



620 Newport Center Dr, # 150
Newport Beach, CA 92660

Merchant Application and Agreement

OFFICE:			
REP:			
MID:		SIC:	

Sponsor Bank: KeyBank National Association, Cleveland, OH

BUSINESS INFORMATION

Legal Name:	Phone #:	Fax #:
DBA (Doing Business As):	Statement Mailing address:	
Location/Site Address:	City:	State: Zip:
City: State: Zip:	Federal Tax ID Number:	
Contact Person:	Number of Locations:	Email:

OWNERS/PARTNERS/OFFICERS

1) Name (print):	Title:	Equity/Ownership:	%
Date of Birth:	Social Security #:	Home Phone:	
Home Address:	City:	State:	Zip:
2) Name (print):	Title:	Equity/Ownership:	%
Date of Birth:	Social Security #:	Home Phone:	
Home Address:	City:	State:	Zip:

MERCHANT PROFILE SECTION

VISA/MASTERCARD INFORMATION

Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other	MERCHANT TYPE <input type="checkbox"/> Retail Outlet <input type="checkbox"/> Restaurant/Food <input type="checkbox"/> Mail/Telephone Order Only <input type="checkbox"/> Home Business, Trade Fairs <input type="checkbox"/> Outside Sales/Service, Other, Etc <input type="checkbox"/> Internet <input type="checkbox"/> Lodging	VISA/MasterCard Sales Profile Credit Cards Swiped* % *Must Total 100% Credit Cards Keyed* %
Number of Years in Business: <input type="text"/> Length of Current Ownership: <input type="text"/>	Merchant Receives Imprint On Keyed Transactions: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Other currently/previously owned businesses: _____	Has this business or any associated principal been terminated as a VISA/MasterCard Merchant? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Prior Bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No Date Discharged: _____	Methods of Marketing: <input type="checkbox"/> Newspaper/Magazines <input type="checkbox"/> Internet <input type="checkbox"/> Television/Radio <input type="checkbox"/> Direct Mail, Brochure & Catalogs <input type="checkbox"/> Telemarketing Sales	
Do you currently accept VISA/MasterCard? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, you must submit 3 most current statements)	Detailed Description of Products/Services Sold: _____	
Do you wish to accept: EBT cards? <input type="checkbox"/> Yes <input type="checkbox"/> No Debit/ATM cards <input type="checkbox"/> Yes (requires a pin pad) <input type="checkbox"/> No	Do you currently process with ACH? <input type="checkbox"/> Yes <input type="checkbox"/> No Average ACH item: _____ Annual ACH Volume: _____	
Seasonal Business? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list months: _____	If yes, name of current processor: _____	

COMPLETE THIS SECTION FOR ALL MERCHANTS PROCESSING WITH 20% OR MORE KEYED VOLUME

Percentage of monthly volume for: Telephone Orders: _____ Mail and/or Fax Orders: _____ Internet Orders: _____	If internet related, list web address: WWW. _____
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ADDITIONAL SERVICES

<input type="checkbox"/> Gift/Loyalty Card <input type="checkbox"/> AVS Required <input type="checkbox"/> Check Guarantee	Company: _____
<input type="checkbox"/> New American Express Account	Account # _____
<input type="checkbox"/> New Discover Account	Account # _____
<input type="checkbox"/> New Diners Club Account	Account # _____
<input type="checkbox"/> New _____	Account # _____
<input type="checkbox"/> Existing AMEX Merchant	
<input type="checkbox"/> Existing Discover Merchant	
<input type="checkbox"/> Existing Diners Club Merchant	
<input type="checkbox"/> Existing _____	

INTERNET MERCHANT INFORMATION

External Gateway (not supplied by PRI): <input type="checkbox"/>	<input type="checkbox"/> PRI Skipjack
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Sponsor Bank: KeyBank National Assoc.

Merchant: _____

SCHEDULE OF PROCESSING CHARGES			
Application/Setup Fee: \$		Monthly Statement Fee: \$	
Visa/MasterCard Qualified Discount Rate	%	Authorization/transaction Fee: \$	Monthly Minimum Fee: \$
			.20
<small>Mid-qualified transactions will be assessed 1.04% above the qualified discount rate (excluding approved 20% Plus Keyed Merchants). Non-qualified transactions will be assessed 1.64% above the qualified discount rate. Corporate Cards and Corporate Purchase Cards will be assessed 1.64% above the qualified discount rate. Maintenance fee of \$5.00 per month applies to all accounts. Address Verification Service adds \$.15 to Authorization Fee.</small>			
Debit Access Fee: \$		Debit Per Item Fee: \$	Monthly Wireless Service Fee: \$15.00 Activation Fee: \$
OTHER FEES:	Chargeback fee	\$35.00	ea. Investigation Fee \$25.00 ea item or 10% monthly of amt. Investigated
	Request for Copy (retrieval)	\$15.00	ea. ACH Returned item Fee \$25.00 ea.
	Voice Authorization	\$1.50	ea. Checking Account Change \$25.00 ea.
Average Ticket Size: (for VISA/MasterCard ONLY)	\$		Monthly Visa/MasterCard Sales Volume: \$
<small>Each applicant certifies that the above average ticket size and monthly sales volume is accurate and acknowledges that any significant variance from this information could result in delayed or withheld settlement of funds and/or assessment of additional fees. Authorization & batch Closure for American Express, Discover, Diners and/or JCB \$0.30 per item.</small>			
There is a \$15.00 fee to add AmEx, Discover, Diners, JCB Processing and Debit Card to your merchant account after initial set-up.			
ACH Fee (CounterCheck/ e-Check/ Billing Central)			
Item Fee: \$	and	% each item	Returned item Fee: \$
			each rejected or corrected item Monthly Minimum: \$
Overdraft Fee: \$25.00	each occurrence		Inquiry Fee: \$5.00 Monthly Fee: \$

SCHEDULE OF PROGRAM FEES		
Counter Check™		
Initial Setup Fee: \$	Per Transaction Fee: \$	Monthly Fee: \$
TRANSACTION CENTRAL™		
Initial Setup Fee: \$	Gateway Per Transaction Fee: \$	Monthly Fee: \$
BILLING CENTRAL™		
Initial Setup Fee: \$	Gateway Per Transaction Fee: \$	Monthly Fee: \$ 35.00
WEBCONNECT™ (includes Transaction Central)		
Software License Fee: \$	Gateway Per Transaction Fee: \$ 0.10	Monthly Fee: \$
ECShop™ (includes Transaction Central)		
Initial Setup Fee: \$	Gateway Per Transaction Fee: \$	<input type="checkbox"/> ECShop Lite Monthly Fee: \$ 25.00 <input type="checkbox"/> ShopLink Monthly Fee: \$
Gift Card – Loyalty Card Program		
Initial Setup Fee \$	Additional Cards @ \$	per 50 cards Multi Location Tracking Software \$
e-Merchant View™ (online reporting)		Monthly Fee: \$ 10.00 / user

PERSONAL GUARANTEE	
<small>The undersigned unconditionally guarantees to Bank and PRI the performance of this Agreement by Merchant, including paying of all sums due and owing and any attorneys' fees and costs associated with enforcement of the terms thereof. Bank or PRI shall not be required to first proceed against Merchant or enforce any other remedy before proceeding against the undersigned. This is a continuing guaranty and shall not be discharged or affected by the bankruptcy of the undersigned, shall bind the successors, administrators, representatives and assigns and may be for the benefit of any successor of Bank or PRI. The term of this guaranty shall be for the duration of the BankCard Merchant Agreement and for any period thereafter during which any rights of offset or chargeback of transaction of the undersigned remain valid under the applicable Card Association regulations.</small>	
Guarantor: X	Co-Guarantor: X
Date: ____/____/____	Date: ____/____/____
AUTHORIZED SIGNER FOR BUSINESS	
<small>By signing below, Merchant (I) represents that the information provided by Merchants in this Bank Card Merchant agreement is true, complete and not misleading; (ii) acknowledges that Merchant has read and understands the Terms and Conditions and Operating Procedures attached hereto and incorporated herein by this reference and agrees to be bound by their terms; and (iii) authorizes Bank or PRI and their agents to credit and debit the Merchant's Account in accordance with this Agreement and represents and warrants to Bank and PRI that the party signing this agreement is authorized to do so and to act on behalf of the Merchant in the performance thereof.</small>	
<small>INVESTIGATIVE CONSUMER REPORT: An investigative or Consumer Report will be made in connection with this application. Undersigned authorizes Bank and PRI or any credit bureau or any credit reporting agency employed by PRI or any agents of PRI to investigate the references given or any other statements or data obtained from Merchant, or any of the undersigned principals.</small>	
Merchant	
Owner/Officer Signature: X	Title: _____ Date: ____/____/____
FOR ALL CORPORATIONS - Corporate Resolution	
The indicated officer identified above has the authorization to execute the Merchant Processing Agreement with Bank and PRI on behalf of the here within named corporation.	
Secretary of the Board: X	Date: ____/____/____

PAYMENT RESOURCES ACCEPTANCE		
Application Approved By:	Title: _____	Date: ____/____/____
FOR BANK USE ONLY		
Application Approved By:	Title: _____	Date: ____/____/____

Merchant: _____

REFERENCES

TRADE:

1. Name: _____ Contact: _____ Phone: _____

2. Name: _____ Contact: _____ Phone: _____

BANK:

Bank Name: _____ Contact: _____ Phone: _____

Bank Routing Number: _____ Bank Account Number: _____

SITE INSPECTION

The Merchant: _____ Landlord Telephone #: _____ Landlord Name: _____
 Owns Leases the business premises

Merchant Location: Retail Store Front Office/Warehouse Residential Internet Other

Does the amount of inventory and merchandise on shelves appear consistent with type of business? Yes No

I hereby certify that I have inspected the business premises of the merchant at this address and this survey is correct to the best of my knowledge.

Inspected by: _____ Title: _____ Date: _____

HARDWARE/SOFTWARE	TERMINAL PROGRAM
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Terminal Type: _____ QTY: _____	<input type="checkbox"/> Retail (80% Swiped) Dial Out Codes
Printer <input type="checkbox"/> Model: _____	<input type="checkbox"/> Restaurant (w/ tip program) <input type="checkbox"/> None
Pin Pad <input type="checkbox"/> Model: _____	<input type="checkbox"/> MOTO (AVS Required) <input type="checkbox"/> "8"
Check Reader <input type="checkbox"/> Model: _____	<input type="checkbox"/> Purchase Card <input type="checkbox"/> "9"
Card Reader <input type="checkbox"/> Model: _____	<input type="checkbox"/> Lodging <input type="checkbox"/> Other
P.C. Software <input type="checkbox"/> (Manual Close Only) Software Name: _____	Wireless Provider: _____

List equipment to be provided by PRI: _____

Number of Imprinter Plates Needed Ship **Welcome Kit Only** Equipment is: **Reprogram** **Provided by PRI** Ship to: Merchant Office

Payment Amount \$ _____ Ship Address: _____
via: Credit Card Check ACH to sales office

Name on Acct. _____

Acct. # _____ Exp. _____

Lease Lease Co Phone # _____

Call merchant for download training Phone # _____ Contact: _____

Comments: _____

Merchant Documentation Requirements:

- Signed Merchant Application and Agreement including Signed Resolution and Signed Personal Guaranty by principals
- Photos of location or brochures, business cards or other identifying business information on the Merchant. For an Internet Business, a printout of the Merchant's web page
- Copy of voided Check
- All Web Site URLs, Passwords and Domain Names
- Financial statements for Merchants processing over \$50,000 in monthly Merchant sales volume
- 3 months of merchant statements from previous processing
- Photocopy of driver's license
- Additional setup form (ECSshop, Gift/Loyalty Card, American Express, Discover)

MERCHANT AGREEMENT ADDITIONAL TERMS AND CONDITIONS

In these Additional Terms and Conditions, "Agreement" means the Merchant Bank Card Application and Agreement and these Additional Terms and Conditions. "You," "your" and "Merchant" means any party who signs this Agreement as the Merchant. "PRI" means Payment Resource International, LLC, a Delaware limited liability company located at 620 Newport Center Drive, Suite 150, Newport Beach, CA 92660, and its assigns. "Agent Bank" or "Sponsor Bank" means KeyBank National Association, a national bank located at 4910 Tiedeman Road, 2nd Floor, Brooklyn, OH 44144. These Additional Terms and Conditions are part of your Agreement. You agree to be bound by these Additional Terms and Conditions when you sign the Agreement.

Definitions and Interpretation

1.1 For purpose of this Agreement, the following terms shall have the meaning set forth below:

- (a) "Agent Bank" means KeyBank National Association, a national bank, of which PRI is a registered agent of and which PRI designates for the Bank Card Processing for Merchant pursuant to this Agreement.
- (b) "Application Fee" means the then-current fee, if any, for becoming a member of the Interchange System as charged by PRI.
- (c) "Authorization" means the approval (by voice or electronically) of a Bank Card Transaction by the Issuer or its authorized agent.
- (d) "Authorization Center" Means the facility designated by PRI that provides responses (by void or electronically) to your Authorization requests.
- (e) "Bank Card" means a credit card or debit card issued by a member of either Interchange System and bearing the Interchange System's trade name, trademark, service mark, and/or symbols.
- (f) "Bank Card Transaction" means a Sales Transaction, Credit Transaction, or Chargeback.
- (g) "Cardholder" means the person or Entity whose name is embossed on the Bank Card or any authorized user of a Bank Card.
- (h) "Chargeback" means an item representing a Sales Transaction disputed by a Cardholder in accordance with applicable Operating Rules, or a rejected Sales Draft that is returned unpaid for any reason by the Issuer of the Bank Card.
- (i) "Code Ten" is defined in Section 4.5 of these Additional Terms and Conditions.
- (j) "Credit Transaction" means a transaction between you and a Cardholder through use of a Bank Card for exchange, return of, and/or adjustment on merchandise or services sold in a Sales Transaction, as evidenced by a Credit Voucher that you present to PRI for processing through the Interchange System.
- (k) "Credit Voucher" means a paper or electronic record of a Credit Transaction through use of a Bank Card in a form provided or approved by PRI.
- (l) "Depository Bank" is defined in Section 3.2 of these Additional Terms and Conditions.
- (m) "Discount" means an amount equal to the total amount of a Sales Draft multiplied by the appropriate Discount Rate.
- (n) "Discount Rate" is defined in Section 7.2 of these Additional Terms and Conditions.
- (o) "EDC Merchant" means a Merchant that processes its Bank Card Transactions through use of an EDC Terminal.
- (p) "EDC Terminal" means a Point-Of-Sale Terminal that electronically captures Bank Card Transaction data.
- (q) "Effective Date" means the date on which this Agreement is received and signed by a duly authorized representative of PRI at its California offices.
- (r) "Entity" means a corporation, partnership, sole proprietorship, joint venture, or other form of organization.
- (s) "Initial Term" is defined in Section 25.1 of these Additional Terms and Conditions.
- (t) "Interchange Rate" means any then-current fee charged by the Interchange System for each Bank Card Transaction.
- (u) "Interchange System" means the MasterCard International, Incorporated system, or VISA U.S.A. Inc. or VISA International, Inc. system or both, or their successors and assigns.
- (v) "Issuer" means the institution that issued the Bank Card to a Cardholder.
- (w) "Item" means a credit or debit processed through an Interchange System arising from use of a Bank Card.
- (x) "Merchant Collateral Account" is defined in Section 3.4 of these Additional Terms and Conditions.
- (y) "Minimum Monthly Fee" means the then-current monthly fee for maintaining your membership in the Interchange System as charged by PRI.
- (z) "Operating Rules" means all respective bylaws, operating rules and regulations, procedures, and guidelines promulgated by each Interchange System, as they may from time to time be amended.
- (aa) "Point of Sale Terminal" means the computer terminal or similar device at your location that provides electronic responses to Authorization requests. "Preauthorized Order" means a Cardholder's written authorization to make one or more charges to the Cardholder's Bank Card account on a future date.
- (bb) "Program" means the program of Merchant participation in the Interchange Systems as described in this Agreement.
- (cc) "Reserve Account" is defined in Section 3.6 of these Additional Terms and Conditions.

- (dd) "Sales Draft" means a paper or electronic record of a Sales Transaction in a form provided or approved by PRI.
- (ee) "Sales Transaction" means a transaction between you and a Cardholder for sale or rental of merchandise or the provision of services through use of a Bank Card as evidenced by a Sales Draft that you present to PRI for processing through the Interchange System.
- (ff) "Settlement Account" means the commercial checking account identified in Section 3.1 of these Additional Terms and Conditions.
- (gg) Each definition in this Agreement includes the singular and the plural, and the word "including" means "including but not limited to." Reference to any statute or regulation means such statute or regulation as amended at the time and includes any successor statute or regulation. Section and other headings in this Agreement are solely used for convenience and shall not be considered in its interpretation.

Appointment of Agents

- 2.1 You hereby appoint PRI as your agent for the purpose of forwarding to Issuers all Sales Drafts and Credit Vouchers arising from Bank Card Transactions. You shall process all Bank Card Transactions through PRI.

Settlement and Merchant Collateral Accounts

- 3.1 You shall establish and maintain a Settlement Account with any bank in the United States which (a) is a member of the Automated Clearing House system; (b) will permit PRI or its designated Settling Bank to make electronic deposits to and withdrawals from the Settlement Account, and (c) is reasonably requested by PRI or its designated Settling Bank from time to time for the purpose of obtaining the privilege of using and making debits and credits and information inquiry to and concerning the Settlement Account.
- 3.2 You hereby appoint PRI as your agent and attorney-in fact and authorize PRI or its designated Settling Bank to make any payment to you or to collect any amount due and owing by you from time to time pursuant to this Agreement by initiating and transmitting automatic credit and debit entries to the Settlement Account, to obtain from the bank (the "Depository Bank") at which the Settlement account is maintained, account and balance information and statements, and to otherwise deal with the Settlement Account in your name and stead for purposes of performing PRI's obligations and rights under this Agreement. This authority shall remain in full force and effect until PRI has received written notification from you of your termination in such time and in such a manner as to afford PRI a reasonable opportunity to act on it. In the event of termination of this Agreement, such revocation of authority shall not be effective until PRI or its designated Settling Bank issues a certification to the Depository Bank that you have paid all amounts due under this Agreement. You agree to hold harmless Depository Bank for any action taken by Depository Bank at the request of PRI or its designated Settling Bank consistent with the terms of this Agreement.
- 3.3 You agree to deposit and maintain in the Settlement Account sufficient funds to cover all fees, charges, and expenses due PRI and/or Agent Bank, including those estimated by PRI as likely to arise, and shall maintain such funds in the Settlement Account until all possible Chargeback rights recognized under the Operating Rules shall have been exercised or expired for lapse of time, but in no event for a period less than 120 days following termination of this Agreement. PRI shall bill you for the amount of any fees, charges, or expenses that exceed the balance of your Settlement Account. Payment in full for each invoice shall be due within 15 days of receipt thereof. PRI may, at its option, impose a late payment charge of two percent per month (or the maximum legal rate, if less) on the past due balance in the event you fail to pay any fees, charges, or expenses within 15 days after the same are due.
- 3.4 You acknowledge that PRI and Agent Bank may monitor your daily account activity. If PRI or Agent Bank suspects or becomes aware of any abnormal, irregular, suspicious, or fraudulent Merchant activity, including any change in your business practices or activity that is inconsistent with the information contained in or submitted as part of your Merchant Bank Card Application and Agreement, that is inconsistent with your prior processing activities (such as level of charges or number of Credit Vouchers), or that depart from ordinary business practices of other merchants in the same or similar line of business, PRI and Agent Bank may in their sole discretion, without notice to you, do one or more of the following:
- (a) Deposit any amounts otherwise payable to you by credit to the Settlement Account pursuant to Section 8 of these Additional Terms and Conditions in an account (the "Merchant Collateral Account") established in PRI's name. Neither PRI, its designated Settling Bank, nor Agent Bank shall have any liability for any losses of damages, whether direct, indirect, actual, or consequential, suffered by you as a result of such diversion of funds to the Merchant Collateral Account. You agree to pay with respect to funds deposited (i) a one-time account opening fee of \$25, (ii) a monthly account maintenance fee of \$15, (iii) fees and expenses of independent auditors, and (iv) reasonable fees and expenses of counsel to PRI and/or the Agent Bank in connection with inquiries, actions or proceedings by Merchant through its attorneys.
 - (b) Freeze or request the Depository Bank to freeze the Settlement Account so as to preclude any further withdrawals by you.
 - (c) Withdraw amounts from the Settlement Account by any means, including wire transfer, and deposit such amounts in the Merchant Collateral Account.

- (d) Impose a monthly investigation fee up to the maximum set forth in your Merchant Bank Card application and Agreement.
- 3.5 PRI or its designated Settling Bank shall have sole dominion and control of funds in any Merchant Collateral Account. All funds that are or may be placed in a Merchant Collateral Account shall be subject to a security interest in favor of PRI. PRI or its designated Settling Bank may debit the Merchant Collateral Account for any and all amounts owed by you under this Agreement. PRI may retain funds in the Merchant Collateral Account for such time as PRI deems necessary.
- 3.6 PRI may also, in its sole discretion, require Merchant to establish a Reserve Account for such items as Chargebacks, including for mail and telephone orders as provided by Section 19.1 of these Additional Terms and Conditions, subject to terms and conditions to be established by PRI.

Sales Transactions

- 4.1 Honor All Bank Cards. You shall honor all valid and unexpired Bank Cards when properly presented as payment from a Cardholder for a Sales Transaction, provided that the requirements of this Section 4 are satisfied. You shall maintain a policy that does not discriminate among customers seeking to make purchases through use of a Bank Card. If you do not deal with the public at large, you shall be deemed to have complied with this Section 4.1 if you honor Bank Cards of Cardholders who have purchasing privileges with you. In all events you shall not:
- establish, or post any signs that indicate that you require, any minimum or maximum amount of purchase as a condition to honoring a Bank Card;
 - directly or indirectly impose any surcharge on any Sales Transaction;
 - collect any applicable tax separately in cash or
 - require a Cardholder to provide any personal information such as a home or business telephone number or home or business address, or additional identification such as a driver's license as a condition to honoring a Bank Card, unless such information is required under Section 4 or Section 6 of these Additional Terms and Conditions or other specific circumstances cited in the Operating Rules.
- 4.2 Conditions of a Sales Transaction. You shall not complete any Sales Transaction unless all of the following conditions are met:
- Except in the case of a mail or telephone order, a Bank Card is presented;
 - The Sales Transaction date is on or after the "valid from" date and before the expiration date shown on the Bank Card;
 - The signature on the Sales Draft is the same as that contained on the signature panel of the Bank Card (which signature may, but need not be the name embossed or printed on such Bank Card), or the Cardholder resembles the person depicted in the picture (if any) on the Bank Card;
 - If you are using an EDC Terminal that reads the magnetic stripe on the Bank Card, the embossed account number on the Bank Card matches the account number displayed and/or printed from the EDC Terminal;
 - If the Bank Card contains optional security features, the embossed account number on the face of the Bank Card matches the account number indent printed on the signature panel; and
 - You obtain Authorization for the Sales Transaction.
- 4.3 Authorization of Sales Transaction. You shall obtain Authorization before completing each Sales Transaction. The requirement of prior Authorization includes without limitation each of the following circumstances:
- The Sales Transaction is completed in partial payment of a single purchase;
 - You will make a delayed presentment of the Sales Draft, which shall be made in accordance with Section 4.10(b) of these Additional Terms and Conditions; or
 - The Sales Transaction (other than a mail or telephone order or a Preauthorized Order) involves (i) a handwritten Sales Draft that does not contain the imprint of your Merchant plate and the Bank Card, or (ii) an unsigned Bank Card, in which case you must also comply with Section 4.4 of these Additional Terms and Conditions. If you fail to obtain Authorization for any Sales Transaction, you shall in all events be responsible for such Sales Transaction, and the Discount Rate otherwise applicable thereto shall be increased by 1.5 percentage points. Except as otherwise provided in Section 4.10(a) of these Additional Terms and Conditions, you shall request Authorization for the total amount of the Sales Transaction. If an expired Bank Card is presented and you are not an EDC Merchant, you must contact the Authorization Center by telephone. If the Authorization Center grants Authorization, you shall type or legibly print the Authorization approval code on the Sales Draft. An Authorization is effective only for that specific Sales Transaction and shall not constitute a waiver of any other requirement. An additional Authorization is not required where a gratuity is added by the Cardholder if you have obtained Authorization for the Sales Transaction amount, and the gratuity does not exceed 20 percent of the Sales Transaction amount. If the gratuity exceeds 20 percent of the Sales Transactions amount, you must obtain Authorization for the additional amount. You shall type or legibly print both approval codes on the Sales Draft. You shall in all events be responsible for the Sales Transaction regardless of any Authorization if you complete a Bank Card when the Cardholder is present and does not have his or her Bank Card; the signature on the

Sales Draft is unauthorized as compared to the signature appearing on the panel of the Bank Card; or, the signature panel on the Bank Card is blank and you do not comply with Section 4.4 of these Addition Terms and Conditions. Authorization of a Sales Transaction shall in no event limit or preclude PRI from refusing to accept or revoking its receipt of a Sales Draft as provided in Section 8 of these Additional Terms and Conditions.

- 4.4 Unsigned Bank Card. If a Bank Card is not signed, before completing the Sales Transaction, you must;
- Obtain Authorization;
 - Obtain and review positive identification to determine that the user is the Cardholder;
 - Unless otherwise prohibited under applicable law, indicate such positive identification (including any serial number and expiration on the Sales Draft; and require the Cardholder to sign the signature panel of the Bank Card. Positive identification must consist of a current, official government identification document such as a passport, driver's license, or state identification card that bears the Cardholder's signature. If recording of information is prohibited under applicable law, you should note the type of additional identification (but not record the information contained therein) on the Sales Draft.
- 4.5 Code Ten. You shall telephone the Authorization Center and state to the Authorization clerk "This is a Code Ten" under the following circumstances:
- You believe there to be a discrepancy in the signature on the Bank Card and the signature on the Sales Draft or are uncertain whether the person presenting the Bank Card is the same person depicted on the photograph (if any) on the Bank Card;
 - The embossed number displayed and/or printed from your EDC Terminal does not match the account number embossed on the Bank Card;
 - The response to a Point-Of-Sale Terminal Authorization request so directs; or
 - You suspect that the Bank Card may be counterfeit or stolen, or you have any other reason to be suspicious of the Sales Transaction. You shall then await instructions from the Authorization clerk and shall follow those instructions when given. The instructions given by the Authorization clerk shall not constitute a waiver of any provision of this Agreement.
- 4.6 Retention of Bank Cards. You shall use your best efforts, by reasonable and peaceful means, to retain a Bank Card under the following circumstances:
- While making an Authorization request or Code Ten call;
 - Until the Authorization Center can be contacted regarding a Code 10, as required by Section 4.5 of these Additional Terms and Conditions, if the Authorization Center is closed or cannot be reached; and
 - After completing a telephone call to the Authorization Center, if the Authorization clerk directs you to do so. You shall return the Bank Card to the Cardholder after completing a telephone call to the Authorization Center, unless directed not to do so.
- 4.7 Mail Order or Telephone Order. If you are authorized to make a Sale transaction pursuant to a mail or telephone order subject to the provisions of Section 19 of these Additional Terms and Conditions, you must use equipment running an address verification service. For each Sales Transaction, you shall obtain the valid date (if indicated on the Bank Card) and expiration date of the Bank Card and, when Authorization is required, forward it as part of the Authorization request. A Sales Draft based on a mail or telephone order may be completed without Cardholder signature or imprint; provided, however, that you must maintain shipping documents indicating the address where goods are shipped and obtain signatures of the individual or Entity receiving the goods whenever possible. You shall type or legibly print on the signature line on the Sales Draft the letters "MO" for a mail order and the letters "TO" for a telephone order. You shall be deemed to represent and warrant to PRI that the person that placed the mail or telephone order is the Cardholder of the Bank Card.
- 4.8 Preauthorized Orders. You may accept a Preauthorized Order for a Sales Transaction only if the Cardholder has signed a written authorization for the preauthorized charge. The written authorization must at least specify the Sales Transaction amount(s) charged to the Cardholder's account, the frequency of the charges (if applicable), and the duration of time for which such Cardholder's authorization is granted. If Cardholder authorization is renewed, the Cardholder must complete and deliver to you a subsequent written authorization for continuation of such merchandise or services to be charged to Cardholder's account. You shall retain the written authorization and make it available upon request to PRI. You shall not deliver merchandise or perform services covered by a Preauthorized Order after you receive actual notification that the written authorization has been canceled or that the Bank Card covered by the Preauthorized Order is not to be honored. For each Preauthorized Order, you shall type of legibly print the letters "PO" on the signature line of the Sales Draft.
- 4.9 Multiple Sales Drafts. You shall include all items of merchandise and services purchased in a single Sales Transaction in the total amount on a single Sales Draft in every case except for:
- The balance of the amount due is paid by the Cardholder at the time of sale in cash, by check, with another credit or debit card or any combination thereof. In all such cases, Authorization is required for the amount of the purchase effected with the Bank Card.
 - The Cardholder executes two separate Sales Drafts in a delayed delivery Sales Transaction. In such case, a deposit is made by completion of one Sales Draft and payment of the balance is tendered by completion of a

second Sales Draft, the latter being conditioned upon delivery of merchandise or performance of services. Separate Authorization approval codes shall be obtained for and recorded on each Sales Draft, which shall also contain the words "delayed deposit," and the words "deposit" or "balance," as appropriate. You shall not deposit the Sales Draft labeled "balance" until shipment of the merchandise or performance of the services.

- 4.10 Product Changes. Merchant shall submit Bank Card Transactions for approval by PRI only for the product or products listed in the Merchant Bank Card Application and Agreement. Merchant shall not submit Bank Card Transactions for any product, including goods and services, not previously approved in writing by PRI.

Sales Drafts

- 5.1 You shall use a Sales Draft in each Sales Transaction. Each Sales Draft shall be imprinted with the appropriate legends in accordance with Section 6 of these Additional Terms and Conditions. The Bank Card must actually be presented, even if for some reason the information embossed thereon is written in by hand (unless the Sales Transaction is transacted by mail or by telephone in accordance with Section 4.7 and Section 19 of these Additional Terms and Conditions). The Sales Draft shall also contain:
- (a) the date of the Sales Transaction;
 - (b) the total cash price of the sale (including any applicable state or federal taxes), or (i) the amount to be charged if a partial payment is made in cash or by check in accordance with Section 4.10 (a) of these Additional Terms and Conditions, or (ii) the amount to be charged if a partial payment is made as a deposit or as the balance owing after a deposit has been made in accordance with Section 4.10(b) of these Additional Terms and Conditions.
 - (c) A short description of the merchandise or services;
 - (d) The words "delayed deposit," "deposit," or "balance" as appropriate and the Authorization approval code if Authorization for delayed deposit is given in accordance with Section 4.3(c) and Section 4.10(b) of these Additional Terms and Conditions;
 - (e) The letters "MO" (mail order), "TO" (telephone order), or "PO" (Preauthorized Order), if applicable to the Sales Transaction; and
 - (f) If you are using an EDC Terminal, the Cardholder's account number and your name and location code (or city and state).
- 5.2 The Cardholder shall sign the Sales Draft unless the Sales Transaction is completed by mail or telephone subject to Section 4.7 and Section 19 of these Additional Terms and conditions or is a Preauthorized Order. The Cardholder shall not be required to sign the Sales Draft until the final Sales Transaction amount is known and indicated in the total column. You shall deliver a true and completed copy of the Sales Draft to the Cardholder.
- 5.3 You shall not alter any Sales Draft after it has been signed by the Cardholder.

Imprints

- 6.1 You shall use a suitable electronic printer or imprinter to print legibly on each Sales Draft and Credit Voucher the embossed legends from the Bank Card presented by the Cardholder and your Merchant plate. If either or both legends are not so printed and you are not within one of the exceptions noted in Section 6.2 of these Additional Terms and Conditions, you must note legibly on the Sales Draft or Credit Voucher sufficient detail to identify the Cardholder, the Issuer, and you. Such detail shall include at least the Cardholder's name and account number; the ICA or BIN number, the valid date (if any), and the expiration date of the Bank Card; any company name; the name of the trade style of the Issuer as it appears on the face of the Bank Card; your name and address; and any other embossed data such as security symbols.
- 6.2 You are not required to obtain an imprint of either legend if:
- (a) you are an EDC Merchant and your EDC Terminal produces Sales Drafts and Credit Vouchers that contain the information specified in Operating Rules; or
 - (b) The Bank Card Transaction is based on a mail or telephone order subject to Section 4.7 and Section 19 of these Additional Terms and Conditions or is a Preauthorized Order subject to Section 4.8 of these Additional Terms and Conditions.
- 6.3 Except as otherwise provided in Section 4.10(a) of these Additional Terms and Conditions, you shall request Authorization for the total amount of the Sales Transaction. If an expired Bank Card is presented and you are not an EDC Merchant, you must contact the Authorization Center by telephone. If the Authorization Center grants Authorization, you shall type or legibly print the Authorization approval code 6.3. The exception set forth in Section 6.2(a) of these Additional Terms and Conditions shall not apply if the EDC Terminal or printer is not functioning or if your EDC Terminal does not read the magnetic stripe on the Bank Card. In such cases, you must obtain an imprint of both legends or otherwise comply with Section 6.1 of these Additional Terms and Conditions.
- 6.4 Except in the case described in Section 6.2(a) of these Additional Terms and Conditions, if you complete a Bank Card Transaction without imprinting the Bank Card, whether or not Authorization is obtained, you shall be deemed to represent and warrant to PRI the true identity of the customer as the Cardholder unless you have obtained independent evidence of the

Cardholder's true identity. In any case in which you obtain independent evidence, you must record the information contained in the independent evidence on the Sales Draft, unless recording is prohibited under applicable law, in which event you must note the type of evidence (but not record the information contained therein) on the Sales Draft.

- 6.5 You must immediately notify PRI in the event that any information on your Merchant plate is changed.

Deposit of Sales Drafts

- 7.1 You shall not deposit a Sales Draft with PRI until you have performed all of your obligations relating to the Sales Transaction. You shall not, directly or indirectly, deposit any Sales Draft with PRI that did not originate in a legitimate Sales Transaction in the ordinary course of your business as described in the Merchant Bank Card Application and Agreement.
- 7.2 The amount of the Discount Rate applicable to each Sales Draft, and any adjustments to the Discount Rate, shall be determined by PRI in its sole discretion. Without limiting the generality of the preceding sentence, the otherwise applicable Discount Rate will be increased by 1.5 percentage points with respect to (i) Sales Transactions in which an Authorization was not obtained, (ii) except as otherwise required by these Additional Terms and Conditions with respect to specific Sales Drafts (such as "delayed deposit" or "balance" transactions), deposits or batch transmissions two (2) or more days after the date of the included Sales Transactions or Credit Transactions, (iii) transactions including Bank Cards issued outside the United States, (iv) Sales Transactions in which use of an address verification service was required by the Additional Terms and Conditions but Merchant failed to use such service, (v) any Keyed Bank Card Transaction (except for Merchants approved by PRI or Agent Bank as a keyed Merchant), and (vi) any Bank Card Transaction involving a corporate card or corporate purchase card. You shall deposit a copy of each Sales Draft with PRI not later than the bank business day following the date of the Sales Transaction, except:
- (a) In those cases when goods are shipped or services performed after the expiration of the otherwise applicable one bank day period, the deposit shall not be made sooner than the shipment or performance, and shall be made immediately thereafter;
 - (b) In those cases in which the Cardholder has agreed in writing to a delayed presentment, and you request and receive an Authorization for delayed presentment, deposit shall be made within the period permitted for delayed presentment; or
 - (c) In those cases in which you are obligated by law to retain the Sales Draft or return it to the Cardholder upon timely cancellation, the deposit shall be made within ten bank business days after the date of the Sales Transaction.

Receipt of Sales Drafts

- 8.1 Except as otherwise provided in this Agreement, PRI shall receive and process all Sales Drafts deposited with it that comply with the terms and conditions of this Agreement and Operating Rules. PRI or its designated Settling Bank shall pay you the total face amount of each Sales Draft, less the applicable Discount and any adjustments determined daily according to information contained in the Merchant Bank Card Application and Agreement, by credit to the Settlement Account. All payments, credits, and charges are subject to audit and the final checking by PRI, and prompt adjustment shall be made for inaccuracies discovered.
- 8.2 Notwithstanding any other provision of this Agreement, PRI may refuse to receive any Sales Draft or revoke its prior receipt if:
- (a) The Cardholder disputes liability on any of the following grounds: (i) that the merchandise, services, or other things of value received by the Cardholder do not conform to the written characterization appearing on the Sales Draft or accompanying support documentation, and the Cardholder has returned or attempted to return the merchandise or other things of value or has canceled or attempted to cancel the services; (ii) that the merchandise or other things of value covered by the Sales Draft that were to be shipped (1) were not received by the Cardholder or (2) were returned by the Cardholder because they were received broken or otherwise not suitable for the purpose for which they were sold; (iii) that the services covered by the Sales Draft were not rendered because you were unwilling or unable to perform such services; (iv) that the merchandise, services, or other things of value covered by the Sales Draft were paid for by another means; (v) that you received notification from the Cardholder of revocation or nonrenewal of Authorization of cancellation of account or payment prior to completion of the Sales Draft evidencing a Preauthorized Order; (vi) that a Credit Voucher or some other advice with an account number and amount issued by you has not been processed to the Cardholder's account; or (vii) the Cardholder asserts a claim or defense against the Issuer under federal or state statute or regulation or other local law that provides the Cardholder with additional rights, and all requirements of the federal or state statute or regulation or the local law are satisfied; or
 - (b) The Sales Transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, the Operating Rules, or any other applicable laws and regulations of any governmental authority, including: (i) that you did not provide the Issuer with a legible reproduction of the Sales Draft, the original Sales Draft, or a substitute Sales Draft within five bank business days following the date of the

request; (ii) that, in response to a retrieval request, you provided the Issuer with an illegible or incomplete copy or substitute of the Sales Draft; (iii) that you did not obtain Authorization for the Sales Transaction; (iv) that you were notified in response to an Authorization request that the Bank Card was not to be honored or received a negative account number verification; (v) that the Cardholder account number, Sales Transaction amount, or your name on the Sales Draft is missing or not sufficiently legible to allow proper posting; (vi) that the account number on the Sales Draft does not match any account number on the Issuer's master files; (vii) that you erroneously received payment for a Sales Transaction processed by another merchant; (viii) that you did not submit all of the applicable Sales Drafts within five bank days from the earliest processing date stamped on your transmittal summary clearing draft; (ix) that the Sales Draft on its face shows that there was an error in addition and the amount shown as total is incorrect; (x) that the amount of the Transaction was increased or reduced (for a credit) without the Cardholder's permission; (xi) that the account number on the Sales Draft does not match the account number obtained from the magnetic stripe on the Bank card; (xii) that the Cardholder's account was incorrectly posted as a result of (1) using an incorrect Bank Card Transaction code (for example, a credit was posted as a sale), or (2) processing the imprinted amount instead of the correct Sales Transaction amount as evidenced by other information on the Sales Draft; (xiii) that the Cardholder or Issuer suspects that a Sales Transaction may have been charged more than once; (xiv) that no signature appears on the Sales Draft, and the Cardholder states in writing that he or she did not make or authorize the Sales Transaction; (xv) that, unless you fall within one of the exceptions set forth in Section 6 of these Additional Terms and Conditions, the Sales Draft does not contain an electronic print or imprint of the embossed legends from the Bank Card and your Merchant plate; (xvi) that the Cardholder states that neither he or she nor anyone authorized by him or her engaged in the Sales Transaction; (xvii) that the valid date embossed on the Bank Card had already passed on the Sales Transaction date; (xix) that the expiration date imprinted on the Sales Draft had already passed on the Sales Transaction date; (xx) that you did not provide the Issuer with the amount of the Sales Transaction in the original Sales Transaction currency; (xxi) the Sales Draft resulted from the fraudulent use of account numbers or any abnormal, irregular, or fraudulent Merchant activity, including any activity described in Section 3.4 of these Additional Terms and Conditions; (xxii) that the Sales Transaction date is more than 30 days prior to the central site processing date; or (xxiii) that PRI has any other basis to conclude there is any other violation of this Agreement, the Operating Rules, or any other applicable laws and regulations of any governmental authority.

8.3 In the event of a revocation of the prior receipt of the Sales Draft, you shall pay PRI any amount previously paid to you for such Sales Draft. PRI or its designated Settling Bank may withdraw this amount from the Settlement Account.

Credits to Settlement Account as Full Payment

9.1 You agree that receipt of the Sales Draft by PRI and the making of an appropriate credit to your Settlement Account shall constitute payment to you for merchandise or services furnished by you to or for the account of the Cardholder. After an appropriate credit is made, you shall not make any claim against or receive payment from any person with respect to the same Sales transaction, unless PRI thereafter revokes its receipt in accordance with Section 8 of these Additional Terms and Conditions.

Refunds and Adjustments

10.1 You shall establish and maintain a fair policy for the exchange or return of, or adjustments on merchandise or services sold in Sales Transactions. Provided that proper disclosure is made at the time of the Sales Transaction, you may:

- (a) not accept merchandise in return or exchange and not issue a refund to a Cardholder; or
- (b) only accept merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original Sales Transaction; or
- (c) accept merchandise in return and deliver to Cardholder an in-store credit for the value of the merchandise that may be used only in your place(s) of business; or
- (d) if permitted by applicable law, stipulate special circumstances agreed to by the Cardholder (e.g., late delivery, delivery charges, insurance charges, or other non-credit related charges) as terms of the Sales Transaction, but under no circumstances shall a surcharge be assessed for use of a Bank Card.

10.2 Proper disclosure shall be deemed given if the words "No Refund," "Exchange Only," "In-Store Credit Only" (or similar words), or the special terms, as applicable, appear legibly, in letters approximately ¼ inch high and in close proximity to the space provided for the Cardholder's signature, on all copies of your Sales Drafts or an invoice presented to the Cardholder for signature. If you do not make proper disclosure, then you shall give the Cardholder a full refund upon return of any merchandise or termination or cancellation of any services purchased from you.

Credit Vouchers

11.1 You shall not make cash refunds or payments to any person for returns or adjustments described in Section 10 of these Additional Terms and Conditions; instead, when a refund or payment is due for any return or adjustment, you shall issue a Credit Voucher. Each Credit Voucher shall be imprinted with the appropriate legends in accordance with Section 6 of these Additional Terms and Conditions. The Bank Card must actually be presented, even if for some reason the information embossed thereon is written in by hand. The Credit Voucher shall also contain:

- (a) the date it is issued;
- (b) the total amount of the refund or adjustment; and
- (c) a brief description of the merchandise or services in connection with which the refund or adjustment is to be made.

11.2 You shall sign and date the Credit Voucher and deliver a true and completed copy of the Credit Voucher to the Cardholder.

11.3 You shall not issue any Credit Voucher with respect to merchandise or services paid for in cash that are returned or canceled or to which a fee adjustment is allowed or without having completed a previous Sales Transaction with the same Cardholder. You shall not accept payment from a Cardholder for the purposes of preparing and depositing a Credit Voucher that will result in a deposit to the Cardholder's account.

Deposit of Credit Vouchers

12.1 If you are an EDC Merchant, you shall electronically deposit a copy of each Credit Voucher with PRI not later than the close of business on the next bank business day following the date of the issuance. If you are not an EDC Merchant, you shall deposit the bank processing copy of each Credit Voucher not later than the next bank business day following the date of its issuance. You agree to pay PRI the total amount of each Credit Voucher issued by you which shall be received by PRI, less any Discount or adjustments determined according to the information contained in the Merchant Bank Card Application and Agreement. PRI or its designated Settling Bank shall arrange a credit to the Bank Card account of the Cardholder named on the Credit Voucher in the total face amount of such Credit Voucher.

12.2 You warrant and covenant that each Credit Voucher issued by you which is received by PRI represents a bona fide refund or adjustment on a Sales Transaction by you with respect to which a Sales Draft has been accepted by PRI.

Disputes with Authorized Users

13.1 All disputes between you and any Cardholder relating to any Bank Card Transaction shall be settled between you and the Cardholder. You agree to indemnify, defend, and hold PRI harmless from all claims and defenses arising out of any Bank Card Transaction, whether or not the other party ultimately prevails. You agree to pay all of the expenses, including reasonable attorney fees, of PRI in seeking to overcome such claims and defenses in the event PRI chooses to do so.

Application Fee; Minimum Monthly Fees

14.1 You agree to pay PRI any Application Fee that may be in effect at the time of this Agreement. The amount of this fee, if any, is specified in the Merchant Bank Card Application and Agreement and is nonrefundable.

14.2 You agree to pay PRI the Minimum Monthly Fee specified in the Merchant Bank Card Application and Agreement. The amount of all Discounts determined by PRI in accordance with Sections 7 and 8 of these Additional Terms and Conditions shall be credited toward the Minimum Monthly Fee. If the Minimum Monthly Fee exceeds the total amount of Discounts, PRI or its designated Settling Bank shall debit your Settlement Account the balance due. Any increase in the monthly fee imposed from time to time by an Interchange System to maintain your membership therein shall automatically and contemporaneously increase the Minimum Monthly Fee by a like amount, without prior notice to you.

14.3 You agree to pay PRI and/or Agent Bank, as applicable, all fees, expenses, and other charges provided for in this Agreement. You acknowledge that (i) the amounts of any such expenses and other charges shall automatically and contemporaneously reflect any increases in charges to PRI from an Interchange System or third-party vendor without prior notice to you, and (ii) the amounts of any such fees may be increased at any time and from time to time by PRI and/or Agent Bank, as applicable, in their respective sole discretion upon fifteen (15) days prior written notice to you.

Point-Of-Sales Terminals and Printers

15.1 The terms and conditions of this Section 15 shall apply if you are purchasing Point-Of-Sales Terminals or printers, using Point-Of-Sale Terminals or printers, or accessing other financial services using Point-Of-Sales Terminals as shown in this Agreement:

- (a) Physical installation and telephone lines shall be your responsibility. Upon order and confirmation the connection is complete, PRI shall provide the download line necessary to begin using the unit as a Point-Of-Sale Terminal on PRI's system.
- (b) Payments may be deducted from your Settlement Account upon receipt of each agreement for sale or use of Point-Of-Sale Terminals or printers or

access to services by PRI, and each month thereafter, if monthly assessments are made. PRI shall bill you for the amount of any charges that exceed the balance of your Settlement Account. Payment in full for each invoice shall be due within 15 days of receipt. PRI may, at its option, impose a late payment charge of two percent per month (or the maximum legal rate, if less) on the past due balance in the event you fail to pay any charges within 15 days after they are due.

- (c) To the extent allowed by law, PRI shall take reasonable measures to extend the manufacturers' standard warranties to you.
- (d) PRI's obligation to sell or otherwise provide any Point-Of-Sale Terminals is conditioned upon the availability of the Point-Of-Sale Terminals or printers from PRI's customary source of supply, in sufficient quantities to supply your requirements and PRI's other requirements.
- (e) You shall pay all applicable sales, use, personal property, and other taxes applicable to the sale, service, use, or ownership of any Point-Of-Sale Terminal or printer regardless of whether taxes are invoiced by PRI.

15.2 PRI shall have no liability for any negligent design or manufacture of any Point-Of-Sale Terminal or printer. PRI's entire liability, if any, and your exclusive remedy in all situations, shall be to perform repair services on any inoperative Point-Of-Sale Terminal or printer sold by PRI. PRI shall not be liable for any damages resulting from any delay in performance or nonperformance caused by circumstances beyond PRI's control, including, but not limited to, act of God, fire, flood, war, governmental action, accident, labor trouble or shortage, inability to obtain a Point-Of-Sale Terminal or printer, parts, service, or transportation, or other events of similar effect in connection with PRI's obligation, if any, to sell or otherwise provide any Point-Of-Sale Terminal or printer; and PRI's obligation, if any, to provide access to other financial services.

Imprinter Purchase

16.1 If you are not an EDC Merchant, you shall use imprinters acceptable to PRI. If you are an EDC Merchant, you shall maintain at least one imprinter for back-up purposes. PRI will arrange for the sale of any reasonable number of imprinters that you require for your own use under this Agreement. The sale price shall be determined in accordance with the information contained in the Merchant Bank Card Application and Agreement and may be debited from your Settlement Account or paid in advance.

Promotional Materials and Other Forms

17.1 PRI shall make available to you, at Merchant's expense, such promotional materials as PRI deems appropriate indicating your participation in the Interchange System. PRI shall also provide you, at Merchant's expense, Sales Drafts, Credit Vouchers, and any other forms that may be required by PRI.

Display of Materials; Trademarks

18.1 You agree to prominently display promotional materials provided by PRI regarding your participation in the Interchange System in your place(s) of business. Use of such promotional materials, and use of any trade name, trademark, service mark, or logotype associated with Bank Cards, shall be limited to informing the public that Bank Cards will be accepted at your place(s) of business. You agree to abide by such directions for the use of promotional materials as may be provided by PRI from time to time. Any other use of such promotional materials, or use of any trade name, trademark, service mark, or logotype associated with Bank Cards is prohibited unless expressly authorized in writing by PRI.

18.2 You shall continue to use any such promotional materials provided to you so long as this Agreement is in effect. Upon termination of this Agreement, you shall immediately discontinue and shall no longer use any promotional materials provided by PRI, or any trade name, trademark, service mark, or logotype associated with Bank Cards. All unused promotional materials or any other materials furnished by PRI shall be returned promptly upon termination of this Agreement.

18.3 You shall not use any promotional materials or any trade name, trademark, service mark, or logotype associated with Bank Cards in any way that suggests or implies that the Interchange System endorses any goods or services other than Bank Card services. You shall refer to the Interchange System in describing eligibility for your goods, services, or membership. You shall not use any trade name, trademark, service mark, or logotype associated with Bank Cards on any terminal that dispenses scrip.

Mail and Telephone Orders

19.1 You shall not engage in the systematic solicitation of mail and telephone orders without the prior written authorization of PRI. PRI may require that a Reserve Account be established before or during commencement of any such processing, or at any time thereafter, subject to terms and conditions to be established by PRI.

19.2 If and when PRI authorizes you to engage in the systematic solicitation of mail and telephone orders, PRI shall establish a maximum monthly sales volume for the Merchant processing account. Sales Transactions that exceed the monthly cap are subject to holds by PRI for a period of 90 days. In the event retrieval requests or Chargebacks exceed one percent of your monthly Sales Transaction volume, PRI may impose a lower cap or require increased reserves without prior notice.

19.3 PRI's security review procedures may result in any Bank Card Transactions for mail and telephone orders being held for verification purposes at any time.

19.4 Merchant acknowledges that all mail and telephone order charges are difficult to defend against Chargeback requests, so Merchant shall take reasonable precautions to protect against Chargebacks, including:

- (a) Delivering merchandise only to the Cardholder's billing address where the Issuer sends the Interchange System billing;
- (b) Using a delivery service that maintains shipping logs and requires signature by the person receiving merchandise; and
- (c) Using address verification service and not processing sales unless all information matches information from the address verification service.

19.5 Notwithstanding any other provisions in this Agreement, you shall not solicit or accept Cardholder computer-generated orders for any Bank Card Transaction without the prior, written consent of PRI and on such terms and conditions as PRI, in its sole discretion, may require.

Operational Rules; Additional Terms

20.1 This Agreement is made subject to the Operating Rules. As part of your participation in the Program, you agree to be bound by and to fully comply with the Operating Rules and by all amendments or additions that may be made from time to time. You agree to indemnify and hold harmless PRI or its designated Settling Bank, the Interchange System, and their respective members for any failure by you to comply with the Operational Rules. The Operational Rules shall control to the extent of any inconsistency with this Agreement. This Agreement shall be automatically amended to reflect any change in any applicable Operational Rule.

20.2 You represent and warrant to PRI that all information set forth in this Agreement, including all of the information provided to PRI as part of your Merchant Bank Card Application and Agreement, is true and complete. You covenant and warrant that all additional materials that you may submit to PRI in the future with respect to the Program shall be true and complete. You acknowledge that PRI, as part of the approval and retention process, has relied and will rely on information and materials submitted by you, including for the purpose of credit analysis, because your credit standing is an integral part of the economic basis for this Agreement. You agree to promptly notify PRI in writing of any changes that may occur from time to time regarding any such information and materials.

Records and Business Practices

21.1 Inspection of Books and Records. Representatives of PRI and the Interchange System may, during normal business hours, inspect, audit, and make copies of your books, accounts, records, and files pertaining to any Bank Card Transaction or the Program. The Interchange System requires you to retain either the original or a microfilm copy original of all records of each Bank Card Transaction, including any refunds or credits, for a minimum period of three years from the processing date. You may be required to retain such records for a longer period under federal law or state law, or both. You shall retain all original or microfilm copies of the original Sales Drafts and Credit Vouchers in chronological order based on the Bank Card Transaction date.

21.2 Disclosure of Information. You shall not, under any circumstances, disclose any Cardholder's name, Cardholder's account information, or other personal information in the form of imprinted Sales Drafts and Credit Vouchers, copies of imprinted Sales Drafts and Credit Vouchers, mailing lists, tapes, or other media obtained in connection with any Bank Card Transaction to any person or Entity other than PRI, except as specifically required by law or the express terms of this Agreement. You shall store all media containing Cardholder names, Cardholder account information, and other personal information, as well as Bank Card imprints (such as Sales Drafts and Credit Vouchers, 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.

21.3 Obligations to Cardholders. You shall fulfill completely all of your obligations to each Cardholder under the terms of any Bank Card Transaction. By presenting a Sales Draft to PRI, you warrant and covenant that the goods or services sold have been or will be delivered or performed in accord with these Additional Terms and Conditions.

21.4 Other Charges and Conditions. In connection with any Sales Transaction, you shall not, directly or indirectly, require any Cardholder to pay a surcharge, or to pay any part of any Discount or charge imposed upon you by this Agreement, through any increase in price or otherwise. You shall not, directly or indirectly, require any Cardholder to pay any contemporaneous finance charge or any special charge not also required from a person paying cash. You shall not extract any special agreement or security from any Cardholder. This Section 21.4 shall not, however, be construed as prohibiting discounts to customers for payments in cash or for charges (such as bona fide commissions, fees for special handling or expedited services, postage and handling, and similar charges that are charged to the Cardholder regardless of the form of payment.

21.5 Cash Payments and Taxes. You shall not receive any payment from a Cardholder with respect to charges for merchandise or services that are included on any Sales Draft. The amount of any applicable federal, state, or

local tax shall be shown separately on the Sales Draft and shall not be separately collected.

- 21.6 No Laundering. You shall deposit Sales Drafts that represent bona fide sales of merchandise or services by you in the ordinary course of your business only. You shall not deposit any Sales Draft arising from (a) sale of merchandise or services other than the merchandise or services specified in the Merchant Bank Card Application and Agreement; or (b) sale of merchandise or services, either directly or indirectly, by any other source or in connection with any other business.
- 21.7 Refinancing of Previously Existing Obligations. You shall not deposit any Sales Draft that represent the refinancing of an existing obligation of a Cardholder, including any obligation (a) previously owed to you; (b) arising from the dishonor of the Cardholder's personal check; or (c) representing the collection of any other preexisting obligation.
- 21.8 Re-depositing of Bank Card Transactions. You shall not re-deposit any Sales Draft that has been previously charged back and not re-presented. This subsection applies to Bank Card Transactions processed with or without the Cardholder's permission.
- 21.9 Fraudulent Transactions. You shall not present any records of Bank Card Transactions that you know or should know to be fraudulent or not authorized by the Cardholder. For purposes of this Section 21.9 and any other part of this Agreement, you shall be responsible and liable for the actions of your employees.
- 21.10 Magnetic Stripe EDC Terminal. If you are using an EDC Terminal that reads the magnetic stripe on a Bank Card, you shall not print or display more information than which is normally embossed on the front of the Bank Card.
- 21.11 Discriminatory Practices. You shall not engage in acceptance practices or procedures that discriminate against, or discourage use of, any Bank Card in favor of any other competing brand that you also accept.
- 21.12 Script. You shall not deposit any Sales Draft that arises from acceptance of a Bank Card at terminals that dispense scrip.
- 21.13 Traveler Cheques. You shall not effect a Sales Transaction representing the sale of traveler cheques if the sole purpose of the sale is to allow the Cardholder to make a cash purchase of merchandise or services from you.

Indemnification; Additional Costs

- 22.1 You shall indemnify and hold PRI or its designated Settling Bank, the Interchange System, and their respective officers, directors, agents, successors, and assigns harmless from and against all liability, loss, damage, claim, action, and expenses (including reasonable attorney fees) based upon or arising out of (a) any breach by you of any representation, warranty, or covenant set forth in this Agreement or (b) any failure by you to fully comply with the terms and conditions of this Agreement and the Operating Rules.
- 22.2 You shall be liable for and shall reimburse both PRI for any and all costs, expenses, and charges, including, without limitation, reasonable attorney fees and administrative costs and fines incurred by PRI in the (a) collection of any amount owed by you under this Agreement; (b) enforcement of any term of this Agreement; or (c) processing of Chargebacks.

Limitation of Liability

- 23.1 IN NO EVENT SHALL PRI OR ITS DESIGNATED SETTLING BANK BE LIABLE UNDER ANY THEORY FOR ANY LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

Disclaimer of Warranties

- 24.1 PRI SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY. THIS AGREEMENT IS A SERVICE AGREEMENT, AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY TO IT.

Renewal and Termination of Agreement

- 25.1 The Term of this Agreement shall be three years commencing on the later of (a) the date of acceptance of this Agreement by a duly authorized representative of PRI at its California offices; or (b) the date that Merchant commences processing. Thereafter, this Agreement shall be automatically renewed for successive like three year terms unless sooner terminated pursuant to the terms and conditions of this Section 25.1. This Agreement may be terminated by PRI or Agent Bank for any cause or reason or for no reason whatsoever by written notice to the other party, and such termination shall become effective on the later of either 15 days from the date of delivery of the notice or the termination date specified in the notice. In addition, if you default in any material respect in the performance of any of your obligations under this Agreement or take any action that PRI considers to be injurious to Cardholders, or in the event the Interchange System notifies PRI that you are

prohibited from participating in the Interchange System, PRI may terminate that Agreement immediately by giving oral or written notice to you, and termination shall become effective immediately. The rights of PRI to terminate under this Section 25.1 are cumulative, and the existence of a right under one provision is not exclusive of a right under any other provision. Termination of this Agreement prior to expiration of the 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 12 months (or such shorter time if the merchant has processed for less than 12 months) multiplied by the number of months remaining under the agreement, or (ii) \$250.

- 25.2. In addition to specific obligations otherwise noted in this Agreement, each of the following obligations shall continue after the effective date of termination:
- (a) Your obligation to maintain sufficient funds in the Settlement Account as required by Section 2 of these Additional Terms and Conditions
 - (b) Your obligation to deposit all Sales Drafts and Credit Vouchers within the time periods specified in this Agreement for Bank Card Transactions
 - (c) Made prior to the Effective date of termination;
 - (d) Your obligation with respect to Sales Drafts and Credit Vouchers accepted by PRI as set forth in this Agreement prior to the effective date of termination;
 - (e) Your obligation not to use any promotional materials, trademarks, service marks, and logotypes associated with Bank Cards after the effective date of termination of this Agreement;
 - (f) Your obligation to return all unused promotional materials as set forth in this Agreement;
 - (g) Your obligation to make your books and records pertaining to Bank Card Transactions available for inspection for at least three years from the date of the Bank Card Transaction;
 - (h) Your obligation not to disclose information pertaining to a Cardholder's account; and
 - (i) Your obligation to fulfill completely all of your obligations to Cardholders.

Assignment; Third Party Agents

- 26.1 Merchant shall not assign, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement. PRI may assign this Agreement at any time without notice.
- 26.2 You may designate a third party, which does not have a direct agreement with PRI, as your agent for the purpose of delivering data-captured Bank Card Transactions at the point-of-sale by such agent. If you elect to use a third party as your agent for direct delivery of data-captured Bank Card Transactions to the Interchange System for clearing and settlement, you shall:
- (a) provide written notice to PRI of your election and obtain the prior, written consent of PRI;
 - (b) understand and agree that the obligation of PRI to pay you for a Sales Draft is limited to the amount (less the applicable Discount and any adjustment) delivered by the agent to the Interchange System; and
 - (c) Be solely responsible for any failure by the agent to comply with any term of this agreement or any Operating Rule, including, but not limited to, any violation that results in a revocation of a prior receipt of a Sales Draft.

Entire Agreement; Binding Effect

- 27.1 This Agreement sets for the entire understanding and agreement between the parties with respect to the Program and the subject matter hereof and replaces any Bank Card or similar agreement entered into between the parties.
- 27.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, and assigns to the extent allowed by this Agreement. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or Entities not parties to this Agreement any rights or remedies by reason of this Agreement, as a third-party beneficiary or otherwise.

Amendments; Waiver

- 28.1 Except as otherwise specifically provided in this Agreement, no provision of this Agreement may be amended, modified, or waived except by a written agreement signed by PRI or a written notice sent by PRI. This Agreement may be amended by PRI from time to time upon written notice of the change(s) in terms or conditions. Any amendment to this Agreement shall be effective when expressly agreed or the later of the effective date contained in the notice or 15 days after the notice is mailed.

Severability

- 29.1 The invalidity of any section, paragraph, sentence, or part of this Agreement shall not affect the validity of any other section, paragraph, sentence, or part of this Agreement.

Notices

- 30.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered when given by personal delivery, telefax (confirmed by a mailed copy), or first-class mail, postage prepaid, addressed as follows:

(a) If to PRI:
Payment Resource International
620 Newport Center Drive, Suite 150
Newport Beach, CA 92660
Attn: Vice President
Telephone:(949) 729-1400
Fax: (949) 655-4141;

If to Agent Bank:
KeyBank National Association
4410 Tiedeman Road
2nd Floor
Brooklyn, OH 44144
Fax: (216) 813-1514

- (b) If to you, at the address written on the signature page of this Agreement;
or
- (c) To such other address as any party from time to time may be written
notice designate to each other party.

Contact Person

31.1 You should contact the following person regarding any questions you may
have regarding this Agreement:
Customer Service Representative
Payment Resource International
620 Newport Center Drive, Suite 150
Newport Beach, CA 92660
Telephone: (888) 835-1777
Fax: (949) 655-4141

Governing Law; Exclusive Jurisdiction and Venue

32.1 This Agreement is a contract made under, and shall be governed by and
construed in accordance with, the law of the State of California applicable to
contracts made and to be performed entirely within such State and without
giving effect to choice of law principles of such State. Each party agrees that
any legal action or proceeding with respect to this Agreement or the
transactions contemplated hereby shall be brought in any court of the State of
California sitting in Orange County, California, or in any court of the United
States of America sitting in Orange County, California, and each party hereby
submits to and accepts generally and unconditionally the jurisdiction of such
courts with respect to its person and property and irrevocably consents to the
service of process in connection with any such action or proceeding by
personal delivery to such party or by registered or certified mail, postage
prepaid, to such party at the address set forth in Section 30.1 of these
Additional Terms and Conditions. Each party hereby irrevocably waives any
objection to venue of any such lawsuit or proceeding in the above described
courts.

Counterparts

33.1 This Agreement may be executed in one or more counterparts, each of which
shall be deemed to be an original and such counterparts shall together
constitute one and the same instrument.

Data Processing and Payment Collection Agreement (ACH PROCESSING)

This Data Processing and Payment Collection Agreement (this "Agreement") is entered into as of the date set forth below, by and among the undersigned company ("CLIENT") and Payment Resource International, LLC (hereinafter "PRI"), a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 620 Newport Center Drive, Suite 150, Newport Beach, California 92660.

WHEREAS: PRI is an item processor and provides Automated Clearing House ("ACH") and EFT services ("Services") for the collection and payment of Payments and Deposits to the accounts of Consumers and Businesses (collectively, "Customers") and;

WHEREAS: CLIENT wishes to initiate ACH transactions and desires to engage PRI to process those ACH transactions items initiated by CLIENT.

NOW, THEREFORE, the parties intending to be legally bound do hereby agree as follows:

1. **Headings and Captions.** Unless the context otherwise clearly requires, words used in the singular include the plural, and words used in the plural include the singular. The captions and headings contained in this Agreement are for the convenience of the parties only and shall not be construed to limit or otherwise define the scope of this Agreement. This Agreement shall not be deemed to have originated with either party hereto.
2. **Definition of Terms.** Except as otherwise specifically indicated, the following terms shall have the following meanings in the Agreement:
 - a. **Banking Day:** Any business day, during which PRI is open for business, but does not include any Saturday or Sunday, or Holiday observed by the Federal Reserve.
 - b. **Account:** A deposit account established by Customers at a Federal Reserve member bank that has the ability to receive Automated Clearing House ("ACH") items from the Federal Reserve for debit and credit to the account.
 - c. **EFT Data:** Electronic Funds Transfer ("EFT") Data, is that certain data collected by CLIENT indicating funds to be distributed by credit or debit to Customers' accounts of Customers authorizing such credit or debit.
 - d. **Collected Funds:** Funds collected from the Federal Reserve as a result of the processing of EFT Data entries.
 - e. **Settlement Date:** A date specified by CLIENT, on which date EFT Data Entries will be available to Customers' banks that receive EFT Data from the Federal Reserve.
 - f. **Customer:** Those consumers or businesses who have given authorization to CLIENT for CLIENT to initiate credit or debit entries to the accounts of those CUSTOMERS.
 - g. **Sponsor Bank:** The bank designated by PRI which is a Federal Reserve depository with Agreements between itself, PRI and the Federal Reserve to electronically transfer funds between member banks of the Federal Reserve Banking System.
3. **Engagement:** CLIENT hereby retains and appoints PRI as CLIENT'S exclusive data processing and collection agent for processing ACH transactions originated by CLIENT for credit and debit to accounts of Customers, who have agreed to such transactions, in accordance with the terms and conditions contained herein.
4. **Fees:** For the services performed herein by PRI, CLIENT agrees to pay the fees as detailed in the Fee Addendum, which is attached hereto and made a part hereof. CLIENT understands that some fees may be subject to tax and agrees to pay all applicable tax. Increases in fees charged by Sponsor Bank will be passed through to CLIENT, without notice, and the Fees may be changed by PRI at any time upon Thirty (30) days prior written notice to CLIENT. Client may be assessed an Investigation Fee equal to \$25 for each item investigated and/or 10% of the amount investigated each month for all sums that PRI is required to investigate as a result of Client's conduct.
5. **Term and Termination:** The initial term of this Agreement shall be for a period of three (3) years beginning on the later of (a) the date of acceptance of this Agreement by PRI; or (b) commencement of processing (the "Term"), and shall renew for additional successive three (3) year terms unless any party hereto provides the other written notice of its intent not to renew prior to the expiration of the current term. Additionally, PRI shall have the right to terminate this Agreement at any time without cause. Termination of this Agreement prior to the expiration of the Term or any renewal Term, shall result in the assessment of an account termination fee in an amount equal to the greater of (a) the average monthly processing fees charged to client over the last 6 months (or shorter time if not processing for 6 months) multiplied by the number of months remaining on the Term; or (b) \$295.00; in addition to all other amounts owed by CLIENT to PRI.
6. **Upon Default:** Either party shall have the right to terminate this Agreement, effective immediately, if either party is in default of any obligation under this Agreement and default continues for 30 days following notice from the other party, or if either party is declared bankrupt, files a petition under any bankruptcy laws, has a receiver appointed for all or substantially all of its property, or makes an assignment of all or substantially all of its assets for its creditors.
7. **Upon Termination:** All rights and obligations hereunder shall cease except CLIENT'S obligations (A) to pay the applicable fees for any services performed by PRI prior to the effective date of termination; B) to pay for any items returned unpaid ("Returned Items") subsequent to the effective date of termination for which PRI shall hold from the final deposit to the Settlement Account for sixty (60) days a balance sufficient to cover Returned Items and any unpaid fees payable to PRI, and C) within ninety (90) days of termination of this Agreement CLIENT shall return to PRI all materials that are the property of PRI and provided by PRI to CLIENT, as part of the services contemplated hereunder, including, but not limited to software, hardware, manuals and instructions.
8. **Responsibilities of the Parties:** In connection with the engagement of PRI by CLIENT, the parties hereby agree that each shall have the responsibilities set forth hereunder:
9. **CLIENT shall be responsible for the following:**
 - a. **Settlement Account.** CLIENT shall, at all times, maintain an Account ("Settlement Account") at a bank that is a member of the Federal Reserve ACH System. All credits for collected funds and debits for fees, payments and Returned Items under the terms of this Agreement shall be made to the Settlement Account. For the services to be performed by PRI hereunder as set forth in the Specifications as published from time to time by PRI, CLIENT authorizes PRI to credit and/or debit the Settlement Account, and CLIENT warrants that it shall, at all times, maintain a sufficient balance in said account

to cover overdraft of the Escrow Account as might result from Returned Items and service fees, and other charges plus such additional fees charged by PRI for the performance of services beyond the terms of this Agreement or resulting from increased expenses incurred by the failure of CLIENT to furnish data as specified in the Specifications as published from time to time by PRI, upon demand of PRI. CLIENT may not close or change the Settlement Account without written notice to PRI. CLIENT will be solely liable for all fees and costs associated with the Settlement Account and for all overdrafts. CLIENT hereby grants to PRI a security interest in the Settlement Account as well as any other account owned by Client to the extent of any and all fees, payments and Returned Items which may arise under this Agreement, and CLIENT shall execute any document and obtain any consents or waivers from the bank at which the Settlement Account is maintained as requested by PRI to protect its security interest therein.

- b. **Notice of Intent.** CLIENT shall provide PRI with immediate notice of intent to:
 - 1). Transfer or sell any substantial part of its total assets, or liquidate;
 - 2). Change the basic nature of its business, including selling any products or services not related to its current business;
 - 3). Change ownership or transfer control of its business;
 - 4). 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 CLIENT'S business.Failure to provide notice as required above may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. In the event any of the changes listed above should occur, PRI shall have the option to renegotiate the terms of this Agreement or provide thirty (30) days notice of termination.
 - c. **Non-Disclosure of Customer Information.** CLIENT will not, under any circumstances, disclose any CUSTOMER'S account number or any information relating to any CUSTOMER'S account, or any sales information, to any person other than PRI, except as expressly authorized in writing by CUSTOMER, PRI as required bylaw.
 - d. **Returned Items.** CLIENT is liable for repayment to PRI for all Returned Items. PRI will comply with ACH Associations' and the Federal Reserve prevailing regulations in processing any Returned Items which result from CUSTOMER disputes. However, all disputes which are not or cannot be resolved through established returned item procedures shall be settled between CLIENT and the CUSTOMER, and CLIENT will indemnify PRI and will provide reimbursement for all expenses, including reasonable attorney's fees, which it may incur as the result of any CUSTOMER claim which is pursued outside the ACH Association or Federal Reserve rules and regulations.
 - e. **Delivery of EFT Data.** CLIENT shall deliver EFT data necessary for ACH processing in such form and at such times and in accordance with the Specifications as published from time to time by PRI. CLIENT will cause the EFT data to be current and accurate at all times. CLIENT warrants to PRI that all data and entries contained in EFT Data and delivered to PRI by CLIENT will be in accordance with the Specification as published from time to time by PRI; will contain true and accurate information; will be authorized by Consumers; and if a telephone initiated entry, CLIENT warrants that there is an existing relationship with the CONSUMER or the CONSUMER initiated the telephone call. CLIENT assumes the responsibility for storage of all CONSUMER authorizations. Failure to provide PRI with requested CUSTOMER authorization documentation within five (5) business days after receipt of such request may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. CLIENT will maintain documentation for a period of SIX (6) years past the date of the last transaction to any Account. PRI shall have no liability to CLIENT, Customer, or third parties in the event Collection data is inaccurate or incomplete.
 - f. **Timely Delivery.** CLIENT shall cause the EFT data to be delivered to PRI in a timely fashion to permit the electronic processing on the date designated by CLIENT which is estimated to require the delivery of the EFT Data not less than (2) banking days prior to the scheduled processing date.
 - g. **Delivery of Payroll Funds.** CLIENT shall cause payroll funds to be delivered by wire transfer at least Three (3) Banking Days ("Lead time") prior to the Settlement Date designated by CLIENT in an amount sufficient to cover payroll deposits, fees and other charges to PRI ("Payroll amount requirement") in accordance with the Specifications as published from time to time by PRI. CLIENT understands and agrees that in the event payroll funds are not delivered in accordance with the above Lead time, or that the Payroll amount requirement is insufficient, the Settlement Date will be delayed to allow for sufficient Lead time and sufficient Payroll amount requirement.
 - h. **Exclusive.** CLIENT agrees that PRI shall be its sole provider of ACH services during the term of this Agreement.
 - i. **Compliance.** CLIENT warrants and agrees that CLIENT shall fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including the Federal Truth-in-Lending Act and Regulation E of the Board of Governors of the Federal Reserve System.
 - j. **Acceptance by PRI.** This Agreement shall be effective only upon acceptance by PRI. In the event CLIENT is not accepted for the services as contemplated herein, any fees paid to PRI shall be non-refundable.
10. PRI shall be responsible for the following:
- a. **Document Preparation.** PRI shall consult and assist CLIENT on the form and content of documents to be filed with Sponsor Bank, PRI and Consumers.
 - b. **Format of EFT Data.** PRI shall provide CLIENT with consultation on the format and specification of EFT data.
 - c. **Escrow Account.** PRI shall establish and maintain an account ("Escrow Account") for deposit of Collected Funds and payment of returned Items and service fees, and other charges ("Other Fees") incurred by PRI, Sponsor Bank and the Federal Reserve hereunder. CLIENT understands and agrees that: 1). PRI shall deposit all Collected Funds to the Escrow Account. 2). PRI shall hold One Hundred Percent (100%) of Collected Funds ("Hold amount") in the Escrow Account for a period of THREE (3) Banking Days, or such other time period that may be established by PRI pursuant to its underwriting of Client ("Hold period"). 3). PRI shall, at the expiration of the Hold period, transfer the Collected Funds, less a reserve amount ("Reserve amount") established for Client pursuant to PRI's underwriting of Client, by EFT to the Settlement Account. Such transfer shall be in such form and at such times and in accordance with the Specifications as published from time to time by PRI.

CLIENT further understands and agrees that PRI shall hold any Reserve amount for a period of Thirty (30) days from the date of collection ("Reserve Period"). PRI shall release the Reserve amount to the credit of the Escrow Account at the expiration of the Reserve Period. CLIENT understands and agrees that the Hold amount, Hold period, Reserve amount and Reserve Period may be adjusted by PRI, at the sole discretion of PRI, to insure availability and sufficiency of funds to cover Other Fees.

- d. Electronic Bulletin Board. PRI shall provide an electronic means (electronic bulletin board service, or other like service) for the purpose of receiving EFT Data from CLIENT, posting return Items, correction notices and account statements for CLIENT. CLIENT understands and agrees that it is CLIENT'S responsibility to pickup, by electronic means, the statements and return notifications from the electronic bulletin board service.
11. Force Majeure. Except when prevented from doing so by causes beyond its control, including, but not limited to Acts of God, strikes, mechanical or electrical breakdown, fire, flood, war, governmental action, accident, PRI shall process EFT data furnished by CLIENT and observe the processing schedules set forth in the Specifications as published from time to time by PRI, and deposit of funds in the Escrow and Settlement Accounts.
12. Materials. CLIENT acknowledges that all materials provided to CLIENT by PRI, in contemplation of and in fulfillment of this Agreement, are the property of PRI. CLIENT shall guard against unauthorized duplication that would be a violation of United States copyright law and international treaty provisions.
13. Use of Independent Sales Organization. CLIENT acknowledges that PRI may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable ACH Associations' rules, and the Rules and Regulations of the Federal Reserve System. ISO/MSP is an independent contractor and not an agent of PRI. ISO/MSP has no authority to execute the Agreement on PRI'S behalf or to alter the terms hereof without PRI'S prior written approval.
14. Sole Obligation. PRI's sole obligation to CLIENT hereunder is to perform the services agreed upon, exercising the same degree of care used in processing items and data for its own use. PRI shall not be liable for the insolvency, neglect, misconduct, mistake or default of any other bank, corporation or person. In no event shall PRI be liable for any loss, destruction, mutilation, damage or theft, resulting from any cause whatsoever, of any data, entries, or items, except those resulting from the willful misconduct, gross negligence or fraudulent act of Prior its employees.
15. Record Maintenance. This Agreement, and the performance by PRI of its services hereunder, shall not relieve CLIENT of any obligation imposed by law or contract, regarding the maintaining of records or other matters nor from employing adequate audit, account and review practices customarily followed by similar businesses.
16. Indemnification. CLIENT agrees to indemnify and to hold PRI, Sponsor Bank and the Federal Reserve free and harmless from any and all liability, claims, and damages (including attorney's fees and costs) which PRI, Sponsor Bank and the Federal Reserve may suffer or incur by reason of providing the services contemplated herein, including but not limited to any liability incurred by PRI with respect to the warranties and indemnities required to be made by PRI to Sponsor Bank or the Federal Reserve, its representatives, and other banks under the ("Operating Rules") of the National Automated Clearing House, except any liability, claims, or damages caused by PRI's gross negligence, or failure to exercise reasonable care in performing its services hereunder. This article shall survive termination of this Agreement.
17. Warranty of Application. In accordance with this Agreement, CLIENT has executed and delivered to PRI a document entitled "Data Processing and Payment Collection Application" containing, among other things, certain information regarding the nature of CLIENT'S business. Its form of business organization, and the individual principal owners of CLIENT. CLIENT represents and warrants to PRI that all information and all statements contained in such Data Processing and Payment Collection Application are true, correct and complete as If set forth in this Agreement. CLIENT FURTHER AGREES TO NOTIFY PRI IN WRITING OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY INFORMATION CONTAINED IN SUCH DATA PROCESSING AND PAYMENT COLLECTION APPLICATION, INCLUDING BUT NOT LIMITED TO: THE IDENTITY OF PRINCIPALS AND/OR OWNERS, THE FORM OF BUSINESS ORGANIZATION (i.e. SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED, AND HOW SALES ARE COMPLETED (i.e. BY TELEPHONE, MAIL, OR IN PERSON AT THE CLIENT'S PLACE OF BUSINESS). Such notice must be received by PRI within ten (10) business days of such occurrence. CLIENT acknowledges that PRI may from time to time request updated credit information on CLIENT'S business and CLIENT further agrees to provide updated financial statements and other information within a reasonable period of time as PRI may request. CLIENT shall be and remain fully liable to PRI for any and all losses, costs, claims, and expenses suffered or incurred by PRI, arising out of or resulting from CLIENT'S failure to report all such changes to PRI in accordance herewith.
18. Notices. Any notice required or allowed to be given under this Agreement shall be addressed to the other party as follows: For PRI: at its principal place of business as listed above; For CLIENT: at the address listed on the attached "Data Processing and Payment Collection Application". Any notice so addressed shall be deemed delivered on the date received.
19. Invalidity. If any provision in this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
20. Facsimile. This Agreement may be executed in one or more separate counterparts and conveyed by facsimile, each of which, when so executed shall be deemed an original and shall together constitute one and the same instrument which may be sufficiently evidenced by anyone counterpart, each of which shall be fully effective against the parties executing the same (even if by facsimile) and all parties claiming under or through them.
21. Assignment. PRI shall have the right to assign this Agreement and PRI's rights thereunder to any corporation or other entity which PRI may hereafter merge or consolidate, or to which PRI may transfer all or substantially all of its assets provided such corporation or other entity assumes all of PRI's obligations thereunder.
22. Limitation of Liability. Any legal action undertaken by CLIENT pursuant to any of the terms or conditions or the interpretation thereof shall be commenced within six (6) months of said termination. CLIENT agrees hereby that after a term of six (6) months has expired, no legal action against PRI may be brought in any court regarding any term or condition of this Contract.
23. Entire Agreement. This contract cancels any previous contract written and executed at PRI. Further, this Agreement constitutes the entire Agreement between parties and each of the parties hereto acknowledges and agrees that there are no other agreements, either written or oral, governing their relationships or Fees.

24. Amendment. Except as otherwise provided herein, no provision of this Agreement may be amended or modified except in writing signed by PRI. Any amendment to this Agreement shall be effective the later of either the effective date contained in the notice of acceptance or fifteen (15) days after the notice is mailed, or when expressly agreed.
25. Guarantors. The undersigned owners/officers ("Guarantors"), by their execution of this Data Processing and Payment Collection Agreement, hereby unconditionally and irrevocably personally guarantee the full and faithful performance or payment by CLIENT of each and all of its duties and obligations herein set forth and contained, whether prior or subsequent to termination or expiration hereof.
26. Attorney's Fees. Should either party pursue an action in court or arbitration against the other regarding any provision of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fees.
27. **Binding Effect: Governing Law; Jurisdiction and Venue.** Any action or proceeding on the Agreement by or against PRI shall be initiated and maintained under the jurisdiction of the State of California with venue in the courts of Orange County, in which case this Agreement shall be construed and governed by the laws of the State of California.

Sample ACH Authorization:

I authorize [Name of Merchant], "MERCHANT" to initiate Debits and or Credits to my checking account at the Depository Financial Institution "BANK", as indicated by the Transit Routing Number that I have supplied on this form, and BANK to pay such Debit or Credit. This authorization is to remain in full force and effect until MERCHANT or BANK has received written notification from me of its termination in such time and in such manner as to afford MERCHANT or BANK a reasonable opportunity to act on it.