

THIS AGREEMENT and the related Merchant Application is entered into by and between Select Bankcard, LLC ("SB"), Mission Valley Bank ("Bank" or "MVB"), and the undersigned ("Merchant") as of the date of acceptance by Bank. SB is an exclusive agent of Bank. Bank is entirely responsible for, and in control of, SB's performance. By entering into this Agreement, Merchant agrees to comply with and be subject to, all Visa, Discover® Network, and MasterCard rules and regulations, as they may exist from time to time, including but not limited to, chargeback procedures and the resolution of any disputes relating thereto. Merchant's agreement to be so bound is made regardless of whether Merchant has seen or read the rules and regulations. Merchant acknowledges that the sole responsibility for obtaining these rules and regulation and updates thereto is with Merchant. Any violations of Visa, Discover Network, or MasterCard rules and regulations by Merchant shall constitute a material breach of this Agreement and shall be grounds for Bank terminating this Agreement.

#### ARTICLE I – DEFINITIONS

**1.01 "Account"** means a bank account maintained by Merchant as set forth in Section 5.12 for the crediting of collected funds and the debiting of fees and charges pursuant to this Agreement.

**1.02 "ACH"** means the Automated Clearing House paperless entry system operated by the Federal Reserve.

**1.03 "Agreement"** means the Merchant Application, these Terms and Conditions with all exhibits and attachments, including the Fee Schedules, and any supplementary documents indicated herein, as amended from time to time, all of which constitute the Merchant Agreement.

**1.04 "Authorization"** means a computerized function or a direct phone call to a designated number to obtain credit approval for individual Transactions from the Card Issuer.

**1.05 "AVS"** (Address Verification System) means the system that allows verification of the cardholder's ZIP code and billing address while requesting authorizations for Transactions or during a request for address verification only.

**1.06 "Card"** means (i) a valid credit and/or debit card in the form issued under license from Visa U.S.A. Inc., Visa International, Inc., MasterCard International Incorporated, Discover Network, or Diners Club International; or (ii) any other valid credit and/or debit card accepted by Merchant by agreement with Bank and SB.

**1.07 "Card Brand"** means Visa, Discover Network, MasterCard, or any other Card Issuers that provide Cards that are accepted by Merchant by agreement with Bank and SB.

**1.08 "Cardholder"** means the person whose name is embossed upon the face of the Card and who purports to be the person in whose name the Card is issued.

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

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

**1.11 "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.

**1.12 "Discount Fee"** means a fee charged on all Card Transactions that is payable by Merchant to SB for processing Merchant's Card Transactions.

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

**1.14 "MasterCard"** means MasterCard International Incorporated.

**1.15 "Reserve Account"** has the meaning set forth in Section 5.04.

**1.16 "Rules"** means the rules and regulations of any Card Brand, as amended from time to time.

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

**1.18 "Transaction"** means any retail sale of goods or services, or credit for such, from Merchant for which the customer makes payment through the use of any Card and which is presented to Bank for collection.

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

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

#### ARTICLE II - MERCHANT REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

**2.01 Honoring Cards.** (a) Merchant will accept, without discrimination, all valid Cards properly presented for payment for bona fide, legitimate business transactions arising out of Merchant's usual trade or business; (b) Merchant may impose a minimum Transaction amount, not to exceed USD 10, if the amount is applied to all credit, but not debit, Cards. Merchant may not impose a maximum Transaction amount unless (i) it is a department, agency, or instrumentality of the U.S. Government; (ii) it is owned or controlled by the U.S. government; or (iii) its primary business is reflected by one of the following MCCs: 8220, 8244, or 8249, in which case the maximum amount must be applied to all credit, but not debit, Cards; (c) Merchant shall not require any Cardholder: (i) to pay any part of any fee imposed upon Merchant by this Agreement, whether through any increase in price or otherwise; or (ii) presenting a Card to pay any charge as a condition of sale that is not also required from a customer paying cash. However,

Merchant may offer discounts to customers for cash purchases. Merchant may also charge a service fee on Transactions if Merchant charges a service fee: (i) for all payment methods (check, credit card, etc.); or (ii) for a specific payment mode (telephone) and not for other payment modes (face-to-face); (d) Merchant shall not accept a Card as payment (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under this Agreement), if the person seeking to use the Card does not present the Card to permit Merchant to examine it and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

**2.02 Card Acceptance.** (a) Merchant has the option of limiting their card acceptance to any or all of the following card types: Visa credit, Visa signature debit, MasterCard credit, MasterCard signature debit, Discover Network credit, and Discover Network signature debit. Merchant's account will initially be set up to accept all card types. To limit Merchant's acceptance, please contact Bank or SB; (b) if accepting Card checks, Merchant shall accept them on a basis consistent with the terms of Merchant's policy applicable to the acceptance of other personal checks; (c) Merchant must not accept Cards at a terminal that dispenses scrip; (d) When accepting a Card, Merchant will follow the steps provided by Bank and SB, and will: (i) Determine in good faith and to the best of its ability that the Card is valid on its face; (ii) Check the effective date (if any) and the expiration date of the Card, examine any card security features (such as a hologram) included on the Card; (iii) Obtain Authorization before completing any Transaction; (iv) Where Authorization is obtained, warrant the true identity of the customer as the Cardholder; (v) Unless the Sales Draft is electronically generated or is the result of an Internet, mail, telephone or preauthorized order, obtain an Imprint of the Card; (vi) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (vii) Obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (viii) 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, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (ix) Offer the Sales Draft to Bank for purchase according to Bank's and SB's procedures and the terms of this Agreement; and (x) Legibly reproduce the Cardholder's name, account number, expiration date, and the Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. In addition, for MasterCard Transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card.

**2.03 Authorization.** (a) Merchant will obtain a prior Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a Voice Authorization from the designated authorization center, and, if authorization is granted, will legibly print the authorization number on the Sales Draft. If authorization is denied, Merchant shall not complete the Transaction and shall follow any instructions from the authorization center; (b) Merchant will not obtain or attempt to obtain Authorization unless Merchant intends to submit a Transaction for the authorized amount; (c) Merchant will not divide a single Transaction between two or more Sales Drafts or two or more Cards; (d) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale, that an Authorization is not a guarantee of payment, and that an Authorization will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction or a Transaction involving the use of an expired Card. Receiving an Authorization shall not relieve the Merchant of liability for Chargebacks; (e) Merchant will not attempt to obtain Authorization on an expired Card. Transactions will be deemed invalid on Cards that are expired, whether or not an Authorization has been obtained.

**2.04 Retention and Retrieval of Cards.** (a) Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card upon receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe that 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 SB 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.

**2.05 Compliance with Law, Visa Cardholder Information Security Program, Non-Disclosure and Storage of Cardholder and Transaction Information Requirements.** (a) Merchant confirms that it is, and shall be, in full compliance during the term of this agreement with all laws, statutes and federal and/or state regulations, as well as rules and operating regulations and bylaws imposed by any Card Brand applicable to Merchant, its business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations, non-disclosure of Cardholder information and Transaction documents, and other security procedures adopted by the Card Brands. Merchant shall be solely responsible for conforming its policies and procedures to the Rules and all applicable federal, state, and local laws and regulations. Merchant agrees to consult Merchant's legal counsel regarding such compliance; (b) Merchant will not, under any circumstances, sell, transfer, or disclose any Cardholder's account number or any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card ("Sensitive Data") to any person other than Bank, SB, Merchant's service providers, subcontractors, and agents who have a need to know

such information to provide the services described in this Agreement, or as required by law. In the event of bankruptcy, insolvency, or other suspension of business operations, Merchant will either (i) return all Sensitive Data to Bank or SB or (ii) provide acceptable proof of destruction of all Sensitive Information to Bank or SB; (c) Merchant hereby represents, warrants, and covenants that it is and will remain throughout the term of this Agreement in compliance with the Payment Card Industry ("PCI") Data Security Standard ("DSS"), the Cardholder Information Security Program ("CISP") instituted by Visa, the Discover Information Security Compliance (DISC), and the Site Data Protection Program ("SDP") instituted by MasterCard, in effect and as may be amended, supplemented, or replaced. Merchant will cause all of its service providers, subcontractors, and agents that store, process, or transmit Cardholder data on behalf of Merchant to comply with PCI, CISP, DISC, and SDP requirements at all times. Merchant will report any non-compliance immediately to SB. Merchant shall notify the Bank & SB of its use of any third-party service providers, subcontractors, and/ or agent that will have access to Cardholder Data. Merchant hereby agrees to pay any fines and penalties that may be assessed by the Card Brands as a result of Merchant's noncompliance with the requirements of PCI, CISP, DISC, and/ or SDP, any data breaches, or by its failure to accurately validate its compliance. Merchant will provide an annual certification to SB and/ or Bank if requested by SB and/ or Bank (in a form acceptable to the same) certifying compliance with the data security provisions of this Agreement. The Merchant should review and or monitor the requirements at <http://www.visa.com/cisp> in order to determine its ongoing timeframes and mandates for compliance under PCI and CISP; (d) The foregoing is an ongoing obligation during the term of this Agreement and as this Agreement may be renewed; (e) Merchant acknowledges and understands that Merchant may be prohibited from participating in Card Brand programs if it is determined that Merchant is non-compliant.

**2.06 Returns and Adjustments.** (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with the Rules. Merchant agrees to disclose to a Cardholder before a Card sale is made, if applicable, 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 and of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, charges, or other noncredit terms); (b) Disclosures must be made on all copies of Sales Drafts in letters approximately 1/4 inches high in close proximity to the space provided for the Cardholder's signature on the Sales Draft and issued at the time of sale; (c) If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. (d) Merchant shall not refund cash to a Cardholder who paid for the item by Card; (e) Credits must be made to the same Card account number on which the original sale Transaction was processed; (f) Credits may only be issued when a balance in the Merchant's Account exists equal to or greater than the credit; and (g) Any change in Merchant's return or cancellation policy must be submitted in writing to Bank not less than fourteen (14) days prior to the change. Bank may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank has not been notified as required herein.

**2.07 Merchant's Business.** (a) Merchant shall provide Bank and SB with immediate notice of its intent to (i) transfer or sell any substantial part of its total assets, or liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change fifty percent (50%) or more of the ownership or transfer control of its business; (iv) 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; or (v) alter in any way Merchant's approved monthly volume and average ticket; (b) Failure to provide notice as required above may be deemed a material breach and shall be sufficient grounds for termination of this Agreement, or, at SB's option may result in SB amending the terms of this Agreement, including, but not limited to, holding funds and/ or altering the Merchant funding schedule if SB and Bank deem it necessary to protect against financial loss. If any of the changes listed above occur, Bank and SB shall have the option to re-negotiate the terms of this Agreement or provide immediate notice of termination; (c) Merchant will immediately notify SB, with a copy to Bank, of any bankruptcy, receivership, insolvency or similar action initiated by or against Merchant or any of its principals. Merchant will include Bank and SB on the list of creditors filed with the Bankruptcy Court, whether or not a claim exists at the time of filing; (d) Merchant must notify SB, with a copy to Bank, in writing of any changes to the information in the Merchant Application, including but not limited to: a change to Merchant's financial condition (within 3 days), any additional location or new business, the addition of principals and/ or owners, the form of business organization, and the type of goods and services provided. Merchant must also notify SB in writing, with a copy to Bank, if Merchant sells or closes its business. Except for a change to the financial condition, SB and Bank must receive all such notices 7 days before the change. Merchant will provide updated information to SB upon request. Merchant is liable to SB and Bank for all losses and expenses incurred by SB and Bank arising out of Merchant's failure to report changes. SB and Bank may immediately terminate this Agreement upon a change to the information in the Merchant Application, whether SB and Bank independently discover such change or whether Merchant notifies SB and Bank of such change.

**2.08 Advertising.** (a) Merchant is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by Bank. Program Marks mean the brands, emblems, trademarks, and/ or logos that identify Cards. Additionally, Merchant shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to Merchant by Bank pursuant to the Merchant Program or otherwise approved in advance in writing by Bank. Merchant may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by Merchants must be approved in advance by Bank in writing. Merchant shall not use the Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Program Marks. Merchant recognizes that it has no ownership rights in the Program Marks. Merchant shall not assign to any third party any of the rights to use the Program Marks; (b) Merchant shall immediately cease use and return any inventory to Bank or SB upon any termination of the Agreement; (c) Merchant shall be fully liable to Bank and/ or SB for any and all loss, cost, and expenses suffered or incurred by Bank, arising out of Merchant's failure to comply with this section.

**2.09 Merchant's Agreements and Covenants.**

**1. Personal Information.** Merchant may not 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 from that of the Cardholder. Merchant must not contact Cardholders with respect to any matter arising under the Rules, except as required and permitted by the Rules.

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

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

**4. Duplicate Transactions.** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any duplicate Transactions and shall be liable for any Chargebacks, which may result there from.

**5. Deposit of Fraudulent Transactions.** Merchant shall 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. Merchant shall not deposit, unless prior written approval from SB or Bank is received, Transactions evidencing sales that were solicited by telemarketers. If Merchant deposits any such Transactions, this Agreement may be immediately terminated and Bank may hold funds and/ or demand a Reserve Account pursuant to Section 5.04. Perpetrators of fraudulent Transactions will be referred to law enforcement officials.

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

**7. Multiple Transaction Records: Partial Consideration.** Merchant shall not prepare more than one Sales Draft for a single item but shall include all items for goods and services purchased in a single Transaction in the total amount on a single Sales Draft except: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment Transactions.

**8. Non-Imprint Transactions.** In any non-imprint Transaction, as a material inducement for Bank and SB to enter into this Agreement, Merchant acts solely at its own risk, and waives the right to dispute Chargebacks arising from a failure to produce and Imprinted draft to Bank and SB. Merchant further assumes all other risks attendant to such non-imprint Transactions.

**9. Revocation of Authority.** Merchant shall cease the initiation of Card activity immediately upon receipt of actual or constructive notice of a Customer's termination or revocation of authorization of Merchant to do so.

**10. Identifying Numbers.** Merchant agrees that SB may rely solely on identifying numbers provided by Merchant or Cardholder to determine the bank and account of a Customer.

**11. Notice of Erroneous/ Unauthorized Transfers.** Merchant shall regularly and promptly review all statements of account, banking statements, and other communications sent to Merchant and agrees to immediately notify SB if any discrepancy exists between Merchant's records and those provided by SB, the Merchant's bank, or with respect to any transfer that Merchant believes was not authorized by Merchant or Customer. If Merchant fails to notify SB in writing within fourteen (14) calendar days after the date that SB mails or otherwise provides a statement of account or other report of activity

to Merchant, Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer. The foregoing does not limit in any way Merchant's liability for any breach of this Agreement.

**2.10 Representations and Warranties of Merchant.** Merchant represents and warrants to Bank and SB at the time of execution and during the term of this Agreement that: (a) All information contained in the Merchant Application or any other documents delivered to Bank and/or SB in connection therewith is true and complete and properly reflects Merchant's business, financial condition, and principal partners, owners, or officers; (b) Merchant has the power to execute, deliver, and perform this Agreement, and this Agreement is duly authorized, and does not and will not violate any provisions of federal or state law or regulation, or conflict with any other agreement to which Merchant is subject; (c) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) There is no action, suit, or proceeding 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 for collection is genuine and is not the result of any fraudulent or prohibited Transaction and is not being deposited on behalf of any business other than Merchant. Further, Merchant warrants that each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services by the Cardholder in the total amount stated on the Sales Draft; (f) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (g) Merchant has complied with Bank's and SB's procedures for accepting Cards, and the Card Transaction does not involve any element of credit or debit for any purpose other than as set forth in this Agreement and shall not be subject to any defense, dispute, offset, or counter claim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations; (h) 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; and (i) With respect to all Card Transactions that Merchant requests SB and Bank to originate, Merchant continuously represents and warrants to Bank and SB that: (i) Each Cardholder has authorized the debiting and/or crediting of its account; (ii) Each Transaction is for an amount the customer has agreed to; and (iii) Each Transaction is in all other respects properly authorized.

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

**2.12 Monthly Volume, Average Ticket, and High Ticket.** Merchant represents that the Estimated monthly volume of Sales Transactions ("Monthly Volume") and the estimated average Sales Transaction dollar amount ("Average Ticket Amount") appearing on the Merchant Application are each good faith estimates and that there is a reasonable basis for each such estimate. Merchant acknowledges that any actual Monthly Volume or any actual Average Ticket Amount in excess of such estimates will cause SB and/or Bank to review Merchant's file and that such review may result in the delay of transmission of funds and possible interruption of service. Bank may withhold the payment of any amounts otherwise payable hereunder and may terminate this Agreement if the actual Monthly Volume and/or Average Ticket Amount materially exceed such estimates. SB and Bank may impose a cap on the dollar amount of Sales Drafts that it will process for Merchant. This limit may be changed by SB and Bank from time to time, upon notice to Merchant. Such notice may be given orally or in writing. If the cap is decreased, oral notice will be confirmed in writing. If Merchant exceeds the established limit, SB and Bank may suspend processing, hold the funds over the cap, and/or return all Sales Drafts evidencing funds over the cap to Merchant.

**2.13 Password.** If Merchant receives a password from SB or Bank, Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to the system; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify SB if Merchant believes the confidentiality of the system's data or your information has been compromised by use of the password.

**ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK; RESERVE ACCOUNTS; TYPES OF TRANSACTIONS**

**3.01 Acceptance.** (a) Bank and SB shall accept from Merchant all valid Sales Drafts deposited by Merchant and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. 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 the Rules; (b) Bank shall only provisionally credit the value of collected Sales Drafts to the Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks, fees, penalties, late submission charges, reserve deposits, and items for which Bank did not receive final payment. Settlement of funds will be in United States Dollars; (c) Bank and SB may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (i) the Transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement; (ii) the Cardholder disputes his liability to Bank for any reason, including but not limited to those Chargeback rights enumerated in the Rules; or (iii) the Transaction giving rise to the Sales Draft was not directly between Merchant and the Cardholder. Merchant will pay Bank and SB, as appropriate, any amount previously credited to Merchant for a Sales Draft not accepted or later revoked by Bank and/or SB; (d) Merchant agrees that Bank and SB may disclose detailed information about Transactions, individually and in the aggregate, and other information relating to Merchant to third parties that, in Bank's and SB's reasonable discretion, require the information to facilitate the services described in this Agreement or require the information as regulatory authorities.

**3.02 Endorsement.** The presentment of Sales Drafts for collection and payment is Merchant's agreement to sell and assign its right, title and interest in each Sales Draft completed in conformity with Bank's and SB'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. Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Sec. 365, as amended from time to time. Merchant acknowledges that its obligation to Bank and SB for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Account.

**3.03 Transmission Method.** If Merchant utilizes electronic authorization and/or data capture services, Merchant will enter the data related to a sales or credit Transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the Transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet SB's and Bank's requirements for processing Transactions. Information regarding a sales or credit Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to designated Bank processor in the form Bank/SB from time to time specifies. The means of transmission indicated in the Merchant Application shall be the exclusive means utilized by Merchant until Merchant has provided SB with at least thirty (30) days prior written notice, with a copy to Bank, of Merchant's intention to change the means of such delivery or otherwise alter in any material respect Merchant's medium of transmission of data to the designated Bank processor.

**3.04 Prohibited Payments.** Bank and SB shall 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 authorized in writing by Bank, Merchant shall not make or attempt to make any collections from Cardholders on any Transaction, including chargebacks, and shall hold any funds or property recovered in trust for Bank and shall promptly deliver 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.

**3.05 Chargebacks.** (a) Simultaneously with each Cardholder Transaction, a contingent and unmatured claim for Chargeback accrues against Merchant in favor of SB and Bank for that SB or Bank is required, or has the right, to pay to MasterCard, Discover Network, or Visa with respect to any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Merchant by SB and/or Bank. Merchant agrees that it is fully liable to Bank and SB for all Chargebacks, and that Bank and SB are authorized to offset from incoming transactions and to debit via ACH the Account, the Reserve Account, or any other account held at any other financial institution in the amount of any Chargeback. Merchant agrees to accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to the Rules; or SB and Bank determine that Merchant has in any way failed to comply with the Rules or SB's procedures, including but not limited to the following: (i) The Sales Draft is illegible, not signed by the Cardholder or has not been presented to Bank within the required timeframes; (ii) The Sales Draft does not contain the Imprint of a valid, un-expired Card; (iii) A valid Authorization number has not been correctly and legibly recorded on the Sales Draft; (iv) The Sales Draft is a duplicate of a prior Transaction or is the result of two or more Transactions generated on one credit card for a single sale; (v) The Cardholder alleges that he or she did not participate in the sale, authorize the use of the Card, receive goods or services purchased, receive a required credit adjustment, or disputes the quality of the goods or services purchased; (vi) The price of goods or services on the Sales Draft differs from the amount which Merchant presents for payment; (vii) The Transaction results from an Internet, mail, phone or preauthorized order and the Cardholder disputes entering into or authorizing the Transaction or the Transaction has been made on an expired or non-existing account number; (viii) SB and Bank believe, within their sole discretion, that Merchant has violated any provision of this Agreement; (ix) SB determines that the

Transaction record is fraudulent or that the Transaction is not bona fide or is subject to any claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees; (x) Merchant fails to provide a Sales Draft or legible copy thereof to Bank and SB in accordance with this Agreement. Merchant acknowledges that SB and Bank shall have full recourse to charge back the amount of a Card sale for which the Cardholder disputes that he/she did not authorize the charge if (i) the Imprint of the Card; or (ii) the signature of the Cardholder was not obtained by Merchant; (xi) Merchant shall not initiate a Transaction in an attempt to collect a Chargeback; (b) Guarantors are personally liable for all Chargebacks. In the event Merchant sells its business, and the new owner incurs Chargeback's, the original Merchant and all guarantors will continue to be held personally liable for the Chargebacks and any other liabilities of the new owner(s).

**3.06 Types of Transactions.**

*1. Telephone, Mail, Preauthorized, Installments Orders, and Internet Transactions.* (a) Unless indicated on the Merchant application or Merchant has received prior written authorization by Bank and SB to accept Internet, mail and phone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place. If Merchant is found to be accepting mail order, telephone order, or Internet Transactions without such prior written consent, 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 there from shall be held pursuant to Section 3; (b) Merchant must prominently and unequivocally inform the Cardholder of the identity of Merchant at all points of the interaction, such that Cardholder understand that Merchant is responsible for the Transaction, the delivery of products, and related customer support. Merchant must display on its website (i) its name, as it will appear on the Cardholder statement, as prominently as any other information depicted on the website, other than images of the products or services being offered; (ii) a consumer data privacy policy; (iii) a policy for transmission of Card details; and (iv) the address of its permanent establishment; (c) For approved MO/TO and Internet Merchants, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant shall create a Sales Draft containing Cardholder data, the expiration number of the credit card, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate; (c) For approved MO/TO and Internet Merchants, AVS may be required. AVS is not a guarantee of payment, and the use of AVS will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction; (d) unless indicated on the Merchant application or approved in writing by SB and Bank, Merchant shall not process sales prior to delivery of product or service. Violation could result in immediate termination; (e) Merchant should process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to SB and Bank. Merchant is liable for all chargebacks and losses related to Internet Transactions whether or not: (i) Internet Transactions have been encrypted; and (ii) Merchant has obtained SB's and Bank's consent to engage in such Transactions. Encryption is not a guarantee of payment, and will not waive any provision of this Agreement or otherwise validate a fraudulent Transaction. All communication costs related to Internet Transactions are Merchant's responsibility. SB will not manage the Internet telecommunications link and it is Merchant's responsibility to manage that link. Bank and/or SB are under no obligation to approve telephone, mail, Internet or preauthorized orders and reserve the right to withdraw permission for such Transactions at any time; (f) Merchant must not refuse to complete an Internet Transaction solely because the Cardholder does not have a digital certificate or other secured protocol.

*2. 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 shall 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 shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

*3. Recurring Transactions.* For recurring Transactions, Merchant must obtain a written authorization from the Cardholder, disclosing the frequency of the recurring charge and the duration of time during which charges may be made, for such goods and services to be charged to Cardholder's account. Merchant will not complete any recurring Transaction after receiving (i) a cancellation notice from the Cardholder; (ii) Notice from SB or Bank that authority to accept recurring Transactions has been revoked; or (iii) a response that Card is not to be honored. Merchant must print legibly on the Sales Draft the words "Recurring Transaction."

*4. Multiple Sales Drafts.* Merchant will include a description and total amount of goods and services purchased in a single sales Transaction on a single Sales Draft or Transaction record unless: (i) partial payment is entered on the Sales Draft or Transaction record and the balance of the Transaction is paid in cash or by check at the time of Transaction; or (ii) a Sales Draft represents an advance deposit in a Card

Transaction completed in accordance with this Agreement and the Rules.

**ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION**

**4.01 Term: Termination.** (a) This Agreement shall become effective upon acceptance by Bank ("Effective Date"). The initial term of this Agreement shall be for the period of time specified in the Agreement Term section of the Merchant Application beginning on the Effective Date ("Initial Term") and will renew for the same period of time ("Renewal Term") unless terminated as set forth below; (b) This Agreement may be terminated by any party effective at the end of the Initial or any Renewal Term by providing written notice to the other parties of its intent not to renew no less than thirty (30) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated: (i) by SB and Bank at any time with or without cause, and without prior notice; and (ii) by Merchant in the event of a material breach of the terms of this Agreement by SB and/or Bank, provided Merchant provides SB and Bank written notice of the alleged breach and the breach remains uncured for a period of fifteen (15) days following receipt of written notice by the breaching party. Bank and SB's rights of termination provided throughout this Agreement are cumulative. A specific right of termination enumerated in this Agreement shall not limit any other right of Bank and SB to terminate this Agreement expressed elsewhere in the Agreement. Notice of termination must be given in writing by Merchant. Notice of termination by SB and Bank may be given orally or in writing, but if given orally, will be confirmed in writing; (c) Within SB's and Bank's sole discretion, if Merchant's or any of its principals' business or personal credit deteriorates, if any significant circumstances exist that would create harm or loss to the goodwill of a Card Brand system, or if any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate. Merchant agrees to notify SB and/or Bank immediately of any bankruptcy, receivership, insolvency or similar action initiated by or against Merchant.

**4.02 Effect of Termination.** (a) In the event of termination for any reason, Merchant expressly authorizes Bank and SB to withhold and discontinue the disbursement for all Cards and other payment Transactions of Merchant in the process of being collected and deposited; (b) Collected funds will be placed in the Reserve Account (defined below) until Merchant pays any equipment and processing cancellation fees and any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Further, Bank reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be disbursed to Merchant; (c) Merchant expressly acknowledges that MATCH™ is a file maintained by MasterCard and the CMNF is a file maintained by Discover Network containing the business name and the names and identification of principals of Merchant which have been terminated for one or more of the reasons specified in the Rules. Such reasons include, but are not limited to: fraud, counterfeit paper, unauthorized Transactions, excessive chargebacks, or highly suspect activity. Merchant acknowledges that SB and Bank are required to report the business name of the Merchant and the names and identification of its principals to MATCH and/or the CMNF when Merchant is terminated for such reasons. Merchant consents to such reporting to the Card Brands by Bank and SB. Further, Merchant waives and will hold harmless Bank and SB from any claims that Merchant may raise because of such reporting; (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations and will cease transmitting Sales Drafts to Bank and SB. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement; (e) Following termination, Merchant shall, upon request, provide Bank and SB with all original and microfilm copies of Sales Drafts and Credit Vouchers to be retained as of the date of termination; (f) Upon termination, any amounts due to Bank or SB - including, but not limited to, (i) any Monthly Minimum, Account Maintenance Fee, PCI Maintenance Fee, and Annual Fee that would have accrued during the remaining Term; and (ii) any applicable Termination Fee - will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank or SB; (g) Merchant will return all Bank and SB property, forms, or equipment; and (h) All obligations for Transactions prior to termination (including to pay for chargebacks and Bank's expenses relating to chargebacks) survive termination.

**ARTICLE V - ACCOUNTS; SECURITY INTERESTS; INDEMNIFICATION**

**5.01 Account Monitoring.** (a) Merchant acknowledges that SB will monitor Merchant's daily deposit activity. Merchant agrees that SB and Bank may suspend, within their sole discretion, the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. SB and Bank will make good faith efforts to notify Merchant promptly following suspension. SB and Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement; (b) Merchant's presentation to SB and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate

termination of this Agreement. "Excessive Activity" refers to any two consecutive calendar months during which a merchant or merchant location has a minimum of 15 chargebacks and a ratio of chargeback Transactions to total sales Transactions of at least 1% or a ratio of chargeback dollar volume to sales dollar volume of at least 2.5%. Merchant authorizes, upon the occurrence of Excessive Activity, Bank and SB to take additional actions as either of them may deem necessary, including, but not limited to, the suspension of processing privileges, the increase of any fees that may be charged to Merchant, and/or the creation or maintenance of a Reserve Account in accordance with this Agreement.

**5.02 Records.** In addition to any records routinely furnished to SB and Bank under this Agreement, Merchant shall preserve a paper or microfilm copy of all actual paper Sales Drafts and Credit Vouchers and, if a mail, phone order or preauthorized order is involved, the Cardholder's signed authorization for the Transaction, for at least three (3) years after the date Merchant presents the Transaction to Bank.

**5.03 Requests for Information.** (a) Within 3 days of receipt of any written or verbal request by Bank or SB, Merchant shall 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 SB to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts; (b) From time to time, SB or Bank may require additional information about Merchant or Merchant's procedures for accepting Cards. SB and Bank shall make reasonable efforts to obtain such information from Merchant and Merchant agrees to comply with such requests. If merchant does not make reasonable efforts to supply the requested information, SB or Bank may notify Merchant of and assess a non-receipt penalty if the information is not received within the timeframe(s) defined within the notification(s).

**5.04 Security Interests, Reserve Account, Recoupment and Set- Off.** (a) This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to Bank and SB a security interest in and lien upon: (i) the Account (as set forth in Section 5.10) and all funds at any time in the Account, whatever the source of such funds; (ii) the Reserve Account (as defined below) and all funds at any time in the Reserve Account, whatever the source of such funds; (iii) future Sales Drafts; and (iv) all Merchant's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Bank and SB, Merchant will execute one or more financing statements or other documents to evidence this security interest. Merchant authorizes and appoints SB and Bank its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. Merchant represents and warrants that no other party has a security interest in the Secured Assets. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements between Merchant, SB and Bank including, but not limited to, Merchant's obligation to pay any amounts due to Bank and SB. With respect to such security interests and liens, Bank and SB will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Bank and SB written consent prior to granting a security interest of any kind in the Secured Assets to a third party; (b) Bank will establish and maintain a non-interest bearing account ("Reserve Account") in the name of Merchant at any Federally-insured financial institution, with sums provided by Merchant that are sufficient to satisfy Merchant's current or future obligations as determined by Bank and SB: (i) Bank and SB shall have the right to initiate a debit to the Account or any other account at any institution to establish or maintain funds in the Reserve Account. Bank or SB may deposit into the Reserve Account funds they would otherwise be obligated to pay Merchant, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if they determine such action is reasonably necessary to protect their interests; (ii) Bank, on its own behalf or at SB's request, may, without notice to Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and Bank or SB. Also, SB or Bank may exercise their rights under this Agreement to collect any amounts due to Bank or SB including, without limitation, rights of set-off and recoupment. Merchant shall have no right to withdraw funds or debit the Reserve Account. In the event of a bankruptcy proceeding, Bank and SB may exercise their rights under this Agreement to debit the Reserve Account for amounts due Bank and SB regardless the pre-petition or post-petition nature of the amount due Bank and/or SB. In the event of a bankruptcy proceeding, Merchant also agrees that it will not contest any Motion for Relief from the Automatic Stay, which Bank and SB may file to debit the Reserve Account; (iii) Funds in the Reserve Account will remain in the Reserve Account for a minimum of 270 days following termination and for any reasonable period thereafter, during which Cardholder disputes may remain valid under the Rules. Bank will have sole control of the Reserve Account. In the event of a bankruptcy proceeding, Bank and SB do not consent to the assumption of this Agreement. Nevertheless if this Agreement is assumed Merchant agrees that, in order to establish adequate assurance of future performance within the meaning of 11 U.S.C. Sec. 365, as amended from time to time, Merchant must establish or maintain a Reserve Account in an amount satisfactory to Bank and SB; (c) Bank and SB have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected

amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Account; and (ii) any other amounts SB and Bank may owe Merchant under this Agreement or any other agreement; (d) The rights conferred upon Bank and SB in this Section are not intended to be exclusive of each other or of any other rights and remedies of Bank and SB under this Agreement, at law or in equity. Rather, each and every right of Bank and SB at law or in equity will be cumulative and concurrent and in addition to every other right.

**5.05 Third Parties.** (a) Merchant may be using special services or software provided by a third party to assist Merchant in processing Transactions, including authorizations and settlements, or accounting functions. Merchant is responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure Merchant has and complies with any software updates. SB and Bank have no responsibility for any Transaction until that point in time SB receives data about the Transaction; (b) Merchant will notify SB immediately if Merchant decides to use electronic authorization or data capture terminals or software provided by any entity other than SB or its authorized designee ("third-party terminals") to process Transactions. If Merchant elects to use third-party software or terminals, Merchant agrees (i) the third-party providing the software or terminals will be Merchant's agent in the delivery of Transactions to Bank via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Bank nor SB will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a third party's software or terminal.

**5.06 Modifications to Agreement.** This Agreement is subject to amendment to conform to the Rules. From time to time, SB and Bank may amend any provision 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 amendment, and the amendment shall become effective unless Bank and SB receive Merchant's notice of termination of this Agreement before such effective date. Amendments due to changes in either Card Brand's fees, interchange, assessments, Rules or any law or judicial decision may become effective on such shorter period of time as SB and Bank may specify if necessary to comply with the applicable Rule, law or decision.

**5.07 Limitation of Liability: Indemnity.** (a) The liability, if any, of Bank and SB under this Agreement whether to Merchant or to any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by Merchant to SB and Bank during the month in which the Transaction out of which the liability arose occurred; and (ii) assessments, Chargeback's, and any offsets authorized under this Agreement against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of SB and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. In no event will Bank, SB, nor their officers, agents, directors, or employees be liable for any indirect, special, or consequential damages; (b) Merchant hereby agrees to indemnify and hold Bank, SB, and their employees and agents harmless from any claim relating to a dispute between Merchant and a Cardholder, any Sales Draft paid for as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of, or losses that either Bank or SB may incur as a result of (i) Merchant's breach of any representation, warranty, or term of this Agreement; (ii) a breach of the security of the system safeguarding Cardholder information or Merchant's failure to comply with PCI, CISP, and/or SDP; (iii) Merchant's negligence or willful misconduct in the performance of its obligations under this Agreement; (iv) any violation of applicable federal and state laws, rules, regulations and guidance and Card Brand rules by Merchant; and (v) all third-party claims arising from the foregoing. Further, Merchant shall reimburse Bank or SB, as the case may be, for all expenses and costs, including attorney's fees, with regard thereto; (c) SB and Bank will perform all services in accordance with this Agreement. SB makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. SB disclaims all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. If any of the Transactions that are on SB's system belonging to Company are subpoenaed by legal process or otherwise, SB shall use reasonable efforts to notify Company. If Company does not respond in a timely manner, and/or thirty (30) days elapses from SB's receipt of subpoena, SB may produce records in accordance with the subpoena.

**5.08 Warranty Disclaimer.** BANK AND SB MAKE NO WARRANTIES REGARDING THE USE, OPERATION, OR PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND BANK AND SB EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5.09 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.

**5.10 Account.** (a) Merchant will establish and maintain an Account at Bank or at any Federally-insured financial institution reasonably approved by Bank in the United States. Merchant will maintain sufficient funds in the Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes SB and/or Bank to debit the Account for Chargebacks, fees and any other penalties or amounts owed under this Agreement. Merchant must obtain prior written consent from Bank and SB to change the Account. If Merchant does not get that consent, SB or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion; (b) Bank will deposit all Sales Drafts to the Account subject to Section 3.01 of this Agreement. Merchant authorizes Bank and SB to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry; (c) Bank, in its sole discretion, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Bank and SB and subject to all Chargebacks and other amounts owed to Bank and SB under this Agreement; (d) Merchant shall promptly examine all statements relating to the Account, and immediately notify SB in writing of any errors. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by SB within 30 days after Merchant received the periodic statement containing the asserted error. Merchant may not make any claim against Bank or SB for any loss or expense relating to any asserted error for 60 days immediately following receipt of Merchant's written notice. During that 60 day period, SB and Bank will be entitled to investigate the asserted error, and Merchant will not incur any cost or expense in connection with the asserted error without notifying SB; (e) Merchant will indemnify and hold SB and Bank harmless for any action they take against the Account pursuant to this Section. Merchant will also indemnify and hold harmless the institution at which Merchant maintains the Account for acting in accordance with any instruction from Bank or SB regarding the Account. This section will survive termination of this Agreement; (f) Merchant authorizes Bank and SB to initiate debit/credit entries to the Account, as the Account may be changed from time to time, and to any other account maintained by Merchant at any institution that is a receiving bank of ACH, all in accordance with this Agreement. In the event Merchant changes the Account, Merchant will notify SB, with a copy to Bank, and this authorization will apply to the new Account. This authorization will be effective until both: (1) SB and Bank have received written notification from Merchant terminating this authorization, and (2) all obligations of Merchant to SB and Bank have been paid in full.

**5.11 Fees and Other Amounts Owed.** (a) Merchant shall pay the fees and charges as set forth on the Fee Schedules, attached hereto, the provisions of which are incorporated herein by reference. Unless otherwise noted, merchant shall pay all fees monthly, with the exception of the discount fee, which shall be paid either monthly or daily, as determined by SB in its sole discretion. The Account will be debited through ACH for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement; (b) Merchant will immediately pay SB and Bank any amount incurred by SB attributable to this Agreement or any other agreement between Merchant and SB or any subsidiary or affiliate of SB, including but not limited to equipment fees, Chargebacks, fines imposed by a third party, non-sufficient fund fees, and ACH debits that overdraw the Account, Reserve Account, or are otherwise dishonored. Merchant authorizes SB and Bank to debit via ACH the Account, Reserve Account, any other account Merchant has with SB, an affiliate or subsidiary of SB, Bank or at any other financial institution for any amount Merchant owes under this Agreement or under any other contract, note, guaranty, or dealing of any kind now existing or later entered into between Merchant and SB or any subsidiary or affiliate, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse SB and Bank for the amount owed, Merchant will immediately pay SB and Bank such amount.

**ARTICLE VI- MISCELLANEOUS**

**6.01 Waiver.** Failure by Bank or SB to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future. The waiving party must sign all waivers.

**6.02 Notices.** All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed by Merchant via overnight carrier or certified mail, and when mailed by SB/Bank, by first class mail, postage prepaid, addressed as follows:

- |  |  |
|--|--|
| (a) Select Bankcard<br>170 S Interstate Plz.<br>Ste. 230<br>Lehi, UT 84043 | (b) Mission Valley Bank<br>8928 Sunland Blvd. Suite B<br>Sun Valley, CA 91352<br>Attn. Merchant Services |
|--|--|

(c) If to Merchant, at the address provided as the billing address and to the contact listed on the Merchant Application.

**6.03 Choice of Law: Jurisdiction.** This Agreement shall be governed and construed under the laws of the State of California. All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, will be submitted to and decided by arbitration held in the State of California in accordance with the rules of the American Arbitration Association.

**6.04 Entire Agreement: Assignability.** This Agreement, including the Merchant Application, these Terms and Conditions and any supplementary documents indicated herein, expresses the entire understanding of the parties with respect to its subject matter and except as provided herein, may be modified only in writing executed by all parties. This Agreement may be assigned by SB and Bank, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank and SB. In the event, for whatever reason, Merchant Application does not meet standard underwriting criteria, and satisfies only sub-standard underwriting criteria, Merchant acknowledges this completed Application may be forwarded to an alternative Member processor for their review and approval. Further, Merchant acknowledges that the programs, rates and terms of the alternative Member processor may change. Upon approval of this Merchant Agreement by an alternative Member, Merchant agrees to and acknowledges acceptance of the new terms and conditions set forth by the alternate Member processor. Such acceptance will be evidenced by utilization of the Network for the first sale Transaction. If Merchant nevertheless assigns this Agreement without such consent, the Agreement will be binding on the assignee. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns. If Merchant sells its business and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners.

**6.05 Credit and Financial Inquiries: Additional Locations: Inspections.** (a) Merchant authorizes Bank and SB to make, at any time, any credit inquiries which it considers necessary to either review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, partners, principal owners, or officers. If requested to do so by Bank or SB, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns, and other financial information as Bank or SB may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices; (b) Merchant may honor Cards only at locations approved by SB and Bank. Additional locations may be added, subject to SB and Bank's approval. Either Merchant or SB may delete any location by providing notice as provided in this Agreement; (c) Merchant agrees to permit Bank or SB at any time 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 shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement; (d) Representatives of Bank or SB may, during normal business hours, inspect, audit, and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction; (e) If Merchant is undergoing a forensic investigation at the time this Agreement is signed, Merchant will fully cooperate with the investigation until completed.

**6.06 Marketing of Non-Card Services by SB.** From time to time, SB may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions.

**6.07 Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse bank and/or SB for all attorneys' fees and other costs and expenses paid or incurred by Bank and/or SB in the enforcement of this Agreement, or in collecting any amounts due from merchant to Bank and/or SB or resulting from any breach by Merchant of this Agreement.

**6.08 Signature.** Merchant represents and warrants that the person(s) executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person(s) is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by SB now or in the future. Merchant acknowledges that if Merchant has not signed above, Merchant agrees that Merchant's first transmission of Transactions constitutes Merchant's acceptance of this Agreement.

**6.09 General.** If any provision of this Agreement is illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Merchant is responsible for its employees' actions while in its employ. The parties do not intend to confer any benefits on any person or entity other than Merchant, Bank and SB. Sections, 3.02, 3.05, and the entirety of Article 5 will survive termination of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or electronic signature will be binding and legal in all respects as if it were an original signature to this Agreement.