

TRANSNATIONAL BANKCARD, LLC DISCLOSURE SCHEDULE

This disclosure schedule sets forth a summary of certain information in the Card Services Agreement (“Agreement”) for your information only and does not provide all information pertinent to the Agreement. Transnational Bankcard, LLC (“TNB”) recommends thoroughly reviewing the Agreement and contacting us with any questions you may have. In the event of any conflict between the terms of the Agreement and the terms of this disclosure schedule, the terms of the Agreement shall control. Capitalized terms not otherwise defined in this disclosure schedule have the meanings set forth in the Agreement.

Date of the Contract: The Agreement is binding on TNB on the earlier of (a) TNB and Member’s acceptance of the Agreement or (b) TNB’s processing of transactions delivered to TNB by Merchant pursuant to the Agreement.

Member: Unless otherwise specified in the Merchant Application or upon notice to Merchant, the Member is:

BMO Bank, N.A.
320 S Canal St
Chicago, IL 60606

TNB: TransNational Payments
9550 W. Higgins Road, 8th Floor
Rosemont, IL 60018
Phone: (888) 998-6224

Term and Termination: The initial term of the Agreement is three years and the Agreement automatically renews for additional one year terms until terminated. Either party may terminate the Agreement effective at the end of the current term by providing written notice to the other party at least sixty days prior to the expiration of the then current term. Each party has additional termination rights set forth in the Card Services Terms & Conditions, including but not limited to Section 13. Certain liquidated damages are also set forth in Section 13 if you terminate the Agreement prior to the end of the term.

Payment for Transactions: Merchant will be provisionally paid for transactions after the expiration of any applicable hold period, less the amount allocated to a reserve account (if any) and credits associated with any prior transactions, fees, assessments, and other amounts due. This will usually be within two to three business days, but can be up to the full time period in which any transaction processed by merchant is at risk of chargeback.

Fees/Rates: The most common fees and rates charged to you can be found in the Merchant Application. Other fees and rates are set forth in the Agreement and the Rules. If you are unsure about the calculation or applicability of any fee, please contact us and we will explain it to you in greater detail. Additional fees may be applicable if your account or transaction activity requires excessive use of, or assistance from, TNB personnel or TNB’s vendors, as specified in Section 5 of the Agreement. The way the most common fees are calculated is as follows:

“Discount Rate” is a percentage of the gross amount of each transaction processed by TNB. A portion of the Discount Rate is the Interchange Rate. The discount rate may be set by category (e.g., qualified, mid-qualified, and non-qualified) or set based on the Interchange Rate (e.g., the Interchange Rate plus a certain percentage). The category into which a transaction will fall depends on a number of factors, including but not limited to the card type, transaction type, payment method, authorization, and timeliness of submitting the transaction/batch. TNB can provide information to you about the category applicable to a particular transaction upon your request.

“Interchange Rate” is a percentage of the gross amount of each transaction set by the applicable Card Brand. The Interchange Rate varies based on the type of transaction, method of transaction, and transaction classification.

Transaction fees, depending on the specific fee, may be charged on all transactions or only specific types of transactions. For example, a PIN-Debit Fee is only charged on debit transactions requiring a PIN. Other fees will be charged as set forth for each fee, which may be upon the occurrence of an event (e.g., a Chargeback fee will be charged for each Chargeback) or based on the passage of time (e.g., a monthly fee will be charged each month or portion thereof without proration).

The payment due for the purchase or lease of equipment, and the calculation of such payment, will vary based on the type of equipment, the applicable license(s) necessary to use the equipment, the length of any financing term, and the creditworthiness of Merchant. The payment amount(s), and the calculation for such amounts, will be set forth in a separate purchase or lease agreement.

Each Card Brand may surcharge one or more transactions based on the type of transaction, method of transaction, transaction classification, and other metrics set forth in the Rules. Merchant is responsible for reviewing the applicable Rules (available on each Card Brand website or upon request from TNB) regarding applicable surcharges.

Modification: The Agreement, including but not limited to the fees charged, may be modified upon notice to Merchant in accordance with its terms and TNB’s standard operating procedures.

Complaint Handling: Merchant is responsible for handling any complaint with regard to a customer. If Merchant has a complaint with regard to TNB, Merchant will immediately notify TNB of such complaint. TNB will handle the receipt of complaints in accordance with its current policies and procedures. If TNB is unable to resolve an issue to Merchant’s satisfaction, the complaint resolution procedures in the Agreement will control the process, including but not limited to Section 17 of the Card Services Terms & Conditions.

Statements: Merchant statements are available online, after login, at www.gotnp.com and paper statements are available upon request.

CARD SERVICES TERMS & CONDITIONS

1. General.

- (a) **Agreement.** The Card Services Agreement ("**Agreement**") consists of these Card Services Terms & Conditions and the Merchant Application and the TNB Merchant Operating Guide and is made by and among the merchant identified on the Merchant Application ("**Merchant**"), Transnational Bankcard, LLC ("**TNB**"), and Member (as defined below). The provisions in the Agreement are applicable to Merchant if Merchant has signed the appropriate space in the Acceptance of Terms & Conditions/Merchant Authorization section of the Merchant Application or if Merchant has submitted card payment transactions to TNB. Merchant will be responsible for all of its employees' and its agents' actions and omissions in connection with this Agreement and with regard to any transaction.
- (b) **Bank and Card Brands.** The member bank identified in the Merchant Application ("**Member**") is a member of Visa Inc. ("**Visa**") and MasterCard Incorporated ("**MasterCard**"). TNB is a third party agent of Visa, a service provider of MasterCard, a registered program participant of American Express Company ("**American Express**"), and a registered acquirer for Discover Financial Services LLC ("**Discover**"). TNB is an agent of Member in connection with this Agreement. "**Card Brands**" means Visa, MasterCard, American Express, Discover, the Debit Networks (defined below), any other organization or network accessible in connection with this Agreement, and each of their successors and assigns.
- (c) **Discover, American Express, and Switched Transactions.** Merchant and TNB agree that the rights and obligations contained in these Card Services Terms and Conditions do not apply to Member with respect to, and Member shall have no liability for, American Express transactions, Discover transactions and Switched Transactions (as defined below). If Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover for accepting Discover cards. In such case, Merchant will also be enabled to accept JCB, China UnionPay and Diner's Club cards under the Discover network and such transactions will be processed at the same fees and rates as Merchant's Discover transactions are processed. To the extent Merchant accepts Discover cards and has a separate agreement with Discover, Discover card transactions shall be processed by TNB as Switched Transactions. If Merchant accepts American Express cards, the provisions in this Agreement with respect to American Express apply unless Merchant has a separate agreement with American Express for accepting American Express Cards. To the extent Merchant accepts American Express cards and has a separate agreement with American Express, American Express card transactions shall be processed by TNB as Switched Transactions.
- (d) **Services.** Under the terms of this Agreement, Merchant will be furnished with the services and products described in this Agreement and in the Merchant Application and selected by Merchant in the Merchant Application, (collectively and individually, as applicable, the "**Services**"). During the term of this Agreement, TNB will be the sole and exclusive provider of all Services to Merchant and Merchant shall not obtain services or products similar to the Services from any third party. Any Merchant accepted by TNB for any Service agrees to be bound by the Agreement, including the terms of the Merchant Application and these Card Services Terms & Conditions, as each may be modified in the future. MERCHANT'S SUBMISSION OF A TRANSACTION TO TNB SHALL BE DEEMED TO SIGNIFY MERCHANT'S ACCEPTANCE OF THE AGREEMENT, INCLUDING THESE CARD SERVICES TERMS & CONDITIONS.
- (e) **Survival.** Except as expressly stated otherwise in Section 13, all terms and conditions of this Agreement shall survive termination to the extent necessary to protect TNB and Member's rights herein.

2. Service Descriptions.

The Services may include, without limitation and if selected by Merchant and offered by TNB, Credit Card Processing Services, EBT Transaction Processing Services, and Debit Card Services (each as defined below).

- (a) **Credit Card Processing Services.** "**Credit Card Processing Services**" means authorization and electronic draft capture of credit card transactions; outclearing of such transactions to the appropriate Card Brands and/or issuers; settlement; facilitation of Merchant's dispute resolution with cardholders' banks as requested and applicable; and transaction-related reporting, statements and products. From time to time under this Agreement, upon Merchant's request, TNB may facilitate the transmission of certain payment card transactions ("**Switched Transactions**") to the respective card issuers, including but not limited to American Express, Diners Club and various fleet, private label and commercial cards. Switched Transactions require TNB's prior written approval and are subject to applicable pricing. TNB only processes the data regarding, and does not settle, Switched Transactions and shall have no liability or obligation regarding any funds associated with any Switched Transaction.
- (b) **EBT Transaction Processing Services.** "**EBT Transaction Processing Services**" means electronic interfaces to the Electronic Benefits Transfer ("**EBT**") networks for the processing of cash payments or credits to or for the benefit of benefit recipients ("**Recipients**"). TNB will provide settlement and switching services for various Point of Sale transactions initiated through Merchant for the authorization of the issuance of the United States Department of Agriculture, Food and Nutrition Services ("**FNS**") food stamp benefits ("**FS Benefits**") and/or government delivered cash assistance benefits ("**Cash Benefits**", and with FS Benefits, the "**Benefits**") to Recipients through the use of a state-issued card ("**EBT Card**").
- (c) **Debit Card Services.** "**Debit Card Services**" are those services addressed in Section 27 of this Agreement.
- (d) **Limited Acceptance.** With respect to Visa and MasterCard products, Merchant may elect on the Merchant Application to accept credit cards or debit/prepaid cards or both. Merchant is solely responsible for identifying and not submitting transactions involving those Visa and MasterCard products Merchant has elected not to accept. Merchant agrees to pay and Merchant's account(s) will be charged pursuant to Section 5 of this Agreement for any additional fees incurred as a result of Merchant's subsequent acceptance of transactions with any Visa or MasterCard product that it has elected not to accept.

3. Procedures.

- (a) **Acceptance.** Merchant will permit holders of valid cards bearing the symbols of the cards authorized to be accepted by Merchant under this Agreement to charge purchases or leases of goods and services and such transactions shall be submitted to TNB for processing in accordance with TNB's policies, provided that the transaction complies with the terms of this Agreement.
- (b) **Policies and Procedures.** All transactions submitted by Merchant for processing will be evidenced by an approved sales slip. Merchant will not present for processing any transaction that does not arise out of a bona fide transaction between a cardholder and Merchant. Merchant agrees to follow TNB's policies and procedures, as amended from time-to-time, each of which shall be accessible through TNB's merchant portal or available upon reasonable request from TNB. Merchant will clearly disclose itself as the supplier of products and services to each customer.

Merchant is solely responsible for: (i) the delivery of goods or provision of services that are the subject of any transaction; (ii) providing customer service to each cardholder; and (iii) dispute resolution in connection with any transaction. Merchant shall obtain a positive authorization response for each transaction prior to completing such transaction. After completing a transaction, Merchant will provide a copy of the transaction documentation, formatted in accordance with and containing all information required by the Rules, to each cardholder. Merchant is responsible for ensuring that each card, credential, token, or other device used in a transaction is valid, authorized, and belongs to the cardholder.

- (c) **Prohibitions.** Merchant will not knowingly submit any transaction that is illegal or that Merchant should have known was illegal. Merchant will not deposit a transaction that it knows to be fraudulent or not authorized by the cardholder. Merchant will not submit any transactions in connection with any Merchant locations other than those set forth on the Merchant Application without TNB's prior written approval. Merchant may only set minimum or maximum amounts or assess a surcharge in connection with the use of a card if such action is in compliance with the Rules and in compliance with all applicable Law. Merchant will not complete secondary reads or additional card swipes after a card or related credential has been used to obtain an authorization response (including but not limited to chip card or contactless transactions), nor will Merchant capture or store the contents of a magnetic strip after a transaction authorization. Merchant will issue all refunds, returns, and other credits in the amount of and to the card used in the corresponding purchase transaction and will not provide cash or other legal tender to the cardholder in connection with any credit.
 - (d) **Rules.** Merchant agrees to be bound by the operating regulations, requirements, and rules of the Card Brands ("**Rules**"), available on the Card Brands' respective websites or upon reasonable request from TNB. The Rules shall also include, but not be limited to, the regulations, requirements, standards, and rules of the PCI Security Standards Council, LLC ("**PCI**"), as amended from time-to-time. The PCI rules, requirements, and standards include, but are not limited to, the Payment Card Industry Data Security Standard ("**PCI DSS**") and the Payment Application Data Security Standard ("**PA DSS**"). In the event of any conflict between this Agreement and the Rules, the Rules shall apply.
 - (e) **Compliance.** Without limiting the generality of Sections 3(b), 3(c), and 3(d), Merchant agrees to comply with and be bound by, and to cause any third party who provides Merchant with services related to payment processing or facilitates Merchant's ability to accept or participate in the Services and who is not a party to this Agreement to comply with and be bound by the Rules, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program. Merchant also agrees to cooperate at its sole expense with any request for an audit or investigation by TNB, Member, Debit Sponsor, or a Card Brand in connection with cardholder and transaction information security.
 - (f) **Data Use.** Merchant agrees that it will use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. Merchant will indemnify and hold TNB, Debit Sponsor, and Member harmless from any fines and penalties issued by any Card Brand and any other fees and costs arising out of or relating to the processing of transactions by TNB, Debit Sponsor, and/or Member at Merchant's location(s) and will reimburse TNB and Member for any losses incurred by TNB or Member with respect to any such fines, penalties, fees and costs. Merchant will be solely responsible for the security of all such information obtained from a cardholder, including implementing those safeguards and protections necessary to prevent the unauthorized disclosure of or access to such information. Merchant will indemnify and hold TNB, Debit Sponsor, and Member (including, without limitation, the respective officers, directors, employees, attorneys, shareholders, representatives and agents of all of the foregoing) harmless from any claim, liability, judgment, arbitration award, settlement, action, suit, demand, loss, damage or cost incurred by TNB, Debit Sponsor and/or Member, including but not limited to attorneys' fees, court costs, and amounts incurred by TNB or Member attributable to reasonable TNB or Member staff time expended to address issues arising out of or resulting from any unauthorized disclosure or use of merchant or cardholder information.
 - (g) **Applicable Law and Certain Rules.** Without limiting the generality of any other provision of this Agreement, Merchant also agrees that it will comply with all Rules and Law (defined below), including but not limited to those Laws involving: (i) the truncation or masking of cardholder numbers and expiration dates on transaction receipts from transactions processed at Merchant's location(s) such as the Fair and Accurate Credit Transactions Act (collectively the "**Truncation Laws**"); and (ii) the collection of personal information from a cardholder in connection with a card transaction ("**PI Laws**"). As between Merchant, on the one hand, and TNB, Debit Sponsor, and Member, on the other hand, Merchant shall be solely responsible for complying with all Truncation Laws and PI Laws and will indemnify and hold TNB, Debit Sponsor, and Member harmless from any claim, loss or damage resulting from a violation of Truncation Laws or PI Laws as a result of transactions processed at Merchant's location(s). "**Law**" shall mean any foreign, federal, state, or local law, statute, regulation, rule code, judgment, or ordinance enacted, adopted, issued, or promulgated by any court or foreign, federal, state, or local government authority, administrative body, regulatory body, or agency thereof, including but not limited to any common law, consent decree, or settlement agreement.
 - (h) **Instructions.** TNB may, from time to time and in addition to its policies and procedures, issue written directions (via mail or Internet) to Merchant regarding procedures to follow and forms to use to carry out this Agreement. These directions and the terms of the forms are binding as soon as they are issued and shall form part of these Card Services Terms & Conditions. The Rules, and all applicable policies and procedures, may be reviewed upon appointment at TNB's designated premises and Merchant acknowledges that it has had the opportunity to request a review and/or review such Rules, policies, and procedures in connection with its execution of this Agreement.
- 4. Marketing.** Merchant shall display the Card Brand service marks and promotional materials supplied by TNB in accordance with the Rules. Merchant shall cease to use or display such service marks immediately upon notice from TNB, the applicable Card Brand, or upon termination of this Agreement. In no case shall Merchant use any Card Brand name, logo, service mark, trademark, or other intellectual property in violation of the Rules. Merchant may not display any Card Brand mark or promotional material which in any way states, suggests, or implies that a Card Brand endorses Merchant or any product or service.
- 5. Fees and Payment.**
- (a) **Fees.** Fees and charges payable by Merchant shall be as set forth in the Merchant Application or this Agreement. TNB may modify the fees and charges payable by Merchant at any time, and will provide Merchant written notice of any such modification at least thirty (30) days prior to the modification. The fees and charges listed on the Merchant Application may be subject to additional surcharging from any Card Brand or Member, and all such surcharges shall be passed through and paid by Merchant. If Merchant uses any Services for which the corresponding fees and charges are not set forth on the Merchant Application or this Agreement, TNB will charge and Merchant agrees to pay TNB's then-current rates for such Service, and such rates may be adjusted by TNB from time-to-time.
 - (b) **Non-Qualified Surcharges.** Merchant's pricing appears in the Card Services Fee Schedule of the Merchant Application. Notwithstanding the foregoing, certain merchants, including but not limited to airline, car rental, cruise line, fast food, lodging, restaurant, travel agent, and

transportation merchants may have separate rates quoted for consumer and commercial (business) transactions. Transactions that do not clear as priced are subject to non-qualified surcharges (“NQS”) that are billed back to Merchant on Merchant’s monthly statement. Most non-qualified surcharges can be avoided by using a product that supports authorization and market data requirements established by the Card Brands and that are subject to change from time to time. Some non-qualified surcharges occur on specific types of cards (including without limitation Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, MasterCard World Elite Card, Discover Rewards Card, Discover Premium Card, Discover Premium Plus Card, and “foreign” cards issued outside the United States). Unless Merchant’s Card Services Fee Schedule specifically addresses commercial cards (i.e., Business Cards, Corporate Cards, Fleet Cards, GSA Cards, Purchase Cards), Merchant will be billed back for the higher cost of acceptance of commercial cards. The Card Brands require that information from the original authorization, including a lifecycle identifier, be retained and returned with subsequent authorizations and/or the settled transaction data. The Card Brands validate this information as part of the clearing and settlement process. If authorization data is not retained and returned at settlement, then the applicable transaction will not clear as priced and Merchant will incur NQS. For more information concerning NQS, Merchant may contact TNB. The scenarios under which NQS’ are charged to Merchant listed in this Section are not and are not intended to be a comprehensive list of all instances in which NQS may apply. NQS may apply in additional situations. All NQS may include additional fees assessed by the Card Brand, Member or TNB.

- (c) **Additional Fees.** Merchant may be assessed additional fees which will be in addition to the fees stated on the Merchant Application and in this Agreement, including but not limited to: (i) cross-border fees and a U.S. acquirer support fee for international MasterCard and Maestro transactions; (ii) an international service assessment fee and international acquirer fee for international Visa transactions; and (iii) an international processing fee and international service fee for international Discover transactions. These fees, which are applicable to transactions between Merchant and a non-U.S. MasterCard, Maestro, Visa, American Express, or Discover cardholder will listed on Merchant’s monthly statement and may include fees assessed by both the applicable Card Brand and Member or TNB.
- (d) **Transaction Fees.** Merchant will also be assessed per transaction access fees and assessment rates for Visa, MasterCard, American Express and Discover transactions, which will be listed on Merchant’s monthly statement and may include fees by both the applicable Card Brand and Member or TNB. Merchant will also be assessed a Discover network authorization fee.
- (e) **Data Security Fees.** Merchant may also be assessed a PCI compliance fee, which will be listed on Merchant’s monthly statement. This fee is assessed by Member and/or TNB in connection with Member and/or TNB’s efforts to comply with the PCI Rules and does not ensure Merchant’s compliance with the PCI standards or any Rule or Law. The payment of such fee shall not relieve Merchant of its responsibility to comply with all Rules and Laws related to cardholder data security. Merchant may also be assessed a PCI DSS non-compliance fee until Merchant validates compliance or confirms it is using a PA DSS validated payment application.
- (f) **Resource Fee.** In addition to any other fees, rights, and remedies available to TNB, Merchant will be assessed a fee (“Resource Fee”) if: (i) Merchant suffers a data breach or there is any unauthorized access to any system or password or personal identification number maintained by or under the control of Merchant; (ii) fraud, excessive chargebacks, excessive credits, or other transactions or behavior identified by TNB as “high risk” are associated with Merchant; (iii) Merchant violates any Rule or Law; (iv) a Reserve Account is established; or (v) Merchant requests, or the nature of Merchant’s business or processing activity requires, excessive usage of TNB resources in support of Merchant, or in connection with any Merchant related investigation, accounting, or administrative functions, including but not limited to reconciliation of and reporting related to Reserve Account amounts. The Resource Fee shall be equal to: (vi) the number of hours expended by TNB personnel associated with the foregoing events or occurrences multiplied by TNB’s then-current hourly rate for such personnel, such rate not to be less than one hundred twenty five dollars (\$125) per hour; plus (vii) legal, accounting, and consultant fees and costs incurred by TNB in connection with the events set forth in this sub-Section. The Resource Fee will be listed on Merchant’s monthly statement.
- (g) **Visa Additional Fees.** Merchant will also be assessed the following fees on or related to Visa transactions: the Misuse of Authorization System fee, which will be assessed on authorizations that are approved but never settled with Merchant’s daily batch, the zero floor limit fee, which will be assessed on settled transactions that were not authorized, the zero dollar verification fee, which will be assessed on transactions where Merchant requested an address verification response without an authorization, the transaction integrity fee, which will be assessed on Visa signature debit and prepaid transactions that fail to meet processing and transaction standards defined by Visa, and a monthly fee based on the number of card present Merchant locations by Merchant taxpayer identification number and/or all Visa volume processed by a Merchant’s taxpayer identification number.
- (h) **MasterCard Additional Fees.** Merchant will also be assessed a MasterCard CVC2 transaction fee and the MasterCard misuse of authorization system fee, which will be assessed on authorizations that are approved but never settled with the Merchant’s daily batch or not properly reversed within 120 days, and an acceptance and licensing fee that will be applied to the Merchant’s total U.S. MasterCard sales volume. The acceptance and licensing fee may be included with Merchant’s MasterCard assessment fees, and may include fees assessed by both the applicable card association and Member or TNB.
- (i) **TouchTone Capture.** Transactions which utilize touchtone capture for authorizations and settlement, settle beyond 48 hours, or are not transmitted via the touchtone capture system, will be priced at the rate quoted plus the non-qualified rate quoted in the Merchant Application.
- (j) **Paper Deposit Fees.** Non-terminal/electronic paper deposit transactions will be priced at the rate quoted in the Card Services Fee Schedule of the Merchant Application.
- (k) **Debit Card Fees.** Each debit card transaction will be assessed the network’s acquirer fee in addition to the debit card per item fee quoted in the Card Services Fee Schedule of the Merchant Application.
- (l) **Payment.** Merchant will be paid for amounts due by TNB under this Agreement by credit to the Account (defined below). The Account will, at TNB’s sole discretion, be credited for: (i) the gross amount of the transactions settled less the amount of any credit vouchers deposited; or (ii) the gross amount of the transactions settled less the amount of any credit vouchers deposited and less the amount of the fees and charges payable by Merchant. Merchant shall not be entitled to credit for any funds that arise out of a transaction not processed in accordance with the terms of this Agreement or which violates any Rule or Law. Availability of funds deposited in any Account shall be subject to the procedures of the applicable financial institution(s). Merchant understands and agrees that the deposit by TNB or its vendors to the Account, as it relates to any transaction, is provisional and may be revoked by TNB if such transaction is returned, refunded, charged back, or otherwise subject to dispute.

- (m) **Account Charges.** Merchant shall establish and maintain an account in Merchant's name at a financial institution which is approved by TNB and participates in the automated clearing house system ("Account"). Merchant agrees to maintain an adequate balance in the Account to cover all fees, fines, and other amounts due to TNB, including but not limited to those amounts due to TNB pursuant to or in connection with this Agreement, an equipment purchase or lease agreement, or any other agreement. Chargebacks and adjustments will be charged to the Account or set off against processed transactions on a daily basis. Merchant agrees to pay and the Account will be charged for the discount, fees, chargebacks, and other fees and charges described in this Agreement. Merchant also agrees to pay and the Account will be debited for all fees, arbitration fees, fines, penalties, assessments, and other amounts charged or assessed by TNB, Member, Debit Sponsor, or the Card Brands on account of or related to Merchant's processing hereunder, including without limitation amounts owed to any third party who provides Merchant with services related to payment processing or facilitates Merchant's ability to accept credit and debit cards and who is not a party to this Agreement. TNB is authorized to debit the Account in the amount of, and set off against amounts due to Merchant, all amounts due from Merchant to TNB or Member or any Card Brand, whether such amounts are due under this Agreement, a separate agreement, or for any other reason, without prior notice to Merchant.
- (n) **Discrepancy.** If any type of overpayment to Merchant or other error occurs, the Account may be debited or credited, without notice, and if the Account does not contain sufficient funds, Merchant agrees to remit the amount owed directly to TNB. Merchant agrees not to, directly or indirectly, prevent, block or otherwise preclude any debit by TNB, Debit Sponsor, or Member to the Account which is permitted hereunder.
- (o) **Indebtedness.** Merchant represents and warrants that no one other than Merchant has any claim against any transaction amounts processed, settled, or otherwise submitted to TNB pursuant to this Agreement except as authorized in writing by Member and TNB. Merchant hereby assigns to Member and TNB all of its right, title, and interest in and to all funds for transactions submitted hereunder, and agrees that Member and TNB have the sole right to receive payment on any transactions processed hereunder, and further agrees that Merchant shall have no right, title or interest in any such funds, including any such funds held in a Reserve Account (as defined below).

6. Equipment, Supplies, and Third Party Services.

- (a) **Rights.** Merchant agrees that it will not acquire any title, copyrights, or any other proprietary right to any: advertising material; Card Brand materials; leased equipment including imprinters, authorization terminals, or printers; other equipment; software; credit card authenticators; unused forms; and Merchant deposit plastic cards provided by TNB in connection with this Agreement. Merchant will protect all such items from loss, theft, damage or any legal encumbrance and will allow TNB and its designated representatives reasonable access to Merchant's premises for their repair, removal, modification, installation and relocation.
- (b) **Software Rights.** Merchant acknowledges that any equipment or software provided under this Agreement is embedded with proprietary technology ("Software"). Merchant shall not obtain title, copyrights or any other intellectual property or proprietary right to any Software. At all time, TNB or its suppliers retain all rights to such Software, including but not limited to all rights in and to the updates, enhancements and additions of such Software. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by TNB. TNB's suppliers are intended third party beneficiaries of this Agreement to the extent any terms of this Agreement pertain to such suppliers' ownership rights, such suppliers have the right to rely on and directly enforce such terms against Merchant.
- (c) **Equipment Usage.** The operating instructions will instruct Merchant in the proper use of the terminals and other equipment, and Merchant shall use and operate the terminals and other equipment only in such manner. Merchant is solely responsible for the operation of all terminals and other equipment. If Merchant has purchased the maintenance/help desk service from TNB for its terminals, Merchant will promptly notify TNB of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon TNB will make the necessary arrangements to obtain required maintenance. Merchant is responsible for shipping costs. Merchant shall cooperate with TNB in its attempt to diagnose any problem with the terminal. In the event the Merchant's terminal requires additional Software, Merchant shall cooperate and participate in a dial in down line load or other procedure, as instructed by TNB. With respect to any item of equipment leased to Merchant by TNB, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to TNB in the event that any item of equipment is damaged, lost, destroyed, stolen, or rendered inoperative. Merchant will indemnify TNB against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Merchant also agrees to hold harmless and indemnify TNB for any Indemnified Amounts as a result of Merchant's use of any terminal or other equipment, whether provided hereunder or otherwise. TNB shall have no responsibility for the processing or settlement of transactions which are not submitted to TNB in accordance with the Rules and TNB's policies, procedures, and technical specifications due to the use, misuse, malfunction, or other error associated with any terminal or other equipment. Any unused equipment in its original packaging purchased from TNB hereunder may be returned to TNB at Merchant's expense within thirty (30) days of receipt. Merchant shall receive a refund of any money paid in connection therewith subject to a re-stocking fee of an amount equal to twenty percent (20%) of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after thirty (30) days.
- (d) **Third Parties.** Merchant acknowledges that some of the services to be provided by TNB and Member hereunder may be provided by third parties. Merchant agrees that except for its right to utilize such services in connection with this Agreement, it acquires no right, title or interest in any such services. Merchant further agrees that it has no contractual relationship with any third party providing services under this Agreement and that Merchant is not a third party beneficiary of any agreement between TNB or Member, as applicable, and such third party. Merchant may not resell the Services of TNB or any third party providing Services under this Agreement to any other party without TNB's prior written consent.

7. **Financial Information.** Merchant agrees to furnish to TNB and Member such financial statements and information concerning Merchant, its owners, principals, partners, proprietors, vendors, or its affiliates as TNB or Member may from time to time request. TNB and Member, or its duly authorized representatives, may examine the books and records of Merchant, including but not limited to records of all transactions previously processed or presented for processing. Merchant agrees to retain copies of all paper and electronic sales slips and credit slips submitted to TNB and Member for a period of two years from submission, or such longer period of time as may be required by the Rules, by Law, or by TNB and Member as specifically requested in individual cases.

8. **Change in Business.** Merchant agrees to provide TNB and Member sixty (60) days prior written notice of its: (a) transfer or sale of any substantial part (ten percent (10%) or more) of its total stock, assets and/or its plans to liquidate; (b) change to the basic nature of its business, or (c) provided that Merchant has not indicated on the Merchant Application that it accepts mail order, telephone order, or internet-based transactions, conversion

of all or part of the business to mail order sales, telephone order sales, Internet-based sales or to other sales where the card is not present and not swiped through Merchant's terminal. Upon the occurrence of any such event, the terms of this Agreement may be modified by TNB to address issues arising therefrom, including but not limited to requirements of the Card Brands.

9. Transferability. This Agreement, and Merchant's rights and obligations under this Agreement, are not assignable by Merchant, by operation of law or otherwise, without the written consent of TNB. Any attempt by Merchant to assign its rights or to delegate its obligations, in whole or in part, in violation of this paragraph shall be void. Merchant agrees that the rights and obligations of TNB hereunder may be assigned, by operation of law or otherwise, by TNB without notice to Merchant. Merchant agrees that the rights and obligations of Member hereunder may be assigned, by operation of law or otherwise, to any other Card Brand member without notice to Merchant. Merchant acknowledges that the rights of TNB and Member assignable hereunder shall include, but shall not be limited to, the authority and right to debit the Account as described herein.

10. Representations and Warranties.

(a) Representations and Warranties. Merchant represents and warrants, as of the effective date and as of the date of each transaction submitted to TNB and/or Member: (i) that each sales transaction delivered hereunder represents a bona fide sale to a cardholder by Merchant for the amount shown on the sales slip as the total sale and constitutes the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever; (ii) that each sales slip or other evidence of indebtedness will accurately describe the goods and services which have been sold and delivered to the cardholder or in accordance with the cardholders' instructions; (iii) that Merchant will comply fully with all Rules and Law; (iv) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any customer dispute or complaint directly with the cardholder; (v) that each transaction and the signature on the sales slip will be genuine and authorized by cardholder and not forged or unauthorized; (vi) that the sales transaction shall have been consummated and the sales slip prepared in full compliance with the Rules and TNB's policies and procedures, as amended from time to time; (vii) provided that Merchant has not indicated on the Merchant Application that it accepts mail order, telephone order, or internet-based transactions, that none of the sales transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present at the Merchant's location and swiped through Merchant's terminal, unless Merchant is specifically authorized in writing by TNB to submit such sales slips for processing; (viii) to the extent Merchant has indicated on the Merchant Application that it accepts mail order, telephone order, or internet-based transactions, Merchant shall not submit such a transaction to TNB and Member for processing until the goods and/or services are shipped or performed, as applicable, unless otherwise permitted by the card associations or network organizations; (ix) that none of the sales transactions submitted hereunder represent sales to any principal, partner, proprietor, or owner of Merchant; (x) that, without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto will comply with the Rules, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program; and (xi) that all of the information contained in this Agreement (including but not limited to the Merchant Application) is true and correct.

(b) Breach. If any of the foregoing representations or warranties is breached, the affected sales slips or other transactions may be refused, or prior acceptance of such sales slip or transaction may be revoked and charged back to the Merchant, at TNB's sole discretion. Furthermore, if Merchant submits a sales transaction that is not the result of a sale of Merchant's goods or services offered to the general public or if Merchant submits any sales transactions which represents a sale to any principal, partner, proprietor, or owner of Merchant, such sales transaction may be refused or charged back, at TNB's sole discretion.

(c) Third Party Election. Merchant must notify TNB if Merchant elects to use the terminal service of American Express or any other third-party provider. If Merchant elects to use a third-party terminal provider, that provider becomes Merchant's agent for the delivery of card transactions to TNB via the applicable card- processing network. Merchant agrees to assume full responsibility and liability for any failure of such agent to comply with the Rules, including without limitation any violation, which results in a chargeback to the Merchant. Merchant also agrees that the obligation hereunder to reimburse the Merchant for the value of the card transactions captured by an agent is limited to the value of the transactions (less applicable fees) received by the card-processing network from the agent.

(d) Disclaimer. MEMBER, DEBIT SPONSOR, TNB, AND EACH SUPPLIER OF TNB MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, AVAILABILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY TERMINAL, ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH, OR ANY OF THE SERVICES FURNISHED HEREUNDER.

11. Indemnity. Merchant agrees to satisfy directly with the cardholder any claim, chargeback or complaint arising in connection with any transaction, regardless of whether such claim or complaint is brought by the cardholder, TNB, Member, or another party. Merchant agrees to indemnify and hold TNB and Member (including, without limitation, the respective officers, directors, employees, attorneys, shareholders, representatives and agents of all of the foregoing) harmless from and against any claim, liability, judgment, arbitration award, settlement, action, suit, demand, loss, damage or cost arising out of or relating to a transaction and this Agreement, including without limitation: (a) claims, chargebacks and complaints made by a cardholder or any other person or entity with regard to transactions processed hereunder; (b) the failure to capture or settle any authorized transaction; (c) any other Service provided hereunder; (d) any failure by Merchant to comply with any Law or Rule; (e) Merchant's or Merchant's employees, officers, owners, or agents breach of any Law, Rule, or any representation, warranty, covenant or obligation in this Agreement, or (f) any unauthorized access to any computer system, cardholder information, Merchant credential, or any point of sale equipment controlled or maintained by Merchant. Merchant is jointly and severally liable for the obligations of Merchant's establishments under the Agreement. For purposes of this Agreement, including the foregoing indemnities, Merchant is responsible and liable for the acts and omissions of its employees, agents and representatives (whether or not acting within the scope of their duties).

12. Limitation of Liability.

(a) Force Majeure. Member, Debit Sponsor, and TNB shall not be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems, or other similar causes beyond such party's control.

(b) Limitations. TNB, Debit Sponsor, and Member shall have no liability associated with the failure to process, capture, or settle any transaction. The total liability of TNB, Debit Sponsor, and Member for any amounts arising out of or relating in any way to this Agreement, including but not limited to damages arising out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or malfunction of

the Services, personal injury, or property damage, shall, in the aggregate, be limited to actual and direct money damages in an amount not to exceed one (1) month's average fees paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of TNB's, Debit Sponsor's, and Member's liability arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the form in which any legal or equitable action may be brought against TNB, Debit Sponsor, or Member, whether contract, tort, or otherwise, and the foregoing shall constitute Merchant's exclusive remedy. Under no circumstances shall TNB, Debit Sponsor, or Member be liable for any lost profits, lost interest, or for special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement or for any other reason, including but not limited to, damages arising out of placement of a Merchant's name on any terminated merchant list for any reason, even if TNB, Debit Sponsor, or Member has been advised of the possibility of such damages. Under no circumstances shall TNB, Debit Sponsor, or Member be liable for any settlement amounts pertaining to Switched Transactions; Merchant's recourse for such transactions shall be to the applicable card issuer. Member shall not be responsible or liable to Merchant for any action taken by Member (or the results thereof) that is authorized by this Agreement.

- (c) **Discrepancy Reporting.** It is agreed that in no event will TNB, Debit Sponsor, or Member be liable for any claim, loss, billing error, damage, or expense arising out of or relating in any way to this Agreement which is not reported in writing to TNB by Merchant within sixty (60) days of such failure to perform or, in the event of a billing error, within ninety (90) days of the date of the invoice or applicable statement. Merchant expressly waives all of its rights in and to any such claim that is not brought within such sixty (60) or ninety (90) day time periods, as applicable.

13. Term and Termination.

- (a) **Term.** This Agreement shall remain in full force and effect for an initial term of three (3) years. This Agreement shall be automatically extended for successive one (1) year periods on the same terms and conditions expressed herein, or as may be amended, unless Merchant gives written notice of termination as to the entire Agreement or a portion thereof at least 60 days prior to the expiration of the initial term or any extension or renewals thereof, in which case this Agreement will terminate at the end of the then-current term.
- (b) **Liquidated Damages.** Notwithstanding anything to the contrary set forth herein, in the event Merchant terminates this Agreement prior to the end of the then current term, the following amount(s) shall be immediately due and payable to TNB: the lesser of (i) the maximum amount permitted by state law, and (ii) the amount of \$500 if cancelled within the first 12 months following Merchant's first transaction date, or \$395 anytime thereafter, such amount being immediately due and payable to TNB. Merchant hereby authorizes TNB to accelerate the payment of such applicable amount(s) and all other amounts owed to TNB hereunder and to deduct such total amount(s) from Merchant's Account, or to otherwise set off or withhold the total amount(s) from those amounts due to Merchant from TNB, immediately upon notice to TNB of termination, upon Merchant's failure to submit transactions to TNB, or after the effective date of termination. If the Merchant's Account does not contain sufficient funds for the debit or the amount cannot be withheld by TNB from amounts due to Merchant, Merchant shall pay TNB the amount due within five (5) days of the date of TNB's invoice for same. The payment as described here is not a penalty, but rather is hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate TNB for its termination expenses and all other damages under the circumstances in which such amounts would be payable. Such amount(s) shall not be in lieu of but in addition to any payment obligations for Services already provided hereunder (or that TNB may continue to provide and other amounts owed to TNB hereunder), which shall be an additional cost, and any and all other damages to which TNB may be entitled hereunder. Notwithstanding the foregoing, if Merchant provides TNB with written notice within forty-five (45) days of Merchant's execution of this Agreement that it wishes to terminate this Agreement immediately, Merchant shall not be responsible for the payment of liquidated damages, but shall be responsible for compliance with all other terms and conditions set forth in this Agreement, including but not limited to payment for all fees incurred prior to the termination of this Agreement.
- (c) **TNB Termination; Suspension.** TNB may terminate this Agreement or any portion of this Agreement without written notice to Merchant. TNB will use reasonable efforts to inform Merchant within a commercially reasonable time after such termination. Furthermore, TNB may terminate this Agreement, may suspend the Services or may process submitted transactions and suspend payment of settled transactions to Merchant at any time without notice upon: (i) Merchant's default in performing under any obligation under this Agreement; (ii) an unauthorized conversion of all or any part of Merchant's activity to mail order, telephone order, Internet order, or to any activity where the card is not physically present and swiped through the Merchant's terminal; (iii) Merchant's failure to follow any Rule or other policy or procedure of TNB; (iv) any misrepresentation by Merchant; (v) commencement of bankruptcy or insolvency proceedings by or against the Merchant; (vi) a material change in the Merchant's average ticket or volume as stated in the Merchant Application; (vii) request or instruction by any Card Brand or Member; or (viii) any circumstances which create actual or risk of harm or loss of good will for TNB or any Card Brand.
- (d) **Merchant Termination.** In the event that TNB and Member breach this Agreement, Merchant may, at its option, give written notice to TNB and Member of its intention to terminate this Agreement unless such breach is remedied within thirty (30) days of TNB's receipt of such notice. Failure to remedy such a breach shall make this Agreement terminable, at the option of the Merchant, at the end of such thirty (30) day period unless notification is withdrawn. Any Merchant deposit of sales or credit slips that is accepted by TNB and Member or by a designated depository after the effective date of termination will be returned to Merchant and will not be credited (or debited) to merchant's Account. If the deposit has already been posted to Merchant's account(s), said posting will be reversed. Termination of this Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any transactions processed hereunder prior to termination, including but not limited to chargebacks even if such chargebacks come in after termination of this Agreement. In the event of termination, all equipment leased from or provided by TNB (but not from any other leasing agent), including but not limited to imprinters, terminals, and printers; all supplies; materials; and operating instructions must be returned immediately to TNB at Merchant's expense.
- (e) **Other Termination.** Any Card Brand or Member may terminate this agreement at any time in their sole discretion and without notice to Merchant. TNB will use reasonable efforts to inform Merchant within a commercially reasonable time after such termination.

- 14. Returned Items and Chargebacks.** If a cardholder disputes any transaction, if a transaction is charged back for any reason by the card issuing institution, or if TNB, Debit Sponsor, or Member has any reason to believe a pending transaction or a previously-processed transaction is questionable, not genuine, or is otherwise unacceptable, the amount of such transaction may be charged back and deducted from any payment due to Merchant or may be charged against the Account, the Reserve Account (as defined below), or any other account in Merchant's name. Merchant acknowledges and agrees that it is bound by the Rules with respect to any chargeback. Merchant further acknowledges that it is solely responsible for providing TNB, Debit Sponsor, and Member with any available information to re-present a chargeback and that, regardless of any information it provides or

does not provide TNB, Debit Sponsor, and Member in connection with a chargeback, or any other reason, Merchant shall be solely responsible for the liability related to such chargeback. A list of reasons for chargebacks is contained in the Rules. If any such amount is uncollectible through withholding from any payments due hereunder or through charging Merchant's Accounts or the Reserve Account, Merchant shall, upon demand by TNB, pay TNB the full amount of the chargeback. Merchant understands that obtaining an authorization for any sale shall not constitute a guarantee of payment, and such sales slips can be returned or charged back to Merchant at any time.

15. Reserve Account.

- (a) Reserve. At any time, TNB or Member may, at their option, establish a reserve account to secure the performance of Merchant's obligations to TNB ("Reserve Account"). The Reserve Account shall be funded, at TNB's sole discretion, through any or all of the following: (i) at the request of TNB or Member, Merchant will directly deposit funds in the Reserve Account; (ii) TNB may use the proceeds of submitted transactions to fund the Reserve Account; or (iii) TNB or Member may withdraw funds from the Account or any other accounts of Merchant, including but not limited to certificates of deposit, maintained by Merchant or Merchant's guarantor, if any, with any depository or other financial institution and deposit such amounts into the Reserve Account. Merchant and Merchant's guarantor hereby grant Member a lien and security interest in (i) the Account, (ii) the Reserve Account, (iii) all other accounts, including but not limited to certificates of deposits, maintained by Merchant or Merchant's guarantor, if any, with any depository or other financial institution, (iv) any rights to receive credits or payments under this Agreement and (v) all deposits and other property of Merchant that Member or its affiliates possess or maintain (including all proceeds of the foregoing). Merchant authorizes TNB and/or Member to each make withdrawals from all or any of the accounts described in the previous sentence at such times and in such amounts as it may deem necessary hereunder, including as necessary to pay fees, fines, penalties, chargebacks, and other amounts due to any Card Brand, TNB or Member under this Agreement, under a separate agreement, or for any other reason without prior notice to Merchant. Merchant shall execute, acknowledge or deliver any documents or take any actions Member and TNB may from time to time request to better assure, preserve, protect, perfect, maintain or enforce the security interest granted above. Merchant and Merchant's guarantor hereby instruct said financial institutions to honor any requests made by TNB or Member under the terms of this provision. Merchant and Merchant's guarantor will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from TNB and Member.
- (b) Reserve Deductions. Merchant authorizes TNB and Member to deduct from the Reserve Account any amount owed to such party, whether under this Agreement, a separate agreement, or for any other reason. Any funds in the Reserve Account may be held until the later of: (i) the expiration of any potentially applicable chargeback rights in respect of processed transactions under the Rules; or (ii) the period necessary to secure the performance of Merchant's obligations, which holding period may extend beyond termination of this Agreement. Merchant will not receive any interest on funds being held in a Reserve Account and Merchant has no right to access the funds being held in the Reserve Account or otherwise transfer, pledge or use these funds for its own purposes. Without limiting the generality of the foregoing, Merchant shall, upon termination of this Agreement, maintain the sum of at least five percent (5%) of gross sales for the 90 day period prior to termination to be held in a Reserve Account in accordance with the terms of this Agreement. TNB may, at its discretion upon termination of this Agreement, require that the Merchant maintain more than five percent (5%) of gross sales for the 90 day period prior to termination in a Reserve Account.

16. Default and Security Interest.

- (a) Default. If Merchant fails to meet any obligation under this Agreement (including funding the Reserve Account) or breaches any representation or warranty, the Account or any other account belonging to Merchant, Merchant's affiliated entities, or Merchant's guarantor held by any depository (or by any other financial institution) may be debited without notice to Merchant, and Merchant (on behalf of itself and its affiliated entities) and Merchant's guarantor grant Member and TNB a first priority security interest in all such accounts for these purposes. The scope of the security interest, and Merchant's (on behalf of itself and its affiliated entities) and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from TNB and Member, and Merchant's agreement to hold such institutions harmless and to indemnify them are described in Section 15.
- (b) Setoff. Merchant agrees that Member and TNB have a right of setoff and may apply any of Merchant's balances or any other monies due Merchant from Member or TNB towards the payment of amounts due from Merchant under the terms of this Agreement or any other agreement. The rights stated herein are in addition to any other rights TNB and Member may have under this Agreement and applicable law.

17. Choice of Law, Attorney's Fees, Venue, and Jury Trial Waiver. Should it be necessary for TNB or Member to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse TNB and/or Member, as applicable, for all costs and expenses, including reasonable attorney's fees, as a result of such collection or legal action. Without limiting the generality of the foregoing, Merchant agrees to reimburse TNB and/or Member, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by TNB and/or Member in enforcing or defending its rights under this Section 17, without regard to whether there has been an adjudication on the merits in any such action. Merchant waives trial by jury with respect to any litigation arising out of or relating to this Agreement. TNB, Member, and Merchant agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of this Agreement, shall be governed by the laws of the State of Illinois, notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. TNB, Member, and Merchant agree that all actions arising out of, relating to, or in connection with this Agreement or the relationships which result from this Agreement, shall be brought exclusively in the state and federal courts located in Cook County, Illinois and expressly agree to the exclusive jurisdiction of such courts.

18. Amendments. TNB may modify, effective immediately and without notice to Merchant: (a) TNB's policies and procedures; and/or (b) any and all fees, charges, and/or discounts (including without limitation NSQ (defined below) rates) charged to Merchant. TNB may modify, by written notice, any other term in this Agreement, and such modification shall be binding upon Merchant if Merchant deposits any sales or credit slips after the effective date of such amendment or new agreement set forth in TNB's notice. Except for modifications by TNB in accordance with this Section 18 or as expressly allowed elsewhere in this Agreement, this Agreement may be amended only by a writing signed by TNB, Member, and Merchant.

19. Waiver. No provision of this Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising on the part of any party hereto, any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

20. Exchange of Information.

- (a) **Authorization.** Merchant authorizes TNB to order a credit report on Merchant and any owner, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant authorizes Member or any depository institution to release any financial information concerning Merchant or its accounts to TNB. Subsequent credit reports may be ordered in connection with updating, renewing or continuing this Agreement. Upon the written request of any individual who is the subject of a consumer credit report, TNB will provide the name and address of the consumer credit reporting agency furnishing such report, if any. TNB may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, officers, shareholders, managing agents, and guarantors with Member, other financial institutions, the Card Brands, and any other party. Merchant hereby authorizes TNB to disclose information concerning Merchant and Merchant's transactions, disputes, and any other activity to any Card Brand, financial institution, Member, or any other party without any liability whatsoever to Merchant.
- (b) **Merchant Policy.** Merchant's privacy policy shall allow the sharing of information regarding each customer and transaction with TNB and each Card Association, including but not limited to the billing and shipping address for fraudulent transactions.
- (c) **Restrictions.** Merchant shall not use, store, or disclose any Confidential Information except as necessary to perform its obligations under this Agreement. "**Confidential Information**" means all information any materials pertaining to technology, trade secrets, know-how, products, facilities, processes, operations, suppliers, marketing objectives and plans, pricing and other information pertaining to TNB, Member, or a Card Brand. Confidential Information includes, but is not limited to, merchant credentials, passwords provided by TNB, card numbers, transaction information, or cardholder personal information. All information received by TNB, Member, or a Card Brand may be used or disclosed in accordance with TNB's, Member's, or the Card Brand's, as applicable, policies and procedures.

21. Severability and Headings. If any provision of this Agreement or portion thereof is held to be unenforceable, such a determination will not affect the remainder of this Agreement. Paragraph headings are included for convenience only and are not to be used in interpreting this Agreement.

22. Notices. All notices required by this Agreement shall be in writing and shall be sent by facsimile, by overnight carrier, or by regular or certified mail. All notices sent to TNB or Member shall be effective upon actual receipt by the General Counsel of Transnational Bankcard, LLC, 9550 W. Higgins Road, 8th Floor, Rosemont, Illinois 60018. Any notices sent to Merchant shall be effective upon the earlier of actual receipt or upon sending such notice to the address provided by Merchant in the Merchant Application or to any other e-mail or physical address to which notices, statements and/or other communications are sent to the Merchant hereunder. The parties may change the name and address of the person to whom notices or other documents required under this Agreement must be sent at any time by giving written notice to the other party in accordance with this Section 22.

23. Entire Agreement. This Agreement, including these Card Services Terms & Conditions and the Merchant Application, and the TNB Merchant Operating Guide constitutes the entire agreement between Merchant, TNB, and Member and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing.

24. Effective Date. This Agreement shall become effective only upon acceptance by TNB and Member, or upon delivery of transactions to TNB for processing, whichever event shall first occur.

25. Designation of Depository. The financial institution set forth in the Merchant Application is designated by Merchant as a depository institution ("**Depository**") for its credit card transaction proceeds, and at which the Account is located. Such financial institution must be a member of the Automated Clearing House Association. Merchant authorizes payment for transactions processed hereunder to be made by paying Depository therefore with instructions to credit the Account. Depository, Member, and/or TNB may debit any of Merchant's accounts, including but not limited to those at Depository for any amount due under this Agreement. TNB must approve in writing any proposed changes to the Account number or to the Depository. Merchant authorizes Depository to release any and all account information to TNB as TNB may request without any further authorization, approval or notice from or to Merchant.

26. Financial Accommodation. The acquisition and processing of sales slips hereunder is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced, and TNB and Member shall be excused from performance hereunder.

27. Debit /ATM Processing Services: Additional Terms and Conditions.

- (a) **Sponsorship.** Debit Sponsor shall act as Merchant's sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by Merchant (the "**Covered Terminals**") in those debit card networks supported by TNB, which may be changed by TNB or Debit Sponsor from time-to-time in their sole discretion and without notice to Merchant ("**Debit Networks**"). The Debit Networks may include, but are not limited to Accel, NYCE, Pulse, Star, AFFN, Interlink Maestro, and CU24. Merchant may also have access to other Debit Networks that do not require a sponsor. TNB will provide Merchant with the ability to access the Debit Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Debit Networks. TNB will provide connection to such Debit Networks, terminal applications, settlement, and reporting activities in accordance with the terms of this Agreement.
- (b) **Participation.** Merchant will execute and deliver any application, participation, or membership agreement, enrollment form, or other document necessary to enable Debit Sponsor to act as sponsor for Merchant in each Debit Network. Merchant agrees to utilize the debit card Services in accordance with the Agreement, its exhibits or attachments, and TNB's instructions and specifications, and to provide TNB with the necessary data in the proper format to enable TNB to properly furnish the Services. The relevant and applicable portions of agreements, operating regulations, and Rules shall be made available to Merchant upon Merchant's reasonable request.
- (c) **Relationship.** Merchant shall not in any way indicate that Debit Sponsor endorses Merchant's activities, products, or services. Debit Sponsor and Merchant are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and Merchant.
- (d) **Limitations.** TNB and Debit Sponsor shall be excused from failing to transmit or delaying the processing of any transaction which, in the exclusive opinion of TNB or Debit Sponsor, would result in the violation of any present or future Law or Rule.
- (e) **Termination.** TNB and/or Debit Sponsor may terminate the sponsorship of Merchant for participation in the Debit Networks immediately and without notice to Merchant. During the term of this Agreement, TNB may assign Debit Sponsor's rights and obligations hereunder to a third

party. All provisions in this Section necessary to enforce the rights and obligations of the parties contained in Section 27 shall survive the termination of Debit Sponsor's debit sponsorship of Merchant under the Agreement. Debit Sponsor may assign its rights and obligations to any parent, subsidiary, affiliate, or successor-in-interest without notice to Merchant.

28. EBT Transactions: Additional Terms and Conditions.

- (a) **Issuance.** Merchant agrees to issue EBT to Recipients in accordance with the procedures specified herein, and in all documentation and user guides provided to Merchant by TNB, as amended from time-to-time and pursuant to the Quest Operating Rules (the "EBT Rules"), as amended from time-to-time, issued by the National Automated Clearing House Association as approved by the Financial Management Service of the U.S. Treasury Department.
- (b) **Definitions.** Unless otherwise defined in this Agreement, all capitalized terms in this Section 28 shall have the meanings ascribed them in the EBT Rules.
- (c) **Procedure.** Merchant will provide each recipient a receipt of each Benefit issuance. Merchant will be solely responsible for Merchant's issuance of Benefits other than in accordance with authorizations. Merchant agrees to comply with all Law pertaining to the delivery of services to Benefit Recipients and Benefit Recipient confidentiality. If Merchant issues FS Benefits under this Agreement, Merchant represents and warrants to TNB that Merchant is an FNS-authorized "Merchant" (as such term is defined in the EBT Rules) and is not currently suspended or disqualified by FNS. Merchant agrees to secure and maintain at its own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of Benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that Merchant will not issue Benefits at any time during which Merchant is not in compliance with the requirements of any Law or EBT Rule.
- (d) **Indemnification and Modification.** Merchant agrees to hold TNB harmless from any costs of compliance or failure to comply with any obligation by Merchant under this Section 28. TNB may terminate or modify the provision of Services to Merchant if any of TNB's agreements with government EBT agencies are terminated for any reason or if any party threatens to terminate services to TNB due to some action or inaction on the part of Merchant. If any of these Card Services Terms & Conditions are found to conflict with Law or the EBT Rules, the Law and EBT Rules shall control. These Card Services Terms & Conditions are subject to reasonable amendment by TNB, the State or its EBT service provider to address any such conflict upon ninety (90) days written notice to Merchant, provided that Merchant may, upon written notice, terminate its receipt of EBT Transaction Processing Services under this Agreement within fifteen (15) days of receipt of notice of such amendment.
- (e) **States.** Nothing contained in this Agreement shall preclude the State from commencing appropriate administrative or legal action against Merchant or for making any referral for any action to any appropriate federal, State, or local agency.

29. Discover Card Acceptance.

- (a) **License.** Merchant is hereby granted a limited non-exclusive, non-assignable, non-sublicensable, non-franchisable, and non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks") solely for the limited purpose of disclosing to the public that Merchant accepts Discover cards as payment for goods and services. Merchant's usage of the Discover Program Marks must strictly comply with the Discover Rules.
- (b) **Mark Usage.** Merchant is prohibited from using the Discover Program Marks other than as expressly authorized in writing by TNB. Merchant shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to Merchant by TNB pursuant to this Agreement or otherwise approved in advance in writing by TNB. Merchant may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by TNB in writing. Merchant shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Discover Program Marks. Merchant recognizes that it has no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks. TNB and Discover may use Merchant's name in advertising, promotional, or other materials.
- (c) **Card Acceptance.** Merchant shall adhere to the card acceptance policies and procedures set forth in the Rules and by TNB. At the time of accepting a Discover card, Merchant must review the expiration date and, where applicable, submit such expiration date.
- (d) **Termination.** TNB may terminate Merchant's ability to accept Discover cards through TNB and this Agreement at any time, without prior notice, and for any reason, including, but not limited to, Discover requiring such termination or in accordance with the requirements of the Discover Rules. Termination of Merchant's ability to accept Discover cards shall not terminate Merchant's liability, responsibility, and other obligations related to any Discover transactions submitted to TNB for processing prior to such termination.
- (e) **Cardholder Contact.** Merchant will not contact any cardholder with respect to any matter arising under the Discover Rules except as required or permitted under the Discover Rules.

30. American Express. If Merchant elects to accept American Express cards and does not have a separate agreement with American Express, Merchant agrees to be bound by and adhere to the terms of the American Express Card Acceptance Agreement. If Merchant elects to participate in the American Express program, the following provisions will apply to such program:

- (a) Merchant agrees to comply with, and accept Cards in accordance with, the terms of the American Express Merchant Operating Guide, which is incorporated into this Agreement by reference and which is available from American Express online at www.americanexpress.com/merchantopguide, as such terms may be amended from time to time. American Express reserves the right to make changes to the American Express Merchant Operating Guide in scheduled changes and at any time in unscheduled changes.
- (b) Merchant expressly authorizes TNB to submit transactions to, and receive settlement from, American Express on Merchant's behalf.

- (c) Merchant expressly acknowledges and consents that TNB may disclose transaction data, Merchant data, and other information about Merchant to American Express, and that American Express may use such information: (i) to perform its responsibilities in connection with Merchant's participation in its merchant program, (ii) to promote the American Express network, (iii) to perform analytics and create reports, and (iv) for any other lawful business purposes, including commercial marketing communications purposes within the parameters of the Program Agreement, and important transactional or relationship communications from American Express. Merchant also acknowledges and consents that American Express may use the information obtained in the Merchant Application at the time of setup to screen and/or monitor Merchant in connection with American Express's marketing and administrative purposes. Merchant understands that it may opt out of marketing messages from American Express, and that opting out will not preclude Merchant from receiving important transactional or relationship communications from American Express. The opt-out option is provided in the Merchant Application.
- (d) Merchant agrees that it may be converted from the American Express program through TNB to a direct card acceptance relationship with American Express if and when it becomes a "High CV Merchant," as defined by American Express. Upon conversion, (i) Merchant will be bound by American Express' then-current card acceptance agreement; and (ii) American Express will set pricing and other fees payable by Merchant for card acceptance.
- (e) Merchant agrees to not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from charges will be for bona fide sales of goods and services (or both) at its establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future transaction receivables to TNB, its affiliated entities and/or any other cash advance funding source that partners with TNB or its affiliated entities, without consent of American Express.
- (f) American Express shall be a third-party beneficiary of this Agreement, conferring on American Express third-party beneficiary rights, but not obligations, to this Agreement that will fully provide American Express with the ability to enforce the terms of this Agreement against Merchant.
- (g) Merchant acknowledges that it may elect to opt out of accepting American Express cards at any time without directly or indirectly affecting its rights to accept other Card Brands' payment cards.
- (h) Merchant acknowledges and agrees that TNB may terminate Merchant's right to accept American Express cards if it breaches any of the provisions in this section or the American Express Merchant Operating Guide. In addition to TNB's termination rights set forth in this Agreement, TNB also has the right to immediately terminate Merchant for cause or fraudulent or other activity, or upon American Express' request.
- (i) Merchant's refund policies for purchases on American Express cards must be at least as favorable as its refund policy for purchases on any other Card Brand's payment products, and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with applicable law.
- (j) Merchant may not bill or collect from any cardholder for any purchase or payment on an American Express card unless the chargeback procedure has been exercised, Merchant has fully paid for such charge, and it otherwise has the right to do so.
- (k) Merchant agrees to comply with all applicable laws, rules and regulations relating to the conduct of Merchant's business.
- (l) Merchant must comply with the American Express Data Security Requirements (DSR) and Payment Card Industry Data Security Standard (PCI DSS).
- (m) Merchant must report all instances of a data security incident immediately to TNB after discovery of the incident.
- (n) Merchant must remove American Express licensed marks from its website and wherever else they are displayed upon termination of this Agreement or Merchant's participation in the American Express program.

31. Signatures. Under the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand. This Agreement and all related electronic documents shall be governed by the provisions of the E-Sign Act. By submitting the Merchant Application or any transaction to TNB, Merchant agrees: (i) that the Agreement and related documents shall be effective by electronic means; (ii) to be bound by the terms and conditions of this Agreement and related documents; (iii) that Merchant has the ability to print or otherwise store the Agreement and related documents; and (iv) to authorize TNB to conduct an investigation of Merchant's credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the Merchant Application and any related equipment lease.

32. Contact and Questions.

- (a) Questions. All questions regarding Services should be referred to Transnational Bankcard, LLC, 9550 W. Higgins Road, 8th Floor, Rosemont, Illinois 60018, or call: 1-888-998-6224.
- (b) Billing Disputes. Billing disputes must be forwarded, in writing, to Customer Service within 60 days of the date of the statement and/or notice.
- (c) "Debit Sponsor" means Bay Bank, a Maryland banking corporation.