

# Simmons First Merchant Services Application

**THIS FORM CAN NOT BE COMPLETED ONLINE**

**Print off, complete and sign the application. Send just the application to:**

- 1. Mail the completed application and inspection form to:**

Simmons First  
Merchant Service Dept.  
Post Office Box 6609  
Pine Bluff, AR 71611

- 2. Drop it by a convenient Simmons First location near you.**

<http://www.simmonsfirst.com/banknearyou.com>

**Once your application has been processed, we will mail a quick reference card to you along with supplies and contact information. For additional questions please call 1-800-272-2102, ext. 1003.**

**SIMMONS FIRST NATIONAL BANK**

**BANK CARD MERCHANT APPLICATION**

Rep \_\_\_\_\_ Agent \_\_\_\_\_ Referral \_\_\_\_\_

Merchant ID# \_\_\_\_\_ Date Rec'd \_\_\_\_\_

**BUSINESS NAME**

Name of Account (Doing Business As)			Legal Business Name (the "Merchant")		
Store Location Address			Business Mailing Address		
City	State	Zip	City	State	Zip
Store Manager Name			Business Contact		
Phone Number	Fax Number		Phone Number	Fax Number	
Merchant Statement Mailed to: <input type="checkbox"/> Store Location <input type="checkbox"/> Business Address				Federal Tax ID #	

**MERCHANT PROFILE**

Type of Goods or Services Sold		Years in Business	SIC Code (Bank Use)		
Web Site and/or E-Mail Address		Average Ticket	Credit Card Annual Sales		
<b>Visa/MasterCard/Discover Sales Profile (be accurate)</b>					
On Site Sales %	Off Site Sales %	* Mail Order %	* Telephone %	* Internet %	TOTAL
					100%

\* Additional Information may be Requested

**OWNERS/ OFFICERS (Required)**

INVESTIGATIVE CONSUMER REPORT: An investigative consumer report, including information as to character, general reputation, personal characteristics, and mode of living may be procured or caused to be prepared with respect to each Applicant and with respect to each of the Owners/Officers who have signed below. Each Applicant and each Owner/Officer hereby authorize Simmons First National Bank, or Participating Bank ("Bank"), to procure or cause to be prepared investigative customer reports with respect to each Applicant and the undersigned Owners/Officers, and each Applicant and each Owner/Officer further authorize Bank or any credit bureau or any credit reporting agency employed by Bank to investigate the references given to Bank or any other statements or data obtained from each Applicant or any of the undersigned Owners/Officers, or from any other person pertaining to each Applicant or any of the undersigned Owners/Office Each Applicant and each undersigned Owner/Officer has the right, upon written request to Bank, made within a reasonable time after the date of the application, to receive a complete and accurate disclosure of the information requested.

Name		Title	Social Security #		
Residence Address		City	State	Zip	
Signature		Ever declared bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No		What year?	Case #
Name		Title	Social Security #		
Residence Address		City	State	Zip	
Signature		Ever declared bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No		What year?	Case #

# MERCHANT SIGNATURE AUTHORIZATION

The undersigned officer(s) or representative(s) of the Merchant listed certifies that the Merchant is :

- a Sole Proprietorship;                       a Limited Partnership organized under the laws of the State of \_\_\_\_\_  
 a General Partnership;                       a Corporation (C/S, LLC, LLP) organized under the laws of the State of \_\_\_\_\_  
 Other; \_\_\_\_\_

and further certifies the following (as applicable to the type of business ownership checked above):

CERTIFICATE OF SOLE PROPRIETOR	PARTNERSHIP CERTIFICATE	CORPORATE RESOLUTION
<p>Being the sole owner of the Merchant further certifies to and agrees with Simmons First National Bank, or Participating Bank ("Bank") as follows:</p> <p>1. I am the sole owner of the Merchant and have applied to the Bank and entered into a contract entitled "Merchant Agreement" for the retail or service business of the Merchant.</p> <p>2. The person(s) whose name(s) appears below and I, or any one of us are hereby authorized by me to sign the Merchant Agreement and to act for and on behalf of the Merchant and me in any matter related to the terms and conditions of the Merchant Agreement.</p> <p>3. The Bank may solely rely on the authorization granted in this certificate until it receives actual notice of any changes hereto, but receipt of such notice shall not affect any action taken by the Bank in reliance on this certificate prior to that time.</p> <p>4. The following are titles, names and genuine signatures of the person(s) authorized by this certificate:</p>	<p>We further certify and agree, individually and on behalf of the Merchant:</p> <p>1. We are the partners of the Merchant. A certificate of partnership has been properly filed as required by law.</p> <p>2. Any partner of the Merchant and the persons whose names appear below, or any one of them, are hereby authorized to sign a contract with Simmons First National Bank, or Participating Bank ("Bank") entitled "Merchant Agreement" and by said signature bind the Merchant thereto.</p> <p>3. Any of the partners or other persons designated below are authorized to act for and on behalf of the Merchant in any matter related to the conduct and performance of the terms and conditions of the Merchant Agreement.</p> <p>4. The Bank may solely rely on the authority granted in this certificate until it receives actual notice of any changes hereto, but receipt of such notice shall not affect any action taken by the Bank in reliance on this certificate prior to that time.</p> <p>5. The following are titles, names and genuine signatures of the person(s) authorized by this certificate:</p>	<p>I further certify that I am the duly elected _____(TITLE) of _____ (name of Corporation). The following is a true and complete copy of a resolution duly adopted at a meeting or by unanimous written consent of the Board of Directors of Merchant, held in accordance with the articles and bylaws of the corporation and that such resolution is still in full force and effect:</p> <p>RESOLVED, that the officers or representatives whose names appear below, or any one of them, are hereby authorized on behalf of the Merchant to sign a contract with Simmons First National Bank, or Participating Bank ("Bank"), entitled "Merchant Agreement" and by said signature bind the Merchant thereto.</p> <p>RESOLVED FURTHER, that any of the officers designated below are authorized to act for and on behalf of the Merchant in any matter relating to the conduct and performance of the terms and conditions of the Merchant Agreement.</p> <p>RESOLVED FURTHER, that the Bank rely on the authority granted in this resolution until it receives actual notice of any changes hereto, but receipt of such notice shall not affect any action taken by the Bank in reliance on the resolution prior to that time. I further certify that the following are titles, names and genuine signatures of the person(s) authorized by the above resolution:</p>

Check one of the following:		GENERAL PARTNERSHIP
<p>Owner(s)                      [ ]</p> <p>General Partner(s)        [ ]</p> <p>President                      [ ]</p>	<p>Name _____</p> <p>Signature _____</p>	<p>We further certify and agree, individually and on behalf of the Merchant:</p> <p>1. We are all of the general partners of the merchant.</p> <p>2. Any general partner of the Merchant and the persons whose names appear to the left, or any one of them, are hereby authorized to sign a contract with Simmons First National Bank, or Participating Bank ("Bank") entitled "Merchant Agreement" and by said signature bind the Merchant thereto.</p> <p>3. Any of the general partners or other persons designated are authorized to act for and on behalf of the Merchant in any matter related to the conduct and performance of the terms and conditions of the Merchant Agreement.</p> <p>4. The Bank may solely rely on the authority granted in this certificate until it receives actual notice of any changes hereto, but receipt of such notice shall not affect any action taken by the Bank in reliance on this certificate prior to that time.</p> <p>5. To the left are titles, names and genuine signatures of the person(s) authorized by this certificate:</p>
<p>General Partner(s)        [ ]</p> <p>Vice President              [ ]</p>	<p>Name _____</p> <p>Signature _____</p>	
<p>General Partner(s)        [ ]</p> <p>Secretary                    [ ]</p>	<p>Name _____</p> <p>Signature _____</p>	
<p>Treasurer                    [ ]</p>	<p>Name _____</p> <p>Signature _____</p>	
<p>IN WITNESS WHEREOF, I have hereunto subscribed my name as                  [ ] Proprietor    [ ] General Partner    [ ] Officer of Corporation                  of the "Merchant" as of this _____ day of _____, 20____</p>		
<p>Print Individual's Name</p>	<p>Signature</p>	

**ACH ACCOUNT**

Bank name				Checking Account No.
Address	City	State	Zip	ABA Routing No. (9 Digits)

**APPLICANT SIGNATURE (Required)**

Simmons First National Bank, or Participating Bank ("Bank") and the undersigned Merchant agree that the listed terms, provisions and charges of this application, if accepted, are a part of the Merchant Agreement, attached hereto as Addendum 1, between them. Merchant acknowledges that it has received a copy of the Merchant Agreement (Addendum 1) between Merchant and Bank, including this Application. The Merchant Agreement (including this application) shall become effective only after the Merchant has been approved by Bank. The Merchant Application information is submitted for the purpose of obtaining a merchant credit card processing account. The undersigned applicant(s) represents and warrants information in or in connection with application to be complete and correct. Merchant expressly authorizes Bank, or its authorized representative, to obtain information from others concerning the credit standing of any individuals or entities listed herein.

\*\*Service Agreement for [ ]Visa [ ]MasterCard [ ]Discover

Executed as of the \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_.

\*\*Financial Institution \_\_\_\_\_ Merchant \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

\*Only Financial Institutions that are Members of VISA, U.S.A., may enter into a Merchant Agreement for VISA services.

\*\*Only Financial Institutions that are Members of MasterCard International, may enter into a Merchant Agreement for MasterCard Services.

**GUARANTY (Required if incorporated or processes mail, telephone or internet transactions)**

The undersigned do hereby unconditionally, jointly and severally guarantee all present and future obligations of \_\_\_\_\_ hereinafter called "Merchant", under any Bank Card Merchant Agreement by and between Merchant and Simmons First National Bank, or \_\_\_\_\_ (Participating Bank) jointly, (hereinafter called Bank), now existing or hereinafter amended. This Guaranty may be terminated prospectively, at any time, by giving ten (10) days prior written notice to Bank. However, any such termination will not affect the liability for any transactions, acts or events occurring prior to the effective date of such termination.

Guarantor's Signature:

**BANK USE ONLY (REQUIRED FOR NON REFERRAL BANKS)**

Participating Financial Institution: \_\_\_\_\_

Authorized Bank Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Authorized Bank Representative: \_\_\_\_\_  
(Please print name and title)

Approved  Declined



Where is business located?

- Shopping Center
- Office Suite
- Commercial Bldg.
- Other

What are the normal business hours?

Daily: \_\_\_\_\_ a.m. TO \_\_\_\_\_ p.m.

Closed: Sun Mon Tues Wed Thurs Fri Sat

SEASONAL:  Yes, (If seasonal circle months open)  No

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Does merchant have a return of merchandise policy?

- No Refund
- Exchange Only
- In Store Credit Only
- Other

Does the amount of inventory and merchandise appear consistent with this type of business?

- Yes
- No

Are the owners on the premises?

- Yes
- No, Who is? \_\_\_\_\_

On Site Inspection:

- Yes
- No

Photograph:

- Yes
- No

The undersigned has personally inspected the business premises of the proposed Merchant and as a result of that inspection has concluded that all of the above information is correct, to the best of his/her information and belief.

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

Printed Name: \_\_\_\_\_

Additional Information:

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# ADDENDUM 1

## BANK CARD MERCHANT AGREEMENT

Revised 06/10

### 1. CARD(S) MERCHANT AND BANK

As a member of the value exchange system(s) associated with VISA U.S.A., Inc.,\* and other qualified affiliated cards which bear the Blue, White and Gold bands design and/or MasterCard\*\* and other cards identified with MasterCard International, Inc., and/or Discover\*\*\* and other cards identified with Discover Network (all of such cards in this Agreement called "Card(s)"), Merchant (in this Agreement called Merchant) agrees to follow the provisions of this Bank Card Merchant Agreement (this Agreement) in connection with the sales of merchandise or services, and will from time to time first offer to the Financial Institution (in this Agreement called Bank), for purchase such sales drafts relating to such sales as Merchant may desire to sell. Merchant certifies that it is not a collection agency.

### 2. HONORING CARDS

Merchant shall promptly honor all valid Cards properly tendered or presented by customers in payment for goods or services. If Merchant is one (such as a private club) that does not deal with the public at large, it may honor only such cards as are tendered by persons eligible to purchase from Merchant. Merchant shall not establish minimum or maximum transaction amounts, or impose any surcharge, as a condition for honoring Cards. Any tax required to be collected by Merchant must be included in the total transaction amount and not collected separately in cash. The Merchant shall not impose a requirement on cardholders to provide any personal information such as a home or business telephone number, a home or business address or driver's license number as a condition for honoring Cards, unless such information is required under specific circumstances cited in this Agreement. In no event shall Merchant make any cash disbursement to a Cardholder or user of a Card. Merchant shall submit no transaction, for payment to Bank, containing the account number of a Card account issued to Merchant.

### 3. PREREQUISITE TO CARD ACCEPTANCE.

(a) Merchant shall check each Card for validity and will complete no transaction involving use of a Card not thus determined to be valid and current. If Merchant has reasonable grounds to believe the Card to be counterfeit, fraudulent, stolen or in the possession of a person not authorized to use same, or if so requested in response to a request for instruction or authorization, Merchant shall retain the Card by reasonable and peaceful means and return the Card to the Bank. Merchant shall telephone request a "Code 10" authorization when the transaction involves suspicious or unusual circumstances.

(b) Merchant shall compare the signature on the Card (which signature may, but not need to be the name embossed on the Card) with the signature on the Sales Draft; and if the two signatures do not appear to be the same, or if for any other reason Merchant is uncertain as to the validity of the Card, the identity of the person presenting same or the authority of that person to use the Card, Merchant shall complete no transaction involving the use of such Card without first telephoning for instruction or authorization. If the signature panel on the Card is blank, in addition to requesting an Authorization, the Merchant must do all of the following: 1) Review positive identification to determine that the user is the Cardholder (current, official government identification document (such as a passport or driver's license) that bears the Cardholder's signature), 2) Indicate such positive identification (including any serial number and expiration date) on the Sales Draft., 3) Require the Cardholder to sign the signature panel of the Card prior to completing the transaction.

(c) Merchant shall not complete a sale transaction involving use of a Card in any case where specific authorization has not first been obtained. In the case of each authorization so obtained, Merchant shall legibly enter the authorization number in the appropriate place on the Sales Draft. Merchant understands that an Authorization does not constitute a guarantee of payment, only available credit and may be subject to dispute or chargeback.

### 4. EXCESSIVE AUTHORIZATIONS

Merchant will obtain authorization as required by paragraphs 3a, 3b and 3c of this Agreement. Bank will have the right to charge Merchant's account for excessive authorizations, at any time, without prior notice. Excessive means more than one authorization per transaction.

### 5. SALES DRAFT AND CREDIT VOUCHER REQUIREMENTS

(a) All Sales Drafts shall be on forms supplied or approved by Bank and must be dated and signed by the Cardholder or user, and legibly completed by Merchant to include Merchant's name and place of business, the Card number, the Cardholder's name, a brief description of the merchandise or services sold, and the total price thereof (including any applicable taxes). Additionally, each Sales Draft must include the name of the Card user (if different from the Cardholder's) and the applicable authorization number, together with motor vehicle license number and state of licensing if Merchant is an auto service station (except that such motor vehicle identification need not appear if an Automated Dispensing machine is used in the transaction).

(b) Each Credit Voucher must include a brief description of the merchandise returned, services canceled or adjustments made and the date and the amount of the credit. In no event shall Merchant receive monies from a Cardholder and thereupon present a Credit Voucher for deposit of same to the Cardholder's account. Under no circumstances may Merchant process a Credit Voucher without having completed a previous purchase transaction with the same Cardholder.

(c) Merchant will use a suitable imprinter to imprint legibly on each Sales Draft and Credit Voucher the embossed legends from both the Card and the Merchant's identification plate with the exception of transactions being processed by Electronic Draft Capture. If Card will not read electronically, Card must be imprinted manually for proof Card was present.

(d) If a Card Transaction is made by telephone order ("TO"), mail order ("MO"), Internet order ("IO") or preauthorized order ("PO"), the Sales Slip may be completed without a customer's signature or a Card imprint, but Merchant agrees:

(i) To imprint legibly on the Sales Slip, or capture electronically sufficient information to identify Merchant and the Cardholder, including: Merchant's name and address, the account number, the expiration date and any effective date on the Card, the Cardholder's name, and address and any company name.

(ii) To print legibly on the signature line of the Sales Slip the letter "TO", "MO", or "PO" for these transactions and "Recurring Transaction" for these transactions, as appropriate.

(iii) For telephone and mail order transactions, to include the address verification service and the expiration date as part of any Authorization Inquiry, and to transmit sale data to Bank or Bank's processor within one business day of the authorization date including Merchant's customer service number for any consumer complaint: and,

(iv) To be liable for the amount of any Sales Slip generated in a telephone, mail, Internet or preauthorized order transaction that proves to be uncollectible for any reason whatsoever.

(e) In any non-imprint transaction, Merchant shall be deemed to warrant the customer's true identity as an authorized user of the Card.

(f) In connection with a recurring transaction (or preauthorized order) pursuant to which goods or services are delivered to or performed for a Cardholder periodically, Merchant agrees to do all of the following:

(i) Obtain a written request from the Cardholder to charge the recurring transaction to the Cardholder's account. The written request must specify the amount of the recurring transaction, the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect. Merchant shall retain the Cardholder's written request for as long as the preauthorized order is in effect and must provide copy to Bank upon its request.

(ii) Obtain a subsequent written request from the Cardholder containing the same information as the original written request before renewing a preauthorized order.

(g) Merchant may offer Cardholders an installment payment option for its mail/telephone order merchandise subject to the following conditions:

(i) Merchant's promotional material must clearly disclose the installment terms, including but not limited to:

- (a) Whether the plan is available only for selected items or for the total amount of any order, and
- (b) How shipping and handling charges and applicable taxes will be billed. The material also must advise

Cardholders who are not billed in the transaction currency of the Merchant that the installment billing amounts may vary due to fluctuations in the currency conversion rates.

(ii) No finance charges may be added by Merchant. The sum of the installment transaction may not exceed the total sales price of the merchandise on a single-transaction basis.

(iii) Authorization is required for each installment transaction.

(iv) Merchant may not deposit any transaction with Bank until the merchandise is shipped. Subsequent installment transactions must be deposited at intervals of 30 days or more, or on the anniversary date of the transaction (i.e., the same date each month).

(h) In the event Merchant follows the above guidelines and procedures, any transaction in which the Card and/or the Cardholder is not present poses significant chargeback and/or unauthorized transaction risk to the Merchant for which the Merchant is liable.

#### **6. DELIVERY OF COPY REQUIRED**

(a) Merchant shall deliver to the Cardholder or user a true and completed copy of the Sales Draft (or Transaction Record) or Credit Voucher at the time of the transaction. The Cardholder shall not be required to sign a Sales Draft until the final transaction amount is known and indicated in the "Total" column.

(b) For transactions originating at Point of Transaction terminals, the Cardholder's copy of the Sales Draft or Transaction Record must include the Card number, the Merchant's name and the place of business, and the amount and date of the transaction.

(c) For transactions originating at Automated Dispensing Machines or Limited Amount Terminals (excepting those originating at Magnetic Stripe Reading Terminals), the Transaction Record copy must include the Card number, the Merchant's name, the Magnetic Stripe Reading Terminal location, and the amount and date of the transaction.

#### **7. SALES DRAFT, MERCHANT OBLIGATION AND WARRANTIES**

(a) With respect to each Sales Draft or Transaction Record tendered to Bank, Merchant warrants that it will and does represent a valid obligation of the Cardholder in the amount set forth therein, that such obligation is exclusively for merchandise sold or services rendered and does not involve any cash advance or extension of credit for any other purpose whatsoever, and that Merchant has no knowledge of any fact or circumstance that might impair the validity of the Sales Draft or its collectability. Merchant shall not deposit sales transactions that it knows or should have known to be fraudulent or in violation of Visa, MasterCard or Discover Network rules, operating regulations, procedures, or policies or not authorized by the Cardholder. Merchant may not represent for deposit or processing any transaction that has previously been charged back to the Bank and subsequently returned to Merchant. Merchant shall not present to Bank transactions for merchandise or services outside the normal course of Merchant's business known to Bank. Merchant shall not submit for processing and payment any Transaction(s) representing the refinancing of an existing uncollectible debt of a Cardholder including, but not limited to obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing uncollectible debt.

(b) Merchant will not by any action, omission, procedure or practice of any nature within Merchant's control, create or allow the existence of any circumstance or situation that might render unenforceable any such Sales Drafts, render inaccurate or incomplete any disclosures which Bank by applicable law and regulations is required to make in billing the Cardholder, result in finance charges or interest in excess of any applicable legal limit, or require procedural changes or other non-routine action on Bank's part to avoid violation of any such law or regulation.

(c) Merchant will indemnify and hold Bank harmless from any and all claims, demands, or action and defenses of every nature whatsoever asserted against Bank in connection with any and all Sales Drafts, credit vouchers and other transactions with Merchant contemplated by this Agreement, including but not limited to (i) claims, defenses, disputes, offsets and counterclaims relating to merchandise sold or services rendered by Merchant, (ii) claims, demands, and causes of action arising from any alleged violation of or failure to comply with Truth in Lending or other laws, rules or regulations of any government or agency having or claiming jurisdiction in the matter where any act, omission, misrepresentation or non-disclosure on the part of Merchant is the basis of or contributes to the alleged violation or failure, and (iii) expenses of litigation including attorney's fees and any damages and/or penalties incurred by or assessed against Bank in connection with the foregoing.

#### **8. RECURRING TRANSACTIONS**

(a) A Recurring Transaction is a mail order type of transaction covering a purchase of goods or services to be delivered or performed periodically, for which the Cardholder account will be charged periodically. It may include a payment of recurring charges such as insurance premiums, subscriptions, membership fees or utility charges, but shall not include partial payment in an isolated transaction or periodic payments upon which Merchant assesses additional finance charges. Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, Bank or response that the Card in not to be honored.

(b) For each Recurring Transaction accepted by Merchant, Merchant shall obtain the Cardholder's written consent, which states the amount(s), frequency and duration of the recurring charges that are authorized to be made on the Cardholder's account. Presentment of the Sales Draft drawn on a Recurring Transaction shall constitute Merchant's warranty that Merchant holds such written consent duly signed by the Cardholder, and that same will be promptly delivered by Merchant to Bank if and when requested by Bank.

#### **9. RETURN OF MERCHANDISE**

(a) If, following any sale transaction where the Card is used, any return of merchandise, termination or cancellation of services or price adjustment is allowed, Merchant shall in no event make the refund or adjustment in cash, but shall make same only by issuing and delivering to Bank a Credit Voucher bearing the same Card number used in the sale transaction in an appropriate amount not exceeding the original purchase price. Bank, upon receipt of such Credit Voucher, will refund to Merchant the applicable discount fee and credit the same to Merchant's account, if any.

(b) If Merchant desires to limit or restrict its acceptance of returned merchandise or its price adjustment policy, Merchant may do so only if proper disclosure is made on the Sales Draft at the time of the transaction. Such disclosure may be made in the following or similar words, legibly printed on all copies of the Sales Draft in letters approximately 1/4 inch high and in close proximity to the Cardholder's signature space:

"NO REFUND" - If no return or exchange will be allowed and no refund will be made;

"EXCHANGE ONLY" - If merchandise may be returned only in immediate exchange for similar merchandise; or

"IN STORE CREDIT ONLY" - If merchandise may be returned only for credit which can be used only in the Merchant's place of business. Merchant may, if permitted by applicable law, stipulate special circumstances agreed to by the Cardholder (e.g. late delivery, delivery charges or insurance charges) as terms of the sale transaction, in which case disclosure will be made by appropriate wording on the Sales Draft; but under no circumstances shall a surcharge be assessed for the use of the Card.

(c) If a dispute regarding merchandise or services not resolved between Merchant and the Cardholder should result in the Cardholder's asserting a claim or defense against Bank, Bank in its discretion may settle or compromise same with the Cardholder without notice to the Merchant and without relieving the Merchant of its obligation to indemnify Bank in the matter.

#### **10. PRESENTMENT OF DRAFTS**

(a) Presentment of each Sales Draft that Merchant desires Bank to purchase shall be promptly made to Bank, within and no later than three business days after the transaction date. In the event Merchant is authorizing sales through electronic equipment, all Drafts must be presented to Bank no later than one business day after the transaction date. If the Merchant is clearing Sales Drafts electronically through data capture equipment, the sales must be transmitted daily (excluding Sundays and U.S. holidays). In a delayed delivery situation where Merchant has requested and received Authorization for delayed presentment, presentment of the Sales Draft may be deferred until the merchandise is delivered or the services are performed (in which case the delayed presentment Authorization Number and the words "Delayed Presentment" shall be legibly noted on the Sales Draft, and presentment shall be within the delay period authorized).

(b) Each Credit Voucher shall be presented to Bank within three business days after the applicable Transaction Date; and if Merchant's failure to make timely presentment of a Credit Voucher should result in a Cardholder billing error inquiry, or in the imposition of a finance charge or late payment charge which would not have been made otherwise and hence must be refunded to the Cardholder, Merchant shall reimburse Bank for any expense thereby incurred, including but not limited to the amount of any such refund.

#### **11. ASSIGNMENT TO BANK**

(a) Merchant's preparation and presentment of a Sales Draft to Bank shall constitute Merchant's transfer and assignment of same to Bank, without recourse, except as otherwise herein provided. If the endorsement of Merchant is required any time in connection with such assignment, same may be signed in Merchant's name by Bank or its representative. Merchant waives notice of default or non-payment, protest or notice of protest, demand for payment and any other demand or notice relating to this Agreement or any Sales Draft. Merchant agrees that extensions of time, compromises or indulgences may be made or granted by Bank without affecting Merchant's liability or any remedy of Bank thereon or hereunder.

(b) Bank alone shall have the right to receive Cardholder payment on each Sales Draft assigned to it until and unless same is charged back and reassigned to Merchant. Merchant shall not accept any such payment from a Cardholder without Bank's specific authorization to do so; and if so authorized, Merchant shall receive the payment in trust for Bank and promptly remit same to Bank.

#### **12. PAYMENT FOR DRAFTS PRESENTED AND ACCEPTED**

(a) Subject to the terms of this Agreement as hereinafter provided, Bank will settle with Merchant such percentage of the total amount of Sales Drafts presented, accepted and purchased hereunder (diminished by the same percentage of the total amount of Credit Vouchers presented hereunder) as agreed upon from time to time between Bank and Merchant; and for the purposes hereof, the difference between said percentage and 100% may be called the "Discount Rate". Bank will provide to Merchant the Discount Rate Schedules that will vary according to specific transaction processing procedures and qualifications as disclosed by Bank. Bank may change Discount Rate Schedules at any time upon notice to Merchant.

(b) If Merchant has multiple locations, separate presentments shall be made for each identifying that location by address (city and state), by the trade name there used (if different from Merchant's own), and by any identifying number Bank might have assigned to that location. Any fees or assessments levied by VISA U.S.A. MasterCard International or Discover Network for violations of these procedures or procedures specified herein will be the responsibility of Merchant.

(c) As to each presentment, Bank shall pay Merchant the applicable percentage (agreed upon as aforesaid) of the Net Sales, diminished by the same percentage of Net Credits, and further diminished by any Reserves that Bank might retain as hereinafter provided. Provisional payment thereof shall be made by Bank's credit or deposit of same to the account regularly maintained by Merchant with Bank, or by any other method that Bank and Merchant may agree upon from time to time. In any event, it is understood that no such provisional payment for a Sales Draft shall be deemed a "final settlement" of the item within the contemplation of the Uniform Commercial Code. Payment of sales by Bank shall not be final so long as the related sale is subject to chargeback or Cardholder return. Bank may revoke any prior provisional settlement of a sale by making an immediate withdrawal without notice or demand.

(d) Merchant shall promptly reimburse Bank for all Cardholder refunds or adjustments necessitated by billing errors or other acts or omissions on the part of Merchant by Credit Vouchers subsequently presented, or by other contingencies beyond the control of Bank; and to secure such reimbursement; (i) Banks shall have the right and option to retain and hold, for reasonable periods of time, Reserves consisting of such percentage of any payments due Merchant as Bank in its discretion shall deem necessary for Bank's reasonable protection against loss from such refunds and adjustment(s); and (ii) at Bank's option and without notice to Merchant, Bank may appropriate and apply toward payment of such reimbursement the said Reserves (if any) and any other funds or deposits of Merchant at any time held by Bank.

#### **13. CERTAIN ASSIGNMENTS SUBJECT TO BANK RECOURSE**

Merchant agrees to pay or reimburse Bank the net amount of any Sales Draft, and Bank shall have the right at any time to charge Merchant therefore without notice, in any situation relating to any such Sales Draft where: (1) merchandise is returned or services are rejected, whether or not a Credit Voucher is delivered to Bank; (2) any sales transaction has not been specifically authorized by Bank; (3) the Sales Draft appears to have been drawn, accepted or endorsed improperly or without authority; (4) the Sales Draft is illegible; (5) the Cardholder disputes the sale, quality or delivery of merchandise or the performance or quality of services covered by the Sales Draft, and Merchant fails to resolve such dispute with the Cardholder; (6) the Sales Draft is drawn by or credit is given to Merchant in circumstances constituting a breach of any term, condition, representation, warranty, or duty of Merchant hereunder; (7) the extension of credit for merchandise sold or services performed was in violation of law or the rules or regulations of any governmental agency having jurisdiction in the matter.

(a) Under any of the following circumstances, Bank may chargeback to Merchant any Transaction Record that Bank has accepted, and Merchant shall repay Bank the amount represented by such Transaction Record:

(i) The Transaction Record (1) is illegible or the data contained therein is otherwise not distinguishable, (2) is not endorsed, (3) is not delivered to Bank within the required time limits, or (4) is incomplete (i.e., missing any one of the following items: the account number, Card expiration date, Merchant description, transaction amount and date, Cardholder signature, description of product or services, authorization code.)

(ii) The Card account number was listed on the current National Card Recovery File on the transaction date and Merchant did not reject the transaction or receive prior Authorization for the transaction, as applicable.

(iii) A valid authorization number is not correctly and legibly included on the Transaction Record.

(iv) The Transaction Record is a duplicate of an item previously paid or is one of two or more Transaction Records generated in a single transaction.

(v) The Cardholder disputes the execution of the Transaction Record; the sale, delivery, quality or performance of the goods or services purchased; or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Cardholder's account.

(vi) Bank determines that Merchant has violated any term condition, covenant, warranty or other provision of this Agreement in connection with the Transaction Record or the transaction to which the Transaction Record relates.

(vii) Bank determines that the Transaction Record is fraudulent or that the related transaction is not a bona fide transaction in the ordinary course of Merchant's business or is subject to a 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.

(viii) The Transaction Record arises from a mail or telephone order transaction that the Cardholder disputes entering into or authorizing or that involves an account number that never existed or that has expired and has not been renewed.

(ix) In any other situation in which a transaction has been charged back to Bank in accordance with the Chargeback rules established by Visa, MasterCard or Discover.

(b) Bank may chargeback a transaction in accordance with this Section even if an Authorization was obtained.

(c) Merchant will be responsible for the verification of each chargeback. Merchant must protest any chargeback within ten (10) days of the date the original chargeback was posted. If the chargeback is not protested within the 10 days, the Merchant agrees to accept the item regardless of its accuracy or authenticity. The Merchant shall hold Bank harmless from any claim it may have as a result of any chargeback if the chargeback is not protested within the 10 days.

(d) Visa, MasterCard and Discover rules may not allow the reversal of a chargeback in certain electronic transactions, however, Merchant agrees to accept all chargebacks issued pursuant to Visa, MasterCard and Discover regulations.

(e) Merchant shall not initiate a Sale Transaction in an attempt to collect a chargeback.

#### **14. CONFIDENTIALITY OF CARDHOLDER INFORMATION**

(a) Merchant shall take adequate steps to ensure the confidentiality of Card numbers and other Cardholder information. In no event shall Merchant disclose a Cardholder's account information or other personal information to third parties, other than to Merchant's own personnel for the purpose of assisting Merchant in completing the transaction or as specifically required by law. In case Merchant's business fails, Merchant must protect the confidentiality of cardholder data and this Agreement prohibits the sale or disclosure of databases containing cardholder account numbers, personal information, or other Card transaction information to third parties as an asset of the failed business. This Agreement further requires that all Card transaction information be returned to the Bank or acceptable proof of destruction of this data be provided to the Bank.

(b) Merchant shall store in an area limited to selected personnel, and prior to discarding shall destroy (in manner rendering all data unreadable) all material containing Cardholder account numbers or Card imprints, such as Sales Drafts, Credit Vouchers, vehicle leasing agreements and carbons. The retention or storage of magnetic stripe data subsequent to the authorization of a transaction is prohibited.

#### **15. NO FACTORING - NO LAUNDERING**

Merchant shall not discount, factor, launder or otherwise deal with Sales Drafts generated by other dealers, mail order companies, telemarketers, suppliers, or any third party and shall not directly or indirectly present to Bank for processing any Sales Draft or Credit Voucher that did not originate with or arise from Merchant's own sale of goods or services to a Cardholder.

#### **16. MERCHANT RECORDS**

Bank may examine and verify at any reasonable time all records of Merchant pertaining to Sales Drafts sold to Bank hereunder. Merchant agrees to preserve such records for a period of no less than three (3) years from date of each Sales Draft. Such records shall be stored in a manner permitting retrieval and submission of legible copies on the same day that Merchant receives a request from Bank. Since a Card Issuer may over a period of time, request duplicate copies of the same Sales Draft, Merchant must retain at least one legible copy of each Card Transaction. Failure to provide Bank with requested documentation within five (5) business days after receipt of such request may result in the Transaction being charged back to Merchant, and Bank shall have the right to debit the Account for the full amount of the Transaction in question.

#### **17. PROMOTIONAL MATERIAL**

Bank will furnish Merchant, without charge, promotional material and advertising displays indicating Merchant's participation in Card plans. Merchant agrees to display such materials prominently at Merchant's place of business. Merchant agrees to take all necessary steps to protect and preserve the copyrights, trademarks and service marks pertaining to the plans and services. Merchant will not use such material in any form that would result in the loss of such rights. Merchant agrees to encourage sales personnel to inform and solicit customers' use of the Card.

#### **18. USE OF SERVICE MARKS**

Merchant shall use the Visa, MasterCard and Discover labels, decals, symbols and designs in promotional material, advertising and displays at its place of business solely to indicate that Cards will be accepted for payment, and not to indicate or imply endorsement of goods or services or eligibility for same. All such use by Merchant must fully comply with all requirements of Visa U.S.A., MasterCard International and Discover Network, and may continue only for so long as this Merchant Agreement remains in effect.

#### **19. IMPRINTERS**

Merchant, of its own expense, will procure and maintain an appropriate number of imprinters suitable for use with the Cards as herein required. If requested, Bank will provide same for Merchant's purchase or rental, at purchase prices or rental charges from time to time agreed upon. Rental imprinters shall remain the property of Bank and be returned to Bank in good condition upon termination of this Agreement or upon Merchant's sooner termination of its rental of each imprinter.

#### **20. ELECTRONIC DEPOSIT**

(a) Bank, at its option, will offer to Merchant Card transaction processing via Electronic Draft Capture. If Merchant elects to electronically process card types (foreign cards) other than or in addition to Visa, MasterCard and Discover products, Merchant will indemnify and save Bank harmless from any and all claims, demands, or actions and defenses of every nature whatsoever asserted against Bank in connection with any transaction contemplated or processed under this Agreement. Utilization of Electronic Draft Capture of foreign card transactions on Bank's processing system is strictly a courtesy of Bank and all responsibilities, liabilities and operational procedures, including but not limited to, funds settlement and sales authorization of these transactions is governed by any agreement Merchant has with the foreign card service provider. Merchant agrees that Bank has no responsibility or liability for the performance of any agreement made between Merchant and any other foreign card service provider.

(b) Any telephone communication connection expenses necessary for the installation of the terminal will be incurred by Merchant. Bank will not be responsible for any malfunction or damage to telephone system incurred as a result of terminal installation.

(c) Bank will instruct Merchant's designated employees in the proper use and operation of the terminal. Merchant will not make or permit its employees to make any alterations, attachments, additions or modifications to the terminal without Bank's prior knowledge.

(d) Merchant, its employees, or its agents, shall use and operate the terminal in accordance with the provisions of this Agreement as may be amended from time to time. Merchant shall be subject to chargebacks for failure to comply with such provisions or with the provision of this Agreement, except as otherwise specifically provided herein. On each transaction, Merchant will obtain the signature of the Cardholder in the appropriate place on the sales draft and verify that such signature bears a reasonable resemblance to that appearing on the Card. Merchant shall enter in the appropriate place on the sales draft the electronic authorization code displayed on the terminal screen. In the event that the terminal is unable to read a customer's Card number or expiration date, Merchant shall manually enter information into the terminal to obtain authorization and imprint the Card manually for proof the Card was present.

(e) All sales must be transmitted daily. Any sales not transmitted daily will be subject to increased Merchant Discount on each item. Merchant shall be responsible for the retrieval of all sales drafts and credit vouchers requested by Bank within the time limits established by the VISA, MasterCard and/or Discover rules and regulations. Merchant agrees to retain original sales drafts and credit vouchers for a period of three (3) years from the date of the transaction. Merchant's failure to produce a copy of transaction requested by Bank may result in a chargeback.

(f) Merchant agrees to notify Bank of any malfunction or other incident resulting in the loss of use of the terminal. In the event Merchant's terminal is inoperable for any reason, Merchant will be responsible for obtaining authorization on all transactions by calling a back-up authorization number. Merchant will hold all sales tickets until a replacement terminal can be provided by Bank. UNDER NO CIRCUMSTANCES SHOULD PAPER DRAFTS BE TAKEN TO BANK FOR DEPOSIT.

(g) Bank will be responsible for having Merchant's terminal repaired if necessary and will bill cost of repair if not under manufacturer's warranty. The terminal carries a \_\_\_\_\_ year warranty. The printer carries a \_\_\_\_\_ year warranty. Merchant shall bear total responsibility for any and all chargebacks and adjustments resulting from transactions processed pursuant to this Agreement. Upon termination, Merchant shall maintain an escrow account with Bank, which is based on the preceding \_\_\_\_\_ days of actual chargeback and adjustment dollar volume. These monies are to be used for settlement of chargebacks and adjustments on or after the date of the termination of this Agreement. Bank will refund any such remaining monies to Merchant no later than \_\_\_\_\_ days after termination of this Agreement. If monies are not sufficient in escrow account to cover said chargebacks and adjustments pursuant to this Agreement, Merchant agrees to promptly pay Bank upon request.

(h) If suit or action is instituted in connection with the terms of this Agreement, the prevailing party shall be entitled to recover court costs and attorney's fees adjudged reasonable by the court.

#### **21. ACH AUTHORIZATION**

Merchant hereby authorizes the Bank (a) to present automated clearing house ("ACH") debits to Merchant's bank or banks (as designated on Merchant Application and/or as designated from time to time by Merchant to Bank) for payment to Bank of amounts due Bank under the terms of this Agreement, including but not limited to amounts due Bank for Merchant's discount and fees, chargebacks, and any other amounts due under this Agreement, and (b) to present ACH credits for payment of amounts owed by Bank to Merchant. Merchant's authorization to make debits as aforesaid shall be irrevocable during the term of this Agreement and thereafter until all amounts owed by Merchant to Bank shall be fully paid and satisfied. Merchant shall promptly notify Bank in writing of any change in bank or account number to which such ACH transactions are to be presented.

## 22. E-COMMERCE MERCHANT TERMS & CONDITIONS (INTERNET)

**(a) NATURE OF TERMS AND CONDITIONS.** These E-Commerce Terms and Conditions govern the relationship between Bank and Merchant for all E-Commerce Products and Services, including those E-Commerce Products and Services provided **(i)** directly by Bank **(ii)** through Bank as a reseller on behalf of parties other than Bank ("Third Party Vendors"), and **(iii)** directly by Third Party Vendors with the written consent of the Bank. These E-Commerce Terms and Conditions expressly govern, without limitation, software products; hosting services, secure payment gateway services, and related support and maintenance services obtained through the Bank or Third Party Vendors in connection with the E-Commerce Products and Services. Merchant understands and agrees that it may be required to enter into additional specific agreements for software products, hosting services or other E-Commerce Products and Services as Bank or Third Party Vendors may determine in their sole discretion. Merchant has the option to utilize any or all of the products and services or may contract directly with other third party providers of suitable services. Merchant is required to post their consumer data privacy policy and their method of transaction security on their web site.

**(b) THIRD PARTY VENDOR E-Commerce PRODUCTS AND SERVICES.** Merchant understands and acknowledges that Bank does not control Third Party Vendors and their E-Commerce Products and Services provided directly to Merchant or resold by Bank. Bank offers the Third Party Vendor E-Commerce Products and Services to Merchant as a convenience for use with Bank and other E-Commerce Products and Services. Merchant understands and acknowledges that it may not be accepted by such Third Party Vendors or that, if accepted, later rejected or canceled by the Third Party Vendors. Bank's sole responsibility for these Third Party Vendor E-Commerce Products and Services is limited to communicating any problems reported to Bank by Merchants to the Third Party Vendors.

**(c) THIRD PARTY PAYMENT SERVICES.** Bank is a reseller of Third Party Vendor E-Commerce Services that provide secure payment gateway services (the "Payment Services") for transmitting credit card information. Consistent with the limited Bank duties set forth in this Rider, Bank does not represent, warrant or guarantee that credit card information transmission will be secure and uninterrupted for any of these Payment Services. Merchant acknowledges that these E-Commerce Terms and Conditions are the only terms and conditions applicable to the Payment Services and that Merchant's recourse for any error relating to such Payment Services is limited to the remedies expressly provided for in this Rider.

**(d) DISCLAIMER OF WARRANTY.** Without limiting the generality of the foregoing, and except as expressly provided for in this Rider, Bank has no responsibility for assuring that any problems encountered by the Merchant will be resolved to the satisfaction of the Merchant and makes no representations or warranties and expressly disclaims any responsibility or liability to cure any problems with Third Party Vendors or the E-Commerce Products and Services. Further, Merchant agrees that Bank shall not be responsible for damages claimed by Merchant as a result of any alleged action or inaction of any Third Party Vendor, Merchant acknowledges that the Third Party Vendor E-Commerce Products and Services may contain data transmission and capture capabilities that are secure to the extent that they utilize certain encryption and firewall technologies which are generally understood in the industry at this time to provide adequate security against unauthorized use or access through most currently available technology. Nonetheless, Bank cannot, and does not, represent, warrant or guarantee that the Third Party Vendor E-Commerce Products and Services will be completely secure and uninterrupted.

THE E-COMMERCE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO PERFORMANCE, NON-INFRINGEMENT, MERCHANT ABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE PROVIDED FOR IN OR IMPLIED BY THE UNIFORM COMMERCIAL CODE. MERCHANT ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE E-COMMERCE PRODUCTS AND SERVICES. BANK'S LEGAL LIABILITY SHALL NOT BE EXTENDED BEYOND THAT WHICH IS SET FORTH IN THESE E-COMMERCE TERMS AND CONDITIONS OR ANY SPECIFIC AGREEMENTS RELATING TO E-COMMERCE PRODUCTS AND SERVICES.

**(e) INDEMNIFICATION.** Merchant hereby indemnifies and holds Bank harmless from any claims, losses, damages, and liabilities whatsoever, including attorneys' fees and other costs of defense, whether or not litigation is commenced, that relate to or result from Merchant's use or inability to use the E-Commerce Products and Services.

**(f) LIMITED LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BANK OR ANY THIRD PARTY VENDOR INVOLVED IN THE CREATION, PRODUCTION, PROVISION, DELIVERY OR LICENSING OF THE E-COMMERCE PRODUCTS AND SERVICES BE LIABLE TO MERCHANT OR ANY OTHER PERSON FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COSTS OF DELAY, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, OR OTHER PECUNIARY LOSS, WHETHER OR NOT WITH A CLAIM OF BREACH OF WARRANTY OR BASED ON CONTRACT, STRICT LIABILITY OR OTHERWISE) ARISING OUT OF THE USE OR INABILITY TO USE THE E-COMMERCE PRODUCTS AND SERVICES, WHETHER OR NOT THE POSSIBILITY OR CAUSE OF SUCH DAMAGES WAS KNOWN TO BANK OR SUCH OTHER THIRD PARTY VENDOR. IN NO EVENT SHALL BANK'S LIABILITY IN CONNECTION WITH THE E-COMMERCE PRODUCTS AND SERVICES EXCEED THE TOTAL FEES PAID FOR THEM TO DATE OF THE CLAIM BY MERCHANT.

**(g) PRICES AND FEES.** If Merchant obtains E-Commerce Products and Services through the Bank, as described above, there will be a per transaction fee and other charges which are shared by the Third Party Vendor and the Bank. All prices and fees are exclusive of applicable taxes on the sale or use of the E-Commerce Products and Services. In the event Bank is charged such taxes, Bank may add an equal amount to the total fee owed by Merchant hereunder.

**(h) MISCELLANEOUS.** The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. The parties agree that injunctive relief is available for breaches of this Merchant Agreement, without the need to prove damages or harm, or to post any bond. In the event legal action is brought by either Merchant or Bank to enforce the terms of this Merchant Agreement and Rider, the prevailing party shall be entitled to recover reasonable attorney fees, expenses and all costs, for any proceeding with or without litigation, at or before trial and upon appeal, in addition to any other relief deemed appropriate by the court. These E-Commerce Terms and Conditions and any specific agreements for E-Commerce Products and Services indicated herein constitute the complete agreement between Bank and Merchant, and supersede all prior agreements between the parties relating to the E-Commerce Products and Services.

**(i) CARDHOLDER INFORMATION SECURITY PROGRAM.** Merchant must implement the following controls:

1. Install and maintain a working network firewall to protect data accessible via the Internet.
2. Keep security patches up-to-date.
3. Encrypt stored data.
4. Encrypt data sent across open networks.
5. Use and regularly update anti-virus software.
6. Restrict access to data by business "need to know."
7. Assign a unique ID to each person with computer access to data.
8. Don't use vendor-supplied defaults for system passwords and other security parameters.
9. Track access to data by unique ID.
10. Regularly test security systems and processes.
11. Maintain a policy that addresses information security for employees and contractors.
12. Restrict physical access to cardholder information.

## 23. LIMITATION OF LIABILITY; INDEMNIFICATION; DUE CARE

**(a)** Merchant shall indemnify and hold harmless Bank from all claims, liability, loss and damage, whether direct or indirect, including reasonable attorney's fees and costs, arising out of any breach by Merchant of the terms of this Agreement, or arising from any act, omission or failure to act, or for the breach of any warranty by Merchant pursuant to the terms of this Agreement and the Card Associations Rules and operating regulations and violations of any Federal or State law, rule or regulation.

**(b)** Merchant shall indemnify and hold harmless Bank from and against all liability, loss and damage, including reasonable attorney's fees and costs, arising out of a claim of any third party arising out of any agreement to permit Merchant to access other financial services through point-of-sale terminals provided by Bank, or arising out of actions, omissions, or any other cause or fault of Merchant.

(c) Bank shall have no liability for any negligent design or manufacture of any point-of-sale terminal, printer or other equipment provided by Bank.

(d) Bank's sole liability to Merchant hereunder shall be to correct, to the extent reasonably practical, any data in which errors have been caused by Bank, provided that Merchant notifies Bank of any such error within sixty (60) days after such error occurs. However, the expense to Bank of correcting such data shall constitute Bank's only liability in connection with such error.

(e) No claim for damages for any performance or failure of performance by Bank under this Agreement shall exceed the Merchant Discount Fee amount and any other fees or charges paid to Bank in connection with the Card Transaction which is the subject of the alleged failure of performance.

(f) Bank shall have no other liability whatsoever to Merchant, and Merchant hereby expressly waives any claim against Bank for indirect, special, exemplary, incidental or consequential damages or lost profits or interest. Without limitation of the foregoing, Bank shall not be liable to Merchant for delays in data transmission. Merchant acknowledges that any losses hereunder are commercial in nature.

(g) BANK MAKES NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF BANK, AND Bank HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and Bank shall have no liability to Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that Bank has no liability or responsibility for the actions of any Card Association, Card issuer or Cardholder. Merchant hereby releases Bank from any liability, arising directly or indirectly out of Bank provision of services hereunder or Merchant's participation or activities hereunder.

(h) Bank shall have no liability to Merchant arising under or in connection with this Agreement or any action taken or omitted in connection herewith except as otherwise specifically provided herein.

(i) Bank shall not be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, equipment failures, strikes, riots, war, nonperformance of vendors, suppliers, processors or transmitters of information, acts of God or any other causes over which Bank has no control.

#### **24. SUPPLEMENTS TO MERCHANT AGREEMENTS**

If, in connection herewith, Merchant and Bank are parties to any Supplements to this Agreement wherein special provisions are made for certain types of Merchants such as those processing via Electronic Draft Capture or such as those providing lodging, travel or entertainment services, the provisions of such Supplements shall override the provisions hereof to the extent of any conflict or inconsistency between the two.

#### **25. AMENDMENT**

This Agreement or any related Supplements may be unilaterally amended by Bank at any time upon giving 10 days' written notice to Merchant. By continuing to present Sales Drafts to Bank after the effective date of an amendment, Merchant shall be deemed to have accepted such amendment and agreed to be bound thereby. No amendment shall be required, however, for Discount Rate, service charge changes, or other miscellaneous charges which Bank in its reasonable discretion may make any time upon notice to Merchant.

#### **26. TERMINATION**

(a) Either Bank or Merchant may terminate this Agreement at any time, without cause and for any reason whatsoever, effective immediately upon notice of termination given to the other party hereto.

(b) Bank may terminate this Agreement immediately, without notice to Merchant, in the event of Merchant's violation of any of the terms of this Agreement.

(c) In the event of any such termination, all obligations of Merchant theretofore incurred and then existing hereunder shall survive such termination, and Merchant's liability for chargebacks hereunder shall continue for the time prescribed in applicable regulations of Visa U.S.A., MasterCard International or Discover Network. To secure payment of same, Bank shall have a security interest in any and all Reserves retained by Bank as above provided and in all accounts wherein funds of Merchant are on deposit with Bank, and may place and maintain for at least 120 days following the termination date an administrative hold upon all or such portion of the funds therein as Bank in the exercise of its reasonable discretion shall deem necessary for its said security; and if at the expiration of said 120-day period Bank shall reasonably anticipate further chargebacks, Bank may require Merchant to pledge suitable collateral or otherwise secure the eventual payment of same, as a prerequisite to its release of any funds from said administrative hold.

(d) Bank may terminate this Agreement effective immediately without prior notice from Bank if (1) Merchant has excessive chargebacks (2) Merchant materially misrepresents any data or information required by Bank in connection with Merchant's Application or at any other time; (3) Merchant discontinues the operation of or materially changes Merchant's business; (4) All or substantially all of the assets or ownership of Merchant's business are sold, transferred or pledged; (5) Merchant becomes insolvent; (6) There is a substantial or material change in the form, management, operations or ownership of Merchant's business; (7) There is a substantial change in Merchant's current credit standing; (8) Bank is fined by Visa, MasterCard or Discover for Merchant's violation of their respective rules and regulations. Merchant shall notify Bank immediately upon the occurrence of any of the events or conditions covered by Section 23 (d).

(e) If Merchant is terminated for any of the reasons specified as cause by Visa, MasterCard and Discover, including but not limited to, fraud, excessive acceptance of counterfeit Cards, unauthorized transactions, excessive chargebacks or suspect activity, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the terminated Merchant file. Merchant expressly agrees and consents to such reporting in the event Merchant is so terminated and Bank shall have no liability to Merchant for any loss, expense or damage Merchant may incur directly or indirectly due to such reporting. Furthermore, Merchant shall indemnify and hold harmless Bank for any claims, which Merchant may raise against any other party as a result of such reporting.

#### **27. MISCELLANEOUS**

(a) This Agreement shall be governed by the laws of Arkansas, and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

(b) Merchant's sale and Bank's purchase of Sales Drafts in transactions herein contemplated shall constitute their acceptance and agreement to be bound by the terms hereof, whether or not this Agreement is actually signed by both parties.

(c) Neither this Agreement nor any obligations of Merchant hereunder may be transferred or assigned by Merchant, whether expressly or as incidental to a sale or transfer of any business or Merchant.

(d) It is understood that this Agreement must be in conformity with current and applicable Operating Regulations of Visa, U.S.A., Inc., MasterCard International, Inc. and Discover Network. Any required provisions thereof not expressly dealt with herein shall be deemed incorporated herein by this reference.

(e) Merchant warrants that Sales Drafts tendered to Bank are subject to no prior liens.