

MERCHANT SERVICES AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Services Agreement (this "Agreement"), and the agreement of Merchant to participate in the card processing services program established by Bank, the parties agree as follows:

1. Parties. The parties to this Agreement are FIFTH THIRD BANK, a federally chartered bank whose address is 6111 N. River Road, Rosemont, IL 60018 ("Fifth Third Bank"), Titanium Processing, Inc, a Texas corporation, whose address is 1754 Bagdad Rd., Bldg 100A, Cedar Park, TX 78613 ("ISO"), and the Merchant set forth on the Merchant Application form to which this Agreement is attached ("Merchant"). Fifth Third Bank is a principal member of Mastercard International Inc. ("Mastercard") and Visa USA, Inc. ("Visa"). ISO participates in programs affiliated with (a) Mastercard, Visa, DFS Services, LLC d/b/a Discover Network ("Discover") (including any card issuer whose Cards are processed and settled through the Discover Network) and American Express Travel Related Services Company Inc. ("Amex") and (b) certain similar entities, including without limitation those appearing in the application or pricing section of this Agreement, and any other network supported by ISO, including without limitation debit networks ("Other Networks" and collectively with the entities listed in subparagraph (a) the "Card Networks"). Subject to the foregoing, Fifth Third Bank and ISO are collectively referred to herein as the "Bank" and, subject to the requirements of the Rules, Fifth Third Bank and ISO allocate the duties and obligations allocated to Bank as they deem appropriate in their sole discretion and may jointly or individually assert or exercise the rights or remedies provided to Bank hereunder.

2. Definitions. For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
"Address Verification" means a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
"Applicable Law" means: (i) all applicable federal, state and local laws, rules and regulations; and (ii) the Rules.

"Authorization" means an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the relevant Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions requiring Authorization by the Associations must be authorized.
"Authorization Center" means the facility or facilities designated from time to time by Bank to which Merchant shall submit all requests for Authorization.

"Business Day" means any day other than: (i) a Saturday or Sunday; or (ii) a day on which banking institutions in Texas are authorized by law or executive order to be closed (and on which Bank is in fact closed).

"Card(s)" means either a Visa, Mastercard or Discover credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card.

"Cardholder" means a person authorized to use a Card.
"Cardholder Information" means any non-public, sensitive information about a Cardholder or related to a Card, including, but not limited to, any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number, or credit or debit card number, or other bank account number.

"Card Network(s)" means VISA U.S.A., Inc. ("Visa"), Mastercard International Incorporated ("MasterCard"), DFS Services LLC ("Discover") and American Express Travel Related Services Company, Inc. ("American Express").

"Chargeback" means a Transaction that Bank returns to Merchant pursuant to this Agreement.

"Forced Sale" means a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.

"Full Recourse Transactions" means mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.

"Issuer" means a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.

"Merchant Statement" means an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 5 of this Agreement).

"Monthly Chargeback Violation," for any given calendar month, means that more than five Chargebacks have been processed in that month and that the Transaction Chargeback Ratio for that month is equal to or greater than 1%.

"Mid-Qualified Transactions" means any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations

"Non-Qualified Transactions" means: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations.

"Pre-Authorized Recurring Order Transaction" means a Transaction that has been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

"Qualified Transactions" means any Transaction categorized as such by the processor designated by Bank to settle Transactions with the Associations.

"Rules" means all rules, regulations, by-laws, standards and procedures adopted and/or amended from time to time by the Card Networks (including, without limitation, the Payment Card Industry Data Security Standard ("PCI DSS")), Bank and each relevant Issuer.

"Services" means the activities undertaken by Bank to authorize, process and settle Card transactions undertaken by Cardholders at Merchant's location(s), and all other services provided by Bank under this Agreement.

"Transaction" means the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns and adjustments.

"Transaction Chargeback Ratio," for any given calendar month, means the number of Chargebacks processed in that month divided by the total number of Transactions processed in that month.

3. Services Provided to Merchant. Subject to the Rules, Services may be performed by Bank, its affiliates, its agents or other third parties Bank may designate from time to time in connection with this Agreement. Information related to Merchant's Transaction activity or any credit or financial information of Merchant may be disclosed to any such third party servicers or any referral bank partner.

4. Term. This Agreement shall become effective when approved by Bank and, unless sooner terminated as authorized by this Agreement, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of three (3) years each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. All obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall survive termination of this Agreement until finally and irrevocably paid in full, and, regardless of any such termination, Merchant shall remain liable for all obligations to Cardholders and Bank that are incurred while this Agreement is in effect.

5. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank (the "Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Bank to debit all amounts Merchant owes Bank hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any and all claims for loss or damage arising out of any such charges or debits to the Operating Account.

6. Reserve Account. Upon, or at any time after, execution of this Agreement, Bank may establish a reserve account at Bank ("Reserve Account"), for all future indebtedness of Merchant to Bank that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Bank from time to time may determine in its sole discretion. Bank may fund the Reserve Account by deducting amounts from payments due to Merchant, by effecting a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank, or by demanding payment from Merchant (which payment Merchant shall make within ten (10) days after receipt of any such demand). The Reserve Account will be maintained for a minimum of nine months after the date on which this Agreement terminates or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchant's account with Bank is fully resolved. **The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all of Bank's other anticipated expenses, losses and damages have been paid will be disbursed to Merchant.**

7. Fees. Merchant shall pay to Bank all fees specified on *Schedule A*, as amended by Bank from time to time. For each Transaction, Bank will charge Merchant as follows:

- (a) An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate");
- (b) A specified amount per Transaction ("Transaction Fee"); and
- (c) A specified amount per Authorization ("Authorization Fee").

The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on *Schedule A*. Different Merchant Discount Rates apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on *Schedule A*. Merchant agrees that Bank will, and authorizes Bank to, deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily or monthly basis. Merchant also agrees to pay to Bank the amount of any fees, charges or penalties assessed against Bank by any Card Network or Issuer for Merchant's violation of any Applicable Law. Merchant shall pay Bank for any other services provided to Merchant by Bank and for all other fees shown on *Schedule A*, including, but not limited to, monthly minimum fees, Chargeback fees and customer service fees.

8. Billing. All amounts Merchant owes to Bank may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank holds for or on behalf of Merchant.

9. Security Interest. As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in: (i) the funds held in the Operating Account and in the Reserve Account; and (ii) any inventory with respect to which a Transaction has occurred but has not yet been fulfilled. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Bank's security interest in the Operating Account, Reserve Account and such inventory, and will pay all costs and expenses associated with

filing the same or this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account, the Reserve Account and such inventory where authorized by Applicable Law. Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank.

10. Processing Transactions.

(a) Merchant shall obtain Authorizations and process Transactions using such equipment and software as may be approved from time to time by Bank, in its sole discretion (the "Equipment"). Merchant shall validate Cards and Cardholders in face-to-face transactions as required by Applicable Law.

(b) Merchant shall obtain Authorizations for Transactions in a manner required by Applicable Law and in the manner, and following the processes and procedures, determined from time to time by Bank, in its sole discretion, and communicated to Merchant by Bank.

(c) Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction.

(d) Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be illegal, fraudulent or not authorized by the Cardholder.

(e) Merchant shall not process a Transaction that does not result from an act between a Cardholder and Merchant.

(f) Merchant shall not request or use any Card number for any purpose other than as payment for its goods or services.

(g) Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Card Networks.

(h) If the signature panel on a Card is blank, Merchant must review positive identification bearing the Cardholder's signature to validate the Cardholder's identity. For online Transactions, the payment website must authenticate the Cardholder's identity and use appropriate site security and internet section security standards in accordance with the Rules.

11. Prohibited Transactions.

For all Card Networks Merchant shall not do any of the following:

(a) Establish a minimum on debit cards or greater than \$10.00 on credit cards or a maximum dollar Transaction amount;

(b) Obtain multiple Authorizations for amounts less than the total sale amount;

(c) Obtain Authorization for the purpose of setting aside the Cardholder's credit line for use in future sales;

(d) Extend credit for or defer the time of payment of the total cash price in any Transaction;

(e) Honor a Card except in a Transaction where a total cash price is due and payable;

(f) Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;

(g) Transmit or accept payment for any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;

(h) Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (ii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;

(i) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;

(j) Re-process any Transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval;

(k) Initiate a Transaction credit without a preceding debit at least equal to the credit;

(l) Initiate a Transaction credit without a balance in the Operating Account at least equal to the credit;

(m) Use the Equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;

(n) Use the Equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;

(o) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;

(p) Disclose any information obtained through the Equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;

(q) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;

(r) Disburse funds in the form of cash;

(s) Accept a Card to collect or refinance an existing debt (whether originally owed to Merchant or otherwise) that is considered uncollectible (for example, payments to a collection agency or attempts to recover funds for a dishonored check) except to the extent specifically permitted by Applicable Law;

(t) Issue a Transaction credit in respect of goods or services acquired in a cash transaction which are returned;

(u) Make any cash refund to a Cardholder who has made a purchase with a credit Card (all Transaction credits shall be issued to the same credit Card account number used in the sale);

(v) Require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature or any other Card account data in plain view when mailed;;

(w) Accept a Card for the purchase of Scrip (as defined by applicable VISA regulations), except to the extent specifically permitted by Applicable Law;

(x) Accept any payment directly from a Cardholder for previous Card charges incurred and processed by Merchant;

(y) Require, through an increase in price or otherwise, any Cardholder to pay any surcharge in connection with any Transaction or to pay any part of any charge imposed on Merchant by Bank except, in either case, as expressly permitted by, and under terms and conditions that comply in full with, Applicable Law;

(z) Provide cash to a Visa cardholder unless Merchant is either (i) participating in Visa Cash-Back Services or Discover Cash at Checkout program (ii) a hotel or cruise line;

(aa) Cause any Cardholder to waive its right to dispute a Transaction;

(bb) Request the Card Verification Value 2 data on any paper order form;

(cc) Request a Cardholder account number for any purpose that is not related to payment for goods or services; or

(dd) Add any tax to Transactions, unless applicable law expressly requires that a merchant be permitted to impose a tax, and only if such tax is included in the Transaction amount and not collected separately..

12. Prohibition of Furnishing Account Information; Use of Third Parties.

Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange any Card information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained through the use of a Card to any third party. Merchant may use third parties that do not have a direct agreement with Bank as Merchant's agent for the direct delivery of Transactions for clearing and settlement if:

(a) Merchant advises Bank that it will use a third-party processor in this capacity, identifying the third party so selected by Merchant;

(b) Merchant agrees that Bank will reimburse Merchant only for the Visa Transactions delivered by that third-party processor to VisaNet; and

(c) Merchant assumes responsibility for any failure by its third-party processor to comply with Applicable Law.

Merchant shall notify Bank of the identity of any third party performing services to Merchant in connection with which such third party has access to any Card information.

13. Daily Reconciliation of Transactions.

(a) Electronically Transmitted Transactions. Bank shall control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Bank receives payment from or through the Card Networks will be settled on a daily basis, and Bank shall deliver payment to Merchant in connection with such Transactions by effecting a credit to the Operating Account equal to the reconciled and paid summary Transaction total of all of Merchant's total paid summary Transactions since the previous credit.

Notwithstanding the foregoing, Bank may, in its sole discretion, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Bank receives payment in connection therewith from or through the Card Networks. In either case, Bank may, if necessary or appropriate, reduce any credit made to the Operating Account by, and/or Bank may require that Merchant pay to Bank an amount equal to: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the amounts, fees and charges, including (but not limited to) Chargebacks, Merchant owes Bank hereunder; (iv) all taxes, penalties, charges, fees and other items incurred by Bank that are reimbursable pursuant to this Agreement; (v) all applicable rates, fees and charges described on *Schedule A*; (vi) any amount Bank previously credited to the Operating Account that Bank determines, in good faith, was incorrectly so credited; and (vii) any amount Bank determines, in its sole discretion, represents unacceptable risk to the relevant Cardholder or Bank. Any application of funds associated with the settlement of Transactions that differs from the foregoing must be agreed to, in writing, by Bank and Merchant and may not, in any respect, violate Applicable Law.

(b) Reconciliation of Transactions. Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Bank for payment, and shall notify Bank immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Bank shall not have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Bank for settlement.

(c) Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Card Networks. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer, or Bank receives adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

14. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If Merchant limits its acceptance of returned merchandise, or if Merchant is an Electronic Commerce Merchant, Merchant will ensure that its return policy are clearly set forth on the Transaction receipt or on Merchant's website, as required by Applicable Law. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay the excess to Bank. Merchant shall make no cash refunds on credit Transactions and shall handle all credit adjustments as provided in this Section 14. If no refund or return will be given, Merchant must advise Cardholder in writing, at the time of the Transaction, that the sale is a "final sale" and "no returns" are permitted. Merchant must advise Cardholder in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Card Network reservation/no-show policies, and shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

15. Chargebacks. The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for: (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) under any of the following circumstances:

(a) No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to the Bank thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;

(b) The Transaction was based on a pre-authorization form, the Card on which the Authorization was based was canceled and Merchant was so notified prior to the Transaction;

(c) The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;

(d) The Card expired prior to the date of the Transaction or the date of the Transaction was prior to the validation date, if any, indicated on the Card;

(e) The Transaction information required by this Agreement was not submitted to Bank, or the procedures required by this Agreement to be followed in connection with processing a Transaction were not followed;

(f) Bank or Issuer receives a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;

(g) The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;

(h) A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in the Transaction;

(i) The Transaction was made at or by a merchant other than Merchant;

(j) The Transaction otherwise violates the terms of this Agreement or any Applicable Law;

(k) A Transaction is charged back by an Issuer; or

(l) Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchant agrees that it is solely responsible for all Chargebacks, and that Bank, without prior notice to Merchant, may: (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; and/or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If Merchant disagrees with Bank's decision to charge back a Transaction, Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued. Without limiting the generality of any other provision of this Agreement, if Bank takes legal action against Merchant for any Chargebacks or any amounts due Bank, Merchant shall pay the costs and attorneys' fees incurred by Bank, whether suit is commenced or not.

16. Merchant Statement. At least once each month, Bank shall provide a statement (the "Merchant Statement") to Merchant. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.

17. Retention of Information. Merchant shall retain the information required to be submitted in connection with a Transaction or to be maintained in connection with a complaint for seven years from the date of the Transaction or the complaint. At the request of Bank, Merchant shall provide such information to Bank within five (5) days of receipt of a request from Bank. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall, among other things, constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

18. Recovery of Cards. Merchant will use its best efforts to reasonably and peaceably recover and retain any Card with respect to which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the Equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card that it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

19. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall attempt to resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

(a) The Cardholder's name;

(b) The Card account number;

(c) The date and time the Cardholder asserted the claim or defense;

(d) The nature of the claim or defense; and

(e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

20. Confidentiality. Merchant shall treat all information that it obtains knowledge of or access to in connection with this Agreement as confidential information of Bank (collectively, "Bank Confidential Information"). Merchant shall protect all Bank Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion Merchant uses to protect similar confidential information of Merchant's own, but in no event less than reasonable care. Furthermore, Merchant shall not use, reproduce, distribute, disclose, or otherwise disseminate Bank Confidential Information, except in connection with the performance of Merchant's obligations under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the term of this Agreement and for a period of five years thereafter.

21. Compliance with Applicable Law.

a. General. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses, and that it is in compliance with all Applicable Law, in connection with the operation of its business. Merchant represents and warrants that it understands the importance of complying with Applicable Law in connection with any and all actions it takes in connection with Transactions (including, without limitation, complying with requirements relating to Transaction information, storage and disclosure), and covenants at all times to comply in full with all Applicable Law. Merchant further acknowledges and agrees that it is responsible for the actions of all of its employees while in Merchant's employ.

b. Data Security Rules. Without limiting the generality of the foregoing or any other provision of this Agreement, Merchant understands that it and all of its employees, agents, representatives and service providers must comply with the Rules, including without limitation, those relating to Cardholder Information security issues, non-disclosure of Cardholder Information and Transaction documents, retention and storage of Cardholder Information and Transaction information and other security procedures adopted by the Card Networks. Merchant hereby confirms its agreement to abide by and fully comply with such Rules, including, without limitation, the Rules and procedures described below:

i. Visa Cardholder Information Security Program, Mastercard Site Data Protection Program and Discover Information Security Compliance. Visa and Mastercard have implemented programs to protect Cardholder data. The Visa Cardholder Information Security Program ("CISP"), Mastercard SiteData Protection Program ("SDP") and Discover Information Security Compliance ("DISC") apply to Merchant if Merchant processes or stores Cardholder data as a result of Internet or mail/telephone acceptance of Visa, Mastercard or Discover Card account information. A copy of the complete Visa Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained online at www.visa.com/cisp or from Bank, and a copy of the SDP provisions can be obtained from Bank. Visa and Mastercard may impose restrictions, fines, or prohibit Merchant from participating in Visa or Mastercard programs if it is determined that Merchant is non-compliant. Merchant may be required to comply with an audit to verify compliance with security procedures. The following list describes some of the current CISP and SDP program requirements, with all of which Merchant may be required to comply, if applicable to Merchant: (A) install and maintain a working network firewall to protect data accessible via the Internet; (B) keep security patches up-to-date; (C) encrypt stored data; (D) encrypt data sent across networks; (E) use and regularly update anti-virus software; (F) restrict access to data by business "need to know"; (G) assign a unique ID to each person with computer access to data; (H) don't use vendor-supplied defaults for system passwords and other security parameters; (I) track access to data by unique ID; (J) maintain a policy that addresses information security for employees and contractors; and (K) restrict physical access to Cardholder information. Merchant must also comply with the requirements of Section 10.3 of the Visa Rules in connection with suspected or confirmed losses, thefts, compromises of information, and fraud or laundering associated with information. Please also note that this is not intended to be a complete list, and Merchant remains solely responsible for understanding and complying in full with all of the applicable CISP, SDP and DISC requirements.

ii. Transaction Information. Merchant acknowledges that the sale or disclosure of databases containing Cardholder account numbers, personal information, or other Transaction information to third parties is strictly prohibited by the Rules. Unless Merchant obtains consents from Bank, and each applicable Card Network, issuing bank and Cardholder, Merchant must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Transaction (including without limitation, the names, addresses and Card account numbers of Cardholders, copies of imprinted sales drafts and/or credit records, mailing lists, tapes or other media obtained in connection with a sales draft and/or credit record) except for purposes of authorizing, completing and settling Transactions and resolving any Chargebacks, retrieval requests or similar issues involving Transactions, other than pursuant to a court or governmental agency request, subpoena or order. Merchant shall use proper controls for, limit access to, and render unreadable prior to discarding all records containing Cardholder account numbers and Card imprints.

Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signature of a Cardholder, Merchant may not reproduce such signature except upon the specific request of Bank. Merchant shall store all media containing Cardholder names, Cardholder account information, and other personal information, as well as Card imprints (such as sales drafts and credit records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding any such information, destroy it in a manner that renders the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer or disclose any materials that contain Cardholder account numbers, personal information, or Transaction information to third parties, and shall return the information to Bank and provide acceptable proof of destruction to Bank.

c. Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with Applicable Law.

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

e. Response to Unauthorized Access. Merchant will notify Bank within twenty four (24) hours after it becomes aware of any actual or potential breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank, Issuer, regulators, governmental authority or any Card Network deems necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Bank and the Issuer(s) or the Card Network to investigate the incident and provide assistance and cooperation to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and

(c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear the cost of notifying the affected Cardholder.

22. Merchant's Business. Merchant will notify Bank immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant or Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; (f) changes its return policies or to another fulfillment house different from those identified in Merchant Application; or (g) changes to its Operating Account. Merchant will notify Bank promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of the Agreement and for Bank's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Bank may immediately terminate this Agreement.

23. Merchant's Representations and Warranties. Merchant represents and warrants that: (a) all information contained in the Merchant Application or any other documents delivered to Bank in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principals, partners, owners or officers (as applicable); (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of Applicable Law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; and (d) there is no action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations.

24. Merchant's Covenants. Merchant covenants that: (a) each Transaction presented to Bank for collection is genuine and is not the result of any fraudulent activity, or a Transaction prohibited by a Card Network, or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (b) each Transaction is the result of a bona fide purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Transaction record; (c) Merchant will perform all of its obligations to the Cardholder in connection with the Transaction evidenced thereby; (d) Merchant will comply with Bank's procedures for accepting Cards, and the Transaction itself will not involve any element of credit for any other purposes other than as set forth in this Agreement, and will not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Rules, the Consumer Credit Protection Act (15 USC §1601) or other Applicable Law.

25. Third Parties. Merchant may desire to use a third-party service provider to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Bank previously in writing, and unless such third party is fully compliant with all Applicable Laws. Any third party used by Merchant must be registered with the Card Network prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any third-party service provider and Merchant will be responsible for compliance by such third-party service provider with all Applicable Laws. Merchant will indemnify and hold harmless Bank from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including third-party service providers. Bank is not responsible for any third-party service provider used by Merchant, nor is Bank required to process any Transaction which Bank receives from Merchant or its service providers in any format not approved by Bank. Bank has no responsibility for, and shall have no liability to Merchant in connection with, any hardware, software or services Merchant receives subject to a direct agreement (including any sale, warranty or end-user license agreement) between Merchant and a third party.

26. Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank is required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank. All other federal, state or local taxes of any description related to this Agreement, including, but not limited to excise, sale or use taxes that are imposed on Transactions, are Merchant's sole responsibility and Merchant hereby agrees to be responsible for the collection and payment thereof. Merchant shall not add any tax to any Transaction unless Applicable Law expressly provides that Merchant is permitted to impose a tax, and any such tax amount, if so allowed, shall be included in the Transaction amount and not collected separately. Bank shall be entitled to recover from Merchant any of said taxes paid by it on behalf of Merchant immediately after payment.

27. Limitation of Liability. In addition to all other limitations on the liability of Bank contained in this Agreement, Bank shall not be liable to Merchant or Merchant's customers or any other person for any of the following:

(a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;

(b) Any loss caused by a Transaction downgrade resulting from defective or faulty Equipment, even if such Equipment is owned by Bank;

(c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank or any other person for any reason; or

(d) Interruption or termination of any Services caused by any reason.

IN NO EVENT WILL BANK OR ITS AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK PURSUANT TO THIS AGREEMENT. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S PERFORMANCE OR ANY FAILURE TO PERFORM, BANK'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE.

28. Limitation on Damages. Any liability of Bank under this Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees retained by Bank pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

29. Indemnification. Merchant agrees to defend, indemnify and hold Bank and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, losses, claims, damages, liabilities, fees or expenses of any nature whatsoever, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates) asserted against or incurred by Bank arising out, relating to or resulting from, either directly or indirectly, of any of the following:

(a) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant;

(b) Any act or omission of Merchant, including negligence;

(c) Merchant's failure to comply with any Equipment's user's guide;

(d) Merchant's failure to comply with any Applicable Law;

(e) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;

(f) The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;

(g) Merchant's selection of an Internet service provider or other telecommunication services provider;

(h) The theft of or damage or destruction to any Equipment;

(i) Full Recourse Transactions, unauthorized Transactions and prohibited Transactions; or

(j) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information.

Merchant will promptly reimburse Bank for any assessments, fines, fees or penalties imposed by any Card Network in connection with this Agreement, including the data security provisions, and authorizes Bank to deduct any such sums from the Operating Account, the Reserve Account or amount to otherwise be cleared and settled with Merchant.

30. Credit Investigation and Bank Auditing. Bank may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank to complete Bank's audit. Merchant authorizes parties contacted by Bank to release the credit information requested by Bank, and Merchant agrees to provide a separate authorization for release of credit information, if requested by Bank. Merchant shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. Without limiting the generality of the foregoing, Merchant shall provide to Bank its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.

31. Termination of Agreement by Bank. Bank may terminate this Agreement, without cause, upon at least 30 days' prior written notice to Merchant. In addition, Bank may terminate this Agreement immediately upon written or verbal notice to Merchant, or by closing Merchant's Equipment, upon the occurrence of any of the following (each, an "Event of Default"):

(a) Any information concerning Merchant obtained by Bank is unsatisfactory to Bank, in Bank's sole discretion.

(b) Any act of fraud or dishonesty is committed by Merchant, its employees or agents, or Bank believes in good faith that Merchant, its employees or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation.

(c) Chargebacks are excessive, in the opinion of Bank.

(d) There is a breach of any representation or warranty made by Merchant to Bank, or Merchant defaults in the performance of any of its obligations under this Agreement.

(e) A petition under any bankruptcy or insolvency law is filed against or by the Merchant.

(f) Bank determines that the continuation of this Agreement may create harm or the loss of goodwill to Bank or any Card Network.

(g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank hereunder.

(h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank.

(i) Any insurance policy obtained by Bank or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason.

(j) Merchant fails to provide financial statements suitable to Bank on request or there is a material adverse change in Merchant's financial condition.

(k) Bank is unable to perform its duties under this Agreement and Bank determines that it is not feasible to provide the Services contemplated by this Agreement to Merchant.

(l) Any Card Network requests or demands that this Agreement be terminated.

(m) any information which Merchant provided to Bank, including in the Merchant Application, was false, incomplete or misleading when received.

(n) an overdraft in the Operating Account exists for more than 3 days.

(o) Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent or otherwise unauthorized Transactions.

(p) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable Law.

(q) Merchant has failed to timely pay Bank any amount due.

(r) Merchant has failed to promptly perform or discharge any obligation under its Operating Account or the Reserve Account.

(s) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given.

(t) Merchant has defaulted on any agreement it has with Bank.

(u) Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service.

(v) any Rules are amended in any way so that the continued existence of this Agreement would cause Bank to be in breach of those rules.

(w) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way.

(x) termination is necessary to prevent loss to Bank or Issuers.

(y) Merchant's type of business indicated on the merchant application or as conducted by Merchant could endanger Bank's safety or soundness.

(z) Merchant appears on any Card Network's security reporting.

Bank may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the date of such Transaction.

In the event Bank terminates this Agreement following any Event of Default, Merchant: (i) agrees that Bank may place Merchant on each Card Network's "Terminated Merchant File" (or any other list or file serving a similar purpose); and (ii) agrees to indemnify and hold Bank harmless from and against any and all costs, expenses and liabilities incurred by Bank in connection with or arising out of such Event of Default.

In the event of a bankruptcy filing against or by Merchant, Bank reserves the right to suspend or discontinue Services. Upon filing voluntary or involuntary bankruptcy proceedings by or against Merchant, Merchant must notify Bank in writing within five (5) days. Notification must be sent by certified mail to Bank at the address set forth herein. Credits to merchant's designated account and other payments to merchant are provisional. The Parties acknowledge the Agreement in an agreement whereby Bank is extending financial accommodations to the Merchant within the meaning of 11U.S.C.365 (c) (2) of the Bankruptcy Code as amended from time to time. The right of merchant to receive any amounts due or to become due from the Bank is expressly subject and subordinate to the Chargebacks, recoupment, setoff, lien, and/or security interest rights that are being applied to claims that are liquidated, unliquidated, fixed contingent, matured or unmatured.

32. Termination of Agreement by Merchant. Merchant may terminate this Agreement by providing written notice to Bank if Bank amends *Schedule A* pursuant to Section 31 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from a Card Network, prior to the effective date of such amendment. However, continued use of the Services after the effective date of any such rate or fee change shall be deemed Merchant's acceptance of such rate or fee changes for the Services, throughout the term of this Agreement.

33. Setoff. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by Law, Bank may set off any amounts due to it under this Agreement against any property of Merchant in its possession or under its control.

34. Exclusivity and Early Termination Fee. Merchant shall submit all Transactions made during the term hereof solely to Bank for processing. If Merchant fails to comply with this provision, or if this Agreement is terminated for any reason, Merchant agrees to pay Bank, within 10 days of the date of non-compliance or termination, a liquidated damages sum equal to the greater of (i) \$250 per Merchant location, or (ii) an amount to be determined by multiplying \$25 by the number of months remaining in the term hereof, and multiplying that number by the number of Merchant locations. Merchant and Bank agree that the damages

suffered by Bank as a result of such non-compliance or termination would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above. Any exceptions to this exclusive arrangement must be approved by Bank in advance in writing.

35. Amendments to this Agreement. From time to time Bank may amend this Agreement as follows:

(a) Bank may amend or delete Cards or Services listed in *Schedule A* by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

(b) From time to time, Bank may introduce new fees or change the rates, fees and charges set forth on *Schedule A*. Bank will provide written notice to Merchant of all such amendments. Bank may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached or if the risk factors associated with processing Transactions increase. If notice is required, Bank will give written notice on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Section 28.

(c) Bank may amend this Agreement in any manner other than as described in Section 31(a) or 31(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.

36. Assignment. This Agreement may not be assigned, directly or by operation of law, by Merchant without the prior written consent of Bank. Bank may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.

37. Financial Accommodations. Bank and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

38. Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.

39. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

40. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

41. Severability; Conflict with Rules. If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof. In the event of a conflict between this Agreement and the Rules, the Rules shall govern and control.

42. Notices. Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when: (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) business days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to Fifth Third Bank: 6111 N. River Road, Rosemont, IL 60018

If to ISO: 1754 Bagdad Rd., Bldg 100A, Cedar Park, TX 78613

If to MERCHANT:

Address listed on the application to which this Agreement is attached.

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.

43. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the state of Illinois, without regard to internal principles of conflict of laws, and federal law. Bank and Merchant agree that, in the event of any dispute regarding, arising out of or relating to this Agreement or any personal guarantee related hereto, the courts of the state of Illinois shall have and be vested with personal jurisdiction over the parties. **Such parties further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this Agreement or any personal guarantee related hereto herein shall be filed and litigated only in courts located in Williamson County, Texas and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this Agreement or any personal guarantee related hereto.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, MERCHANT AND BANK WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDINGS REGARDING ANY LITIGATION RELATED TO THIS AGREEMENT AND EACH AGREE THAT ANY SUCH ACTIONS OR PROCEEDINGS WILL BE TRIED A JUDGE WITHOUT A JURY.

44. Third-Party Beneficiary. Bank's respective affiliates and any third party Bank uses in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person or entity any rights or remedies, and the parties do not intend for any person or entity to be third-party beneficiaries of this Agreement.

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

46. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

47. No Waiver. Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

48. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

49. Cooperation. Merchant covenants and agrees that, if it is undergoing forensic investigation at the time this Agreement is signed, Merchant will fully cooperate with the investigation until it is completed.

50. IRS Reporting Information. Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities such as Bank and third-party settlement organizations are required to file an information return reflecting all payment card transactions and third-party network transactions occurring in a calendar year. This requirement applies to returns for all calendar years after December 31, 2010 and Merchant will receive a form 1099-K reporting Merchant's gross transaction amounts for each calendar year. In addition, amounts payable under Section 6050W are subject to backup withholding requirements. Merchant acquirers such as Bank, either itself or through third parties, are required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee's taxpayer identification number (TIN) to the merchant acquirer; or (b) if the IRS notifies the merchant acquirer that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provides Bank with the correct name and TIN that Merchant uses when filing its income tax return that includes the transactions for Merchant's business. In addition to the fees set forth on the Merchant Application, if Merchant fails to comply with the obligations set forth in this section, Bank may charge Merchant additional amounts determined by Bank and may pass through any additional fines, costs or expenses incurred by Bank.

51. E-Sign Consent Agreement. By accessing and using the Services, Merchant hereby consents and agrees that:

(a) Bank can provide disclosures required by Law and other information about Merchant's legal rights and duties to Merchant electronically.

(b) Where required or requested, Merchant's electronic signature (via "click-through" or other method) on agreements and documents relating to use of the Services has the same effect as if Merchant signed them in ink.

(c) Bank can send all communications, billing statements, amendments to the Services or this Agreement, notices, and other disclosures or information regarding the Services or Merchant's access to and use of the Services (collectively, "Disclosures") to Merchant electronically (1) via e-mail, (2) by access to a web site that Bank designates in an e-mail notice Bank sends to Merchant at the time the information is available, or (3) to the extent permissible by Applicable Law, by access to a website that Bank will generally designate in advance for such purpose.

(d) If Merchant wants a paper copy, Merchant can print a copy of the Disclosure or download the information for Merchant's records.

(e) This consent applies to all future Disclosures sent to Merchant in connection with the Services or this Agreement.

52. Legal Effect. By consent, Merchant agrees that electronic Disclosures have the same meaning and effect as if Bank provided paper Disclosures to Merchant. When Bank sends Merchant an email or other electronic notification alerting Merchant that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Bank provided a paper Disclosure to Merchant, whether or not Merchant chooses to view or print or download the Disclosure.

53. Limited Acceptance. Merchant has the option to elect to be a Limited Acceptance Provider and only accept only certain Visa, Mastercard, Discover or American Express ("Limited Acceptance"). Bank and its designated vendors have no obligations with regard to Limited Acceptance except those expressly stated in the Rules or the Laws. Bank and its designated vendors have no obligation to police card types accepted by Merchant at the point of sale. If Merchant elects to be a Limited Acceptance Provider, Merchant is solely responsible for implementing its Limited Acceptance and for paying all costs related thereto. Should Merchant submit a transaction involving a Card type that it has indicated it does not wish to accept, Bank and/or its designated vendors may process that transaction and Merchant will be responsible for all fees, charges and assessments related to that transaction. If indicated on the Merchant Application, Merchant agrees to elect to be a Limited Acceptance Provider and will accept only the Visa and/or Mastercard and/or Discover and/or American Express types indicated on the Merchant Application.

54. Participation in the American Express OptBlue® Program

If Merchant elects to participate in the AMERICAN EXPRESS OptBlue Program ("American Express Card Acceptance"), the following terms and conditions apply:

(a) The definition of "Card Network(s)" is to read as follows:

"Card Network(s)" means VISA U.S.A., Inc. ("Visa"), Mastercard International Incorporated ("MasterCard"), DFS Services LLC ("Discover") and American Express Travel Related Services Company, Inc. ("American Express").

(b) The definition of "Card(s)" is changed to read as follows:

"Card(s)" means either a Visa, MasterCard, Discover or American Express credit card, debit card (or other similar card that requires a PIN for identification purposes), or pre-paid, stored-value or gift card.

(c) The definition of "Issuer" is changed to read as follows:

"Issuer" means American Express or a member of a Card Network that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards

(d) Merchant authorizes Bank and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant.

(e) Merchant agrees that Bank may disclose to American Express information regarding Merchant and Transactions to American Express, and that American Express may use such information: (i) to perform its responsibilities in connection with American Express Card Acceptance; (ii) to promote American Express; (iii) to perform analytics and create reports; and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of American Express Card Acceptance, and important transactional or relationship communications from American Express. American Express may use the information about Merchant obtained in this Agreement at the time of setup to screen and/or monitor Merchant in connection with American Express marketing and administrative purposes. Merchant agrees it may receive messages from American Express, including important information about American Express products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Merchant. Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. Merchant agrees that it may be sent fax communications.

(f) Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ISO; however, Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Merchant from receiving important transactional or relationship messages from American Express.

(g) Merchant acknowledges that it may be converted from American Express Card Acceptance to a direct relationship with American Express if and when its American Express-related Transaction volumes exceed the eligibility thresholds for American Express Card Acceptance. If this occurs, upon such conversion: (i) Merchant will be bound by American Express's then-current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant.

(h) Merchant will not assign to any third party any payments due to it under American Express Card Acceptance, and all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future American Express-related Transaction receivables to Bank, its affiliated entities and/or any other cash advance funding source that partners with Bank or its affiliated entities, without consent of American Express. Notwithstanding the foregoing, Bank prohibits Merchant from selling or assigning future American Express-related Transaction receivables to any third party.

(i) Notwithstanding anything in this Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of this Agreement applicable to American Express Card Acceptance to enforce such terms against Merchant.

(j) Merchant may opt out of accepting American Express at any time without directly or indirectly affecting its rights to accept other Cards.

(k) Bank and ISO have the right to terminate Merchant's participation in American Express Card Acceptance immediately upon written notice to Merchant: (i) if Merchant breaches any of the provisions of this Section 46 or any other terms of this Agreement applicable to American Express Card Acceptance; or (ii) for cause or fraudulent or other activity, or upon American Express's request. In the event Merchant's participation in American Express Card Acceptance is terminated for any reason, Merchant must immediately remove all American Express branding and marks from Merchant's website and wherever else they are displayed.

(l) Merchant's refund policies for American Express-related Transactions must be at least as favorable as its refund policy for purchase with any other Card, and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Applicable Law. Merchant may not bill or attempt to collect from any cardholder for any American Express-related Transaction unless a Chargeback has been exercised. Merchant has fully paid for such Chargeback, and it otherwise has the right to do so.

(m) Merchant must accept American Express as payment for goods and services (other than those goods and services prohibited by this Agreement or Applicable Law) sold, or (if applicable) for charitable contributions made at all of its business locations and websites, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of Merchant's business locations and websites under this Agreement.

(n) Merchant or American Express may elect to resolve any claim against each other, or against Bank or ISO with respect to American Express-related Transactions, by individual, binding arbitration, decided by a neutral arbitrator.

(o) Merchant will comply in full with American Express's Merchant Operating Guide (as the same may be amended from time to time).

(p) American Express has the right to modify the terms of this Section 46 and to terminate Merchant's acceptance of American Express-related Transactions and to require an investigation of Merchant's activities with respect to American Express-related transactions.

(q) Merchant will fully comply with American Express's Data Security Operating Policy (DSOP), Merchant Data Security Requirements, and Information Protection Contract Requirements ("IPCR") as each may be updated by American Express from time to time.