



Merchant Application

To ensure timely processing of your application, please ensure the following:

- The application is filled out *entirely*
- The application is filled out *clearly/legibly*
- The application is filled out with *accurate information*
- The application is *signed* and *dated*

If there are any additional documents that must be submitted with this application, please be sure to provide clear, complete, and accurate documents to ensure that they are accepted.



HUMBOLDT
MERCHANT SERVICES

A Registered ISO/ISP for

BMO Harris Bank N.A.
Chicago, IL

Merchant Bankcard Application and Agreement

Please print and fill out completely.

| | | |
|---------------------|-----------------------|------------------------|
| Sales ID # 27178 | Representative's Name | Representative's Email |
|---------------------|-----------------------|------------------------|

| | | | |
|---|-------------------------------------|--|--|
| Maximum Monthly Bankcard Volume \$ _____ | Average Bankcard Ticket \$ _____ | Do you process recurring transactions? <input type="checkbox"/> Yes <input type="checkbox"/> No | Do you accept card numbers over the internet? <input type="checkbox"/> Yes _____% <input type="checkbox"/> No |
|---|-------------------------------------|--|--|

PROCESSING INFORMATION

Visa/MasterCard/Discover Sales

Select One:

- ☐ Retail/Storefront ☐ Restaurant
☐ Service ☐ Lodging
☐ Trade Show
☐ Mail Order/Telephone Order
☐ Internet (shopping cart required)
☐ Virtual Terminal (no shopping cart)

| | |
|-------------|-----------------|
| Swiped % | Non-Swiped % |
|-------------|-----------------|

Total Must Equal 100%

Fee Summary (Refer to Section 25 of Merchant Agreement for additional fees)

| | Credit Card | Signature Debit * |
|--|------------------|--|
| Qualified Discount Rate | _____ % | _____ % |
| Auth/Batch Fee | \$ _____ each | <input type="checkbox"/> Online Reporting |
| Device Monthly Fee (Internet/Wireless) | \$ _____ /device | |
| Annual Fee | \$ _____ | * If left blank, signature debit rate and credit rate will be the same |

| Adjustments | | | |
|-----------------|-----|-----|------------|
| Monthly Minimum | MQR | NQR | SD MQR/NQR |

Special Program/Event

ADDITIONAL CARD TYPES

JCB

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

American Express

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

☐ Apply (Must Sign Below)

Apply for American Express

Est. Average Ticket: \$ _____ ☐ Monthly Flat Fee: \$7.95 / Est. Annual Volume: \$ _____ (\$0.00 - \$4,999 net annual volume only)

- Pay Frequency: ☐ 3 Day Gross Pay: ☐ Daily Gross Pay **OR** ☐ Discount Rate _____ % and
☐ 15 Day ☐ Monthly Gross Pay (+.03% if \$100k+) ☐ Retail: \$0.10 Trans Fee + 0.30% CNP Downgrade
☐ 30 Day ☐ Service/Wholesale/Other: \$0.15 Trans Fee
☐ Restaurant: \$0.05 Trans Fee + 3.50% fee

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity below and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated below to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions.

Merchant's Signature

Date

Sign Here

DISCLOSURE

MEMBER BANK (ACQUIRER) INFORMATION

Acquirer Name: BMO Harris Bank N.A.
 Acquirer Address: 150 N. Martingale Rd., Ste. 900, Schaumburg, IL 60173
 Acquirer Phone: (847) 240-6600

IMPORTANT MEMBER BANK (ACQUIRER) RESPONSIBILITIES

- A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant.
- A Visa Member must be a principal (signer) to the Merchant Agreement.
- The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
- The Visa Member is responsible for and must provide settlement funds to the Merchant.
- The Visa Member is responsible for all funds held in reserve that are derived from settlement.

MERCHANT INFORMATION

Merchant DBA: _____

IMPORTANT MERCHANT RESPONSIBILITIES

- Ensure compliance with cardholder data security and storage requirements.
- Maintain fraud and chargebacks below thresholds.
- Review and understand the terms of the Merchant Agreement.
- Comply with Visa Operating Regulations.

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

Merchant's Signature

Date

Sign Here

Merchant's Name and Title

BUSINESS INFORMATION

| | | | | | |
|---|--|---|---|---|------------------------|
| Legal Business Name (As registered with IRS) | | | Doing Business As (Appears on Cardholder statements) | | |
| Location Address | | | City | State | Zip |
| Billing Address | | | City | State | Zip |
| Contact Name(s) | | | Federal Tax ID# | | |
| Business Phone | | Customer Service Phone | | Fax | |
| E-mail | | | URL (Use additional sheets if needed to list all URLs) | | |
| Years in Business | Type of Ownership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit <input type="checkbox"/> LLC <input type="checkbox"/> Government | | | | State of Incorporation |
| Do you currently process Bankcards? <input type="checkbox"/> Yes (Provide 3 most recent statements) <input type="checkbox"/> No | | Has this merchant or any of the principals ever had a merchant relationship terminated? <input type="checkbox"/> Yes Explain <input type="checkbox"/> No | | | |
| Describe Products/Services Sold | | | Do you use a Fulfillment House? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, name of service: Phone Number | | |
| Product/Service is received <u>(select one)</u> after card is processed. <input type="checkbox"/> Immediately <input type="checkbox"/> 1-10 Days <input type="checkbox"/> 11-30 Days <input type="checkbox"/> 31-90 Days <input type="checkbox"/> 91-180 Days <input type="checkbox"/> >180 Days | | | | Publicly traded company? <input type="checkbox"/> Yes Provide Symbol (NASDAQ/NYSE/AMEX) <input type="checkbox"/> No | |
| Refund Policy (select one) <input type="checkbox"/> No Refunds <input type="checkbox"/> Refund Within 30 Days <input type="checkbox"/> Damaged/Defective Merchandise Only <input type="checkbox"/> Restocking Fee Charged <input type="checkbox"/> Store Credit Only <input type="checkbox"/> Return Authorization Required (RM/RMA) <input type="checkbox"/> Other _____ | | | | | |
| Marketing Methods <input type="checkbox"/> Newspaper/Magazine <input type="checkbox"/> Television/Radio <input type="checkbox"/> Yellow Pages <input type="checkbox"/> Direct Mail <input type="checkbox"/> Internet <input type="checkbox"/> Other _____ | | | | | |

SECURITY

| | |
|---|--|
| Do you store account data electronically? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, indicate what you store (select all that apply): <input type="checkbox"/> Card Numbers <input type="checkbox"/> Expiration Date <input type="checkbox"/> CVV2/CVC2/CID <input type="checkbox"/> Cardholder Name <input type="checkbox"/> Cardholder Zip Code <input type="checkbox"/> Cardholder Address <input type="checkbox"/> Mag Stripe Data | |
| Are you currently PCI DSS compliant? <input type="checkbox"/> Yes <input type="checkbox"/> No | Have you been subject to any ongoing or previous compromise investigations? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Do you utilize a shopping cart service? <input type="checkbox"/> Yes <input type="checkbox"/> No Name of service: _____ | Do you utilize a hosting provider? <input type="checkbox"/> Yes <input type="checkbox"/> No Name of provider(s): _____ |

PRINCIPAL INFORMATION

| | | | | | |
|---|-------|---------------|---|-------|---------------|
| Principal 1 Name | | | Principal 2 Name | | |
| Position/Title | | % Ownership | Position/Title | | % Ownership |
| Social Security # | | Date of Birth | Social Security # | | Date of Birth |
| Driver's License # | | State | Driver's License # | | State |
| Home Address <input type="checkbox"/> Own <input type="checkbox"/> Rent | | | Home Address <input type="checkbox"/> Own <input type="checkbox"/> Rent | | |
| City | State | Zip | City | State | Zip |
| Home Phone/XXXXXXXXXXXXXXX | | | Home Phone/XXXXXXXXXXXXXXX | | |
| Relative Not Living With You | | Phone | Relative Not Living With You | | Phone |

ACH

| | | | |
|---|--|---------------|--|
| Bank Name | | Phone | |
| Transit & Routing/ABA # (Include Voided Check) | | Account #/DDA | |

SITE SURVEY

| | | | | | |
|--|--|--|--|--|--|
| Zoning: <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Residential | | Type of Building: <input type="checkbox"/> Shopping Center <input type="checkbox"/> Office Building <input type="checkbox"/> Residence <input type="checkbox"/> Retail Storefront <input type="checkbox"/> Other | | | |
| Business Premises: <input type="checkbox"/> Own <input type="checkbox"/> Rent <input type="checkbox"/> Lease | | Permanent Signage: <input type="checkbox"/> Yes <input type="checkbox"/> No | | Is inventory consistent with business? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| | | | | Business appears legitimate? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| By signing below, I certify that I have inspected the business premises of the merchant identified in this Application AND I have personally confirmed the identity of each person listed in the Business Information and Principal Sections of this Application AND I have conducted my review of this merchant to the best of my ability and that, to the best of my knowledge and belief, the information set forth in this Application is true and accurate. | | | | | |
| Signature | | To Be Completed by Sales Representative | | Date | |

SECTION 25 - FEES

document issued contemporaneously herewith, and any other charges as may be shown on the monthly statement or that arise out of this Agreement, as amended from time to time. Merchant agrees that all charges are considered accurate and final unless Merchant disputes them within sixty (60) calendar days of receipt of documentation showing the charges. No charges will be prorated for partial months including the month in which the Merchant's account is closed, and all charges commence on the date that the Merchant Bankcard Application is approved by OT U Harris Co \ N.A. and Humboldt Merchant Services. The following charges are applicable to this Agreement as of the effective date hereof (Merchant acknowledges that such charges may be changed and that other fees and/or charges may be added by OT U Harris Co \ N.A. and Humboldt Merchant Services pursuant to this Agreement):

See Processing Information on Application for Qualified Discount Rate for sales and credits, Online PIN Debit Fees, Electronic Benefits Transfer Fees, Auth/Batch Fee, and Device Monthly Fee.

Rewards Discount Rate for sales and credits: An additional 0.25% over the credit Qualified Discount Rate.

Mid-Qualified Discount Rate (MQR) for sales and credits: An additional 0.89% over the credit Qualified Discount Rate or as otherwise noted in the Adjustments section on Application.

Non-Qualified Discount Rate (NQR) for sales and credits: An additional 1.99% over the credit Qualified Discount Rate or as otherwise noted in the Adjustments section on Application.

Monthly Minimum: \$25.00/month or as otherwise noted in the Adjustments section on Application.

Annual Fee: See Processing Information on Application; to be charged annually on Anniversary Date.

Requests for refunds of fees, statements, or questions relating to fees must be addressed in writing to Humboldt Merchant Services within sixty (60) days of receipt of statement, but in no event more than ninety (90) days following imposition of the fee in question. Harris N.A.'s and Humboldt Merchant Services's liability with respect to any fee is limited to ninety (90) days from date statement issued.

Early Cancellation Fee: \$295.00 minimum, refer to section 21.

Voice Auth Fee: \$1.00 each.

Address Verification Service (AVS): \$0.10 each.

Maintenance Fee: \$10.00/month per account.

Online Reporting: \$5.00/month per account.

Retrieval Fee: \$7.00 each.

Chargeback Fee: \$25.00 each.

Overlimit Fee: \$35.00 per occurrence.

ACH Reject Fee: \$25.00 per occurrence.

Settlement Account Change Fee: \$15.00 per occurrence.

Merchant DBA Name Change Fee: \$15.00 per occurrence.

Documentation Research Fee: \$20.00 per hour.

NETWORK FEES

VISA

Acquirer Processing Fee*: Currently \$0.0218 per authorization (includes Kilobyte and Risk Assessment Network Fees).

International Fee (IAF)*: Currently 0.45% or 0.90% per settled transaction based on your merchant category code.

ISA Fee*: Currently 0.40% of Visa International Sales Volume.

Cash Advance Fee (ISA)*: Currently 0.40% of Visa International Sales Volume.

Misuse of Auth Fee*: Currently \$0.045 per authorization.

Zero Floor Limit Fee*: Currently \$0.10 per Visa transaction without proper authorization.

Assessment Fee: 0.11%

MASTERCARD

Network Access Usage Fee*:

Currently \$0.0198 per transaction.

Cross-Border Fee*: Currently 0.40% of MasterCard International Sales Volume.

Acquirers Program Support Fee*:

Currently 0.55% of MasterCard International Sales Volume.

Assessment Fee: 0.11%

DISCOVER

Data Usage Fee*: Currently \$0.185 per transaction.

International Processing Fee*: Currently 0.40% per settled international transaction.

International Service Fee*:

Currently 0.55% per settled international transaction.

Assessment Fee: 0.10%

* Pricing may increase due to any increases in association and other third party fees, which will be passed through to you at cost.

LAW

Paragraph 28: This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflicts of laws principles. Any action or dispute arising from, or related to, this Agreement shall not be deemed proper unless brought in a court of competent jurisdiction located in Oakland County, Michigan.

AGREEMENT

IN WITNESS WHEREOF, the Merchant, Humboldt Merchant Services, and BMO Harris Bank N.A. have caused their names to be signed hereto by the Merchant's officer(s) and the officers or authorized signatories of BMO Harris Bank N.A. and Humboldt Merchant Services thereunto duly authorized as of the _____ day of _____, 20____, have read and hereby agree to all terms and conditions of the Merchant Bankcard Agreement (OA-010) available for viewing and/or downloading at: <https://www.hbms.com/fdhterms>.

MERCHANT:

Principal or Corporate Officer Signature

Date

Principal or Corporate Officer Signature

Date

Print Name

Print Name

ACCEPTED BY:

HMS, 250 Stephenson Hwy., Troy, MI 48063

Date

Harris N.A.

Date

GUARANTEE

PERSONAL GUARANTEE: As a primary inducement to OT U Harris Co \ N.A. and Humboldt Merchant Services to enter into this Merchant Bankcard Processing Agreement with Merchant, and in consideration of OT U Harris Co \ N.A.'s and Humboldt Merchant Services's acceptance of this Merchant Bankcard Application and Agreement, the undersigned Guarantor, jointly and severally if more than one, by signing this Agreement unconditionally and irrevocably guarantees the full and faithful performance by Merchant of each of its obligations to OT U Harris Co \ N.A. and Humboldt Merchant Services pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received any notice of any amendment and, in the event of any breach by Merchant, hereby waives Notice of Default and agrees to indemnify OT U Harris Co \ N.A. and Humboldt Merchant Services for any and all funds due from Merchant and perform any other obligation of Merchant pursuant to the terms of the Agreement. OT U Harris Co \ N.A. and Humboldt Merchant Services may proceed directly against Guarantor without first exhausting its remedies against any other person or entity responsible to, or any security held by, OT U Harris Co \ N.A. and Humboldt Merchant Services. Guarantor waives any and all rights of subrogation, reimbursement, or indemnity derived from Merchant and all other rights and defenses available to Guarantor under applicable law, and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance thereunder is due, and/or any change in any interest, discount rate, or fee thereunder. Guarantor confirms that Guarantor, collectively or individually, is a party to the Agreement, and unconditionally and specifically authorizes OT U Harris Co \ N.A. and Humboldt Merchant Services, or its authorized agent, to debit any overdue fees, costs, chargebacks, fines, penalties, expenses, or obligations under the Agreement and/or any other contractual relationship between OT U Harris Co \ N.A./Humboldt Merchant Services and Merchant from any personal checking account or other account owned or controlled by Guarantor, and further, to report any default hereunder or inquiries hereof on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorney's fees and other legal expenses, incurred by or on behalf of OT U Harris Co \ N.A. and Humboldt Merchant Services in connection with the enforcement of this Guarantee.

_____, An Individual, _____
Signature Date

_____, An Individual, _____
Signature Date

MERCHANT BANKCARD AGREEMENT

TERMS/CONDITIONS
OA-010



registered iso/msp for BMO Harris Bank
N.A., Chicago, IL

MERCHANT BANKCARD AGREEMENT TERMS/CONDITIONS

THIS AGREEMENT (the "Agreement") by and between Humboldt Merchant Services ("HMS"), BMO Harris Bank N.A. ("Harris"), and "Merchant," whose name, complete address, business organization, and type of business are stated on the Merchant Bankcard Application, is entered into as of the date it is accepted by HMS, as such date is set forth immediately following Paragraph 28 - Law on the Merchant Application. Harris is a Member Bank (as defined below) and HMS is an affiliate of Harris. In consideration of the premises set forth herein, Harris, HMS, and Merchant hereby agree as follows:

1. DEFINITIONS

The terms set forth below and used in this Agreement shall have the following meaning:

- a) "Auth/Batch Fee" is the amount charged for dialing out including authorizations, approvals, and declines for all card types and the opening and closing of a batch.
- b) "Bankcard" means a Visa, MasterCard, or Discover card.
- c) "Cardholder" or "Purchaser" means the person whose name is embossed on the Bankcard or whose signature appears thereon in the signature panel as an authorized user.
- d) "Discount Rate" is the amount charged for processing credit card or Signature Debit card sales and/or returns and is based upon whether a transaction is classified as a QT, RT, MQT, or NQT as defined in items (j), (k), (l), and (m) below.
- e) "Electronic Combined Warning Bulletin or National Card Recovery File" refers to the Restricted Card List maintained by Visa and MasterCard. The Restricted Card List/Electronic Warning Bulletin contains the account numbers of Bankcards which have been lost, stolen, fraudulently used, or which otherwise are not to be honored by Merchant.
- f) "Electronic Commerce" means transactions which occur over the Internet.
- g) "Electronic Commerce Merchant" is any merchant accepting customer card information via the Internet for the purpose of processing Bankcard transactions.
- h) "Floor Limit" is a term used by Visa, MasterCard, and DFS to specify the threshold transaction dollar amount below which Merchant is not required to obtain authorization. Under this Agreement, the Floor Limit on all transactions is always zero.
- i) "Member Bank" means any financial institution or entity which is a member of either MasterCard, Inc. or MasterCard International, Inc. (collectively, "MasterCard"), VISA U.S.A., Inc. or VISA International, Inc. (collectively, "Visa"), or Discover Financial Services, LLC, or Discover Network (collectively, "Discover" or "DFS").
- j) "MQT", a mid-qualifying transaction, is a transaction that either does not contain all of the attributes of a QT or RT, or is from a card type that is more expensive or contains greater risk according to Visa, MasterCard, or DFS and/or HMS. MQT credit transactions will be charged an additional percentage over the credit Qualified Discount Rate. MQT Signature Debit transactions will be charged an additional percentage over the credit Qualified Discount Rate unless otherwise noted in the Adjustments section of the Processing Information on the Application.
- k) "NQT", a non-qualifying transaction, is a transaction that either does not contain all of the attributes of a QT, RT, or MQT, or is from a card type that is more expensive or contains greater risk according to Visa, MasterCard, or DFS and/or HMS. NQT credit transactions will be charged an additional percentage over the credit Qualified Discount Rate. NQT Signature Debit transactions will be charged an additional percentage over the credit Qualified Discount Rate unless otherwise noted in the Adjustments section of the Processing Information on the Application.
- l) "QT", a qualified transaction, is a transaction that is classified by HMS to be charged the most favorable rate as processed by HMS and Visa, MasterCard, or DFS. HMS will attempt to assist merchants to qualify transactions as QTs by periodically providing best-practice tips on merchant statements and/or its website www.hbms.com. Certain transactions, including transactions utilizing MasterCard's World Card, Visa's Signature Card, Business Cards, Foreign Cards, and Corporate/Purchase Cards, will never be QTs. HMS, in its sole discretion, may revise the classification of transactions based on a variety of factors, including, but not limited to, Visa, MasterCard, or DFS Interchange rules or HMS updates to its processing system. NOTE: All transactions may qualify for higher rates, Rewards Discount Rate, Mid-Qualified Discount Rate, or Non Qualified Discount Rate.
- m) "RT", a rewards transaction, is a credit transaction that is from a card type that is more expensive according to Visa, MasterCard, or DFS and/or HMS and is not classified by HMS to be a QT, MQT, or NQT. RT credit transactions will be charged an additional percentage over the credit Qualified Discount Rate.
- n) "Sales Draft" and "Credit Voucher" mean the respective forms supplied by Harris and HMS, or Merchant's own forms if approved by Harris and HMS, for the purpose of consummating sales or credits/ refunds to be charged or credited to the Bankcard account of a Purchaser on the basis of a Bankcard properly honored by Merchant pursuant

to the terms hereof. Sales Drafts and Credit Vouchers shall be transmitted to Harris and HMS electronically by Merchant and shall be in a medium and form approved in advance by Harris and HMS. All references in this Agreement to "Sales Drafts" and "Credit Vouchers" shall include, as applicable, all authorized forms of Sales Drafts and Credit Vouchers, whether electronically transmitted, on magnetic tape or original paper format.

o) "Settlement Account" (hereinafter "Account") means a demand deposit account established at a financial institution capable of receiving credits and debits from the Automated Clearing House ("ACH") system operated by the U.S. Federal Reserve Bank for the limited purposes of debiting or crediting Merchant for Bankcard activity pursuant to this Agreement. Other capitalized terms set forth in this Agreement have the meanings ascribed to them in the rules and regulations of Visa, MasterCard, or DFS, as applicable.

p) "Visa International Service Assessment" ("ISA") refers to the fee assessed by Visa for all transactions initiated on a non U.S.-issued card.

q) "MasterCard Cross-Border" ("Cross-Border") refers to the fees assessed by MasterCard for all transactions initiated on a non U.S.-issued card.

r) "Visa Access Fee" refers to the fees assessed by Visa for all transactions run on the Visa network.

s) "MasterCard Access Fee" refers to the fees assessed by MasterCard for all transactions run on the MasterCard network.

2. MERCHANT WARRANTIES AND ACKNOWLEDGEMENTS

Merchant warrants to Harris and HMS all of the following:

a) That all representations and statements in this Merchant Bankcard Application and Agreement, or in any other document relating hereto, made by Merchant or on Merchant's behalf are true, accurate, and complete in all material respects. Merchant hereby authorizes Harris and HMS to investigate and confirm any information related hereto which is provided at any time by Merchant. For this purpose, Harris and HMS may utilize credit bureau/reporting agencies and/or their own agents. Upon Merchant's request, Harris and HMS will provide Merchant with a copy of the results of such investigation.

b) That Merchant is engaged in the lawful business shown on the Merchant Bankcard Application, which includes the sale of merchandise and/or services, and is duly licensed to conduct such business under the laws of the State, County, and City in which Merchant is located, and, further, that Merchant will not process Bankcard transactions for any other type of business.

c) That Merchant has not been terminated from settlement of Bankcard transactions by any financial institution or determined to be in violation of any of the rules and/or regulations of Visa, MasterCard, or DFS except as specifically disclosed in the Merchant Bankcard Application. Merchant acknowledges that the signature of the representative on the Merchant Bankcard Application and/or this Agreement only constitutes a conditional offer made on behalf of, and is contingent upon the final approval of, Harris and HMS and that this Agreement is not binding until approved by Harris and HMS.

d) That Merchant has the authority to enter into this Agreement and that the person(s) signing for, or on behalf of, Merchant is/are specifically authorized and directed to do so by Merchant.

e) That all of Merchant's sales locations engage in the same or substantially similar business activity as that listed on the Merchant Bankcard Application.

f) That as to each transaction presented to Harris and HMS for payment:

i) the Sales Draft is valid in form and has been completed with all applicable requirements; ii) the goods or services described on the Sales Draft have been delivered or completed in accordance with Merchant's agreement with the Cardholder; iii) the Cardholder has no defense, right of setoff, or counterclaim against Merchant in connection with the purchase of the goods or services; iv) the transaction was placed by the Cardholder or other authorized user of the Bankcard; and v) the transaction was not previously charged back or declined.

g) Merchant acknowledges that all transactions are subject to all rules and regulations of Visa, MasterCard, and DFS and agrees to comply with and be subject to, all such 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. Visa, MasterCard, and DFS rules and regulations, as presently in effect and as they may be amended from time to time, are hereby incorporated by reference herein, and made a part hereof, as though fully set forth herein. Any violation of Visa, MasterCard, or DFS rules and regulations by Merchant shall constitute a breach of this Agreement and may, at the option of Harris and HMS, be grounds for terminating this Agreement.

h) Insofar as Merchant represents that it reasonably anticipates a monthly Bankcard sales volume based upon an average ticket amount as set forth in the Merchant Bankcard Application, Merchant acknowledges that any monthly Bankcard volume in excess of approved Bankcard volume will cause the Merchant account to be reviewed and may result in the possible interruption of service, and/or the delay of transmission of funds and/or the diversion of funds

into a Reserve Account. Merchant hereby indemnifies and holds Harris and HMS harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

i) Merchant is responsible for its employees' actions while employed by Merchant.

j) Merchant agrees to only utilize Payment Application Data Security Standard (PA DSS) compliant payment applications.

3. ADVERTISING

a) Merchant shall prominently display any advertising or promotional materials provided or required by Harris and HMS to inform the public that Visa, MasterCard, and DFS Bankcards will be honored at Merchant's place of business. Such displays, however, are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by Visa, MasterCard, or DFS, as applicable.

b) In no event will Merchant advertise or display any promotional material containing the name or symbol of Harris, HMS, Visa, MasterCard, or DFS, which states or implies that only Bankcards issued by Harris will be honored by Merchant. Additionally, Merchant shall not indicate or imply that Harris, HMS, Visa, MasterCard, or DFS endorses Merchant's products or services.

c) Nothing herein is intended to restrict Merchant from honoring other cards or from entering into any other transaction with a Purchaser. Merchant may display and advertise any other credit card or credit plan. Visual parity shall be maintained between the Visa, MasterCard, and DFS symbols and any local/regional acceptance mark also displayed.

d) Merchant agrees to the following terms regarding Program Marks of Visa, MasterCard, and DFS: Merchant is prohibited from using the Program Marks other than as expressly authorized in writing by HMS/Harris. "Program Marks" mean the brands, emblems, trademarks and/or logos that identify Visa, MasterCard, and DFS 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 HMS/Harris pursuant to the Merchant Program or otherwise approved in advance in writing by HMS/Harris. 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 HMS/Harris 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 HMS/Harris or the owners of the Program Marks. Merchant recognizes that it has no proprietary rights in the Program Marks. Merchant shall not assign to any third party any of the rights to use the Program Marks.

e) Merchant shall have the right to use and display the proprietary Visa, MasterCard, and DFS names and symbols only while this Agreement is in effect or until Merchant is notified by Harris, HMS, Visa, MasterCard, or DFS to cease such usage, and then only in compliance with applicable Visa, MasterCard, and DFS rules and regulations concerning usage.

f) Merchant shall have no right to use the proprietary name and/or symbol of Harris or HMS unless the materials containing such are provided to Merchant by, and/or are approved in advance by, Harris and HMS.

4. HONORING BANKCARDS

a) Merchant shall honor without discrimination all valid Bankcards when properly presented as payment for a transaction from a Cardholder, and only in connection with a bona fide, legal business transaction. Merchant will maintain a policy which will not discriminate among Purchasers seeking to make purchases through the use of a Bankcard. If Merchant does not deal with the public at large (e.g., a private club), Merchant will be deemed to have complied with this rule if it honors valid Bankcards of Purchasers who have purchasing privileges with Merchant.

b) Merchant shall use due diligence and verify that Cardholder is authorized to use the Bankcard presented and that such Bankcard is not counterfeit. If the Bankcard is present at the time of the transaction, Merchant shall examine the Bankcard's security features (such as a hologram and signature panel) before accepting the Bankcard. Merchant shall obtain an authorization on each transaction in advance of each transaction.

c) Merchant shall not establish minimum or maximum transaction amounts as a condition for honoring Bankcards.

d) Merchant shall not impose any surcharge on Bankcard transactions.

e) Any tax required to be collected by Merchant must be included in the total transaction amount and not collected separately.

f) Merchant shall not accept any foreign Bankcards not valid outside the country of issuance.

g) Merchant shall not submit for payment any transaction that represents an existing cardholder debt that is deemed uncollectible regardless of the terms and conditions of any written preauthorization between Merchant and the Cardholder.

h) Merchant is prohibited from contacting any Discover Cardholder with respect to any matter arising from a DFS card transaction, except as required or permitted by DFS, including but not limited to a disputed transaction.

5. ELECTRONIC COMMERCE MERCHANTS

Electronic Commerce Merchants are required to post their consumer privacy policy and method of transaction security on their website. Furthermore, Merchant is required to display its full permanent address immediately prior to the cardholder's payment instructions.

6. USE OF SALES DRAFTS/CREDIT VOUCHERS

Each Bankcard transaction made by Merchant will be evidenced by a Sales Draft or Credit Voucher drawn by Merchant or the Purchaser in favor of the issuing Member Bank, and all such drafts shall be on the appropriate form which has been approved by Harris and HMS. If the Bankcard is present at the time of the transaction, Merchant shall deliver to the Cardholder a true and completed copy of the Sales Draft or Credit Voucher, as the case may be.

7. TRANSACTION REQUIREMENTS

a) In effecting a Bankcard transaction, Merchant shall, subject to the other provisions of this Paragraph 7 and Paragraphs 8, 9, and 10 herein, complete the Sales Draft or Credit Voucher in the following manner:

i) If the Bankcard is present at the time of the transaction (a "Card Present Transaction"), imprint or swipe through an electronic terminal, with a suitable imprinter or electric printer, all data embossed on the face of the Bankcard and the Merchant's imprinter plate, or legibly type such data thereon; Merchant shall notify Harris and HMS in the event that the information on the Merchant's plate is changed. Whenever the Bankcard's magnetic stripe cannot be read by the electronic terminal, Merchant shall manually imprint the Bankcard. Failure to do so will constitute a waiver by Merchant of any right to dispute chargebacks arising from the transaction. Each Merchant outlet is required to have its own processing software or terminal, and its own printer and manual imprinter with an accurate Merchant plate for use when its electronic printer is not functional or when the Bankcard's magnetic stripe cannot be read by the electronic terminal. Merchant understands that sales completed at one location may not be processed through a terminal at another location. ii) Legibly fill in the appropriate spaces thereof showing; (1) the date of the sale; (2) the Sales Draft amount which includes applicable tax for all charges purchased in the same transaction; (3) a brief description of the services in sufficient detail to identify same; (4) the Cardholder's Bankcard number truncated to bear no more than the last four (4) digits of the Bankcard number; (5) the Cardholder's name; (6) the authorization number; and (7) Merchant's name and unique Merchant I.D. number. iii) For a Card Present Transaction, require the Purchaser to sign the Sales Draft in Merchant's presence. Merchant should retain Bankcard while Purchaser is signing in order to perform signature verification. iv) Obtain authorization pursuant to Paragraph 15 prior to consummating the sale and indicate the authorization code in the appropriate space. **THE FLOOR LIMIT ON ALL TRANSACTIONS IS ALWAYS ZERO.** Merchant understands that authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence, nor shall it validate a transaction which would otherwise be invalid. Merchant shall remain fully liable for all chargebacks and fees related to an invalid or disputed transaction whether or not prior authorization was obtained. v) For a Card Present Transaction, complete the transaction only if the signature on the Sales Draft appears to be the same as the authorized signature on the Bankcard and the Bankcard account number read from the magnetic stripe is the same as that embossed on the front of the Bankcard. If such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Bankcard, Merchant shall contact Harris's and HMS's authorization center for instructions. Except in the case of a Telephone Order ("TO"), Mail Order ("MO"), Electronic Commerce ("EC"), Preauthorization Order ("PO"), or Recurring Transaction, no sale may be completed if the Purchaser fails to present his or her Bankcard. Furthermore, Merchant shall be liable for all chargebacks for magnetically altered or counterfeit cards. vi) For Card Present Transactions, if the signature panel on the Card is blank, in addition to requesting authorization, Merchant must do all of the following (a signature panel bearing the words "See I.D." or equivalent language shall be deemed to be blank): (1) Review positive identification to determine that the user is the Cardholder. Such identification must consist of a 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; and (3) Require the Cardholder to sign the signature panel of the Bankcard prior to completing the transaction.

b) In effecting a Bankcard sale, Merchant shall not permit sales through the use of a Bankcard: i) Which is not yet in effect, according to the effective dates thereon, if any. ii) Which is an expired Bankcard. iii) Which is contained in the latest Combined VISA and MasterCard Electronic Warning Bulletin.

c) Merchant agrees not to: i) Alter the total amount of a Sales Draft after the transaction has been completed and the Sales Draft has been signed by the Purchaser. ii) Present Sales Drafts or Credit Vouchers which it knows, or should have known, to be fraudulent or not authorized by the Purchaser. iii) Divide a single transaction between two (2) or more Sales Drafts. iv) Attempt multiple authorizations on a single Bankcard. v) Submit to Harris and HMS any Sales Drafts or Credit Vouchers using Bankcard accounts affiliated with Merchant, its principals or its guarantors. vi) Utilize the credit available on any Bankcard to provide cash advances to Cardholders. vii) Force authorizations. Any of the actions set forth in this subparagraph 7c immediately above will be grounds for immediate termination of this Agreement and all funds of Merchant, including any funds in other Merchant/Guarantor accounts, may be garnered by Harris and placed on hold pursuant to the provisions of Paragraph 13 below.

8. MAIL, ELECTRONIC COMMERCE, TELEPHONE AND PREAUTHORIZED ORDER

Upon electing to make a Bankcard sale pursuant to an MO, EC, TO, or PO,

Merchant Will:

a) Complete the Sales Draft as provided in Paragraph 7 of this Agreement and mark it MO, EC, TO, or PO, as the case may be, on the signature line of the Sales Draft, obtain the expiration date of the Bankcard and forward the expiration date of the Bankcard as part of the authorization request.

b) Assume all responsibility for identification of the Purchaser and the validity of the Bankcard information.

c) Obtain prior authorization not to exceed seven days prior to goods being shipped or services being performed.

d) Not present a draft for payment until the goods are delivered or the services rendered.

e) Assume responsibility for chargeback if the Cardholder refuses to pay for any reason.

f) For PO transactions, not deliver goods or perform services after receiving notification that the preauthorization is canceled or that the Bankcard covered by the preauthorization is not to be honored.

g) For PO transactions, retain and make available to Harris or HMS, upon request, the customer's written request to Merchant for pre-authorization.

h) For MO, EC, and TO transactions, perform an AVS inquiry on Purchaser and provide an order number and the appropriate MO, TO, or EC indicator in the electronic transaction record. Failure to do so will result in the transaction being downgraded to an NQT. (Merchant understands that performing AVS and providing an order number does not, by itself, guarantee a QT). Obtaining an Address Verification Service (AVS) and/or a Cardholder Verification Value (CVV2)/Card Validation Code (CVC2)/Card Identification Data (CID) validation does not guarantee Cardholder authentication or chargeback protection. These services are risk management tools designed to assist merchants in mitigating risk. i) For EC transactions, include the Electronic Commerce Indicator ("ECI") within the authorization record and settlement record. j) Regardless of the terms and conditions of any written preauthorization agreement between Merchant and Cardholder, the Sales Draft amount of any lodging or vehicle rental transaction which has been preauthorized shall include only that portion of the transaction amount, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to Cardholder, and shall not include any consequential charges. Delayed or amended charges may be processed as a separate Sales Draft within 90 calendar days of the check-out, disembarkation, or car return date as long as the Cardholder's signature is on file and is indicated as such on the Sales Draft. A copy of the Sales Draft must be sent to the Cardholder at the address on the preauthorization agreement. In situations where a parking ticket or moving violation occurred, the charges are to be processed within 90 days of notification from the authority to merchant. Travel & Entertainment delayed or amended charges may include food or beverage charges, taxes, mileage, fuel, insurance, rental fees, parking tickets, and/or other traffic violations. If Merchant violates this provision, it does so at its own risk and waives any right to dispute chargebacks arising therefrom. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization agreement through means other than a Bankcard transaction.

9. RECURRING TRANSACTIONS

If Merchant agrees to accept a Recurring Transaction from a Cardholder for the purchase of goods or services which are to be delivered or performed periodically, the Cardholder shall complete and deliver to Merchant a written request for such goods or services to be charged to the Cardholder's account periodically. Each of the following provisions shall apply to all Recurring Transactions:

a) The Cardholder's written authorization must be retained for the duration of the recurring charges and provided promptly in response to a Cardholder's request for copy.

b) Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, Harris, HMS, or any Member Bank.

- c) Merchant shall type or print legibly, on the signature line of the Sales Draft for Recurring Transactions, the words "Recurring Transaction."
- d) The Cardholder's written authorization must include the amount of the transaction, frequency of charge, and the duration of time for which Cardholder's permission is granted.
- e) If the Cardholder elects to renew a Recurring Transaction, the Cardholder must complete and deliver to Merchant a new written Recurring Transaction request.
- f) Merchant must perform an AVS inquiry for at least the first transaction and then annually thereafter, if applicable.
- g) Merchant must provide both an order number and the appropriate "Recurring Transaction" indicator with the transaction.
- h) Merchant must obtain a valid authorization for each recurring transaction.

10. MULTIPLE SALES SLIPS AND PARTIAL CONSIDERATION

Merchant shall include all items of goods and services purchased in a single transaction in one total amount on a single Sales Draft, except:

- (i) In the case of purchases in separate departments of a multiple department store; or (ii) in a partial payment, delayed delivery, or advanced deposit situation described in this Paragraph 10. Merchant may only effect a transaction with only part of the amount due included on a single Sales Draft: a) When the balance of the amount due is paid by the Purchaser at the time of sale in cash, by check, or both, or b) When the Purchaser executes two separate Sales Drafts in a delayed delivery sale. In such case, a deposit is made by completion of one Sales Draft and payment of the balance is tendered by completion of a second Sales Draft, the latter Sales Draft being conditioned upon delivery of merchandise or performance of services. Authorization is required for both Sales Drafts and Merchant shall note on the Sales Draft the words "deposit" or "balance," as appropriate. The Sales Draft labeled "balance" shall not be presented until the goods are delivered or services performed.

11. RECOVERY OF CARDS

Merchant will use its best efforts to recover any Bankcard and return it to Harris if Merchant is directed by Harris's and HMS's authorization center or any Member Bank to retain it. Reasonable and peaceful means are to be used in retrieving any such card. Nothing in this Paragraph 11 or elsewhere in this Agreement shall be construed to create a duty of physical confrontation or risk of harm in order to retrieve a Bankcard. Merchant agrees not to commit any breach of the peace or to cause any injury to persons and/or property, and hereby indemnifies Harris and HMS against any claim or injury arising as a result of any attempt to retain a Bankcard.

12. PRESENTMENT, ACCEPTANCE, AND PAYMENT OF SALES DRAFTS

Merchant shall present each Sales Draft to Harris and HMS within one (1) business day after the date of the transaction, except that Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed, and Merchant has otherwise performed all of its principal obligations to the Purchaser in connection with the transaction. Merchant may not present directly or indirectly any draft which was not originated as a result of an act between the Purchaser and Merchant. Upon such delivery to Harris and HMS of a Sales Draft and subject to the provisions of any warranties of Merchant hereunder and of any chargeback rights, Harris and HMS will give Merchant provisional credit for the face amount of such Sales Draft. Such credit may be given by credit to Merchant's Account. A service charge, based on the rate specified in Paragraph 25, and any applicable additional fees provided for in this Agreement will be imposed on the daily total of Sales Drafts and Credit Vouchers presented by Merchant to Harris and HMS. Merchant hereby authorizes Harris and HMS to charge the Account for all such amounts. If Harris and HMS reasonably believe that a chargeback or credit is likely with respect to any transaction or Sales Draft Harris or HMS have accepted, Harris and HMS may withhold payments due Merchant under this Agreement until such time that:

- a) Harris and HMS are charged back by the issuing bank. In such event, Harris and HMS shall retain the funds.
- b) The period of time by which the Cardholder may dispute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or
- c) Harris and HMS determine that a chargeback on the Sales Draft will not occur. Merchant is required to close any open batches with at least a daily frequency (except on days when Merchant's place of business may be closed); Merchant may close batches more frequently if desired. Merchant understands that transactions are not transmitted to Harris and HMS until the Merchant closes the batch. Furthermore, Merchant acknowledges that open batches of transactions that are not properly closed and transmitted to Harris and HMS within forty-five (45) days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant shall indemnify and

hold Harris and HMS harmless for any and all loss sustained by Merchant for said purged transactions. It is Merchant's responsibility to close, balance, and reconcile batches daily, and to detect discrepancies between transactions processed by Harris, HMS, and transactions supposedly submitted by Merchant. Merchant understands that minor discrepancies do occur in the normal course of business and that Harris and HMS will use their best efforts to correct discrepancies once notified by Merchant. It is the Merchant's responsibility to monitor and reconcile its Settlement Account vigilantly in order to detect discrepancies in a timely manner. Merchant understands that Harris and HMS have no ability to detect discrepancies. Merchant agrees that, upon termination of this Agreement, Harris and HMS may withhold payments to Merchant for such period of time necessary to establish a reserve to cover any chargebacks, credits, and/or uncollected discounts or fees.

13. SECURITY RESERVE

In addition to the chargeback rights granted to Harris and HMS by Merchant, Merchant hereby authorizes Harris to establish a security reserve account (the "Reserve Account"), with or without prior notice to Merchant, at any time prior to, at, or after termination of this Agreement, to ensure Harris's recovery of any liabilities, of whatever nature, owed it, or reasonably anticipated to be owed it, by Merchant pursuant to this Agreement. Harris may establish a Reserve Account whenever Harris or HMS, in their sole discretion, believes recovery of such liabilities may be in jeopardy. **MERCHANT HEREBY GRANTS TO HARRIS A POSSESSORY SECURITY INTEREST IN ANY RESERVE ACCOUNT SO ESTABLISHED.** Harris may enforce its security interest in the Reserve Account without notice or demand by debiting therefrom any liability found to be owing to Harris and HMS by Merchant. Harris's and HMS's right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Harris's rights with respect to the Reserve Account, including its security interest therein, shall survive the termination of this Agreement. The Reserve Account may be held by Harris up to six (6) months after the later of: (i) the date of the last transaction or chargeback; or (ii) the expiration date of the chargeback liability arising from the Merchant's product or service pursuant to this Agreement, and/or Visa, MasterCard, or DFS rules and regulations, and/or applicable law. Merchant agrees that Harris may also enforce its security interest against an established Reserve Account of Merchant if Merchant exceeds the approved monthly processing limit and/or approved average ticket amount set forth on the Merchant Bankcard Application, in addition to assessing Merchant an overlimit fee. Harris will use commercially reasonable efforts to return any funds held in the Reserve Account to Merchant after all amounts owed to Harris and HMS have been collected and after the expiration of all applicable time periods. Upon termination of this Agreement, Harris and HMS will charge Merchant's Reserve Account \$5.00 per month until any funds held in the Reserve Account are claimed or escheated to the State.

14. CHARGEBACKS

Harris and HMS shall have the right to charge back to Merchant's Account the full amount of any Sales Draft, if, but not limited to, any of the following occur:

- a) The Sales Draft or any material information on the Sales Draft, such as, without limitation, the account number and/or expiration date of the Bankcard, Merchant description, transaction amount or date, is illegible or incomplete, or is not delivered to Harris and HMS within the required time limits.
- b) The Cardholder's account number was listed on the then current Electronic Combined Warning Bulletin and Merchant did not reject the transaction or receive prior authorization for the transaction.
- c) Except in the case of an MO, EC, TO, or PO Transaction described in Paragraph 8, the Sales Draft does not contain the imprint of a Bankcard that was valid, effective and unexpired on the transaction date, or the signature of the Purchaser.
- d) The transaction was one for which prior credit authorization was not obtained or improperly obtained, or a valid authorization number is not correctly and legibly printed on the Sales Draft.
- e) The Sales Draft is a duplicate of an item previously submitted or is one of two or more Sales Drafts generated in a single transaction in violation of Paragraph 10.
- f) The Purchaser disputes the execution of the Sales Draft, the sale, delivery, quality, or performance of the merchandise or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Purchaser's account.
- g) The price of the merchandise or services shown on the Sales Draft differs from the amount shown on the copy of the Sales Draft delivered to the Purchaser at the time of the transaction.
- h) Harris and HMS reasonably determine that Merchant has violated any term, condition, covenant, warranty, or other provision of this Agreement in connection with the Sales Draft or the transaction to which it relates.

- i) Harris and HMS reasonably determine that the Sales Draft is fraudulent or that the related transaction is not a bonafide transaction in Merchant's ordinary course of business, 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.
- j) The Sales Draft or Credit Voucher was not received by Harris and HMS in a timely manner. Merchant may not deliver to Harris and HMS Sales Drafts which have been previously delivered and charged back to Merchant.

15. AUTHORIZATION

Merchant shall obtain authorization before completing any sale transaction. In the event that the Point of Sale device or software fails, Merchant must obtain authorization through a voice back-up and, for Card Present Transactions, manually imprint the Bankcard. If the Purchaser presents an unsigned card, Merchant shall request a "Code 10" authorization which indicates a suspicious transaction. Merchant shall request a "Code 10" authorization when there is substantial belief that the Bankcard may be counterfeit or stolen or the transaction is in some manner suspicious. Obtaining an authorization will not validate a transaction that would otherwise be invalid and therefore does not guarantee that a Sales Draft will not be charged back to Merchant. Authorization must be obtained from Harris's and HMS's authorization center or from an authorizing agent acceptable to Harris, HMS, and Merchant. The first authorization response received is the only valid response.

16. RETURN MERCHANDISE AND ADJUSTMENTS: CREDIT VOUCHERS

Merchant understands that every Credit Voucher issued will be subject on a daily basis to a transaction authorization fee and discount fee and there will be no refund of any fees or charges associated with the original transaction. Merchant shall submit all Credit Vouchers to Harris and HMS within one (1) calendar day after the credit transaction date. Merchant shall sign and date each Credit Voucher and include thereon a brief description of the goods returned, services terminated, canceled or refunded, or adjustment made, together with the amount of credit in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each Credit Voucher, the embossed data from the Bankcard. Merchant shall deliver to the Cardholder a true and completed copy of the Credit Voucher. No Credit Voucher amount shall exceed the amount of the originating Sales Voucher. If Merchant maintains a policy of permitting refunds, exchanges, returns, or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases using a Bankcard. Merchant may restrict its refund or return policy as to any Bankcard transaction, provided that Merchant discloses its policy at the time of the transaction. Face-to-face merchants must print an appropriate notice (such as "No Refunds or Exchanges") on all copies of the Sales Draft in close proximity to the space provided for the Customer's signature. Electronic Commerce merchants must provide appropriate notice of refund, exchange and/or cancellation information on the check out page where the Purchaser enters the credit card information or as a click through confirmation of the specific refund, exchange and/or cancellation policy. Merchant understands that regardless of proper disclosure of refund policy restrictions, such restrictions are unenforceable if Cardholder initiates a dispute under appropriate Federal, State or Local laws. If Merchant accepts any goods for return, or any services are terminated or canceled, or Merchant allows any price adjustment on a sale which was originally consummated using a Bankcard, then Merchant must effect such refund using a Credit Voucher with the same Bankcard account used on the original Sales Draft. Merchant may not effect credit to a Purchaser using cash or check. In conjunction with each Credit Voucher submitted to Harris and HMS, Merchant shall have sufficient funds available in Merchant's Settlement Account or sufficient Sales Drafts in the same batch, to cover the total amount of Credit Vouchers plus any related fees. Merchant understands that a batch consisting solely of Credit Vouchers, or a batch where the total amount of Credit Vouchers exceeds the total amount of Sales Drafts, will result in a debit to its Settlement Account.

17. CONFIDENTIALITY OF INFORMATION

- a) Merchant shall not, without the Cardholder's prior express consent in writing, sell, purchase, provide, or otherwise disclose Cardholder's account information or other Cardholder personal information to any third party other than Merchant's agents and processing organizers for the purpose of assisting Merchant in its business or as required by law, or otherwise use any such information. Merchant and any agent or processing organizer of Merchant must keep all systems and media containing Cardholder account or transaction information (whether physical or electronic, including, but not limited to, account numbers, card imprints and Cardholder's information) in a secure manner such as will, to the extent commercially reasonably possible, prevent access by, or disclosure to, anyone other than Merchant's authorized personnel, Harris, HMS, or agent. Merchant shall store in an area limited

to selected personnel, and, prior to discarding, shall destroy in a manner rendering data unreadable, all material containing Cardholder account numbers or Bankcard imprints, including, but not limited to, Sales Drafts, Credit Vouchers, and carbons. Merchant shall comply with the cardholder information security requirements outlined in Visa's Cardholder Information Security Program (CISP) available at www.visa.com, and MasterCard's Site Data Protection Program (SDP) available at www.mastercardmerchant.com, and in adherence to Payment Card Industry (PCI) Compliance available at www.pcisecuritystandards.org. As a part of these requirements, Merchant agrees not to store any magnetic stripe information or CVV2/CVC2/CID data and to only utilize Payment Application Data Security Standard (PA DSS) compliant payment applications. Failure to comply with these requirements may result in fines imposed by Visa, MasterCard, or DFS, for which Merchant remains liable. Merchant is required to notify HMS in writing of any payment applications and/or Agents being utilized that have access to cardholder data on Merchant's behalf. Merchant must notify HMS or Harris immediately of any suspected or confirmed security breaches.

b) Harris and HMS may disclose card transaction data and other Merchant-related information to current and prospective issuers, current and prospective acquirers, regulatory authorities and other entities to whom we are required to provide such information, as well as to our and each of their respective affiliates, agents, subcontractors and employees for the purpose we deem necessary in our reasonable discretion, including in connection with our performance of our obligations under this Merchant Agreement and in connection with the maintenance of the Merchant's Account. Harris and HMS agree to hold in confidence and not disclose strategic marketing plans, development and/or financial reports or plans, inventions, product plans and/or costs, business and/or technology plans, and/or prices to non-affiliates of Harris and HMS, except as may be required by: (i) appropriate government authority or law; or (ii) Harris or HMS to their agents or other third parties to administer or service Merchant's account.

18. RESTRICTIONS ON CASH PAYMENTS OR DEPOSITS

a) Merchant shall not accept any cash payment from a Purchaser for merchandise or services if any part of such cash payment is included on a Sales Draft resulting from the use of a Bankcard.

b) No cash advance or withdrawal may be made by Merchant to a Purchaser.

c) Merchant shall not accept cash or other monetary instrument from a Purchaser and subsequently process a Credit Voucher for the purpose of affecting a credit to the Purchaser's Bankcard account.

19. GENERAL

Merchant Will:

a) Preserve all records pertaining to a Bankcard transaction, Sales Draft, or Credit Voucher as may be required by law, and in no event less than eighteen (18) months from the date thereof, sorted in such manner as to be able to produce any such documents to Harris and HMS upon request as set forth below, and permit Harris and HMS to examine, verify, and copy the same at any reasonable time.

b) Fully comply with all requirements of applicable consumer credit laws and regulations, as may pertain to Merchant, and with all laws and MasterCard, Visa, and DFS regulations applicable to each Bankcard transaction.

c) Execute, file, and record such statements, notices and certificates as Harris and HMS may reasonably request to preserve and protect Harris's and HMS's interests.

d) Provide Harris and HMS a copy of any requested Sales Draft, Credit Voucher or other transaction memorandum no later than three (3) calendar days from the date of request.

Merchant Will Not change its type of business as indicated on the Merchant Bankcard Application without the express written consent of Harris and HMS.

Notices: Any notice, request, demand or other communication required or permitted to be given hereunder must be given in writing by depositing such notice in the United States Mail, first class postage prepaid: (i) if to Harris and/or HMS, to 250 Stephenson Hwy., Troy, MI 48083; and (ii) if to Merchant, to the address stated on the attached Merchant Bankcard Application, or to such other address as is communicated to the other party pursuant to this subparagraph. Merchant has the responsibility of assuring that its address in Harris's and HMS's records is current and accurate. Notice may be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant to Harris and HMS, the original of any such communication shall be mailed to Harris and HMS on the date of the electronic transmission and it shall not be deemed served until the United States Mail copy is received and confirmed by Harris and HMS. If Harris and HMS give notice by facsimile or other electronic communication to Merchant, service is deemed to have been duly given on the day of transmission.

Construction/Severability: The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement, nor shall this

Agreement be deemed to have originated with any party. If any part of this Agreement is held unenforceable or invalid or prohibited by law, that part shall be deemed stricken herefrom and this Agreement shall be read and interpreted as though said part did not exist.

Waiver: Neither the failure nor any delay on the part of Harris and HMS to exercise any right, remedy, power, or privilege hereunder shall operate as a waiver or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

EFFECTIVE DATE: MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY HARRIS AND HMS AND A MERCHANT IDENTIFICATION NUMBER HAS BEEN ISSUED. ANY ALTERATION, STRIKEOVER OR MODIFICATION TO THE PREPRINTED TEXT OR LINE ENTRIES ON THIS AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER AND, AT HARRIS' AND HMS' SOLE DISCRETION, MAY RENDER THIS AGREEMENT INVALID.

20. ENTIRE AGREEMENT/AMENDMENT

This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated herein by reference, constitute the entire agreement between Merchant and Harris and HMS. This Agreement may be amended by Harris and HMS by written notice to Merchant of not less than ten (10) days prior to the effective date of such amendment, except for service fee or other fee increases which may only be made upon thirty (30) days notice.

In each case acceptance thereof by Merchant will be effected either in writing or by Merchant's failure to give Harris and HMS written objection thereto prior to the effective date of the amendment. Unless otherwise stated in the amendment notice, amendments not relating to fee increases shall apply to both previous and future transactions submitted by Merchant; amendments relating to fee increases shall apply only to future transactions.

21. TERM AND TERMINATION

The initial term of this Agreement shall be for three (3) calendar years, unless otherwise stated in Section 25 of the Merchant Bankcard Application under "Early Cancellation Fee," commencing from the date of execution by HMS and Harris (hereinafter referred to as the "Anniversary Date"). This Agreement shall be automatically extended for successive one (1) year periods on the same terms and conditions expressed herein, or as may be amended, unless sooner terminated in accordance with the provisions of this Agreement. Notwithstanding anything to the contrary set forth herein, in the event Merchant terminates the Agreement in breach of this Section 21, all monthly fees assessed to Merchant under the Agreement and due to Harris or HMS for the remainder of the then existing term of the Agreement, including all minimum monthly fee commitments, shall be immediately due and payable to Harris or HMS, and Merchant hereby authorizes Harris or HMS to deduct the greater of (a) \$295 and (b) all remaining monthly fees (provided in no event shall either such amount exceed the maximum amount permitted by applicable state law) from Merchant's account, or to otherwise withhold the total amount from amounts due to Merchant from Harris or HMS, immediately on or after the effective date of termination. This Agreement may be terminated by either party at any time for any reason upon written notice; provided that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to any Sales Draft which is actually delivered to Harris and HMS by Merchant and not returned to Merchant prior to Harris's and HMS's extending credit therefore. The right of Merchant to make sales as specified in this Agreement and to use advertising displays, Sales Drafts, Credit Vouchers, and other items and materials developed for use under this Agreement shall cease upon termination of this Agreement. Merchant expressly acknowledges that a Terminated Merchant File ("MATCH System") is maintained by MasterCard containing the business name, names, and identification of principals of merchants which have been terminated for one or more of the reasons specified in Visa, MasterCard, or DFS operating regulations. Examples would be, but are not limited to, processing transactions for a business not indicated on the Merchant Bankcard Application, fraud, counterfeit drafts, unauthorized transactions, excessive chargebacks and retrieval requests, laundering, or where a high security risk exists. Merchant acknowledges that should Harris or HMS suspect any of the above, Harris may establish a Security Reserve in accordance with Paragraph 13. Merchant acknowledges that Harris is required to report the business name of Merchant and the names and identification of its principals to the MATCH System when Merchant is terminated because of one or more of the reasons specified in Visa, MasterCard, or DFS Regulations. Furthermore, if Merchant fails to fulfill its obligations arising from this

Agreement, Harris may submit a derogatory report on Merchant and its principals to a consumer and/or business credit reporting agency. Merchant expressly agrees and consents to such reporting by Harris and HMS.

22. MERCHANT INDEMNITY

Merchant will indemnify, protect, defend, and hold Harris and HMS, their affiliates, subsidiaries, and all of their officers, agents and/or employees, harmless from, and against, any and all claims, losses, demands, actions, expenses, damages, liability, and/or causes of action, including (without limitation) attorney's fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:

- a) Any breach of this Agreement or of any warranty or representation made to Harris and HMS by Merchant;
- b) Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees, agents or other representatives;
- c) Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard, Visa, and/or DFS rule or regulation; or
- d) Any claim for injury, direct or indirect, to persons or property from any alleged or actual tort or breach of the peace in connection with Merchant's attempted and/or actual recovery of any Bankcard. The indemnifications provided for in this Paragraph 22 shall survive any termination of this Agreement.

23. ASSIGNMENT

Merchant may not assign any rights or duties created by this Agreement without Harris's and HMS's express prior written consent. A transfer of control of majority interest in Merchant's commercial enterprise shall be deemed to be such an assignment. Changes, by way of example only, in business name, business telephone and/or address, or any banking information, alone shall not be deemed to be an assignment but shall be submitted, in writing, to Harris and HMS by Merchant within ten (10) business days of any such change. Harris may assign this Agreement at any time upon written notification to Merchant.

24. AUTHORIZATION FOR ACH AND RIGHT OF SETOFF

Merchant hereby authorizes Harris and HMS to initiate debit and credit entries to Merchant's depository account number set forth on the Merchant Bankcard Application and which may also be shown on the voided check provided to Harris and HMS therewith (and as that number may be changed, to any new account provided to Harris and HMS). Under normal circumstances, and unless deemed necessary by Harris or HMS, Harris will ACH credit or debit Merchant's depository account the next business day after receipt of funds by Harris. To the extent permitted by applicable law, HMS and Harris reserve a right of setoff in all of Merchant's accounts with HMS, Harris, or their affiliates (whether checking, savings, reserve, or some other account). Merchant acknowledges that all transaction settlements are provisional subject to: (i) the Cardholder's rights under the rules and regulations of Visa and/or MasterCard; (ii) applicable Federal, State and local law relating to disputing Bankcard transactions; and (iii) Harris's and HMS's rights under this Agreement. This authority shall remain in full force and effect until Harris and HMS have received written notification from Merchant of its revocation in such time and manner as to afford Harris and HMS a reasonable opportunity to act upon it.

26. GENERAL TERMS - PIN DEBIT

In addition to the above terms and conditions, Merchant may contract to accept PIN Debit transactions. The following additional terms and conditions apply to PIN Debit processing:

- i) HMS or one of its affiliates is a member of the Point-Of-Sale ("POS") networks (collectively the "Networks," and individually "Network") identified on Merchant Bankcard Application; and
- ii) The Networks have established and administer a shared electronic funds transfer system (the "System") by developing and using an online multi-institutional electronic funds POS transfer facility (the "Interchange") at which electronic funds transactions may be interchanged among Members of Networks, participating Merchants and customers of participating Merchants; and
- iii) Merchant has applied through HMS to become a participant in the System, and HMS is willing to provide POS transaction service to Merchant on the terms and conditions set forth herein; and
- iv) Merchant acknowledges that it will not be able to participate in the System until Merchant has met all required rules, regulations and operating standards therefore.
- v) NOW THEREFORE, in consideration of the promises and mutual covenants set forth in the Agreement, the parties agree to be bound to the terms and conditions contained in this Agreement.

A. DEFINITIONS

The terms set forth below and used in this Agreement shall have the following meaning:

- i) “Card” means an ATM/debit card containing a magnetic stripe and a Network Program Mark that is issued on behalf of a Member and which meets the technical requirements established by the Network.
- ii) “Cashback” means cash received by a Cardholder from Merchant upon completion of a POS Transaction at a Merchant location, subject to the limitations imposed on Cashback transactions in the Operating Rules, by Merchant, or HMS.
- iii) “Debit Percentage Fee” is the percentage of the transaction amount that is charged per PIN Debit transaction processed.
- iv) “Debit Transaction Fee” is the amount charged per PIN Debit transaction processed.
- v) “EBT Authorization Fee” is the amount charged per authorization of EBT transactions.
- vi) “Graphics Standards Manual” means the manuals, collectively and as each are amended and in effect from time to time, adopted by the respective governing authorities of the Networks setting forth specifications and other standard for use of their respective Program Marks.
- vii) “Monthly Access Fee” is the amount charged for monthly access to the Networks that will enable Merchant to obtain authorizations and process transactions.
- viii) “Operating Rules” means the Operating Bylaws and Operating Regulations, collectively and as each are amended and in effect from time to time, adopted by the respective governing authorities of the Networks.
- ix) “POS Terminal” or “Terminal” means a device which includes a magnetic stripe reader (1) that is activated by a Card and a corresponding personal identification number (“PIN”), (2) that meets the technical specifications set forth in the Operating Rules, and (3) at which a Cardholder may initiate a POS transaction.
- x) “Program Marks” means all services marks, trademarks or trade designations now or hereafter owned or adopted by the Networks.
- xi) “Security Manual” means the Operating Manuals for Security, collectively and as each are amended and in effect from time to time, adopted by the respective governing authorities of the Networks.

B. POS TRANSACTION SERVICE

HMS hereby agrees that:

- i) **Transfer of Funds.** HMS will facilitate the transfer of funds received from the Networks as a result of Merchant’s POS transaction activity. Funds will be transmitted to the Merchant Account by ACH transfer on a two to three (2-3) business day delayed basis contingent upon receipt of funds by HMS and the method of Merchant’s statement reconciliation.
- ii) **Cessation of Basic Service; Merchant’s Indemnity.** HMS may, upon receipt of written instructions from any Network, immediately cease to provide Merchant, including Merchant’s customers, access to such Network. HMS shall use its best efforts to promptly notify Merchant of any such interruption in Network access. Merchant hereby agrees to indemnify and hold HMS harmless from any and all claims, liabilities or losses, including but not limited to costs and attorney’s fees, resulting from HMS’s compliance with the written instructions of any Network.

Merchant hereby agrees that:

- i) **Completion of Authorized POS Transactions.** Merchant will complete only those POS transactions that comply in all respects with the Operating Rules and which have been authorized.
- ii) **Honor All Cards.** Merchant will honor all valid Cards when presented for payment of POS transactions when such transaction can be initiated and completed electronically. When a technical malfunction prevents electronic initiation and completion of a POS transaction, Merchant may not complete such transaction.
- iii) **Non-Discrimination.** Merchant shall treat POS transactions by another Member’s Cardholders in the same manner as POS transactions by HMS’s or its affiliates’ Cardholders.
- iv) **Availability of Terminals.** Merchant shall take all reasonable steps to ensure that all POS Terminals and PIN Pads operated at Merchant location(s) (1) are available for use by Cardholders of all Card-issuing Members for POS transactions; and (2) shall function with a minimum of error and in a reliable manner and meet all applicable standards and technical specifications contained in the Operating Rules and Security Manual.
- v) **Responsibility for Compliance With Operating Rules, the Graphics Standards Manual, the Security Manual, and Applicable Laws.** Merchant shall comply with the Operating Rules, the Graphics Standards Manual, the Security Manual (including, but not limited to, all procedures, fees, assessments, penalties, and other membership duties, obligations, and costs of each Network applicable to Merchant during the term of this Agreement), and all Federal, State and local laws applicable to Merchant’s participation in the System including, without limitation, statutes, regulations and judicial decisions relating to POS transactions, POS Terminal sharing, consumer credit, consumer protection, electronic funds transfers, antitrust, franchise and other trade regulation

matters, such as rules, regulations and requirements may change from time to time. Merchant acknowledges that it may request a copy of the Operating Rules or any such manual from HMS for an appropriate fee.

vi) **Surcharging.** Notwithstanding any other provision in this Agreement which may imply that Merchant can charge transaction fees, surcharges or other fees on transaction, Merchant agrees that it will not impose or, on behalf of any third party, pass on any surcharge on a Cardholder's use of a Card unless otherwise notified by HMS in writing.

vii) **Hardware and Software Requirements.** Merchant shall, at Merchant's sole expense, obtain and install all required hardware and software including, without limitation, the following:

viii) **POS Terminals.** Merchant shall obtain and install POS Terminals, together with software and any other facilities necessary to support the System, meeting all requirements set forth in the Operating Rules and Security Manual and approved by HMS, at Merchant locations. Merchant shall not use software not specifically approved by HMS or which Merchant has reason to believe is pirated or obtained from an unauthorized source.

ix) **Magnetic Stripe Reader.** Merchant shall have at, or in proximity to, any point of sale where a Card is accepted, an operating Track 2 Magnetic Stripe Reader that meets all requirements set forth in the Operating Rules and the Security Manual and approved by HMS.

x) **PIN Pad.** Merchant shall have at, or in proximity to, any point of sale where a Card is accepted, an operating PIN Pad with an alpha-numeric keyboard that meets all requirements set forth in the Operating Rules and Security Manual or approved by HMS.

xi) **Ownership; Maintenance and Operation.** All POS Terminals, PIN Pads, and related equipment shall be the property of or leased by Merchant, who shall be solely responsible for the operation and maintenance of all such equipment, and shall at all times operate and maintain the equipment in accordance with the Operating Rules and the Security Manual. Merchant is further responsible for obtaining all insurance thereon that may be required by reasonably prudent business practices. Merchant shall be responsible for connecting the POS Terminals at each Merchant location with the Interchange and shall incur all expenses associated therewith including, without limitation, testing and telecommunication costs.

xii) **Transaction Processing.** All POS transactions shall be processed in accordance with the following:

xiii) **Purchases.** Merchant shall not complete any transaction unless it has been authorized. Merchant shall require that Cardholder enter his or her PIN at, or in proximity to, the point of sale when initiating a POS Transaction. Merchant may not require or request Cardholder's signature or any other means of verifying Cardholder's identity. When consummating any sale, Merchant will offer Cardholder a written receipt containing the information in subparagraph xvi below.

xiv) **Cashback.** If Merchant allows Cardholders to initiate Cashback transactions, Merchant must transmit for each Cashback transaction initiated at a Merchant location the amount of Cashback given to Cardholder pursuant to the transaction. Merchant may not give a Cardholder Cashback in an amount greater than the dollar amount authorized or the difference between the amount and the total purchase price for Merchant's goods or services, whichever is the smaller amount, and in no case shall Merchant give Cashback in an amount exceeding one hundred dollars (\$100.00). If a Cashback transaction is denied solely because the Cashback amount would cause Cardholder to exceed any daily limit on cash withdrawals applicable to Cardholder's Card, Merchant shall tell Cardholder the reason for the denial and invite Cardholder to initiate a POS transaction for the purchase amount alone.

xv) **Reversals.** A POS transaction may be reversed due to the return of goods purchased with a Card and the acceptance thereof by Merchant as a return item(s) only if the Network on which the underlying transaction was processed permits such a reversal and only in accordance with the Operating Rules of the Network.

xvi) **Required Written Receipts.** With each POS transaction, Merchant shall offer Cardholder a written receipt that complies fully with all applicable local, State, and Federal laws and regulations including, but not limited to, Regulation E (12 CFR, Part 205) of the Federal Reserve Board, and which includes, but is not limited to the following information: (1) the exact dollar amount of the transaction; (2) the exact dollar amount of any transaction fee, surcharge or similar cost levied on the transaction; (3) the date of the transaction; (4) the type of transaction (e.g. payment from the Cardholder's account); (5) if Cardholder can access more than one type of account at the POS Terminal, the type of account being accessed (e.g. checking, savings or other); (6) if Cardholder can access more than one account of the same type at the POS Terminal, the specific account being accessed; (7) the street address of the POS Terminal where the transaction is being initiated; (8) Merchant's name; (9) the trace number assigned to the transaction by the computer interface system linking Merchant to HMS; and (10) whenever scrip is issued, the deadline for redeeming the scrip or its expiration date. These requirements shall not apply to any POS transaction not involving the transfer of funds, such as balance inquiries.

xvii) **Funds Settlement.** Upon receipt of each End-Of-Day Batch message, HMS will settle into the Merchant Account the total dollar amount due Merchant for all completed Transactions processed by Merchant in accordance

with this Agreement and identified in that End-Of-Day Batch Message. It is the Merchant's responsibility to ensure batches are sent to HMS daily.

xviii) **Chargebacks; Adjustments.** HMS may charge transactions and associated service fees back to Merchant on behalf of itself, a Network, or a financial institution, and collect chargebacks and the fees described on this Agreement by deducting the amount thereof from the Merchant Account. The amount of chargeback will not exceed the amount of the POS transaction giving rise to the chargeback plus any applicable service fee. A chargeback can occur if: (1) a Network classifies Merchant as a "special merchant" or some other type of Merchant whose transactions can be charged back under the Operating Rules of that Network; (2) Merchant keys in or sends HMS erroneous information relating to the transaction or transmits a transaction for which a Cardholder paid by means of cash, check, or credit card; (3) a transaction is a duplicate of one previously processed; (4) a transaction was processed without authorization; (5) Merchant fails to respond to a request for information concerning a Cardholder dispute or possible processing error within the time allotted by HMS or the Operating Rules of the Network; (6) A Cardholder disputes the transaction due to the quality or quantity of the goods or services provided; (7) A Cardholder disputes the timeliness of the goods or services provided; or (8) A Cardholder disputes the terms provided. A chargeback can also occur to correct any out-of-balance condition identified during the settlement process which could not be debited from the Merchant Account either because it was closed or there were insufficient funds. HMS will adjust a transaction at Merchant's request if, within forty-five (45) calendar days of the original transaction date, Merchant provides HMS with a written request which, in HMS's judgment, establishes that a previously settled transaction was settled erroneously.

xix) **Collection of Fees/Chargebacks.** Merchant hereby agrees to pay HMS the fees and charges set forth on Merchant Bankcard Agreement and authorizes Merchant's Bank, identified on such Merchant Bankcard Agreement or as subsequently changed in the manner therein provided, to debit the Merchant Account for the fees and chargebacks described in subparagraph xviii immediately above. Debit Transaction Fees and Debit Percentage Fees shall be deducted from the monthly settlement; all other fees shall be deducted either monthly or when the chargeable event occurs, at HMS's option.

C. RESOLUTION OF DISPUTES AND ERRORS

i) **Method of Resolution.** Merchant will cooperate fully to resolve any Cardholder dispute or actual or potential processing error. Merchant will promptly resolve Cardholder disputes relating to Merchant's goods or services directly with the complaining Cardholder, and at all times will comply with all applicable laws and Operating Rules in relation thereto.

ii) **Chargebacks/Retrievals.** In response to any request for information by HMS relating to a disputed transaction, within three (3) calendar days of receiving such request or by the date specified on the request, Merchant will produce a copy of Merchant's record of such transaction in such form and content as required by HMS.

iii) **Record Retention.** Merchant will keep a record of each POS transaction for at least two (2) years. The record must contain at least the information listed in clauses (1) through (10), inclusive, of subparagraph xvi of Section B. Merchant shall keep journal tapes, daily sales reports, and management report printer tapes for at least two (2) years and periodically review them as they are generated.

D. SECURITY MEASURES

In addition to Confidentiality of Information outlined in Section 17 i) Merchant shall ensure that all equipment and software obtained by Merchant (other than equipment or software supplied directly by HMS) meets all security features required by the Networks, and communicates data captured from each Card and POS Terminal to the Interchange without modification. Merchant will take all measures HMS or any Network may require from time to time in order to ensure a secure operating environment. HMS or its designee, on behalf of itself and the Networks, shall have the right to inspect Merchant's security system and procedures from time to time after reasonable notice to Merchant.

ii) Merchant and any agent or processing organizer of Merchant must keep all systems and media containing Cardholder account or transaction information (whether physical or electronic including, but not limited to, PIN numbers, account numbers, and Cardholder's information) in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel, Harris, HMS or agent. Merchant shall store in an area limited to selected personnel, and, prior to discarding shall destroy in a manner rendering data unreadable, all material containing Cardholder account numbers or Card imprints, including but not limited to, Sales Drafts, Credit Vouchers, and carbons.

E. SPECIAL PROVISIONS RELATING TO CARDS

i) **Lost Cards.** Except as provided in subparagraph ii below, Merchant shall immediately destroy each Card which is left at Merchant's place of business by cutting it in half through the magnetic stripe.

ii) **Returned Cards.** Merchant may return a Card to its Cardholder after the Card was left at Merchant's place of business if (1) it can be done within one (1) business day of Merchant's discovery of the Card, and (2) the Cardholder to whom the Card is returned first shows Merchant at least two forms of current, reliable identification both of which appear to be signed by the same person who signed the Card in question, and at least one of which contains a photograph of a person who appears to be the Cardholder.

F. RECORDS, INSPECTIONS AND INFORMATION

Merchant shall keep copies of all records relating to this Agreement, the System and to the services and transactions there under for at least seven (7) years and shall allow HMS and/or any Network or their representative(s) to inspect such records upon reasonable request. Merchant hereby gives HMS or any Network (or any designee of either) permission to enter Merchant's premises, including but not limited to all Merchant locations, on reasonable advance notice to verify Merchant's compliance with this Agreement. Merchant agrees that, upon request, it will promptly provide to HMS (or at HMS's request, to a Network) any information reasonably requested to aid HMS or a Network in determining whether Merchant is in compliance with the Operating Rules, the Graphics Standards Manual, this Agreement and any other agreement between Merchant and HMS or Network, and whether its operations are likely to endanger the operations of the System. Merchant further agrees that, upon request it will immediately provide to HMS (or at HMS's request, to a Network) such information as may be reasonably requested by HMS or Network in connection with POS transactions.

G. SIGNS AND DISPLAYS

i) **Use of Program Marks.** (1) HMS hereby grants Merchant a non-exclusive, non-transferable, limited sub-license to use the Program Mark (each a Protected Mark) of each of the Networks identified on the Merchant Bankcard Application solely for use in connections with said Network's POS services and only in accordance with said Network's Operating Rules and Graphics Standards Manual. No right, title, or interest in or to the Program Marks has been transferred or is being transferred pursuant hereto, except the non-exclusive right to use the Program Marks as provided in this Agreement. Merchant shall have no power, right or authority to transfer, assign or license any right in or to the use of any Program Mark. Merchant shall not at any time do or cause to be done any act or deed in any way impairing or intended to impair HMS's or Network's (hereinafter, collectively, the "Owners") exclusive right, title, and interest in and to their respective Program Mark. (2) Merchant shall submit to HMS any proposed use of a Program Mark other than as specified in this Agreement and obtain HMS's prior written approval to such other use.

ii) **Display of Program Marks.** (1) Using only the exact same decals, signs, camera-ready artwork or other materials made available by or through HMS from time to time, Merchant shall, during the term of this Agreement, and at every Merchant location, prominently display the Program Marks of each Network identified in Agreement on or adjacent to Merchant's POS equipment and, for any Network which so requires, on or near each public entrance to each Merchant location, solely to inform the public that Cards identified by the Program Marks are honored at the Merchant location. (2) Merchant may only use Program Marks to indicate that Cards are accepted for payment, and shall not indicate, directly or indirectly, that a Network endorses any goods or services other than Network services. (3) Merchant may not refer to a Network when stating eligibility for its products, services, or membership. (4) Merchant shall prominently display the Program Marks on all signs or decals on which a shared regional or national POS service is promoted at the Merchant location. Merchant shall ensure that each Program Mark displayed on such signs or decals will be printed in a size such that its surface area is not smaller than the size of the largest mark of any other shared regional or national POS Network displayed on such sign or decal. (5) Upon termination of this Agreement for any reason, Merchant shall cease to display and/or, in any way, use the Program Marks, and shall promptly, as directed by HMS, either return or destroy any materials displaying any Program Marks.

iii) **Ownership of Program Marks.** (1) Merchant acknowledges and agrees that HMS and each Network identified on the Merchant Bankcard Application owns its respective Program Mark. Merchant will not claim adversely to any such owner any right, title or interest in or to the Program Marks or any of them. (2) Merchant will not use, register or aid any third party in using, registering or attempting to register any Program Mark or any trademark, service mark, trade name or other symbol or designation confusingly similar to any of the Program Marks or incorporating one or more of the Program Marks or any part thereof. Any registrations obtained by Merchant contrary to this section will be held in trust for HMS and assigned by Merchant to HMS upon HMS's request. (3) Merchant's use of each Program Mark will inure exclusively to the benefit of the owner thereof who may utilize such use in registering or defending the Program Mark. At the owner's request, Merchant will provide evidence relative to Merchant's use of each of the Program Mark. The Owners of the Program Marks each expressly reserve the right to change, modify or withdraw their respective Program Marks or any of them, at any time, and Merchant shall thereafter use such Program Mark only as changed or modified and will not use any withdrawn Program Mark. Merchant shall permit

each of the Owners of the Program Marks, at all reasonable times, to inspect Merchant's use thereof in advertising or otherwise. Should any such materials fail to meet the requirements of the Owners, or any of them, it shall be Merchant's obligation to make all necessary changes.

H. CONFIDENTIALITY

i) **Merchant's Obligation.** Except to the extent specifically required by the Operating Rules or this Agreement and with the prior written consent of HMS, Merchant shall not disclose any information relating to HMS, any Network, any financial institution, any POS transaction or any Cardholder to any person or entity other than HMS, HMS's employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information for a purpose relating to this Agreement (such as responding to a Cardholder dispute or investigating a possible processing error), or as otherwise specifically required by law. Merchant shall treat documents provided by HMS, any financial institution or any Network relating to this Agreement, including but not limited to this Agreement, the Operating Rules, Graphics Standards Manual, the Security Manual and any and all technical specifications, as confidential and proprietary. The obligations of this subparagraph i of Section H will survive termination of this Agreement.

ii) **Confidential Treatment of Network/System Information.** Merchant acknowledges that Networks, through the expenditure of a considerable amount of time, effort, cost and research, developed and secured the right to use various computer programs, forms, logos, operating procedures, manuals, and related materials which constitute property of great value and trade secrets, and that disclosure to others of such material may result in loss or irreparable damage to Networks. Merchant further acknowledges that the System in its entirety constitutes a trade secret of Networks, which is revealed to Merchant in confidence. Accordingly, Merchant agrees to hold and use any and all such property and information regarding the System in confidence, and not to disclose, reveal, copy, sell, transfer, sublicense, assign or distribute any part or parts of it, in any form, to any individual, firm, corporation, or other entity, nor permit any of its employees, agents or representatives to do so, except as permitted by the Operating Rules or otherwise expressly permitted in writing by Networks. Merchant further agrees that upon termination of this Agreement for any reason, it will immediately return all such property to HMS.

I. INDEMNIFICATION

Merchant will indemnify, protect, defend, and hold each Network identified in this Agreement and their respective Members, affiliates, subsidiaries, and all of their officers, agents and/or employees, harmless from, and against, any and all claims, losses, demands, actions, expenses, damages, liability, and/or causes of action, including (without limitation) attorney's fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from: (1) Merchant's breach of this Agreement or failure to comply with the Operating Rules, Graphics Standards Manual, Security Manual or applicable law; or (2) any dispute by a Cardholder or customer concerning Merchant's goods or services including, without limitation, lost profits, even though such damages may have been foreseeable by Merchant.

27. GENERAL TERMS - EBT

i) HMS offers electronic interfaces to Electronic Benefits Transfer ("EBT") networks for the processing of cash payments or credits to or for the benefit of benefit recipients ("Recipients"); and

ii) Merchant may contract for the services offered through HMS for the purposes of offering EBT benefits to Recipients under the terms and conditions set forth below.

iii) NOW THEREFORE, in consideration of the promises and mutual covenants set forth in the Agreement, the parties agree to be bound to the terms and conditions contained in this Agreement.

A. AGREEMENT TO ISSUE BENEFITS

i) HMS will provide settlement and switching services for various Point-of-Sale transactions initiated through Merchant (the "Services") for the authorization of the issuance of the United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and/or government delivered cash assistance benefits ("Cash Benefits," and, together with FS Benefits, "Benefits") to Recipients through the use of a state-issued card ("EBT Card").

ii) Subject to the terms and conditions hereof, Merchant agrees to issue Benefits during Merchant's normal business hours.

iii) If Merchant has agreed to issue Cash Benefits and will provide cash back or cash only transactions, Merchant agrees to maintain adequate cash on hand to issue confirmed Cash Benefits and will issue Cash Benefits to Recipients in the same manner and to the same extent cash is provided to other customers of Merchant. Merchant will not require, and will not in its advertising suggest, that any Recipient must purchase goods or services at Merchant's facilities as a condition to receiving a Cash Only from Cash Account Transaction for such Recipient, unless such condition applies to other customers as well. Merchant will not designate special checkout lanes

restricted to use by Recipients, provided that if Merchant designates special checkout lanes for electronic debit or credit cards and/or other payment methods such as checks or other than cash, Recipients may be directed to such lanes so long as other customers are directed there as well.

iv) Merchant agrees to give prompt notice to HMS of any planned cessation of services, or inability to comply with the terms of this Amendment.

B. ISSUANCE OF BENEFITS

i) Merchant agrees to issue Benefits to Recipients in accordance with the procedures specified in all documentation and user guides provided to Merchant by HMS, as amended from time-to-time (the "User Guides") and pursuant to applicable law. Merchant will provide each Recipient a receipt for each Benefit issuance. Merchant will be solely responsible for Merchant's issuance of Benefits other than in accordance with authorizations.

ii) Merchant will issue FS and/or Cash Benefits to Recipients, in accordance with the procedures set forth in the User Guides, in the amount authorized through its point-of-sale ("POS") terminal, with personal identification number ("PIN") pad and printer ("Equipment"), upon presentation by Recipient of an EBT Card and Recipient entry of a valid PIN. Merchant agrees that in the event of the failure of the Equipment to print Benefit issuance information as approved and validated as a legitimate transaction, Merchant will comply with the procedures set forth in the User Guides for authorization of Benefits in such instance.

iii) Merchant agrees to comply with all applicable laws, rules and regulations in the performance of its obligations under this Amendment, including without limitation, laws pertaining to delivery of services to benefit recipients and recipient confidentiality, and the Federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture pertaining to Food Stamp Program.

iv) Merchant agrees to comply with the procedures set forth in the User Guides as well as the Quest Operating Rules (the "Rules"), as amended from time-to-time, issued by the National Automated Clearing House Association as approved by the Financial Management Service of the U.S. Treasury Department, as necessary, and other such rules and regulations as may be applicable to the issuance of Benefits by Merchant hereunder. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed them in the Rules. Merchant agrees to comply with all additional procedures specified by the State, regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing Recipients with information such as telephone numbers and addresses of the State or other appropriate agencies.

v) Merchant will not accept any EBT Card for any purpose other than the issuance of Benefits, including without limitation acceptance of any EBT Card as security for repayment of any Recipient obligation to Merchant. In the event of any violation of this provision, Merchant will be obligated to reimburse the State for any Benefits unlawfully received by either Recipient or Merchant to the extent permitted by law.

C. ISSUANCE RECORDS

i) Merchant will retain all EBT-related records (including but not limited to manual sales drafts) for three (3) years following Benefit issuance, or for such additional period as may be required by law.

ii) Merchant agrees to make all EBT-related records available for audit upon request to representatives of the State or its EBT Service Provider, or other authorized State or Federal government agency during normal business hours.

iii) To assure compliance with this Amendment, the State, its EBT Service Provider, or other authorized State or Federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, Merchant's premises to inspect or evaluate any work performed under this Amendment, or to obtain any other information required to be provided by Merchant or otherwise related to this Amendment.

D. REQUIRED LICENSES

If Merchant issues FS Benefits under this Amendment, Merchant represents and warrants to HMS that Merchant is a FNS authorized Merchant and is not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. Merchant agrees to secure and maintain at its own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of Benefits under this Amendment, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that Merchant will not issue Benefits at any time during which Merchant is not in compliance with the requirements of any applicable law.

E. TERM AND TERMINATION

i) If Merchant is disqualified or withdrawn from the FS Program, Merchant's authority to issue FS Benefits will be terminated contemporaneously therewith. Such disqualification or withdrawal will be deemed a breach of this

Amendment with respect to Merchant's authority to issue Cash Benefits and, in the event of such disqualification, HMS shall have the right to immediately terminate this Amendment.

ii) With respect to the issuance of Cash Benefits only, Merchant's authority to issue Cash Benefits may be suspended or terminated immediately by HMS, the State or its EBT Service Provider, in its sole discretion, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there shall be: (1) any suspension, injunction, cessation, or termination of the EBT Service Provider's authority to provide EBT services to the State; (2) failure by Merchant, upon not less than thirty (30) days prior written notice, to cure any breach by Merchant of the provisions of these terms and conditions, including without limitation, Merchant's failure to support the issuance of Benefits during Merchant's normal business hours consistent with Merchant's normal business practices, Merchant's failure to comply with issuance procedures, Merchant's impermissible acceptance of an EBT Card, or Merchant's disqualification or withdrawal from the FS Program; or (3), based on the State's or its EBT Service Provider's investigation of the relevant facts, evidence that Merchant or any of its agents or employees is committing, participating in, or has knowledge of fraud or theft in connection with the dispensing of Benefits. In the event that Merchant fails to cure any breach as set forth above, Merchant may appeal such suspension or termination to the State for determination in its sole discretion.

iii) In the event that Merchant's authority to issue Benefits is suspended or terminated by the State or its EBT Service Provider, and Merchant successfully appeals such suspension or termination to the State or its EBT Service Provider, HMS shall be under no obligation to Merchant to reinstate this Amendment.

iv) This Amendment will terminate immediately in the event Merchant's Merchant Bankcard Agreement (the "Agreement") with HMS terminates.

v) This Amendment shall terminate automatically in the event that HMS's agreement with the EBT Service Provider terminates for any reason.

F. CONFIDENTIALITY OF EBT SYSTEM INFORMATION

i) All information related to the issuance of Benefits and the Recipients shall be considered confidential information.

ii) Individually identifiable information relating to any Recipient or applicant for Benefits will be held confidential and will not be disclosed by Merchant, its directors, officers, employees or agents, without prior written approval of the State.

iii) The use of information obtained by Merchant in the performance of its duties under this Amendment will be limited to purposes directly connected with such duties.

G. EBT SERVICE MARKS

Merchant will adequately display the State's service marks or other licensed marks, including the Quest mark, and other materials supplied by HMS, collectively the "Protected Marks," in accordance with the standards set by the State. Merchant will use the service marks only to indicate that Benefits are issued at Merchant's location(s) and will not indicate that HMS or the State endorse Merchant's goods or services. Merchant's right to use such service marks pursuant to this Amendment will continue only so long as this Amendment remains in effect or until Merchant is notified by HMS, the State or its EBT Service Provider to cease their use or display.

H. MISCELLANEOUS

i) Amendments. If any of the terms and conditions of this Amendment are found to conflict with Federal or State law, regulation or policy of the Rules, these terms and conditions are subject to reasonable amendment by HMS, the State or its EBT Service Provider to address such conflict upon sixty (60) days written notice to Merchant, provided that Merchant may, upon written notice, terminate this Amendment upon receipt of notice of such amendment.

ii) State Action. Nothing contained herein shall preclude the State from commencing appropriate administrative or legal action against Merchant or for making any referral for such action to any appropriate Federal, State, or local agency.

iii) Reference to State. Any references to State herein shall mean the State in which Merchant issues Benefits pursuant hereto. If Merchant issues Benefits in more than one State pursuant hereto, then the reference shall mean each such State severally, not jointly.

iv) Governing Law; Jurisdiction. This Agreement shall in all respects be interrupted, governed, constructed and enforced by and under the laws of the State of Michigan. Each party expressly consents and agrees to the jurisdiction of any State or Federal court located within the County of Oakland, State of Michigan, for all purposes in connection with any suit between the parties arising out of or relating hereto.

v) This Amendment incorporates all other terms and conditions of the Merchant Bankcard Agreement, except as modified herein.