

Merchant Bankcard Services Agreement Card Service Terms & Conditions

This Agreement sets forth the terms of the Services offered to you by Chesapeake Bank ("Bank") and Complete Merchant Solutions, LLC ("CMS") (Bank and CMS collectively "we" or "us"). The Bank is the principal party to this Agreement and the Services as provided under this Agreement are extended by the Bank. If you are approved for the Services, you agree to be bound by the terms of this Agreement. Your use of the Services will be additional evidence of your agreement to these terms.

1. **Definitions.** As used in this Agreement, the terms below will have the following meanings:

Agreement is the agreement among CMS, you and Bank contained in the merchant application and Agreement, any attachments, addenda, schedules thereto, each as amended from time to time, all of which collectively constitute the agreement among the parties.

Card is a valid credit Card or debit Card bearing the service mark of Visa or MasterCard and, to the extent that you have signed up for such services, the marks of any other Card Association.

Card Association is any entity formed to administer and promote Cards, including, without limitation, MasterCard International, Inc., VISA U.S.A., Inc., VISA International, Inc., Discover, Diners Club, JCB and American Express.

Cardholder is the individual whose name is embossed on a Card and any authorized user of such Card.

Merchant is the party identified as "Merchant" on the merchant application and Agreement. The words "you" and "your" refer to Merchant.

Services are the credit card, debit card, gift card, loyalty card, ACH, POS equipment, software, payment gateway and related goods and services provided by us to you.

Transaction is a sale, rental or service, or any credit thereon, between you and a bona fide Cardholder

Transaction record is any written or electronic evidence you present to us of a Transaction.

2. **Honoring Cards.** Except as otherwise required under any applicable laws, you will honor without discrimination all valid Cards when properly presented by Cardholders in connection with bona fide, legitimate business transactions arising out of your usual trade or business. Any use of the Card Association marks must comply with Card Association rules and regulations and any such use will terminate effective upon the termination of this Agreement or notice by us.

3. **Compliance.** You agree to comply with:

(a) **Applicable Law**—all laws applicable to you, your business, and Card Transactions, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.

(b) **Card Association**—current and future Card Association rules and regulations.

4. **Prohibitions.** You will not do any of the following:

(a) **Surcharge**—require, through an increase in price or otherwise, any Cardholder to pay a surcharge at the time of sale or to pay any part of any charge that we impose on you. Discounts for payments in cash, however, are permitted as set forth under the applicable laws.

(b) **Finance Charge**—add a finance charge to any Transaction. The sum of an installment transaction may not exceed the total sales price of merchandise on a single-transaction basis.

(c) **Amount Limitations**—establish minimum or maximum Transaction amounts except if set forth in any applicable laws.

(d) **Personal Identification**—require a Cardholder to provide personal identifying information, such as a telephone number, address, or driver's license number, as a condition of honoring any Card, unless the information: (a) is needed to complete the transaction (e.g., when an address is needed to complete a mail order transaction); or (b) is required by a Card Association in connection with a particular transaction and is permitted by law.

(e) **Third Party Transactions**—present sales slips for services or goods provided by others. You may only use the Services for Transactions undertaken in the ordinary course of your business.

(f) **Cash Payments/Advances**—receive any payment from a customer for charges included on any Transaction record resulting from the use of a Card, nor receive any payment from a Cardholder to prepare or present a credit slip for the purpose of effecting a deposit to the Cardholder's account. You will not make a cash advance to a Cardholder, either directly or by deposit to the Cardholder's account.

(g) **Factoring**—present to us, directly or indirectly, any Transaction record that does not result from a transaction between you and the Cardholder.

(h) **Unauthorized Transactions**—present us with a Transaction record that you know or should know is fraudulent or unauthorized by the Cardholder.

(i) **Credits**—process a credit transaction without having completed a previous retail transaction with the same Cardholder.

(j) **Non-customary Transactions**—present us Transaction records for Transactions outside the normal scope of your business, as reflected in your merchant records with us (e.g., the sale of travel services by a

bicycle merchant). You may not conduct mail order, telephone order, or e-commerce (Internet) Transactions unless we authorize you to conduct such Transactions.

(k) **Cardholder Information**—sell, purchase, provide, exchange, or otherwise disclose a Cardholder's name or Card number that you obtain as a result of a Transaction to any third party other than us, your agents (to assist you in your business), a Card Association, or as required by law. If the cardholder's identification is uncertain, you must contact us for instructions. If we ask you to recover the Card, you must assist us to do so according to our instructions.

(l) **Your Cards**—present us with Transactions records for sales involving a Card issued to you.

(m) **Scrip**—accept any Cards for the purchase of scrip.

(n) **Special Conditions**—establish any special conditions for accepting a Card.

(o) **Chargebacks**—submit a transaction or sale that has been previously charged back.

(p) **Split Transactions**—use two or more sales transaction receipts for a single transaction to avoid or circumvent authorization limits or monitoring programs.

5. **Advertising.** Whenever you accept Cards, you will inform the public of the Cards that you honor. However, you may not indicate that any of the Card Associations endorse your goods or services nor refer to the Card Associations when stating your eligibility requirements for purchasing your products, services or memberships.

6. **Exclusivity.** You will not use the services of any bank, corporation, entity or person other than us for authorization and/or settlement of Visa, MasterCard or any other Transactions involving a Card throughout the term of this Agreement.

7. **Identification of Cardholder/Mail Order; Telephone Order;**

Internet Transactions. You will not engage in any Card Transaction with a Cardholder who fails to present the Card that is intended to be used to complete the Transaction. This limitation does not apply if you are approved to engage in mail/telephone/Internet orders. You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total bankcard volume reflected on your merchant application and Agreement. Failure to adhere to this requirement may result in cancellation of this Agreement, or we may hold your funds and/or interrupt or terminate your Services. Mail/Telephone/Internet transactions have a substantially higher risk of chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the sales slip as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet order transaction. In any non-imprint transaction, you will be deemed to warrant the customer's true identity as an authorized user of the Card. You recognize that any Transaction in which the Card and/or the Cardholder is not present poses significant chargeback and/or unauthorized transaction risk, for which you have no recourse to us.

8. **Transaction Requirements.** As to each Transaction you tender to us for processing, you represent and warrant that:

(1) The Transaction represents payment or refund of payment, for the bona fide sale or lease of the goods, services or both, which you have provided in the ordinary course of your business, and the Transaction is not submitted on behalf of a third party.

(2) The Transaction does not involve any element of credit for any purpose other than payment for a current Transaction (including payment of a previously-dishonored check) and, except in the case of approved installment or pre-payment plans, the goods have been shipped or services actually rendered to the Cardholder.

(3) The Transaction is free from any alteration not authorized by the Cardholder.

(4) Neither you nor your employee has advanced any cash to the Cardholder or to yourself or to any of your representatives, agents or employees in connection with the Card transaction, nor have you accepted payment for effecting credits to a Cardholder's account.

(5) To the best of your knowledge, the goods described in each Transaction are your sole property and you are free to sell them.

(6) You have made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy.

(7) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectability of the subject Transaction is in any manner impaired, and the Transaction is in compliance with all applicable laws, ordinances and regulations; and you have originated the Transaction in compliance with this Agreement and the Card Association rules and regulations.

(8) For a Card sale where the Cardholder pays in installments or on a deferred payment plan, a Transaction record has been prepared separately for each installment or deferred payment on the date(s) the Cardholder agreed to be charged. All installments and deferred payments, whether or not they have been submitted to us for processing, shall be deemed to be a part of the original Card sale.

9. **Obtaining Authorization.** Before you conduct any Card Transaction, you will obtain an authorization for the full amount of the Transaction from the authorization center that we designate. Authorization is required for each installment of installment transactions. Authorizations only confirm the availability of credit. They are not a promise, guarantee or representation by us or

the authorization center that a Transaction is or will be deemed valid and not subject to dispute. Authorizations will not in any way affect our right to revoke payment or otherwise exercise our right to charge the Transaction back to you.

- 10. Settlement of Card Transactions.** We have the sole right to receive payments on any Transaction record transmitted by you as long as: (a) we have paid you the amount represented by the Transaction record, less the fees, reserves, discounts and other charges permitted by this Agreement; and (b) we have not charged such Transaction record back to you. Except as otherwise provided in this Agreement, and subject to any warranty by you and our right of chargeback, we will accept valid Transaction records from you during the term of this Agreement and pay you the total amount represented by the Transaction records, less all fees, reserves, discounts and other charges. Any payment made by us to you in connection with a Transaction will not become final until the expiration of the chargeback period established by the Card Association rules and regulations. We will pay you for Transactions by making a deposit to your checking account ("Merchant Bank Account") with us or with any other financial institution of your choice that can accept Automated Clearing House ("ACH") transfers. We may revoke any prior provisional settlement of a Transaction record by making an immediate withdrawal (through the ACH or otherwise) from your Merchant Bank Account, without prior notice or demand. You waive all notice of default or nonpayment, and you consent to all extensions or compromises given by us, or the Card Associations to any Cardholders
- 11. Refund, Exchange and Return Policies.** Your policy of permitting refunds, exchanges, returns, or adjustments for Card purchases may not be more restrictive than for your cash customers. If you accept any goods for return, permit the termination or cancellation of any services, or allow any price adjustment (other than involuntary refunds required by applicable airline or other tariffs, or as otherwise required by law), you will not make any cash refund, but will complete and deliver promptly to us a credit Transaction record evidencing the refund or adjustment. The amount of the credit Transaction record may not exceed the amount of the original Transaction. Your return/cancellation policy must be disclosed to your customers. You will provide us with a written description of your refund and return policy upon our request.
- 12. Chargebacks.** We may charge back Transactions to you under the following circumstances. You agree to immediately pay us the amount of the chargebacks without any further demand from us.
- The Transaction record is: (i) illegible or the data contained therein is otherwise indiscernible; (ii) not endorsed, (iii) not delivered to us within the required time limits; or (iv) altered or incomplete (e.g., missing the account number, Card expiration date, merchant name or location, the transaction amount or date, Cardholder signature, description of product or services, or authorization code.)
 - You fail to obtain prior authorization for the Transaction.
 - The Transaction record is a duplicate of an item previously paid or is one of two or more Transaction records generated in a single transaction in violation of this Agreement.
 - The Cardholder disputes the validity or authorization of the Transaction record, or the sale, delivery, quality or performance of the goods or services purchased; or alleges that a credit adjustment was requested and refused, or that a credit adjustment was issued by you but not posted to the Cardholder's account.
 - We determine that you have violated any term of this Agreement in connection with the Transaction record or the related Transaction.
 - We determine that the Transaction record is fraudulent or that the related transaction is not a bona fide transaction in the ordinary course of your business (as described in our records) or is subject to a claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of you, your agents or employees.
 - The Transaction record arises from a mail order, telephone order, or e-commerce transaction that the Cardholder disputes entering into or authorizing, or involves an account number that never existed or has expired.
 - In any other situation in which a Transaction has been charged back to us in accordance with the chargeback rules established by the Card Association. We may charge back a transaction in accordance with this section even if an Authorization was obtained. We may impose a per-item handling fee for each chargeback that is processed. We may from time to time, in our sole discretion and without prior notice, change the chargeback fee. If your chargeback activities exceed a ratio of 1% (calculated by dividing the number of chargebacks in any month by the number of sales during that month) or any other amount as set forth by a Card Association, you will pay an additional per-item charge established by us for processing such excessive chargebacks. Since Card Association rules may not allow the reversal of a chargeback in certain electronic transactions, you agree to accept all chargebacks issued pursuant to the Card Association rules.

- 13. Fees.** You will promptly pay us the fees and charges we establish for the Services, including (without limitation) the following:
- Fines and Penalties.** The Card Association may impose fines or penalties upon us for violations of their bylaws, rules or regulations. If we determine that you are responsible for the violation, you will indemnify, reimburse and hold us harmless for the fine or penalty, whether the violation occurs or the fines, penalties or other assessments are imposed during or after the term of this Agreement. Card Associations may charge us a Chargeback handling fee or fine, for example, if you exceed certain thresholds set by the Card Association. You will pay or reimburse us within twenty four (24) hours of our request, whether or not you intend to protest the Card Association's assessment. You may contact us for information regarding Card Association chargeback limitations and fines.
 - Legal Fees and Costs.** We will pass through to you, and you agree to pay, the legal fees and costs we incur in seeking legal advice in matters not in the ordinary course of our relationship with you, as described in this Agreement. This includes, but is not limited to, contract disputes, legal procedures, bankruptcy or other similar events, whether the fees or costs are incurred during or after the term of this Agreement.
 - Service Fees.** The fees listed in this Agreement, any merchant application, any addendum to this Agreement, any other documents provided by us to you and those set forth in the Services Guide, as amended by us from time to time. For Transactions that do not qualify, Card Association interchange fees provide for a "down-grade," and we will apply a higher rate for the non-qualifying transactions than the qualifying rate as set forth in our documentation. We may modify your pricing at any time without prior notice. In addition, we may change our fees, charges and discounts for any reason, including, but not limited to, resulting from (i) changes in Card Association fees (such as interchange, assessments and other charges) or (ii) changes in pricing by any third party provider of a product or service used by you. Such new prices will be applicable to you as of the effective date established by the Card Association or third party provider, or as of any date specified in our notice to you.
 - You must maintain sufficient funds in your designated Merchant Bank Account to cover all chargebacks and related fees. Simultaneously, with each transaction processed by you, we have a contingent and unmatured claim against you for any amount we must pay as a result of your processing of transactions, including, but not limited to, any chargebacks, fees, discounts, customer credits and adjustments, charges, fines, assessments and penalties. All settlements or credits given or payment made by us to you in connection with your transactions are provisional, and subject to revocation, chargeback or refund, subject to the terms and conditions of this Agreement and the Card Association rules and regulations. Your right to receive any amounts due from us is expressly subject and subordinate to our chargeback, set-off, lien and security interest rights without regard to whether such chargeback, set-off, lien and security interest rights are applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured. WE MAY, WITHOUT FURTHER NOTICE, ELECTRONICALLY DEBIT YOUR MERCHANT BANK ACCOUNT TO COVER ALL SUMS OWING TO US PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, AMOUNTS OWING FOR CHARGEBACKS, RELATED FEES AND FINES IMPOSED BY CARD ASSOCIATIONS. Should your account become delinquent and subject to ACH Rejects, all chargeback and retrieval fees may increase by up to 200% of the original fee listed in this Agreement.
 - Merchant is responsible for the timely reconciliation of all issues related to Services provided under this Agreement. Merchant must submit any dispute to CMS, in writing within sixty (60) days of the initial posting of the disputed item to the Merchant Bank Account or appearance of the disputed item on the Merchant's statement. If Merchant does not notify CMS within the sixty (60) day time period, Merchant shall be deemed to have accepted without question such payments and may not in the future contest the amount Merchant was paid or seek reimbursement for any discrepancies.
- 14. Merchant Cash Reserve Account.** We may establish a "Merchant Cash Reserve Account" in connection with your Card Transactions and may fund it by (a) withholding a portion of the amount of each Card Transaction and/or (b) requiring you to deposit funds to the Merchant Cash Reserve Account. The Merchant Cash Reserve Account shall be established at the Settlement Bank in the Merchant's name, and the funds therein shall be the property of the Merchant. We may use funds in the Merchant Cash Reserve Account to cover chargebacks, credits, fines, costs and other obligations you incur under this Agreement (collectively, "Liabilities"). Notwithstanding the foregoing, in the event of any governmental action relating to you or your Merchant Account, a lawsuit as a result of Cardholder disputes or any negative public occurrence due to your general business practices that may be construed as harmful to the CMS brand, the Merchant Cash Reserve Account shall be immediately surrendered to CMS for liquidated damages, brand damages, and other considerations of CMS. We may change the required reserve amount, the period that reserves may be held, and the percentage withheld from each Transaction based on our assessment of the amount needed to cover your current and

future Liabilities. Merchant's interest in the Merchant Cash Reserve Account shall be limited to any surplus after satisfaction of all Liabilities.

If we require a Merchant Cash Reserve Account at the time we approve your application for the Services, we will notify you of the percentage and period of your required reserves in our merchant approval. If a reserve is required at a later date, we may establish the reserve immediately and notify you of that fact (or of any change in the required reserve percentage or period). You agree to deposit additional amounts in your Merchant Cash Reserve Account upon our request.

We may elect, at our sole discretion, to withhold payment to you of amounts otherwise payable under this Agreement that we reasonably determine to be necessary to cover future Liabilities that may result from your Card activities. If we determine that the proceeds of your future Transactions may not cover anticipated Liabilities (e.g., because this Agreement has been terminated), we also may prohibit the withdrawal by you of some or all of your funds then held on deposit in the Merchant Bank Account or any other account you have with us. Any liabilities may first be charged to the Merchant Bank Account. If the Merchant Bank Account does not contain sufficient funds to cover the liabilities we may withdraw enough funds from any other account, such as the Merchant Cash Reserve Account, Money Market Account, or Brokerage Account to cover any and all outstanding liabilities.

We may use the Merchant Cash Reserve Account to cover any of your Liabilities, whether they are incurred before or after the date of termination. You acknowledge that if a fine is assessed to Bank or CMS by VISA, MasterCard, or Discover that is caused by the processing activity of merchant, CMS may retain any variance in the amount charged to Merchant as compensation for damages to the CMS brand. Bank or CMS may enforce such security interest without notice or demand. Merchant's obligation to maintain such Reserve Account shall survive the termination of this Agreement by a period of three hundred sixty five (365) days (or longer depending on Merchant's product and business practices) during which time Bank's or CMS's security interest shall continue. After three hundred sixty five (365) days from termination of this Agreement, if reserve funds have not been requested from Bank or CMS, funds become the property of CMS. Bank or CMS may impose a monthly administration fee on reserve accounts related to inactive or terminated Merchant Accounts. Your funds held in a Merchant Cash Reserve Account may be held in a commingled Merchant Cash Reserve Account for the reserve funds of our merchants. You may or may not receive any accrued interest on any funds held by us as a result of your processing of transactions, including, but not limited to, funds held by us in a Merchant Cash Reserve Account. Notwithstanding the foregoing, we shall be entitled to accrued interest on any such held funds.

15. **Financial Information and Review.** You authorize us to obtain, from time to time, credit, financial, and other information regarding you from others, such as credit reporting agencies. You authorize us to respond to requests from others about our experience with you. You agree to provide us, upon our request, with: (a) an updated financial statement; (b) information regarding the ownership, character and nature of your business; and (c) the estimated amount and volume of your future Card Transactions. You agree to permit us and Card Associations to review your Cardholder Transaction records and inspect your business locations during regular business hours.
16. **Changes in Your Business.** You agree to provide us with at least 30 days' advance written notice of any material (10% or greater) change in the ownership of your business and/or the type, scope or nature of your business. This would include, without limitation: a change in your legal structure, such as from a partnership to a corporation; a change in your business name or the use of a fictitious business name; your engagement in a new line of business; entering into a joint venture or joint marketing agreement; a change in location or the addition of a sales location; or the start-up or conduct of a mail-order, e-commerce, and/or telephone-order business. If there is or will be a material change in your business, we may: (a) refuse to accept or pay for sales slips (e.g., e-commerce Transaction records if you have not been approved by us for that service), (b) increase your required reserve, and/or (c) terminate this Agreement.
17. **Security Interest.** You grant us a security interest in all reserves and in all deposits, regardless of source, made to the Merchant Bank Account, the Merchant Cash Reserve Account, and any other deposit or brokerage accounts you maintain with us or with any other financial institutions now or in the future, as well as the proceeds of those deposits, to secure your obligations. We may enforce our security interest without notice or demand of any kind if you breach this Agreement, by withdrawing funds from or freezing your accounts, taking possession of any deposits, and/or taking any other lawful action. Our security interest will remain after the termination of this Agreement as long as any of your Transactions remain subject to chargebacks, and so long as any fee, charge, cost or obligation described in this Agreement remains unpaid by you or could be incurred by us as a result of your actions or omissions. You agree to take such actions and to execute such documents as we may request from time to time to establish, maintain and perfect our security interest in your accounts.
18. **Monthly Transaction Limitation.** You agree not to process or submit Transactions that aggregate more than the "Monthly Transaction Limit" we establish for you. You agree to notify us immediately if you have reason to believe you will exceed the limit. You may apply to us in writing for a greater Monthly Transaction Limit. If you submit Transaction records to us for processing that exceed the Monthly

Transaction Limit, we may hold the excess funds as reserves until the chargeback period related to the excessive Transactions has expired. If we permit you to exceed the Limit, we may refuse without cause or prior notice to continue allowing that practice at another time.

19. **Your Use of Agents.** You agree to obtain our prior written consent before allowing any third party ("Agent") to capture or transmit any Transaction data on your behalf. If you use an Agent, our obligation to reimburse you for such Transactions will not exceed the amount delivered by your Agent, less all applicable fees, discounts, reserves and charges related to your Transactions. You are responsible for any failure by your Agent to comply with this Agreement, the Services Guide, the law, or Card Association rules and regulations. You agree to indemnify, defend and hold us harmless for any losses, damages, claims, costs or actions related to the actions or omissions of your Agent. We assume no responsibility to monitor the actions of your Agent on your behalf. You agree to continuously review the activities of your Agent.
20. **Endorsement/Warranties.** You will be deemed to have endorsed in our favor any Transaction records you present to us. You authorize us to supply your endorsement on your Transaction records. For each Card transaction submitted to us, you warrant the following: (a) it is a lawful sale/rental not previously submitted and is only for the items sold or rented (including taxes, but without any surcharge); (b) it represents an obligation of the Cardholder for the transaction amount; (c) it is not an amount charged subject to any dispute, set-off or counterclaim; (d) it is for merchandise or service actually delivered or performed at the same time you accepted and submitted the Card for processing (except for any delayed delivery or advance deposit transactions expressly authorized by this Agreement); (e) it is not the refinancing of an existing obligation of the Cardholder or arising from the dishonor of a personal check; (f) that you have no knowledge or notice that the transaction is improper, fraudulent or unauthorized; (g) that the transaction is between you and the Cardholder; and (h) the transaction is made in accordance with this Agreement, the Card Associations' rules and regulations.
21. **Processing Related Equipment.** Unless otherwise provided for in a separate sales agreement, the sale of all processing equipment is between you and third parties, including, but not limited to, our independent sales agents and representatives. WE ARE NOT IN THE BUSINESS OF LEASING EQUIPMENT. ALL LEASES ARE BETWEEN YOU AND AN INDEPENDENT LEASING COMPANY. YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU OBTAIN MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS MERCHANT AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE THAT YOU HAVE OBTAINED. We may upgrade or otherwise modify our computer system at any time without prior notice. You agree to provide us access to your processing equipment in the event that we deem it necessary as part of our upgrade or system modification.
Merchant Web Sites and Gateway Services. A gateway service provides you with an interface between you and your customers so you can accept sales from your customers over the Internet. Your choice of a third-party gateway service provider is subject to our approval. Notwithstanding any gateway service provider offered, suggested, or referenced by us or our sales agent, you acknowledge that all issues concerning your gateway service, including, but not limited to, its service and functionality, are solely between you and your gateway service provider. The fees and terms for your gateway service and any services or products offered by your gateway service are set forth in the merchant application or, if applicable, stated in a separate agreement between you and your chosen gateway service provider. Programming of your web site, technical support, and its functionality with the gateway service provider you have chosen, are your sole responsibility. We shall not be liable in any manner whatsoever for any errors, disruptions or security breaches related to your Internet business or web site. You shall be liable to us for all fees and liabilities incurred under this Agreement notwithstanding any errors, disruptions or security issues related to your Internet business or web site. Bank and CMS reserve the right to periodically review a merchant's website for compliance with any Government regulation, including all federal, state and local laws and regulations as well as all Card Brand rules. Such review does not guarantee that the Merchants website is fully compliant and Bank and/or CMS shall have no liability for any violation or breach of Merchants website with any applicable regulation or law for such non-compliance on Merchants behalf.
22. **Your Records.** You agree to exercise the utmost care to prevent disclosure of any Card or Cardholder information (including, without limitation, any Cardholder's name, account number, or any information about any transaction) (collectively, the "Cardholder Information"), other than to the applicable Card Association, or as specifically required by law and the Card Association rules. You agree not to use any account information or other Cardholder Information other than for the sole purpose of completing the transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Card Association rules and regulations or required by law. Except as required or permitted pursuant to this Agreement or otherwise required by law, you must not disclose any Cardholder information (including Cardholder names, addresses and Card account numbers). You shall limit access to Cardholder information to

a secure area that is only accessible to selected personnel. Your disposal procedures must ensure the security of all Cardholder Information and all Cardholder Information that has been discarded must be rendered unreadable. You may not retain or store Card Verification Value 2 (CVV2) magnetic stripe data after a Transaction has been authorized. You may not retain or store any magnetic stripe data after a Transaction has been authorized. You may not retain or store the expiration date of any credit or debit card after a Transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request. You acknowledge that you will not obtain ownership rights in any information derived from Card transactions. You agree to comply with all security standards and guidelines that may be published from time to time by Visa, MasterCard or any other Card Association, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP") and the Payment Card Industry Security Standard ("PCI"). You understand that failure to comply with the CISP and PCI requirements and other security guidelines may result in fines by Visa, and you agree to indemnify and reimburse us immediately for any fine imposed due to your breach of this Section. You also agree to pay any and all fees imposed by CMS for PCI related matters including certification processes or potential fines for non-compliance of PCI standards. You agree to allow us or any Card Association to inspect Merchant's premises and computers, and the premises and computers of any company the Merchant has contracted with, for the purposes of verifying that Cardholder Information is securely stored and processed, and is not used for any purpose other than processing the transactions to which it relates. You hereby indemnify CMS, Bank and their assigns and successors for any liability, claims, obligations, damages, costs, fees (including, without limitation, attorneys' fees) or expenses incurred as a result of or in connection with Merchant's failure to follow the security guidelines, your failure (whether negligent or otherwise) to maintain the security or confidentiality of Cardholder Information, or your misuse of any such information. If at any time either party determines that Card account number information has been compromised, such party will notify the other party immediately and assist in providing notification to the proper parties as we deem necessary. Your information may be shared by us with our affiliates subject to the provisions of this Agreement and Card Association rules and regulations.

- 23. Indemnification.** You agree to indemnify, defend, and hold harmless us, the Card Associations, their respective officers, directors, affiliates, parents, employees or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by you or any employee, agent or affiliate of you to comply with the terms of this Agreement; (ii) any warranty or representation made by you being false or misleading; (iii) any representation or warranty made by you or any employee or agent of you to any third person other than as specifically authorized by this Agreement, (iv) any losses on ACH transactions or credit card transactions, including, but not limited to for any chargebacks, (v) your negligence or the negligence of your subcontractors, agents or employees, or (vi) any alleged or actual violations by you or your subcontractors, employees or agents of any governmental laws, regulations or any Card Association rules and regulations.
- 24. Intellectual Property.** "Intellectual Property" means all of the following owned by Bank and CMS: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by Bank and CMS in their Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Bank and CMS grant no right or license to you by implication, estoppels or otherwise to any Intellectual Property Rights of Bank and CMS. Bank and CMS shall retain all ownership rights, title, and interest in and to their own products and services and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. You shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from Bank or CMS in connection with this Agreement.
- 25. Limitation on Liability.** THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. WE DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO YOU AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US OR OUR EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF OUR OBLIGATIONS. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF

OTHER ASSETS; OR LABOR CLAIMS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF (I) TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING SIX (6) MONTHS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

26. Termination.

- (a) The initial term of this Agreement shall be for a period of five (5) years, commencing on the date first set forth in this Agreement. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than thirty (30) days prior to the end of the current term that it does not wish to renew this Agreement. We may terminate this Agreement for any reason, or no reason at all.
- (b) Termination for Cause. If our services provided under this Agreement fail to conform to generally accepted standards for such services in the Card processing industry then your sole remedy for such failure shall be that: upon notice from you specifying the failure of performance, we will rectify such failure of performance. If we do not rectify our failure of performance within thirty days after receipt of notification, then you may terminate this Agreement upon thirty days' written notice to us.
- (c) Termination of this Agreement prior to expiry of the initial term or any renewal term shall result in the assessment of an account termination fee in an amount equal to the greater of (i) the average monthly processing fees charged to the Merchant for the previous six (6) months (or such shorter time if the merchant has processed for less than six (6) months) multiplied by the number of months remaining under the Agreement, or (ii) \$500. The parties expressly agree that the damages, which CMS and Bank might reasonably anticipate to be sustained by CMS and Bank, are difficult to ascertain and measure because of their indefiniteness or uncertainty and that the amount set forth above is a reasonable estimate of the damages that would probably be caused and shall be due regardless of proof of actual damages.
- (d) We may terminate this Agreement at any time upon written notice to you as a result of any of the following events: (i) your actions cause harm to the Card Associations, (ii) any noncompliance with this Agreement, the Card Association rules and regulations, (iii) any voluntary or involuntary bankruptcy or insolvency proceeding involving Merchant, (iv) we deem Merchant to be financially insecure, or (v) Merchant or any person owning or controlling Merchant's business is or becomes listed in the MATCH file (Member Alert to Control High-Risk Merchants) maintained by Visa and MasterCard or any Card Association notifies us that it is no longer willing to accept your Transactions.
- (e) We may terminate you at any time without notice and charge you the foregoing termination fee as a result of any of the following events: (i) you never transmit Sales Data to us once a merchant account number is issued to you, or (ii) you do not transmit Sales Data to us for a period of more than 60 consecutive days.
- (f) Account Activity After Termination. Termination does not affect either party's respective rights and obligations under this Agreement as to Transactions or other events submitted before termination. If you submit Transactions to us after the date of termination for which you have given us notice, we may, at our discretion, process such Transactions in accordance with the terms of this Agreement. Upon notice of any termination of this Agreement, we may notify you of the estimated aggregate dollar amount of chargebacks and other obligations and liabilities that we reasonably anticipate subsequent to termination, and you agree to immediately deposit such amount, or we may withhold such amounts from your credits, in order to establish a Merchant Cash Reserve Account.
- (g) If this Agreement is terminated for cause, or if you voluntarily terminate this Agreement and grounds for termination for cause exists, you acknowledge that we may be required to report your business name and the names and other information regarding your principals to the Terminated Merchant File/MATCH File maintained by Visa and MasterCard. You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of your default of this Agreement or for any reason specified as cause by Visa or MasterCard or if such reasons exist at the time of your voluntary termination.

Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

27. **Miscellaneous.**

- (a) **Amendment.** We may amend (add to, delete or change) the terms of this Agreement at any time With or without notice to you.
- (b) **Assignments.** This Agreement will be binding upon and will inure to the benefit of you, us and our respective successors and assigns. Notwithstanding the foregoing, you will not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under this Agreement without our written consent. Any purported assignment, transfer, or delegation by you in violation of this provision will be null and void. We may transfer, assign and/or delegate this Agreement to any third party without notice. Upon notice to you, another bank may be substituted for the Bank under whose sponsorship this Agreement is performed.
- (c) **Governing Law; Waiver of Jury Trial; Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah without reference to conflict of law provisions. Any action, proceeding, arbitration or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in the federal judicial district that includes Utah County, Utah. PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. Any claim, dispute or controversy ("Claim") by either you or us against the other, or against the employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents or assigns of the other, arising from or relating in any way to this Agreement or to our relationship, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association, under its Commercial Arbitration Rules in effect at the time the Claim is filed, except as otherwise provided below. All Claims are subject to arbitration, no matter what theory they are based on or what remedy they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law. Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between you and us. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the American Arbitration Association in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Any arbitration hearing at which you appear will take place at a location within the federal judicial district that includes Utah County, Utah. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security or other property interests for contractual debts now or hereafter owed by either party to the other. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, YOU, CMS AND BANK MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY, AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.
- (d) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, supersedes any previous agreements and understandings and, except as expressly provided in this Agreement, can be changed only by a written agreement signed by all parties. No modification of this agreement whether by strikethrough, written text or otherwise shall in anyway supersede the preprinted text and will not be considered as legally binding. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- (e) **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of you and us. It is not for the direct or indirect benefit of any Cardholder or other person or entity.
- (f) **Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, e-mailed, provided on the merchant statement, faxed, or mailed first class, postage prepaid (and deemed to be delivered when mailed) to the addresses as provided by the parties or to such other address as either party may from time to time specify to the other party in writing.
- (g) **Validity.** The invalidity or unenforceability of any provision of this Agreement will in no way affect the validity or enforceability of any other provision.
- (h) **Waiver.** No failure to exercise and no delay in exercising any right, remedy or power under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.
- (i) **Equipment.** ANY EQUIPMENT SOLD BY US OR OUR INDEPENDENT SALES REPRESENTATIVE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- (j) **Section Headings.** The section headings of this Agreement are for convenience only and do not define, limit or describe the scope or intent of this Agreement.
- (k) **Application and Credit Check.** All statements made on your application for this Agreement are true as of the date of your execution of this Agreement. Your signature on this Agreement authorizes us to perform any credit check deemed necessary of you and your principals and guarantors.
- (l) **Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including, without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under this Agreement. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.