected Visa, Discover, American Express or MasterCard card types NOT to accept:

Site Inspection: Merchant: Owns Rents Landlord:
Building Type: Shopping Cntr. Office Building Industrial Building Residence
Area Zoned: Commercial Industrial Residential
Square Footage: 0-500 501-2500 2501-5000 5001-10000+
Based upon your review, does Merchant have the appropriate facilities, equipment, inventory, personnel and license or permit to operate their business? No Yes
Comments:
\* By signing below, inspector is certifying he/she has visited the location and information provided is true & correct
Inspector Name: MORGAN KAMPA Inspector Date: Signature:

**MO/TO QUESTIONNAIRE: COMPLETE THIS SECTION IF PROCESSING LESS THAN 70% CARD PRESENT:**

What percentage of sales are to: Business Consumer \_\_\_\_\_ % Individual Consumer \_\_\_\_\_ %

Method of Marketing:  Newspaper/magazine  Television/Radio  Internet  Direct Mail, Brochure and/or Catalog  Outbound Telemarketing Sales  Other: \_\_\_\_\_

Percentage of products sold via: Telephone Orders \_\_\_\_\_ % Mail Fax Orders \_\_\_\_\_ % Internet Orders \_\_\_\_\_ % Other: \_\_\_\_\_ %

Who processes the order?  Merchant  Fulfillment Center  Other \_\_\_\_\_

Who enters credit card information into the processing system?  Merchant  Fulfillment Center  Consumer  Other \_\_\_\_\_

If credit card payment information taken over the Internet, is payment channel encrypted by SSL or better?  No  Yes

If Merchant is an e-commerce Merchant, is a Merchant Certificate utilized?  No  Yes if yes please provide the following:

Merchant Certificate Number \_\_\_\_\_ Certificate Issuer \_\_\_\_\_ Exp. Date: \_\_\_\_\_ Is Certificate  Individual  Shared

Do you own the product/inventory?  No  Yes Is the product stored at your business location?  No  Yes If no, where is it stored? \_\_\_\_\_

After charge authorization, how long until product ships? \_\_\_\_\_ days Who ships the product \_\_\_\_\_

Product shipped by:  Merchant  Other \_\_\_\_\_ Delivery receipt requested?  Yes  No

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We will also ask for a copy of your driver's license or other identifying documents.

**MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE (Capitalized terms not defined in this Acceptance section have the meanings set forth in the Terms and Conditions section)**

"By executing this Merchant Application on behalf of the merchant described above ("Merchant"), the undersigned individual(s) represent(s), warrant(s), and acknowledge(s) that: (i) All information contained in this Merchant Application ("Application") is true, correct and complete as of the date of this Application; (ii) If the Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Application have the requisite legal power and authority to complete and submit this Application on behalf of the Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of the Merchant and individually; (iii) The information contained in this Application is provided for the purpose of obtaining, or maintaining, a merchant account for the Merchant with the Sponsor Bank ("BANK") and BANK will rely on the information provided herein in its approval process and in settling the applicable Discount Rate, Approved Average Ticket, and Approved Monthly Bankcard Volume; (iv) BANK is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of the Merchant and each person listed on this Application; (v) BANK will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction. Merchant agrees to pay such approved fees; (vi) The Merchant Agreement will not take effect until Merchant has been approved by BANK and a merchant number has been issued to merchant; and (vii) The undersigned has received, read, understood, the Merchant Agreement, which is incorporated herein by reference thereto, and agrees on behalf of the merchant to be bound by the terms of such Merchant Agreement. The merchant on whose behalf this Application is being submitted acknowledges that if this Application is being submitted to Merrick Bank as the Sponsor Bank, ETS CORPORATION will may also be a party to this Merchant Agreement. In such case, Merchant acknowledges that ETS CORPORATION will rely on the representations and warranties set forth in this Application for Merchant Agreement and unless otherwise specified or prohibited by Association or applicable law, ETS CORPORATION will have all the rights of BANK under this Application and Agreement

By checking this box, Merchant opts out of receiving future commercial marketing communications from American Express

**MERCHANT:**

Principal #1:  \_\_\_\_\_  
 Print Name: JAMES CHISHOLM Date: \_\_\_\_\_

Principal #2:  \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**BANK:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name and Title: \_\_\_\_\_

**ETS CORPORATION:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name and Title: HADI AKKAD - VP

**CONTINUING PERSONAL GUARANTY PROVISION - PERSONAL GUARANTOR (Capitalized terms not defined in this Guaranty section have the meanings set forth below in the Terms and Conditions section)**

By signing below, each individual or entity ("Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally guarantees to ETS CORPORATION and BANK the prompt payment and full and complete performance of all obligations of the Merchant identified above under the Merchant Agreement, as amended from time to time, including, without limitation, all promises and covenants of the Merchant, and all amounts payable by the Merchant under the Merchant Agreement, including, without limitation, charges, interest, costs and other expenses, such as attorney's fees and court costs. This means, among other things, that ETS CORPORATION or BANK can demand performance or payment from any Guarantor if the Merchant fails to perform any obligation or pay what the Merchant owes under the Agreement. Each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (1) the Merchant Agreement cannot be enforced against the Merchant for any reason, including, without limitation, bankruptcy proceedings; (2) either ETS CORPORATION or BANK agrees to changes or modifications to the Merchant Agreement, with or without notice to Guarantor; (3) ETS CORPORATION or BANK releases any other Guarantor or the Merchant from any obligation under the Merchant Agreement; (4) any law, regulation, or order of any public authority affects the rights of either ETS CORPORATION, Merchant, or BANK under the Merchant Agreement; and/or (5) anything else happens that may affect the rights of either ETS CORPORATION or BANK against the Merchant or any other Guarantor. Each Guarantor further agrees that: (a) ETS CORPORATION and BANK each may delay enforcing any of its rights under this guaranty without losing such rights and hereby waives any applicable Statute of Limitations; (b) ETS CORPORATION and BANK each can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor or from any security held by the BANK; and (c) such Guarantor will pay all court costs, attorney's fees, and collection costs incurred by either ETS CORPORATION or the BANK in connection with the enforcement of the Merchant Agreement or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. If the Merchant is a corporation or limited liability company, this Guaranty must be executed by a principal or affiliate of Merchant.

Principal #1: \_\_\_\_\_  
 Print Name:  JAMES CHISHOLM Date: \_\_\_\_\_

Principal #2: \_\_\_\_\_  
 Print Name:  \_\_\_\_\_ Date: \_\_\_\_\_

**BANK DISCLOSURE**

**Member Bank Information:** Merrick Bank, 135 Crossways Park Dr North, Suite A100 Woodbury, NY 11797 • Phone (800) 267-2256

**Important Bank Responsibilities:**

- 1. Merrick Bank is the only entity approved to extend acceptance of Visa products directly to a Merchant.
- 2. Merrick Bank is responsible for educating Merchants on pertinent Visa operating regulations with which Merchants must comply.
- 3. Merrick Bank, not ETS CORPORATION must hold, administer and control all reserve funds derived from settlement.
- 4. Merrick Bank, not ETS CORPORATION, must hold, administer and control settlement funds for the Merchant.
- 5. Merrick Bank must be a principal (signer) to the Merchant Agreement

**Merchant Information:** Refer to Merchant Application

**Important Merchant Responsibilities:**

- 1. Complying with cardholder data security and storage requirements
- 2. Maintaining fraud and chargebacks below established thresholds.
- 3. Reviewing and understanding the Merchant Agreement.
- 4. Complying with Visa's operating regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member - Merrick Bank - is the ultimate authority should the Merchant have any problems.

Principal #1:  \_\_\_\_\_  
Print Name: JAMES CHISHOLM Date: \_\_\_\_\_

Principal #2:  \_\_\_\_\_  
Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

## TERMS AND CONDITIONS

Subject to the requirements of applicable Card Association rules, ETS CORPORATION and Bank may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ETS CORPORATION or Bank may jointly or individually assert or exercise the rights or remedies provided to the Bank hereunder. In consideration of the mutual covenants herein, Bank, ETS CORPORATION and Merchant have agreed as follows

### ARTICLE I - DEFINITIONS

- 1.01 "Account" means a commercial checking account or demand deposit maintained by Merchant as set forth in Section 5.16 for the crediting of collected funds and the debiting of fees and charges under this Agreement.
- 1.02 "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
- 1.03 "Agreement" means these terms and conditions and any supplementary documents indicated herein, and valid schedules and amendments to the foregoing.
- 1.04 "American Express" means the Cards bearing the Marks of, and Card Network operated by, American Express Travel Related Services Company, Inc. or its affiliates.
- 1.05 "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.06 "Bank" has the meaning set forth on the Merchant Application.
- 1.07 "Card" means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc. or MasterCard International, Inc. ("Bank Card") or Discover®; or (ii) any other valid credit card accepted by Merchant by agreement with Bank and ETS CORPORATION.
- 1.08 "Card Association" means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc. or Discover or any other Card Issuers that provide Cards that are accepted by Merchant by agreement with Bank and ETS CORPORATION.
- 1.09 "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
- 1.10 "Card Not Present (CNP)" means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.11 "Cardholder" (sometimes referred to as "Card Member" in certain Card Network materials) means the person whose name is embossed upon the face of the Card.
- 1.12 "Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other bank account number.
- 1.13 "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.14 "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.15 "Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.16 "Mid or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for the standard card industry code of Merchant and which may be charged fees as set forth in Schedule A.
- 1.17 "Sales Draft" means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.
- 1.18 "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Bank for collection.
- 1.19 "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

### ARTICLE II - CARD ACCEPTANCE

#### 2.01 Honoring Cards.

(a) Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Association rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. (b) Merchant will not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. (c) Merchant will not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases. (d) Merchant will not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

#### 2.02 Advertising.

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

#### 2.03 Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Bank and ETS CORPORATION for accepting Cards and will:

(a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) Obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) Unless the Sales Draft is electronically generated or is the result of a mail, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) Offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement; and (g) Make an Imprint of the Card, if the Transaction is not based upon a mail, phone or pre-authorized order.

#### 2.04 Authorization. Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Bank or ETS CORPORATION may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if Bank or ETS CORPORATION determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Bank or ETS CORPORATION has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Bank or ETS CORPORATION, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

#### 2.05 Retention and Retrieval of Cards.

(a) Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card (i) when receiving such instructions when making a request for Authorization or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. (b) The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank and ETS CORPORATION harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.

#### 2.06 Multiple Transaction Records; Partial Consideration.

Merchant will not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (i) For purchases in separate departments of a multiple department store; (ii) For partial payment, installment payment, delayed delivery or an advance deposit; or (iii) For delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.

**2.07 Telephone Orders, Mail Orders, eCommerce, Preauthorized Orders and Installment Orders.**

(a) Unless Merchant has been approved by Bank to accept mail, phone or ecommerce orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Bank and ETS CORPORATION determines Merchant has accepted unapproved Card Transactions without Bank's authorization, which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom will be held pursuant to Article IV. (b) Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by telephone, mail or ecommerce nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a Sales Slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.

**2.08 Lodging and Vehicle Rental Transactions.**

(a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction will include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and will not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

**2.09 Returns and Adjustments; Credit Vouchers.**

(a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). (b) If Merchant does not make these disclosures, a full refund in the form of a credit to the cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. (c) Any change in Merchant's return or cancellation policy must be submitted in writing to Bank and ETS CORPORATION not less than fourteen (14) days prior to the change. Bank or ETS CORPORATION reserves the rights to refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank and ETS CORPORATION have not been notified as required herein.

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

**2.11 Cash Advances; Scrip Purchases.** Merchant will not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and will not accept any Card at a scrip terminal. Merchant agrees that either such action will be grounds for immediate termination of this Agreement.

**2.12 Duplicate Transactions.** Merchant will not deposit duplicate Transactions. Merchant will be debited for any adjustments for duplicate Transactions and will be liable for any Chargebacks which may result therefrom.

**2.13 Deposit of Fraudulent Transactions.** Merchant will not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Merchant may be immediately terminated, and Bank may hold funds and/or demand an Escrow pursuant to Sections 4.02 and 5.06; further, Merchant may be subject to the Visa and MasterCard and Discover reporting requirements under the terms of this Agreement. Merchant understands and agrees that it is responsible for its employees' action, whether negligent or fraudulent, while in its employ.

**2.14 Collection of Pre-existing Debt.** Merchant will not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations (i) previously owed to Merchant, (ii) rising from the dishonor of a Cardholder's personal check, Chargeback, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

**2.15 Data Security/Personal Cardholder Information.** Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Bank or ETS CORPORATION or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.

**(a) Safeguards.** Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) insure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or Bank or ETS CORPORATION in accordance with applicable federal and state laws, rules, regulations and guidance.

**(b) Compliance with Card Association Rules.** Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Association bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI"), Discover Information Security Compliance ("DISC"), MasterCard's Site Data Protection Program ("SDP"), the American Express Data Security Requirements ("DSR"), and Visa's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, DISC, DSR and CISP requirements at all times. Merchant will report any non-compliance immediately to Bank or ETS CORPORATION. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.

**(c) Annual Certification.** Merchant will provide an annual certification to Bank or ETS CORPORATION if requested by Bank or ETS CORPORATION (in a form acceptable to Bank or ETS CORPORATION) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Association requirements such as PCI, SDP, DSR and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.

**(d) Information Use Limitations.** Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Bank's or ETS CORPORATION's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or applicable federal and state laws, rules, regulations and guidance and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Association rules, regulations or bylaws.

**(e) Response to Unauthorized Access.** Merchant will notify Bank or ETS CORPORATION within 24 hours after it knows of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank or ETS CORPORATION, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Bank or ETS CORPORATION and the issuing bank (s) or the Card Associations to investigate the incident and provide assistance and cooperation to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear the cost of notifying affected Cardholder.

**(f) Miscellaneous.** Merchant may not make a claim against Bank or ETS CORPORATION or hold Bank or ETS CORPORATION liable for the acts or omissions of other merchants, service providers, Card Associations, financial institutions or others that do not have a written contractual relationship with Bank or ETS CORPORATION or over which Bank or ETS CORPORATION has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Association Rules. Merchant agrees that Provider may disclose to any Card Network information regarding Merchant and Merchant's Transactions to any Card Network, and that such Card Network may use such information to perform its responsibilities in connection with its duties as a Card Network, promote the Card Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes within the parameters of Card Network Card acceptance, and transactional or relationship communications from a Card Network. A Card Network may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with the Card Network marketing and administrative purposes.

Merchant agrees it may receive messages from a Card Network, including important information about Card Network 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.

- 2.16 Compliance with Card Association Rules.** Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum transaction amount as a condition for honoring a Card; (c) 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; (d) add any surcharge to transactions; (e) add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (f) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system); (g) request or use an account number of any purpose other than as payment for its goods or services; (h) 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; (i) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers cheques, Cards, or foreign currency, or (iii) Merchant is participating in the Card Association cash back service; (j) accept a Card for the purchase or scrip; (k) accept a Card for manual cash disbursement; (l) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; or (m) enter into a Transaction that represents collection of a dishonored check. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank or ETS CORPORATION which are attributable, at the Bank's or ETS CORPORATION'S discretion, to Merchant's Transaction processing or business. (n) accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank or ETS CORPORATION which are attributable, at the Bank's or ETS CORPORATION'S discretion, to Merchant's Transaction processing or business.
- 2.17 Merchant's Business.** Merchant will notify Bank or ETS CORPORATION immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change majority ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) changes its return policies or to another fulfillment house different from those identified in Merchant Application; or (g) changes to its Account. Merchant will notify Bank or ETS CORPORATION promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Bank's or ETS CORPORATION'S exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Bank or ETS CORPORATION may immediately terminate this Agreement.
- 2.18 Merchant's Warranties.** Merchant represents and covenants that: (a) all information contained in the Merchant Application or any other documents delivered to Bank or ETS CORPORATION in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Bank or ETS CORPORATION for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Bank's or ETS CORPORATION'S procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; and (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank or ETS CORPORATION.
- 2.19 Merchant's Covenants.** Merchants covenants that: (a) each Transaction Record presented to Provider for collection is genuine and is not the result of any fraudulent activity, or a Transaction prohibited by a Card Network, or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (b) each Transaction Record is the result of a bona fide purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Transaction Record; (c) Merchant will perform all of its obligations to the Cardholder in connection with the Transaction evidenced thereby; (d) Merchant will comply with Provider's procedures for accepting Cards, and the Transaction itself will not involve any element of credit for any other purposes other than as set forth in this Agreement, and will not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Network Rules, the Consumer Credit Protection Act (15 USC §1601) or other Law; and any Credit Voucher which Merchant issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Transaction Record has been accepted by Provider.
- 2.20 Third Parties.** Merchant may desire to use a third-party service provider to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Provider previously in writing, and unless such third party is fully compliant with all Laws and Network Rules. Any third party used by Merchant must be registered with the Card Network prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any third-party service provider and Merchant will be responsible for compliance by such third-party service provider with all Laws and Network Rules. Merchant will indemnify and hold harmless Provider from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including third-party service providers. Provider is not responsible for any third-party service provider used by Merchant, nor is Provider required to process any Transaction which Provider receives from Merchant or its service providers in any format not approved by Provider. Provider has no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party.
- 2.21 Recourse.** Merchant acknowledges that ISO performs the services contemplated by this Agreement and ISO is responsible to Merchant for any failure to perform such services in accordance with the terms of this Agreement. While Bank satisfies settlement files pursuant to instructions provided by ISO, Bank is not responsible for independently verifying the accuracy of such settlement files. Accordingly, to the greatest extent permitted by the Network Rules, Merchant's sole recourse for any failure by Provider under this Agreement is against ISO (and not Bank).
- 2.22 Pre-Authorized Transactions.** If Merchant agrees to accept a pre-authorized order, the Cardholder shall execute and deliver to Merchant a written request for such pre-authorization which will be retained by Merchant and made available upon request to Provider. Merchant will not deliver goods or perform services covered by a pre-authorization after receiving specific notification that the pre-authorization is cancelled or that the card covering the pre-authorization is not to be honored.
- 2.23 Pre-Authorization Health Care Transactions.** If Merchant is a "Health Care Merchant" as indicated on the Merchant Application and accepts a pre-authorized health care Transaction(s) from a Cardholder, Merchant agrees to comply with any requirements in the Network Rules related to such Transactions.

**2.24 Recurring Transactions.** If Merchant agrees to accept a recurring transaction from a Cardholder for the purchase of goods or services which are delivered or performed periodically (a "Recurring Transaction"), the Cardholder shall complete and deliver to Merchant an order form containing a written request for such goods or services to be charged to the Cardholder's account, the frequency of the recurring charges and the duration of time for which such Cardholder's permission is granted. In the event a Recurring Transaction is renewed, the Cardholder shall complete and deliver to Merchant a subsequent order form for continuation of such goods or services to be charged to the Cardholder's account. A Recurring Transaction may not include partial payments made to Merchant for goods or services purchased in a single Transaction, nor may it be used for periodic payments of goods or services on which Merchant assesses additional finance charges. A copy of the order form must be retained for the duration of the recurring charges and provided in response to Provider's request. In addition, Merchant must record, retain, and promptly produce upon request the "ship to address" and address verification service code (where applicable) for each transaction. Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, the Card Issuer, Provider or other party or a response that the Card is not to be honored.

**2.25 Limited Acceptance.**

(a) If appropriately indicated on the Merchant Application, Merchant shall be a limited acceptance merchant, which means that Merchant has elected to accept only certain Visa and MasterCard Card types as indicated on the Merchant Application, or via later notification. The Visa or MasterCard credit acceptance option on the Merchant Application refers to Visa credit and business transactions, and is what MasterCard refers to as "Other Card" transactions. Notwithstanding anything to the contrary in the Merchant Application, Merchant can elect (i) to accept only Visa or MasterCard non-PIN based debit/stored value/electronic benefit transactions (sometimes referred to as "signature debit" transactions, whether or not an actual signature is required), (ii) to accept only Visa or MasterCard Credit transactions, or (iii) to accept all Visa or MasterCard credit and signature debit transactions; provided, however, that a Merchant who accepts any Visa or MasterCard Card types must accept all valid Visa or MasterCard Card types issued by a non-U.S. issuer. Merchant is not required to accept Cards of Card Networks other than Visa or MasterCard in order to accept Visa or MasterCard Cards (except that transactions using Diner's International Cards which also carry the MasterCard Mark must be accepted if Merchant accepts MasterCard Card transactions of the same type). Provider has no obligation other than those expressly provided under the Network Rules and applicable Law as they may relate to limited acceptance. Provider's obligations do not include policing card types at the point-of-sale. Merchant will be solely responsible for the implementation of its decision for limited acceptance including but not limited to policing the Card Network type(s) of transactions at the point-of-sale submitted for processing by Provider. Should Merchant submit a Transaction for processing for a card type it has indicated it does not wish to accept, Provider may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction. Merchant will comply with any applicable Laws and Network Rules and other applicable rules and regulations for the Card Network type processed.

(b) If Merchant has chosen to accept Discover Cards in the Merchant Application, Merchant must accept Discover Cards at all Merchant establishments, including in payment for purchases of goods and services, for charitable contributions and for Cash Over Transactions (subject to the terms of the Network Rules and other applicable rules and regulations), when properly presented for payment by a Cardholder. Subject to this section, Merchant must create a Transaction Record for each Discover Card Transaction and deliver at least one copy of the Transaction Record to the Cardholder. A Merchant may issue a Cash Over (subject to the terms of the Network Rules) in connection with a Discover Card Transaction. Merchant must deliver a single Authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount. In addition, the Transaction Record must include both the purchase amount and the Cash Over amount.

**ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK**

**3.01 Acceptance.** Bank will accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant is required to transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same of next business immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Associations. Bank will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, Reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.

**3.02 Endorsement.** The presentment of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and shall constitute an endorsement by Merchant to Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf.

**3.03 Prohibited Payments.** Bank will have the sole right to receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically unauthorized in writing by Bank, Merchant will not make or attempt to make any collections on any Sales Draft, including Chargebacks, and will hold in trust for Bank and will promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.

**3.04 Chargebacks.** Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Association regulations, or a Card issuer or Bank or ETS CORPORATION determines that Merchant has in any way failed to comply with Card Association regulations or Bank's or ETS CORPORATION's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase. Section 2.03 notwithstanding, Bank may charge back the amount of a Card sale for which the Cardholder disputes that authorizing the charge if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a sale Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on Schedule A.

**3.05 Chargeback Reserve Account.** Notwithstanding anything to the contrary in this Agreement, Bank or ETS CORPORATION may establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing chargeback reserve account (the "Reserve Account"), or demand other security or raise any discount, transaction or other fees. This account may be established at any time or for any reason. Specific examples might include: (a) Merchant engages in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Association rule or applicable law; (d) Merchant's application is in any way inaccurate or becomes inaccurate subsequent to Bank's approval of the application; (e) Merchant changes its type of business without Bank's prior written approval; (f) fraud, Merchant processes an unauthorized charge, or other action that violates Bank's or ETS CORPORATION's applicable risk management standards or is likely to cause a loss; (g) Merchant has chargebacks exceeding 1% of the total number of transactions completed by Merchant in any 30 calendar day period; (h) excessive numbers of requests from consumers or issuing banks to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminates this Agreement. Once the Reserve Account is established, collected funds will be placed in the Reserve Account. Before releasing funds after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding charges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank or ETS CORPORATION may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank or ETS CORPORATION into the Reserve Account. Once established, unless Bank or ETS CORPORATION determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable period thereafter during which Cardholder disputes may remain valid under applicable Card Association rules. The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank terminates the Reserve Account. Any balance remaining after chargeback rights have expired and all of Bank's or ETS CORPORATION's other expenses, losses and damages have been paid will be disbursed to Merchant.

#### ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

**4.01 Term.** This Agreement will be effective once Bank and ETS Corporation accepts it and will continue until party has provided written notice of cancellation/termination given no less than thirty (30) days prior to termination of services.

#### 4.02 Termination.

(a) **Without Cause.** Bank or ETS CORPORATION may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant.

(b) **For Cause.** Bank or ETS CORPORATION may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Bank or ETS CORPORATION reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Bank or ETS CORPORATION, including Application information, was false, incomplete or misleading when received; (v) at any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions exceeding Card Association requirements or 1%, or Chargebacks exceed 3% of any monthly dollar amount of total transactions; (vi) an overdraft in the settlement account exists for more than three days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing transactions arising from fraudulent or otherwise unauthorized transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable law; (ix) Merchant has failed to timely pay Bank or ETS CORPORATION any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under its settlement account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with the Bank or ETS CORPORATION; (xiii) Bank or ETS CORPORATION is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's or ETS CORPORATION's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Association rules are amended in any way so that the continued existence of this Agreement would cause Bank or ETS CORPORATION to be in breach of those rules; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association; (xvii) termination is necessary to prevent loss to Bank or ETS CORPORATION or Card Issuers; (xviii) Merchant's type of business indicated on the Application or as conducted by Merchant could endanger the Bank's or ETS CORPORATION's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with the Bank or ETS CORPORATION and that relationship is terminated; (xx) Merchant appears on any Card Association's security reporting; or (xxi) Bank's or ETS CORPORATION's security for repayment becomes impaired.

**4.03 Effect of Bankruptcy.** Any account or security held by Bank or ETS CORPORATION will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Bank or ETS CORPORATION will be excused from performance hereunder.

**4.04 Effect of Termination.** When termination becomes effective, the parties' rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Bank or ETS CORPORATION may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. If Merchant is terminated for cause, Merchant acknowledges that Bank or ETS CORPORATION may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by Visa, Discover, and MasterCard. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file. Merchant waives and will hold harmless Bank or ETS CORPORATION from any claims that Merchant may raise as a result of Bank's or ETS CORPORATION's MATCH file reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all Bank or ETS CORPORATION property, forms, or equipment. All obligations for Transactions prior to termination (including payment for Chargebacks and Bank's or ETS CORPORATION's expenses relating to Chargebacks) survive termination. Bank or ETS CORPORATION is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide Bank or ETS CORPORATION with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Bank or ETS CORPORATION will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank or ETS CORPORATION. The parties agree that if this Agreement is terminated before completion of the initial term of this Agreement for any reason other than a material uncured breach by Bank or ETS CORPORATION, Merchant will pay Bank or ETS CORPORATION damages determined by (a) computing the number of months remaining from the date of termination to the end of the then current term, and (b) multiplying that number by the average monthly processing fees and adding Bank's or ETS CORPORATION's costs and attorneys' fees. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's or ETS CORPORATION's rights of termination are non-cumulative.

#### ARTICLE V - MISCELLANEOUS

**5.01 Account Monitoring.** Merchant acknowledges that ETS CORPORATION and/or Bank will monitor Merchant's daily deposit activity. Merchant agrees that Bank may upon reasonable grounds suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. ETS CORPORATION and/or Bank will make good faith efforts to notify Merchant promptly. ETS CORPORATION and/or Bank will not be liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

**5.02 Forms.** Merchant will use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Bank or ETS CORPORATION, and Merchant will not use such forms other than in connection with Card Transactions.

**5.03 Indemnification.** Merchant will defend, indemnify and hold Bank and ETS CORPORATION and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs ("Damages"), asserted against or incurred by Bank and ETS CORPORATION arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (c) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable federal and state laws, rules, regulations and guidance and Card Association rules by Merchant; and (e) all third party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Bank or ETS CORPORATION if Damages are caused by, related to or arise out of Bank's or ETS CORPORATION's negligence, gross negligence or willful misconduct, or Bank's or ETS CORPORATION's breach of this Agreement. Merchant will promptly reimburse Bank or ETS CORPORATION for any assessments, fines, fees or penalties imposed by the Card Association in connection with this Agreement, including the data security provisions, and authorizes Bank or ETS CORPORATION to deduct any such sums from amounts to be cleared and settled with Merchant.

**5.04 Records.** In addition to any records merchants routinely furnished to Bank or ETS CORPORATION pursuant to this Agreement, Merchant will preserve a copy of the actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least two (2) years after the date Merchant presents the Transaction to Bank.

**5.05 Requests for Copies.** Immediately upon receipt of any request by Bank or ETS CORPORATION, Merchant will provide either the actual paper Sales Draft or a legible copy thereof (in size comparable to the actual Sales Draft) and any other documentary evidence available to Merchant and reasonably requested by Bank or ETS CORPORATION to meet Bank's and ETS CORPORATION's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

**5.06 Compliance with Law.** Merchant will comply with all laws applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.

**5.07 Fees and Charges.** Merchant will pay to Bank or ETS CORPORATION the fees and charges set forth on Schedule A including any additional charges applied to transactions that fail to meet Card Association requirements for the lowest interchange levels. Merchant's Account will be debited through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Bank or ETS CORPORATION may change fees, including adding fees for additional services utilized by Merchant, upon 30 days written notice to Merchant.



- 5.08 Security Interest.** To secure payment of Merchant's obligations under this Agreement, Merchant grants to Bank and ETS CORPORATION a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Bank and ETS CORPORATION for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with the Bank or ETS CORPORATION or any institution other than Bank or ETS CORPORATION, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Bank or ETS CORPORATION or any institution other than Bank or ETS CORPORATION, including the Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by Bank or ETS CORPORATION, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. If Bank or ETS CORPORATION reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Bank or ETS CORPORATION (whether because this Agreement has been terminated or for any other reason), Bank or ETS CORPORATION may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable laws, including the Utah Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Bank or ETS CORPORATION may require Merchant to furnish such other and different security as Bank or ETS CORPORATION deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank or ETS CORPORATION may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Bank or ETS CORPORATION or financial institutions other than Bank or ETS CORPORATION, pending Bank's or ETS CORPORATION's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank or ETS CORPORATION. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this paragraph, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's or ETS CORPORATION's written consent before it grants a lien or security interest in that pledged collateral to any other person. Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from Transactions 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 Merchant may sell and assign future Transaction receivables to Provider, its affiliated entities and/or any other cash advance funding source that partners with Provider or its affiliated entities, without consent from any Card Network. Notwithstanding the foregoing, Provider prohibits Merchant from selling or assigning future Transaction receivables to any third party without Provider's prior written consent.
- 5.09 Modifications to Agreement.** This Agreement is subject to amendment to conform with Card Association regulations, as amended from time to time. From time to time Bank and ETS CORPORATION may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least thirty (30) days prior to the effective date of the amendments, and the amendment will become effective unless Bank or ETS CORPORATION receives Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision.
- 5.10 Warranty Disclaimer.** ETS CORPORATION MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND ETS CORPORATION EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE
- 5.11 Limitation of Liability.** Bank's and ETS CORPORATION's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges. **Bank and ETS CORPORATION is not liable for any incidental or consequential damages whatsoever.** Merchant waives all claims against Bank and ETS CORPORATION for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to ETS CORPORATION or Bank of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Bank and ETS CORPORATION harmless from any claim relating to any Sales Draft paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages or losses that Bank or ETS CORPORATION may incur as a result of Merchant's breach of this Agreement. Further, Merchant will reimburse Bank or ETS CORPORATION for all expenses and costs, including attorneys' fees, with regard thereto.
- 5.12 Waiver.** Failure by Bank or ETS CORPORATION to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.13 Written Notices.** All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile and the sender obtains a fax confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:  
(a) ETS CORPORATION, 20135 Lakeview Center Plaza, 4th Floor Ashburn, VA 20147  
(b) Bank: Merrick Bank Corporation, 10705 South Jordan Gateway, Suite 200, South Jordan, UT 84095, Attn: SVP of Merchant Services, Facsimile: (516)576-8741;  
(c) If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.
- 5.14 Choice of Law; Jurisdiction.** Any claim or cause of action arising out of or relating to this Agreement, whether now in existence or arising in the future, against Merrick Bank must be initiated and maintained exclusively in the state or federal courts located in Salt Lake County, Utah, and shall be governed by Utah law without regard to its conflict-of-law rules. Merchant hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding and acknowledges that it will be subject to the applicable procedural rules of those courts. Any claim or cause of action arising out of or relating to this Agreement, whether now in existence or arising in the future, against ETS CORPORATION must be initiated and maintained exclusively in the state courts located in Loudoun County, Virginia, and shall be governed by Virginia law without regard to its conflict-of-law rules. Merchant hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding and acknowledges that it will be subject to the applicable procedural rules of those courts. Merchant acknowledges that the state courts of Virginia do not provide a class action mechanism. By accepting this agreement and agreeing to litigate all disputes with ETS CORPORATION in the state courts located in Loudoun County, Virginia, Merchant expressly acknowledges that it foregoes the ability to bring a class action against ETS CORPORATION or to participate as a member of a class in an action against ETS CORPORATION heretofore accrued or accruing in the future.
- 5.15 Entire Agreement; Assignability.** This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Bank and ETS CORPORATION and Merchant. This Agreement may not be assigned, directly or by operation of law, without Bank's and ETS CORPORATION's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.
- 5.16 Deposit Account.** Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Bank and ETS CORPORATION with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Bank and ETS CORPORATION. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank and ETS CORPORATION a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Bank and ETS CORPORATION to protect its security interests therein.

- 5.17 **Credit and Financial Inquiries; Additional Locations; Inspections.** Bank or ETS CORPORATION may make, at any time, any credit inquires which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Upon Bank's or and ETS CORPORATION's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or ETS CORPORATION may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Bank or ETS CORPORATION. Additional locations may be added, subject to Bank's or ETS CORPORATION's approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Bank or ETS CORPORATION, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. Bank or ETS CORPORATION, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Association compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.
- 5.18 **Marketing of Non-Bankcard Services.** From time to time, Bank may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefore.
- 5.19 **Force Majeure.** The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.
- 5.20 **No Third Party Beneficiary.** No other person or entity may be deemed to be a third party beneficiary of this Agreement.
- 5.21 **Severability; Conflict with Network Rules.** If any provision in this Agreement is for any reason held to be invalid or unenforceable, no other provision shall be effected thereby, and this Agreement shall be construed as if the invalid or unenforceable provision had never been a part of it. In the event of a conflict between this Agreement and the Network Rules, the Network Rules shall govern and control.
- 5.22 **IRS Reporting Information.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities such as Bank and third-party settlement organizations are required to file an information return reflecting all payment card transactions and third-party network transactions occurring in a calendar year. This requirement applies to returns for all calendar years after December 31, 2010 and Merchant will receive a form 1099-K reporting Merchant's gross transaction amounts for each calendar year. In addition, amounts payable under Section 6050 W are subject to backup withholding requirements. Merchant acquirers such as Bank, either itself or through third parties, are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the merchant acquirer; or (b) if the IRS notifies the merchant acquirer that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provides Bank with the correct name and TIN that Merchant uses when filing its income tax return that includes the transactions for Merchant's business. In addition to the fees set forth on the Merchant Application, if Merchant fails to comply with the obligations set forth in this section, Provider may charge Merchant additional amounts determined by Provider and may pass through any additional fines, costs or expenses incurred by Provider.
- 5.23 **Confidentiality.** Merchant shall protect all information or other items proprietary to Provider that Merchant obtains knowledge of or access to as a result of Provider's provision of the services pursuant to this Agreement (collectively, "Provider Confidential Information") from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion Merchant uses to protect similar confidential information of Merchant's own, but in no event less than reasonable care. Furthermore, Merchant shall not use, reproduce, distribute, disclose, or otherwise disseminate Provider Confidential Information, except in connection with the performance of Merchant's obligations under this Agreement. The Provider Confidential Information described in the previous sentence, shall include, but not be limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information. The obligations of non-disclosure provided hereunder shall continue during the Term and, (i) with respect to Provider Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and, (ii) with respect to Provider Confidential Information that rises to the level of a trade secret under applicable Law, for such period of time thereafter as the Provider Confidential Information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

**Terms Below Are Additional Terms Applicable Specifically to American Express Card Acceptance (capitalized terms below not defined elsewhere in the Agreement shall have the meanings assigned in the American Express Network Rules). With respect to participation in an American Express acceptance program, in the event of a conflict between the terms below and other terms of this Agreement, the terms below shall control with respect to American Express transactions only. Merchant shall be bound by American Express Network Rules, including the Merchant Operating Guide: [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).**

- A5.24 **Transaction Data**. Merchant authorizes Provider and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express or Bank on behalf of Merchant.
- A5.25 **Marketing Message Opt-Out**. Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting Provider . 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 .
- A5.26 **Conversion to American Express Direct Merchant**. Merchant acknowledges that it may be converted from American Express Card OptBlue program to a direct relationship with American Express if and when its Transaction volumes exceed the eligibility thresholds for the OptBlue program . 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.
- A5.27 **American Express as Third Party Beneficiary**. Notwithstanding anything in the Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card acceptance to enforce such terms against Merchant .
- A5.28 **American Express Opt-Out**. Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept Cards bearing Marks of other Card Networks.
- A5.29 **Refund Policies**. Merchant's refund policies for American Express purchases must be at least as favorable as its refund policy for purchase on any other Card Network, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Law. Merchant may not bill or attempt to collect from any Cardholder for any American Express Transaction unless a Chargeback has been exercised, Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.
- A5.30 **Establishment Closing**. If Merchant closes any of its Establishments, Merchant must follow these guidelines: (i) notify ISO immediately; (ii) policies must be conveyed to the Cardholder prior to completion of the Transaction and printed on the copy of a receipt or Transaction record the Cardholder signs; (iii) if not providing refunds or exchanges, post notices indicating that all sales are final (e.g., at the front doors, by the cash registers, on the Transaction record and on websites and catalogs); (iv) return and cancellation policies must be clearly disclosed at the time of sale; and (v) for Advance Payment Charges or Delayed Delivery Charges, Merchant must either deliver the goods or services for which Merchant has already charged the Cardholder or issue Credit for any portion of the Transaction for which Merchant has not delivered the goods or services .

## Government Terms of Service

### TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among, Electronic Transaction Systems (ETS) Corporation and Merrick Bank Corporation. The TOS and the other portions of the Agreement govern the Merchant's participation in the Program.

### Section A – Definitions

#### 1) DEFINITIONS.

a) **ACH: Automated Clearing House.**

b) **Agreement:** The TOS, any Addendum, the Merchant Application, the Merchant Operating Guide, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

c) **American Express:** The American Express Company.

d) **Authorization:** Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.

e) **Authorization Code:** The code sent by an Issuer in response to an Authorization request.

f) **Automated Clearing House (ACH):** The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

g) **Bankruptcy Proceeding:** With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

h) **Card Not Present:** The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.

i) **Card Present:** The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.

j) **Cardholder:** (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

k) **Chargeback:** A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

l) **Confidential Information:** All information or items proprietary to ETS or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with ETS and Member, including, but not limited to, the following types of information and other

information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

m) Convenience Fee: Any fee or charge for the use of a Payment Device in a Transaction.

n) Credit Card: A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); or (iii) any card bearing the symbol of any other Credit Card Association.

o) Credit Card Associations: (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with ETS and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

p) Credit Card Rules: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by ETS from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

q) Credit Transaction Receipt: A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.

r) Debit Card: A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to make a payment by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.

s) Debit Card Rules: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by ETS from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

t) Demand Deposit Account (DDA): The commercial checking account at a financial institution acceptable to ETS and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.

u) Diners: Diners Club International Ltd.

v) Discover: DFS Services, LLC.

w) EBT Card: A card utilized for electronic benefits transfers.

x) Effective Date: The date set forth in the signature block of ETS herein.

y) EFT Networks: (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes ETS and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

z) Electronic Check Service Association: Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by ETS from time to time.

aa) Electronic Check Service Rules: All applicable rules and operating regulations of the Electronic Check Service Associations, and all rules, operating regulations, and guidelines for Electronic Check Service Transactions issued by ETS from time to time, including without limitation, all amendments, changes, and revisions made thereto from time to time.

bb) Electronic Commerce Transaction: A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant or a Merchant uses the Internet to submit the Transaction for processing to ETS.

- cc) **Electronic Gift Cards (EGC):** A special card purchased by a customer that is redeemable for in-store merchandise or services.
- dd) **Interchange:** The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between ETS and the Issuer.
- ee) **Issuer:** The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.
- ff) **JCB:** JCB International Co., Ltd.
- gg) **Laws:** All applicable state, federal and local laws, rules, regulations, orders and decrees, as amended from time to time.
- hh) **Loyalty Cards:** A special card given to customers who are frequent shoppers of an establishment pursuant to which the customer may receive a discount or other reward.
- ii) **Mail Order/Telephone Order (MO/TO) Transaction:** For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.
- jj) **MasterCard:** MasterCard International Incorporated.
- kk) **Member:** Merrick Bank Corporation. The Member may be changed by ETS at any time.
- ll) **Merchant (or you):** and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.
- mm) **Merchant Application:** Any document containing information regarding Merchant's business that is submitted to ETS and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.
- nn) **Merchant Operating Guide:** The operating manual provided by ETS to its Merchants. The Merchant Operating Guide may be amended from time to time by ETS in its sole discretion.
- oo) **National Automated Clearing House Association (NACHA):** The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.
- pp) **ETS:** As applicable, Electronic Transaction Systems (ETS), Corporation, a Virginia corporation, and any affiliate or subsidiary of ETS, Corporation that provides processing services to a Merchant related to Transactions. ETS is a registered member service provider of each Member.
- qq) **Payment Device:** Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check, (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.
- rr) **Payment Network:** Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.
- ss) **Payment Network Regulations:** Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and/or the Electronic Check Service Rules.
- tt) **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- uu) **POS Device:** A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by ETS and the applicable Payment Network.

vv) Prepaid Cards: A reloadable card having available funds to the Cardholder paid for in advance.

ww) Program: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

xx) Reserve Account: The account established pursuant to Section (B)(6).

yy) Reserve Amount: The amount established pursuant to the calculation set forth in Section (B)(6).

zz) Reserve Event: The events designated in Section (B)(6).

aaa) Retrieval Request: A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

bbb) TOS: These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

ccc) Transaction: Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).

ddd) Transaction Receipt: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.

eee) Value Added Services: Any product or service provided by a third party unaffiliated with ETS or Member to assist Merchant in processing Transactions, including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.

fff) Visa: Visa U.S.A., Inc.

2) RULES OF CONSTRUCTION: Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section B - General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.

#### Section B - General Provisions

3) ACCEPTANCE OF PAYMENT DEVICES. Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Credit Cards are set forth in the TOS. The terms and conditions for the acceptance of any Payment Devices or methods other than Credit Cards shall be set forth in one or more addenda (each an "Addendum"), which shall incorporate the TOS by reference. Each Addendum shall be governed by the TOS, as well as by the terms set forth in the Addendum.

#### 4) DEPOSIT OF TRANSACTION RECEIPTS.

##### a) Funds.

i) Deposits. You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, ETS, and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to ETS and Member for all amounts owed under the agreement arises out of the same transaction as ETS' and Member's obligation to deposit funds to the DDA.

ii) Provisional Credit. All Transaction Receipts and deposits are subject to audit and final checking by Member and ETS, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by

the Issuer. Member or ETS may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and ETS' sole discretion.

iii) **Original Transaction Receipts.** Under no circumstances will Member or ETS be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and ETS.

b) **Chargebacks.** You are fully liable to ETS and Member for all Transactions returned to ETS or Member for whatever reason including all Chargebacks. You will pay ETS and Member for all Chargebacks You agree to accept for Chargeback, and will be liable to Member and ETS in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize ETS and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with ETS and Member in complying with the Payment Network Regulations regarding Chargebacks.

#### 5) DEMAND DEPOSIT ACCOUNT (DDA).

a) **Establishment and Authority.** You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize ETS and Member to debit the DDA for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize ETS' or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. You must obtain prior consent from Member and ETS to change the DDA. If you do not get that consent, ETS or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. ETS and Member have the right to rely upon written instructions submitted by you to request changes to the DDA. You may request from ETS written confirmation of ETS' and Member's consent to change the DDA.

b) **DDA.** If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. ETS and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. You authorize Member or ETS to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at ETS' direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and ETS and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.

c) **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from ETS, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. You must promptly examine all statements relating to the DDA and immediately notify ETS and Member in writing of any errors in the statement Merchant received from ETS. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by ETS within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to ETS within said thirty (30) days, ETS and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or ETS for any loss or expense relating to any asserted error for sixty (60) days immediately following ETS' receipt of your written notice. During that sixty (60) day period, ETS will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying ETS.

d) **Depository Institution.** Merchant authorizes its depository institution to grant ETS and/or Member access to any and all information or records regarding the DDA. You hereby release ETS and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. You also release the depository institution at which you maintain your DDA for acting in accordance with any instruction from ETS and/or Member regarding the DDA.

e) **ACH Authorization.** You authorize Member, ETS, and their respective vendors and agents to initiate debit/credit entries to the DDA and the Reserve Account, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement and until all of your obligations to ETS and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide ETS and Member such information regarding the new DDA as they deem



necessary. It may take ETS up to ten (10) business days after ETS' receipt of a written notice from you to reflect in its system any change to your DDA.

#### 6) RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.

##### a) Reserve Account.

i) **Establishment.** ETS may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and ETS for any and all amounts owed by you. Member and ETS shall have sole control of the Reserve Account.

ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, ETS will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality.

iii) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to ETS, (c) ETS' reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e) termination of the Agreement for any reason, (f) nonpayment of amounts owed to ETS or Member, and (g) the occurrence of an adverse change in your financial condition.

iv) **Funding.** Member and ETS may fund the Reserve Account up to the Reserve Amount by any one or more of the following means. (1) Member and ETS may require you to deposit into the Reserve Account funds in an amount determined by ETS; (2) Member and ETS may debit the DDA in any amount; (3) Member and ETS may deposit into the Reserve Account funds they would otherwise be obligated to pay you.

v) **Use of Funds in Reserve Account.** Member or ETS may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or ETS. Also, Member or ETS may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or ETS. Further, you agree that ETS or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

vi) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.

b) **Recoupment and Set-off.** Member and ETS have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to ETS and Member, you must create or maintain the Reserve Account as required by ETS and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to ETS and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.

c) **Remedies Cumulative.** The rights conferred upon Member and ETS in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and ETS under the Agreement, at law or in equity. Rather, each and every right of Member and ETS under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

#### 7) FEES; OTHER AMOUNTS OWED; TAXES.

a) **Fees.** You will pay Member and ETS fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees. Such fees will be calculated and debited from the DDA once each month for the previous month's activity, or will be deducted from the funds due you under the Agreement. In addition, you will pay ETS at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement will not be amended by ETS for the Initial Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.

b) **Other Amounts Owed.** You will immediately pay ETS or Member any amount incurred by ETS or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing), and any other payments due under the Agreement. ETS or Member may debit these amounts from your DDA by ACH, and in the event such ACH does not fully reimburse ETS or Member for the amount owed, you will immediately pay ETS or Member such amount. ETS will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

c) **Taxes.** You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If you are a tax-exempt entity, you will provide ETS and Member with an appropriate certificate of tax exemption.

#### 8) ACCURACY OF INFORMATION; HOLD HARMLESS; LIMITATION OF LIABILITY; PERFORMANCE.

a) **Accuracy of Information.** You represent and warrant to Member and ETS that all information provided to ETS in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify ETS in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept payment services, type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by ETS at least ten (10) business days prior to the change. You will provide any additional information requested by ETS within a reasonable time. You will hold harmless Member and ETS for all losses and expenses incurred by Member or ETS arising out of any such change, whether or not reported to ETS, or your failure to provide requested information. ETS may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize ETS and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon ETS' or Member' receipt of the Merchant Application.

b) **Hold Harmless.** As between Merchant, ETS and Member, Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute with any Cardholder or third party relating to any Transaction or any breach by Merchant of any of its obligations under this Agreement. Merchant hereby releases ETS and Member from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with such Transactions and Merchant breaches.

c) **Limitation of Liability.** Merchant acknowledges that ETS and Member's fees for the services provided to Merchant are very small in relation to the funds advanced to Merchant for Transactions and consequently ETS' and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on ETS' or Member's liability that may be provided elsewhere, any liability of ETS and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by you during the last three (3) months. In no event will ETS, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.

d) **Performance.** ETS and Member will perform all services in accordance with the Agreement. ETS makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. ETS and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. Neither ETS nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of ETS or Member and without the fault or negligence of ETS or Member.

#### 9) REPRESENTATIONS AND WARRANTIES. You represent and warrant to ETS and Member as of the time the Agreement is effective, and reaffirm to ETS and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:

a) **Information.** All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to ETS is true and complete and properly reflects the business, financial condition and officers of Merchant. ETS has the right to rely upon

written instructions submitted by you to request changes to your business information. You may request written confirmation of ETS' consent to the changes to your business information. You will not submit Transactions for processing to ETS or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of ETS.

b) **Authority to Execute.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by ETS, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.

c) **No Litigation.** There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCHM system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to ETS in writing.

d) **Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with ETS.

e) **Compliance with Laws and Regulations.** You will comply with all Laws and Payment Network Regulations.

f) **Business Use.** You are obtaining and using the processing services from ETS for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.

#### 10) AUDIT AND INFORMATION.

a) **Audit.** You authorize ETS and Member to perform an audit of your business, at ETS' or Member's expense, to confirm compliance with the Agreement. You will obtain and submit a copy of an audit from a third party acceptable to ETS of the financial, physical security, information security, and operational facets of your business at your expense when requested by the Payment Networks or required by the Payment Network Regulations. Further, you acknowledge and agree that the Payment Networks have the right to audit your business to confirm compliance with the Payment Network Regulations.

#### b) Information.

i) **Authority.** You authorize ETS and Member to make, from time to time, any business or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to ETS.

ii) **Financial Information.** Upon the request of either ETS or Member, you will provide ETS and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to ETS and Member such other information regarding your financial condition as ETS and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish ETS, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

c) **Customer Identification.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow ETS and Member to identify you.

11) **RESPONSIBILITY FOR ACTIONS.** You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.

12) **FRAUD MONITORING.** You are solely responsible for monitoring your Transactions and the actions of your officers, directors, employees, agents, business invitees, third party vendors including Value Added Services, and those of any other Person who, with or without your consent

or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. ETS and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.

13) **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. ETS is under no duty to recreate lost Transactions.

14) **THIRD PARTIES.**

a) **Products or Services.** You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to ETS previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will hold ETS and Member harmless from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither ETS nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither ETS nor Member is responsible for any Transaction until ETS receives data for the Transaction in the format required by ETS.

b) **Use of POS Devices Provided by Others.** In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to ETS and Member via a data processing system or network compatible with ETS'; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor ETS will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither ETS nor Member is responsible for any Transaction until ETS receives data for the Transaction in the format required by ETS.

15) **TERM AND TERMINATION.**

a) **Term.** Unless terminated as set forth below, the Agreement will remain in effect on a month-to-month basis following the Effective Date. Thereafter, the Agreement will renew for successive monthly basis unless terminated as set forth below.

b) **Termination.**

i) **Merchant.**

(1) The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of intent not to renew to ETS at least thirty (30) days prior to the expiration of the then current term.

(2) The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or ETS, provided you give Member and ETS written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party you claim to be in breach of the Agreement.

(3) The Agreement may be terminated by you in the event that sufficient legislative appropriation is not available, provided that you give ETS and Member thirty (30) days notice prior to termination.

ii) **ETS or Member.**

(1) The Agreement may be terminated by Member or ETS effective at the end of the Initial Term or any Renewal Term by providing written notice of intent not to renew to you at least thirty (30) days prior to the expiration of the then current term.

(2) The Agreement may be terminated by ETS or Member immediately upon the occurrence of one or more of the following:

(a) The occurrence of an adverse change in your financial condition.

- (b) The garnishment or attachment of your deposit accounts with Member, the DDA, the Reserve Account, or any of your property in the possession of ETS or Member.
- (c) The assignment of your assets generally for the benefit of creditors.
- (d) The commencement of a Bankruptcy Proceeding by or against you.
- (e) Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.
- (f) Any Payment Network requires Member or ETS to terminate this Agreement or cease processing transactions for you.

(3) The Agreement may be terminated by ETS or Member if, after providing thirty (30) days written notice, any of the following conditions remain:

- (a) The occurrence of Excessive Activity (defined in Section C(24)(c)).
- (b) The acceptance of Card Not Present Transactions without proper disclosure to ETS and Member as set forth herein.
- (c) The failure to pay ETS or Member any amount you owe ETS or Member.
- (d) The failure by you to perform a material obligation of this Agreement.

ETS' and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of ETS or Member to terminate the Agreement expressed elsewhere.

c) **Notice of Termination.** Notice of termination by Merchant, ETS, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with ETS may take up to thirty (30) days following ETS' receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by ETS following termination by either Merchant or ETS, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

**d) Action Upon Termination.**

i) **Accounts.** All your obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until you pay all amounts you owe ETS or Member or amounts for which you are liable under the Agreement. You must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination. If a Reserve Account is established by ETS, then any balance remaining after Chargeback rights have expired and all other amounts owed by you have been paid will be disbursed to you.

ii) **Equipment.** If your equipment is leased, you are obligated to honor the terms and conditions of your leasing contract. If your equipment is owned by ETS, you must return all equipment owned by ETS within ten (10) business days and immediately pay ETS any amounts you owe for such equipment.

iii) **Return to ETS.** All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of ETS and must be returned to ETS or destroyed within ten (10) business days after termination of the Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by ETS arising out of any failure to return or destroy such materials following termination.

**16) COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™.**

a) **Compliance with Laws and Payment Network Regulations.** You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or ETS. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) electronic fund transfers; and (iii) confidential treatment of information. You will assist Member and ETS in complying in a

complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and ETS all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.

b) **MATCHTM.** You acknowledge that Member and/or ETS is required to report Merchant's business name and, if applicable, the name of Merchant's principals to the MATCHTM listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by ETS and Member, the listing itself and you waive and hold harmless ETS and Member from all claims and liabilities you may have as a result of such reporting.

c) **Security Program Compliance.** You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, ETS will provide you with the respective website links to obtain the current requirements of the Visa and MasterCard programs. You are responsible for your own actions or inactions, those of your officers, directors, shareholders, employees and agents, including any third party vendors with whom you contract to perform services for you. You shall hold ETS and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security program in place, you must comply therewith and ensure that your officers, directors, shareholders, employees, and agents, including any third party vendors from whom you procure Value Added Services or third party POS Devices also comply with the program requirements of such Payment Network.

d) **Data Compromise.** You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and obtaining any waivers necessary for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to such data incident and all costs ETS or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits, at your expense. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident.

#### 17) USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

a) **Use of Trademarks.** You will prominently display the promotional materials provided by ETS in your place of business. Your use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for your products or services.

#### b) Confidentiality.

i) **Cardholder and Transaction Information.** You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B(16)(d), Merchant shall immediately notify ETS of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) ETS or Member; or (iv) elsewhere.

ii) **Bankruptcy.** In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:

(1) Return this information to ETS, or

(2) Provide acceptable proof of destruction of this information to ETS.

iii) **ETS or Member Confidential Information.** You shall at all times protect ETS' and Member's Confidential Information. You will not disclose any of ETS' or Member's Confidential Information to any third party except as required by Laws.

c) **Passwords.** If you receive a password from ETS to access any of ETS' databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to ETS' databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify ETS if you believe ETS' databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and hold ETS and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.

d) **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by ETS. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which ETS may obtain in respect to ETS' services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of ETS' services, equipment, or software.

#### 18) MISCELLANEOUS PROVISIONS.

a) **Entire Agreement.** The Agreement, Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any Addendum; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) the Merchant Operating Guide; and (vi) any other guides or manuals provided to Merchant from time to time.

b) **Construction.** Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

c) **Assignability.** The Agreement may be assigned by Member or ETS, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of ETS. If you, nevertheless, assign the Agreement without ETS' consent, the Agreement will be binding on the assignee as well as you.

d) **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of ETS. Any written notice to ETS, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 10 Pidgeon Hill Drive, Suite 200 Sterling, Virginia, and shall be deemed received only upon actual receipt.

e) **Bankruptcy.** You will immediately notify ETS of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. You will include ETS on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to ETS under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

f) **Attorneys' Fees.** The non-prevailing party will be liable for and will reimburse the other parties for all attorneys' fees and other costs and expenses paid or incurred in the enforcement of this Agreement, or in collecting any amounts due or resulting from any breach of the Agreement.

**g) Customer Contact.** You authorize Member and ETS to contact your customers or their Issuer if Member or ETS determines that such contact is necessary to obtain information about any Transaction between you and a customer.

**h) Telephone Recording.** You authorize ETS to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in ETS' discretion.

**i) Information Sharing.** You understand and agree that ETS may disclose any information gathered by ETS to (i) ETS' "affiliates" (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement and to ETS' administrative or service units that perform such functions; (ii) to non-affiliated companies to assist ETS in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

**j) Communication with Merchant.** You agree that ETS and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.

**k) Amendments.** Member and ETS may propose amendments or additions to the Agreement. Member or ETS will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and ETS after thirty (30) days following the issuance of the notice. ETS is entitled to pass through to you any fee increases imposed upon ETS by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors.

**l) Severability and Waiver.** If any provision of the Agreement is found to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by ETS or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by you must be signed by ETS.

**m) Independent Contractors.** ETS, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.

**n) Privacy Laws.** In addition to Section (B)(17)(b) above, Merchant must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of ETS to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a "covered entity" or "business associate", as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain "protected health information" as defined by HIPAA. ETS is not a "business associate" as defined by HIPAA and it is not ETS' practice to store or accept any information that would cause it to be a "business associate" under HIPAA.

**o) Survival.** All or your obligations to ETS and Member shall survive termination of the Agreement, including, without limitation, Sections (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(11), (B)(14), (B)(15)(d), (B)(16), (B)(17) and (B)(18)(f) of the TOS.

**p) Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

#### Section C – Acceptance of Visa and MasterCard

**19) ACCEPTANCE OF VISA AND MASTERCARD.** Merchant agrees to the following provisions in addition to the Definitions in Section (A) and the General Provisions of Section (B) above:

**20) VISA AND MASTERCARD DEFINITIONS.** For purposes of this Section, "Credit Card" shall be deemed to be limited to a: (i) credit/business product of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product of MasterCard; or (iv) consumer debit/prepaid product of MasterCard as applicable. The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the



Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards. The consumer debit/prepaid products of Visa are those products that for which Transactions by the Cardholder are paid by accessing the Cardholder's asset account immediately including: (i) consumer Visa check cards such as Classic, Gold, Platinum and Visa Check Card II; and (ii) consumer prepaid/EBT cards such as Visa Buxx, Visa Payroll, Visa gift cards (including incentives, promotional, and rebate), child support cards, unemployment cards, insurance claim cards, customer service cards, state disbursement cards (not including unemployment or child support), flexible spending account cards, general purpose reloadable and one-time use prepaid cards, and student aid college cards. The consumer debit/prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EBT cards and payroll cards. The credit/business products of MasterCard include all other MasterCard products.

## 21) HONORING CREDIT CARDS.

a) **Honoring Cards.** Merchant may choose to accept (i) only the credit/business products of Visa and/or MasterCard; (ii) only the consumer debit/prepaid products of Visa and/or MasterCard; or (iii) both the credit/business products and consumer debit/prepaid products of Visa and/or MasterCard. You must indicate your decision to accept a limited category of products on the Merchant Application and if you wish to discontinue acceptance of either category of products, you must provide ETS with thirty (30) days advance written notice. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, ETS and Member are not required to reject the Transaction and you will be charged our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.

b) **No Minimum or Maximum.** Merchant shall not establish minimum or maximum Credit Card Transaction amounts.

c) **Cardholder Identification.** In Card Present Transactions, you will identify the Cardholder and check the expiration date and signature on each Credit Card. You will not honor any Credit Card if: (i) the Credit Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Credit Card, is blank, or uses language to the effect of "see id"; or (iii) the account number embossed on the Credit Card does not match the account number on the Credit Card's magnetic stripe.

d) **Credit Card Recovery.** You will use reasonable, peaceful means to recover any Credit Card: (i) on Visa Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Credit Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number, or the Credit Card does not have the "Twin Globes" hologram on the lower right corner of the Credit Card face.

e) **Surcharges.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Credit Card, except as permitted by the Credit Card Rules. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check, or similar means rather than by Credit Card.

f) **Convenience Fees.** You may not assess Convenience Fees unless you have disclosed such fees to ETS previously in writing and you have been approved by ETS to assess such fees. If you complete a Transaction and assess a Convenience Fee without having disclosed such fee previously in writing and obtained ETS' consent, you will be in breach of the Agreement and ETS may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations. Transactions that include a Convenience Fee must comply with each of the following requirements:

i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.

ii. The Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition or utility charges.

iii. You must provide a true "convenience" in the form of an alternative payment channel outside of your customary payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.

iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not want to pay the fee.

v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.

vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).

vii. Additional Visa Convenience Fee Requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) the fee must be assessed by the *same Merchant actually providing the goods and services*; and (v) the fee may not be assessed by a different merchant.

viii. Additional MasterCard Convenience Fee Requirements are as follows: (i) the fee may be tiered, percentage based, or flat; and (ii) the fee may be authorized and settled separately from the primary transaction.

ix. Merchants who accept both Visa and MasterCard Credit Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat Convenience Fee and must combine all charges into one authorization and clearing Transaction.

x. To the extent Merchant's state or other governing body has passed legislation that requires Convenience Fee assessment by government agencies as a component of card acceptance, such laws may conflict with the Payment Network Regulations. Merchant bears all responsibility for, and agrees to hold ETS and Member harmless from, all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.

xi. Convenience Fees may be prohibited by Laws in some States. Merchant may not charge Convenience Fees where prohibited by Laws.

xii. In no event is a Convenience Fee to be referred to as a surcharge or advertised as an offset to processing fees.

xiii. If you have received approval from Visa to participate in the Tax Payment Pilot Program, then you may assess a variable service fee so long as: (i) only eligible tax payments are accepted (personal income, personal property, real property, unemployment, business income and sales and use taxes); (ii) Cardholders are notified of the fee and given the opportunity to opt-out of the Transaction; (iii) the variable fee must be processed as a separate Transaction and not combined with the tax payment; (iv) the variable fee may be assessed on all payment channels and the fee cannot be higher than any other card-based payment offered through the same channel; and (v) you submit appropriate reports of CISP compliance to Visa and receive Visa approval and certification annually.

**g) Return Policy.** You must properly disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Credit Card Rules, any limitation you have on accepting returned merchandise.

**h) No Claim Against Cardholder.** You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or ETS refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to ETS.

**i) Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither ETS nor Member bears any responsibility for such Transactions or disputes, other than with respect to processing Chargebacks under the Credit Card Rules.

## 22) AUTHORIZATION.

**a) Required on all Transactions.** You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the

Authorization Code on the Transaction Receipt. In any case in which a sales Transaction is completed without imprinting the Credit Card, the Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.

b) **Effect.** An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.

c) **Unreadable Magnetic Stripes.** For Card Present Transactions, if you authorize and present Transactions electronically and your terminal is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

### 23) PRESENTMENT OF TRANSACTION RECEIPTS.

#### a) Transaction Receipts.

i) **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions).** You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:

- (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
- (2) Merchant name and location.
- (3) Location Code (i.e., merchant identification number issued by ETS).
- (4) Transaction amount, including applicable taxes.
- (5) Transaction date.
- (6) Space for Cardholder signature for Card Present Transactions.
- (7) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
- (8) Authorization Code.
- (9) Terms and conditions of the sale, if restricted.

If the Merchant is accepting consumer debit products of Visa or MasterCard, no data referencing the Cardholder's PIN number shall be printed on the receipt.

ii) **Electronic Commerce Transactions.** You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:

- (1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
- (2) Merchant name.
- (3) Merchant online address.
- (4) Purchaser name.

- (5) Authorization Code.
- (6) Transaction amount.
- (7) Transaction date.
- (8) Customer service contact, including telephone number.
- (9) Terms and conditions of the sale, if restricted.

**b) Signatures.** In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS.

**c) Reproduction of Information.** For Card Present Transactions, if the following information embossed on the Credit Card is not legibly imprinted on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.

**d) Truncation.**

i) The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "\*", or "#," and not with blank spaces or numeric characters.

ii) Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.

iii) These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.

**e) Delivery and Retention of Transaction Receipts.** For Card Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or terminal-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer period as the Credit Card Rules or the Laws may require).

**f) Electronic Transmission.** If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to ETS or its designated agent in the form specified by ETS no later than the close of business on the date the Transactions are completed. If Member or ETS requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.

**24) RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING.**

**a) Retrieval Requests.** You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.

**b) Chargebacks.** You are fully liable to ETS and Member for all Transactions returned to ETS or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and ETS in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay ETS and Member on demand the value of all Chargebacks. You authorize ETS and Member to offset from incoming Transactions and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with ETS and Member in complying with the Credit Card Rules regarding Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.

- i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
- ii) Unauthorized use of a Credit Card as alleged by the Cardholder,
- iii) Dispute by the Cardholder over the quality of goods or services,
- iv) Failure by Merchant to provide goods or services,
- v) The Transaction Receipt does not bear the Cardholder's signature,
- vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
- vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
- viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

c) **Excessive Activity.** Your presentation to ETS of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement as set forth in Section B(15)(b)(ii)(3). "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and ETS to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.

d) **Credits.**

i) **Credit Transaction Receipt.** You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to ETS. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to ETS, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide ETS with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.

ii) **Revocation of Credit.** Member or ETS may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.

iii) **Reprocessing.** You will not resubmit or reprocess any Transaction that has been charged back.

e) **Fraud and Factoring.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that ETS may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate suspicious or unusual deposit activity. ETS and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.

25) **OTHER TYPES OF TRANSACTIONS.**

a) **Mail Order/Telephone Order (MO/TO).** You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to ETS previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and ETS may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service ("AVS") on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or

validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or "TO," or mail order or "MO," as appropriate. ETS recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

**b) Recurring Transactions.**

**i) Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from ETS or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.

**ii) Limitations on the Resubmission of Recurring Transactions.** In some limited instances, you may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.

**iii) Recurring Transaction Receipts.** You must print legibly on the Transaction Receipt the words "Recurring Transaction." You must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.

**iv) Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.

**v) Recurring Transactions With Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.

**c) Multiple Transaction Receipts.** You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.

**d) Deposits.**

**i) Prior Consent.** You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to ETS previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to ETS previously in writing, you will be in breach of the Agreement and ETS may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules.

**ii) Acceptance.** If you have disclosed such method of sale to ETS previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Credit Card Rules. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words "deposit" or "balance" on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled "balance" until the goods have been delivered to Cardholder or until you have fully performed the services.

**ADDENDUM NO. 1 TO MERCHANT AGREEMENT**

The City of Daytona Beach (the "Merchant") and ETS Corporation ("ETS"), as parties to the Merchant Agreement to which this Addendum is attached, which Merchant Agreement includes and incorporates the Application form and standard Government Terms of Service (hereinafter these documents are referred to collectively as the "Agreement"), hereby agree to amend the Agreement as follows:

**Sec. 1.** Merchant's obligation to complete and execute the Continuing Personal Guaranty Provision and the Corporate Resolution included in the application form is hereby waived.

**Sec. 2.** In consideration of the Bank's grant of the foregoing waivers, Merchant agrees to provide Bank a copy of the executed official resolution adopted by Merchant's governing body in approving the Agreement, and such resolution will in substance be substantially similar to the Corporate Resolution referenced above.

**Sec. 3.** No provision of the Agreement will be deemed to waive or limit Merchant's sovereign immunity. Under no circumstances will Merchant be deemed to waive or diminish the limitations on Merchant's liability under Section 768.28, Florida Statutes.

**Sec. 4.** It shall not be a breach of the Agreement for Merchant to disclose or provide public records where required pursuant to Florida's Public Records Law, Ch. 119, Florida Statutes.

This Addendum controls in case of conflicts with any other provision of the Agreement. All provisions of the Agreement not in conflict with this Addendum will in full force and effect.

IN WITNESS WHEREOF, the Bank and Merchant, through their undersigned representatives, have set their hands and seals, effective on the date that the last party has signed below.

**FOR MERCHANT**

**FOR ETS**

By: \_\_\_\_\_

James V. Chisholm, City Manager

Date: \_\_\_\_\_

By: Lindsay Hendrix

Printed Name: Lindsay Hendrix

Title: Corporate Counsel

Date: 11-2-17

Attest: \_\_\_\_\_

Letitia LaMagna, City Clerk

Approved as to Legal Form:

By: \_\_\_\_\_

Bob Jagger, City Attorney