



100399

MERCHANT AGREEMENT

This Agreement ("Agreement") is entered into by and between the undersigned Merchant ("Merchant"), the Member FDIC insured Bank identified in the Merchant Application and Agreement ("Bank"), represented by its Registered Service Provider, Cardservice International, Inc. ("Cardservice International"), an Independent Sales Organization and Merchant Services Provider for Bank. The guarantor(s) signing this Agreement is also a party as a continuing guarantor(s) pursuant to paragraph 3.15. To the maximum degree permitted by law and by MasterCard International, Inc. ("MasterCard") and Visa U.S.A. Inc. ("VISA") rules and regulations, it is the intention of the parties that the rights of Bank set forth in this Agreement or arising from this Agreement, may be exercised by Cardservice International. Within the context of this Agreement and to the full extent permitted by law and by MasterCard and VISA rules and regulations, the rights granted to Cardservice International shall also be for the benefit of any company affiliated with Cardservice International to the extent such affiliate may have or may have had a prior relationship with Merchant concerning or related to credit card processing. Merchant, Cardservice International, and Bank make this Agreement in consideration of the mutual covenants set forth herein.

This Agreement shall not be effective until the Merchant's signed Merchant Application, which incorporates this Agreement by reference, is approved by Bank. Therefore, Cardservice International representative's signature hereon constitutes only an offer made on behalf of, and is contingent upon approval by Bank and Cardservice International, which is located in Agoura Hills, California. This offer shall automatically expire after thirty (30) days unless both Merchant and Cardservice International's corporate office have also signed this Agreement. If Merchant reasonably anticipates that it will have sales volume in excess of \$10,000 per month in combined MasterCard and VISA transactions, Merchant at the request of Bank and Cardservice International, shall submit its current financial statement with this Agreement. Merchant's financial condition shall be one of the factors on which acceptance of this Agreement shall be conditioned. Merchant acknowledges that this Agreement is premised upon Merchant having a floor limit of ZERO dollars. By entering into this Agreement, Merchant agrees to comply with and be subject to, all MasterCard or VISA rules and regulations as they may exist from time to time, including, but not limited to, chargeback procedures and the resolution of any disputes relating thereto. Any violation of MasterCard and VISA rules and regulations by Merchant shall constitute a breach of this Agreement and may, at the option of Bank and Cardservice International, be grounds for terminating this Agreement.

ARTICLE 1 - GENERAL RULES AND REGULATIONS

DEFINITIONS

Account Number - A unique sequence of numbers assigned to a cardholder account that identifies the issuer and type of financial transaction card.
Association Bank - A licensed association member that acquires the data relating to a transaction from the card acceptor or merchant and submits that data into Interchange, either directly or indirectly.
Authorization - The process used by card issuers to approve or decline a transaction request (this only validates this transaction, it does not guarantee the sale).
Automated Clearing House (ACH) - One of the groups of processing institutions that have networked together to exchange (clear and settle) electronic debit transactions.
Average Ticket - A predetermined dollar amount that the merchant can process on a per-sale basis.
Batch - A set of records within the merchant's closing transmission through the point-of-sale terminal.
Card Issuer - The financial institution that issues a credit card.
Cardholder - The customer to whom a card has been issued or the individual authorized to use the card.
Monthly Volume - A predetermined dollar amount that the merchant can process through the terminal.

1.01 HONORING CARDS

Merchant shall honor, in accordance with the terms and conditions of this Agreement and in accordance with all MasterCard and VISA rules and regulations in existence at the time of the transaction, without discrimination, all MasterCard and VISA credit cards ("Cards") when properly presented as payment by Merchant's customers ("Cardholder") in connection with bona fide legal transactions. If Merchant does not transact business with the general public, e.g., a private club, Merchant shall be deemed to have complied with this non-discrimination rule if it honors all valid Cards of Cardholders who have purchasing privileges or memberships with Merchant.

Merchant shall not, through an increase in price or otherwise, impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or similar means. Merchant may offer discounts for the purpose of inducing payment by cash, check or other means not involving the use of a Card, provided that the discount is offered to all prospective buyers. Merchant shall not establish minimum or maximum transaction amounts.

1.02 ADVERTISING

Merchant shall display any advertising or promotional materials provided by Bank and Cardservice International so as to be readily visible to Merchant's customers. This material will be designed to inform the public that Cards will be honored at Merchant's place of business. Merchants that do not deal with the general public, as well as companies subject to government regulation prohibiting such advertising or promotion or other Merchants expressly exempted by MasterCard or VISA, are excluded from this advertising display requirement. Merchant shall not display or use advertising or promotional materials which suggest, implicitly or explicitly, that Merchant only honors Cards issued by Bank.

Merchant shall have the right to use or display the proprietary names and symbols associated with Cards only while this Agreement is in effect or until Merchant is notified by Bank, Cardservice International, MasterCard, or VISA to stop such usage. Merchant shall only use the proprietary names and symbols associated with Cards to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that Bank and Cardservice International, MasterCard or VISA endorses Merchant's products or services.

1.03 CARD EXAMINATION AND CARD RECOVERY

Before accepting any Card, Merchant shall:

- check the date on which the Card becomes valid and the date on which the Card expires. Merchant shall not accept any Card that is not yet valid or that has expired;
- examine the signature on each Cardholder's Card. Merchant shall not honor any Card where the signature on the sales draft does not correspond to the signature on the Card;
- not request or record such personal Cardholder information, such as home or business telephone number, a home or business address, driver's license, or other such identification onto the sales draft as a condition of the sale unless such information is required under specific circumstances cited in MasterCard or VISA rules and regulations; and
- examine all Card security features (such as, by way of example only, a hologram) included on the Card. Merchant shall use its best efforts to retain, by reasonable and peaceful means, any Card which appears to be counterfeit, fraudulent or stolen when:
 - Merchant is directed to do so by Bank or Cardservice International's designated authorization center; or
 - Merchant has, or should have, reasonable grounds to believe that a Card is counterfeit, fraudulent, or stolen. Merchant's obligation to retain or recover a Card does not authorize Merchant to commit any breach of the peace or to cause any injury to persons or property and Merchant in fact agrees not to commit any such breach of the peace or to cause any injury to persons and/or property.

1.04 PRIOR AUTHORIZATION

Prior to accepting Card for payment, Merchant shall use due diligence to verify that Cardholder is authorized to use the Card presented and that such Card is genuine.

- In addition to the requirements set forth elsewhere in this Agreement, as part of Merchant's due diligence, Merchant shall obtain prior authorization for every transaction processed through Merchant's electronic terminal or, if such authorization is not reasonably possible, then authorization shall be obtained by telephone. Merchant shall follow all instructions received in the authorization process. After receiving authorization, Merchant may consummate only the transaction authorized and must post the authorization number on the sales draft. Whenever authorization is obtained by a method other than through the electronic terminal, the Merchant shall execute a sales draft with the Cardholder's signature and the credit card information imprinted onto the draft.
- Obtaining authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence. Neither shall authorization constitute a waiver by Bank of any other procedures required of Merchant by this Agreement or any MasterCard or VISA rules or regulation. Authorization shall not validate a transaction which would otherwise be invalid. Authorization shall not validate a transaction involving the use of an expired card or a transaction wherein Cardholder's signature does not match or has not been authorized by Cardholder. Merchant shall remain fully liable for any chargeback and fees related to an invalid transaction, whether or not prior authorization was obtained.

1.05 DELIVERY OF COPY OF SALES DRAFT

Merchant shall deliver a true and complete copy of the sales draft, credit draft or other transaction memorandum to the Cardholder at the time of the transaction.

1.06 ENTRY AND PRESENTMENT OF TRANSACTION

Merchant shall transmit a daily batch to Bank and Cardservice International containing all sales data relevant to electronic transactions, except that:

- When authorization is obtained by telephone, Merchant shall enter the data obtained from the Cardholder/Authorization Center onto a manually imprinted sales draft and forthwith transmit this data into its electronic terminal. The transaction shall be communicated to Bank and Cardservice International in such form as Bank and Cardservice International may from time to time specify or as may be required under any applicable laws, rules, or regulations; or
- Merchant shall present no sales data until the goods have been shipped or the services performed and Merchant has otherwise performed all of its principal obligations to the Cardholder in connection with the transaction. If Bank and Cardservice International request a copy of such sales draft, credit draft or other transaction memorandum or evidence, Merchant shall provide Bank and Cardservice International with said copy, no later than three calendar days from the date of request.

1.07 MULTIPLE TRANSACTION RECORDS; PARTIAL CONSIDERATION

Merchant shall include on one transaction record the entire amount due for each transaction, unless:

- the Cardholder pays the balance of the amount due at the time of transaction in cash or by check; or
- all or some goods or services are to be delivered or performed at a later date and Cardholder signs two separate sales drafts, one of which represents a deposit and the second of which represents payment of the balance and the "balance" sales draft is completed only upon delivery of goods or performance of the services. In such case, Merchant agrees:
 - to note on the sales draft the word "deposit" or "balance," as appropriate; and
 - not to present the "balance" sales draft until all goods are delivered or all services are performed; or
- in accordance with MasterCard and VISA regulations, Merchant shall not divide a single transaction. By way of example only, a single transaction shall not be divided into two (2) or more smaller transactions.

1.08 TELEPHONE ORDERS, MAIL ORDERS AND PRE-AUTHORIZED ORDERS

If a Card transaction is made in such a manner that the credit card is not present at the time of the transaction as, by way of example, a telephone order ("TO"), mail order ("MO"), or preauthorized order ("PO"), the sales draft may be completed without a Cardholder's signature or a Card imprint. In such case however, Merchant agrees:

- to print legibly on the sales draft sufficient information to identify Merchant and the Cardholder, including all embossed information on Card, including, but not limited to, Merchant's name and address, Cardholder's name and any other names which appear on the Card, Cardholder's account number, expiration date and any effective date on the Card; and
- to print legibly on the signature line of the sales draft the letters "TO," "MO," or "PO," as appropriate; and
- in the case of a pre-authorized order, to require Cardholder to execute and deliver to Merchant a written pre-authorization, which Merchant must retain and make available to Bank upon request; and
- not to deliver goods or perform services covered by a pre-authorization after being notified that the pre-authorization has been canceled, declined or that the Card is not to be accepted.

In any non-imprint transaction, either manual or electronic, Merchant acts solely at his own risk and shall waive the right to dispute any chargeback arising from a failure to produce to Bank/Cardservice International an imprinted draft.

1.09 PRE-AUTHORIZED LODGING AND VEHICLE RENTAL TRANSACTIONS

Regardless of the terms and conditions of any written pre-authorization form, the sales draft amount of any lodging or vehicle rental transaction which has been pre-authorized shall include only that portion of the transaction, including any applicable taxes, evidencing a bona fide renting of real or personal property by Merchant to a Cardholder and shall not include any consequential charges. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its pre-authorization form through means other than a Card transaction.

1.10 RETURNS AND ADJUSTMENTS; CREDIT DRAFTS

If Merchant has a policy of permitting refunds, exchanges, returns, or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases through use of a Card. However, Merchant may restrict its refund or return policy as to any Card transaction if Merchant discloses such policy to Cardholder in writing before obtaining Cardholder's signature. According to MasterCard and VISA regulations, any refund or adjustment policy must be made by printing appropriate notice (such as "No Refunds or Exchanges") on all copies of the sales drafts in close proximity to the space for the Cardholder's signature. Except as provided above, if Merchant accepts any goods for return, any services are terminated or canceled, or Merchant allows any price adjustment (other than involuntary refunds required by applicable airline or other tariffs or otherwise by law), then Merchant shall not make any cash refund. Instead, Merchant shall electronically complete and transmit promptly to Bank the credit data evidencing the refund or adjustment, and deliver to the Cardholder a true and complete copy of the credit draft at the time the refund or adjustment is made, together with the date and amount of the credit, in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each credit draft the embossed information from the Card and from Merchant's imprinter. The amount of the credit draft may not exceed the amount of the original transaction as reflected on the sales draft.

Merchant shall not under any circumstance:

- Accept payment from a Cardholder for the purpose of depositing funds to the Cardholder's Account.
- Process a Credit Transaction Receipt without having completed a previous retail transaction with the same Cardholder.

IN CONJUNCTION WITH EACH CREDIT TRANSACTION, MERCHANT SHALL HAVE SUFFICIENT FUNDS AVAILABLE IN BANK TO COVER THE AMOUNT OF SUCH TRANSACTION AND ANY RELATED FEES.

1.11 PAYMENTS

Merchant shall not receive any payments from a Cardholder for charges included on any transaction resulting from use of any Card. Neither shall Merchant receive any payments from a Cardholder to prepare and present a credit draft for the purpose of effecting a deposit to the Cardholder's account.

1.12 CASH ADVANCES

Merchant shall not use, at its location or through its electronic terminal, Merchant's own credit card or any credit card which Merchant is authorized to use. Such use is deemed a Cash Advance. Cash Advances are prohibited and can result in immediate termination and addition to the Combined Terminated Merchant File, Terminated Merchant File and Match File.

1.13 REFINANCING EXISTING DEBT

Merchant shall not process any transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations:

- Previously owed Merchant except where the refinancing results from a conversion of Merchant's existing credit program to a MasterCard or VISA program and appropriate documentation is provided to Bank and Cardservice International; or
- Arising from the dishonor of a Cardholder's personal check; or
- Representing the collection of any other pre-existing indebtedness.

1.14 RELEASE OF CARDHOLDER ACCOUNT INFORMATION

Unless required by law, Merchant shall not, under any circumstances, sell, purchase, provide, or otherwise disclose Cardholder's account information or other Cardholder personal information to anyone except Issuer or Bank and Cardservice International.

1.15 PURGED TRANSACTIONS

Merchant acknowledges that batches of transactions that are not closed and transmitted within forty-five (45) days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant releases Bank and Cardservice International from any loss they may sustain as a result of such purging and erasure and agrees to indemnify each of them for any losses, including attorneys' fees and costs, that they may sustain from any source because of this.

1.16 MONTHLY VOLUME AND AVERAGE TICKET

Merchant represents that the estimated monthly Card sales volume and average ticket amount appearing on the Merchant Application is a reasonable estimate. Merchant acknowledges that any monthly volume in excess of that estimated by Merchant will cause Cardservice International to review Merchant's file and that this review may result in delay in transmission of funds and possible interruption or termination of service.

1.17 KEYED PERCENTAGE

Merchant warrants that the keyed percentage appearing on merchant's application is a reasonable estimate. Merchant also understands and acknowledges that if the keyed percentage exceeds the stipulated percentage set forth in the Merchant Application, Cardservice International will review the merchant account. Such review may result in immediate increase of discount rates and fees, delay in the transmission of funds, and/or termination of the Merchant Agreement.

ARTICLE 2 - REPRESENTMENT, PAYMENT AND CHARGEBACK.**Fees**

Chargeback, Credit or Debt, or Representation - \$15.00 each
Documentation Retrieval Request - \$10.00 each

DEFINITIONS

Chargeback - A procedure in which a disputed transaction is returned to the Merchant by the card-issuing bank (via the merchant's bankcard processor) for possible resolution.

Credit Slip (Draft or Voucher) - A record of a return or refund of a transaction presented by the Merchant to the Cardholder and Merchant's bankcard processor.

Representation - A procedure in which a disputed transaction is returned to the card-issuing bank.

Retrieval Request - A request made by a Card Issuer to a Merchant (via the bankcard processor) for a copy of a sales slip when there is a question about a transaction.

Sales Slip (Draft) - A record of a sale to use as evidence of purchases made with a Card.

2.01 TERMINATION OF DATA

Instead of depositing paper sales or credit drafts with Bank, Merchant shall transmit all sales data and credit data to Bank and Cardservice International by means of magnetic tape or electronic data. "Sales data" refers to information transmitted by Merchant which is combined in a sales draft or the electronic or magnetic tape record that is the equivalent of such a sales draft. "Credit data" refers to the information transmitted by Merchant combined in a credit draft or the electronic or magnetic tape record that is the equivalent of such a credit draft. All data ("Transaction Records") transmitted shall be in a media form and format approved in advance by Bank and Cardservice International and shall be pre-sorted and organized according to Bank and Cardservice International's instructions. It shall include all information which appears on the sales or credit draft. All references in this Agreement to "sales drafts," "credit drafts," "sales data," or "credit data" shall include, as applicable, Transaction Records transmitted electronically or on magnetic tape, or in original format.

2.02 ACCEPTANCE AND DISCOUNT

Subject to Merchant not being in default of this Agreement and subject to Bank's chargeback rights, Bank agrees to accept valid Transaction Records from Merchant during the term of this Agreement and to pay Merchant the total amount represented by the Transaction Records, less any applicable discount fees and other charges agreed to by the parties and all setoff rights Bank may have. Any payment made by Bank to Merchant shall not be final but shall be subject to subsequent review and verification by Bank. Upon thirty (30) days written notice to Merchant, Bank and Cardservice International retain the right to change the fees set forth in this Agreement.

2.03 ENDORSEMENT

Merchant shall endorse any Transaction Record it presents to Bank and Cardservice International. If Merchant fails to do so, Merchant shall be deemed to have endorsed any Transaction Record it presents to Bank and Cardservice International in favor of Bank and Cardservice International and Merchant hereby appoints Bank and Cardservice International, acting either jointly or alone, as its attorney in fact to supply such endorsement on Merchant's behalf.

2.04 CHARGEBACK

After acceptance by Bank and Cardservice International, Merchant shall nevertheless repay Bank the amount represented by the Transaction Record, plus any applicable chargeback or related fee, if Bank has been charged back by another financial institution or if any one or more of the following circumstances exist:

- The Transaction Record or any material or information on a sales or credit draft (such as, by way of example only, the account number, expiration date of the Card, Merchant description, transaction description or notation of prior authorization for the transaction amount or date) is illegible, incomplete or otherwise not discernible, is not endorsed or is not delivered to Bank and Cardservice International within the required time limits;
- The Cardholder account number was declined or was not authorized on the transaction date and Merchant failed to reject the transaction;
- The sales draft does not contain the imprint of a Card that was valid, effective, and unexpired on the transaction date;

- (d) The transaction was one for which prior credit authorization was required and prior credit authorization was not obtained or a valid authorization number is not correctly and legibly included on the Transaction Record;
- (e) The Transaction Record is a duplicate of an item previously paid;
- (f) The Cardholder disputes the execution of the Transaction Record, the sale, delivery, quality or performance of the goods or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to Cardholder's account;
- (g) The price of the goods or service shown on the Transaction Record differs from the amount shown on the copy of the sales draft or the receipt delivered to the Cardholder at the time of the transaction;
- (h) Bank and Cardservice International reasonably determine that Merchant has violated any term, condition, covenant, warranty or other provision of this Agreement in connection with the Transaction Record or the transaction to which it relates;
- (i) Bank and Cardservice International reasonably determine that the Transaction Record is fraudulent or that the related transaction is not a bona fide transaction in Merchant's ordinary course of business, or is subject to any claim of Regality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees;
- (j) The Transaction Record arises from a mail or telephone order transaction which the Cardholder disputes entering into or authorizing, or which involves an account number that never existed or that has expired and has not been renewed;
- (k) Merchant fails to provide Bank and Cardservice International with any sales draft or credit draft in accordance with this Agreement;
- (l) Multiple authorization attempts were made by Merchant for a single transaction;
- (m) Merchant has divided a single transaction, in violation of MasterCard and VISA regulations or of this Agreement; or
- (n) The Transaction Record is otherwise subject to chargeback by the Card Issuer or Cardholder in accordance with the Associations' MasterCard/VISA rules or applicable law.

2.05 CHARGEBACK AND SECURITY INTEREST

Merchant covenants, agrees and acknowledges that, simultaneously with each purchase by Cardservice International, or Bank with respect to Bancard transactions hereunder of Debt, a contingent and unmatured claim for chargeback accrues against Merchant in favor of Cardservice International and Bank for the amount that Cardservice International and/or Bank is required, or has the right, to pay to or repurchase for MasterCard or VISA with respect to any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Merchant by Cardservice International and/or Bank, and that all settlements or credits given or payment made by Cardservice International and/or Bank in connection with such purchases are provisional, and subject to revocation, chargeback or refund, subject to the other terms of this Agreement, the rules and regulations of MasterCard or VISA, and their Operating Procedures. The right of Merchant to receive any amounts due or to become due to it from Cardservice International and/or Bank is expressly subject and subordinate to the chargeback, setoff, lien and security interest rights of Cardservice International and Bank without regard to whether such chargeback, setoff, lien and security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

2.06 CHARGEBACK AND DOCUMENTATION RETRIEVAL FEE

Merchant shall pay Bank a \$15.00 fee for each chargeback, credit, or debit presentation. Such fee shall be increased to \$25.00 any time that chargebacks are classified as "excessive" as defined in paragraph 2.09 of this Agreement. Merchant shall pay a \$10.00 fee for each Documentation Retrieval Request. The amount of these fees are subject to change by Bank and Cardservice International upon Bank and Cardservice International giving Merchant thirty (30) days notice of any change.

2.07 WITHHOLDING

If Bank reasonably believes that any of the circumstances listed in paragraph 2.04 exists or are likely to exist with respect to any Transaction Record which Bank has accepted and forwarded to Cardholder's issuing bank for payment, Bank may withhold from payments due Merchant under this Agreement the Transaction Record amount less any discount until such time that:

- (a) Bank is itself charged back by the issuing bank for the transaction. In such event Bank shall retain the funds and return the Transaction Record to Merchant pursuant to the chargeback procedure of paragraph 2.04; or
- (b) The period of time by which Cardholder must dispute the Transaction Record and the issuing bank exercise its chargeback rights against Bank has expired; or
- (c) Bank otherwise determines to their exclusive satisfaction that a chargeback on the Transaction Record will not occur.

Upon termination of this Agreement, Bank/Cardservice International may withhold payment to Merchant for such period of time reasonably determined by Bank and Cardservice International as necessary to establish a reserve to cover any chargebacks, credit drafts and uncollected discounts or fees, including, but not limited to, costs for accounting, investigation and account management, that may result from transactions previously processed and appearing after the termination date.

2.08 DISPUTES WITH CARDHOLDER

All disputes between Merchant and any Cardholder relating to any Card transaction shall be settled between Merchant and such Cardholder. Merchant shall, in accordance with paragraph 3.07, indemnify Bank, Cardservice International, MasterCard and VISA from any claim or suit brought by Cardholder relating to any transaction with Merchant.

2.09 EXCESSIVE CHARGEBACKS AND RETRIEVAL REQUESTS

Merchant agrees that if Bank and Cardservice International are presented, during any monthly period, with (a) chargebacks relating to Merchant's transactions processed by Bank in excess of one percent (1%) of the average monthly dollar amount of such transactions or (b) Documentation Retrieval Requests in excess of three percent (3%) of the total number of transactions processed, then such chargebacks or retrieval requests shall be conclusively deemed to be excessive under applicable MasterCard and VISA regulations. Bank and Cardservice International may thereupon terminate this Agreement or take such other action as may be authorized herein or by applicable MasterCard or VISA regulations. The percentage figure in this paragraph shall not be deemed to be, nor shall be, a limitation of Bank's rights to establish a reserve pursuant to the terms of this Agreement. Merchant agrees that the amount or extent of any such reserve shall be based on Bank and Cardservice International's reasonable estimation of the need for it, in light of circumstances known to them at the time.

ARTICLE 3 - TERMINATION, MODIFICATION AND COMPLIANCE WITH LAW

3.01 COMPLIANCE WITH LAW

Merchant shall comply with all laws, ordinances and regulations applicable to Merchant, Merchant's business and any Card transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations. Neither Bank nor Cardservice International shall have any obligation to notify or advise Merchant of the existence of such laws or changes to such laws. Merchant warrants that it has the right to sell the products it sells and to use the trade names it uses.

3.02 MODIFICATION

This Agreement is subject to such modifications, changes and/or additions as may be required, or determined by Bank and Cardservice International, by reason of any state or federal statute, judicial decision, MasterCard or VISA rules or regulations, or the regulation or ruling of any federal agency having jurisdiction over Bank and Cardservice International or Merchant. Such modifications, changes and additions may be made unilaterally by Bank and Cardservice International, shall be in writing and shall be effective immediately upon dispatch by Bank and Cardservice International. This Agreement may only be modified as approved in writing by the Bank and the corporate office of Cardservice International. No field representative of Bank or Cardservice International is authorized to make any modification to this Agreement or to make any representation which is not set forth in this Agreement.

3.03 REFUSAL OR REVOCATION OF CREDIT AND PAYMENT BY MERCHANT

Bank may refuse to accept any sales draft or revoke its prior acceptance thereof in any one or more of the following circumstances:

- (a) The transaction giving rise to the sales draft was not made in compliance with all terms and conditions of this Agreement, as well as all applicable laws, rules or regulations; or
- (b) The Cardholder disputes his or her liability to Bank and Cardservice International or other issuer for any reason including, but not limited to, those chargeback rights enumerated in MasterCard and VISA operating regulations in effect from time to time; or
- (c) The transaction giving rise to the sales draft was not a bona fide transaction directly between Merchant and Cardholder. Merchant shall not accept any transaction on behalf of any other person or persons, or any other business.

No Merchant shall process any transaction accumulated prior to the issuance of a Merchant Number. If such refusal or revocation occurs, Merchant shall, in addition to any penalties and fees, immediately repay Bank the full amount credited by Bank to Merchant's account on the basis of such sales draft.

3.04 TERMINATION

The term of this Agreement shall be six (6) months unless otherwise provided for herein. Notwithstanding this six (6) month term, and any renewals of that term as provided for in paragraph 3.05 of this Agreement, Merchant may terminate this Agreement by giving thirty (30) days written notice to Bank and Cardservice International and concurrently with said notice, paying Cardservice International \$300.00 as an early cancellation fee. Furthermore, if this Agreement is terminated because of Merchant's breach of any of its obligations, such termination shall also be deemed an early cancellation and will require the Merchant to pay to Cardservice International the early cancellation fee of \$300.00. Merchant and Cardservice International mutually agree that said \$300.00 is a reasonable estimate of the costs and expenses Cardservice International will incur as a result of any early cancellation of this Agreement by Merchant.

For a period of six (6) months from the effective date of this Agreement, Cardservice International will not increase the initial discount rate offered to Merchant except as that rate is affected by any increased charges to Cardservice International in interchange, Assessments and Communication costs from MasterCard, VISA and communications suppliers, or any other fees beyond Cardservice International's control. This rate guarantee is void, if Merchant has a higher than allowable percentage of keyed transactions, retrievals or if this Agreement is in a renewal period. Notwithstanding the six (6) month term, Bank may terminate this Agreement, without cause, upon thirty (30) days prior written notice to Merchant.

Bank may terminate this Agreement immediately for cause if any of the following occur:

- (a) If Merchant is or becomes bankrupt or is otherwise unable to pay its debts as they become due; or
- (b) If Merchant violates any term, condition, covenant, or warranty of this Agreement; or
- (c) If Merchant is identified on the Combined Terminated Merchant File. MERCHANT ACKNOWLEDGES THAT SUCH IDENTIFICATION IS GROUNDS FOR IMMEDIATE TERMINATION OF THIS AGREEMENT AND OF IMMEDIATE TERMINATION OF SERVICE.

Upon the effective date of any termination, Merchant's rights to make Card transactions, to deposit transactions with Bank and Cardservice International and to use sales draft forms, credit draft forms, promotional material and/or any other items provided or made available through Bank and Cardservice International shall cease. However, Merchant's obligations in connection with any Transaction Record accepted by Bank and Cardservice International before or after termination shall survive such termination including, without limitation, Merchant's chargeback obligations.

Following the effective date of termination, Merchant shall maintain funds on deposit on account available to Bank for a reasonable time. Based upon Cardholder and issuer chargeback rights, the amount of funds shall be reasonably adequate to cover all chargeback deposit charges, refunds, and fees, including, but not limited to, costs for accounting, investigation and account management, incurred by Bank and Cardservice International pursuant to this Agreement, MasterCard or VISA operating regulations, or the regulations of any processing facility, shall be maintained in such account. Bank is hereby irrevocably authorized by Merchant to charge such account or other accounts maintained by Merchant, for the amount of such matters. Merchant shall pay Bank for all such matters upon demand by Bank, together with all costs and expenses incurred by Bank and Cardservice International, including reasonable attorneys' fees.

3.05 AUTOMATIC RENEWAL

This Agreement will be automatically renewed for successive periods of six (6) months unless either party notifies the other, in writing, of its intention not to renew no less than thirty (30) days and no more than ninety (90) days prior to the end of each term.

3.06 TERMINATED MERCHANT FILE AND MATCH FILE

MERCHANT EXPRESSLY ACKNOWLEDGES that a Terminated Merchant File ("TMF") or any successor thereto is maintained by MasterCard containing the business name and names and identification of principals of Merchants which have been terminated for one or more of the reasons specified in MasterCard or VISA operating regulations. Examples would be, but are not limited to, fraud, counterfeit drafts, unauthorized transactions, excessive chargebacks and retrieval requests, laundering or where a high security risk exists.

MERCHANT ACKNOWLEDGES THAT BANK AND CARDSERVICE INTERNATIONAL ARE REQUIRED TO REPORT THE BUSINESS NAME OF THE MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO THE TMF WHEN A MERCHANT IS TERMINATED FOR ONE OR MORE OF THE REASONS SPECIFIED IN MASTERCARD OR VISA OPERATING REGULATIONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY BANK AND CARDSERVICE INTERNATIONAL.

3.07 IDENTIFICATION

Merchant and Guarantor shall, jointly and severally, indemnify, defend, and hold harmless Bank and Cardservice International, MasterCard and VISA against and with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that Bank and Cardservice International, MasterCard and VISA shall incur or suffer, that arise, result from, or relate to any breach of, or failure by Merchant to perform any of its representations, warranties, covenants or agreements in this Agreement or in any schedule, supplemental agreement, appendix or other instrument furnished or to be furnished to Merchant under this Agreement or in the event Bank or Cardservice International are named as parties to any litigation involving Merchant brought by a party not party to this Merchant Agreement.

3.08 LIMITATION OF LIABILITY

Bank and Cardservice International's liability to Merchant with respect to any Card transaction shall not exceed the amount represented by the Transaction Record in connection with that transaction, less any applicable discount or fees. Bank and Cardservice International shall in no event be liable for any incidental or consequential damages whatsoever.

3.09 ENTIRE AGREEMENT; WAIVER

This Agreement, together with supplemental agreements, appendices and schedules, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

3.10 RESERVE ACCOUNT

In addition to the security interest and chargeback rights granted to Bank by Merchant, Merchant hereby authorizes Bank to establish a Reserve Account, with or without prior notice to Merchant, at any time prior to, at or after termination of this Agreement, to ensure Bank's recovery of any liabilities owed it or reasonably anticipated to be owed it by Merchant pursuant to this Agreement.

- Such liabilities include, but are not limited to, those arising out of actual and/or potential post-termination chargebacks, as well as any and all post-termination fees, including, but not limited to, costs for accounting, investigation and account management, charges and expenses due or anticipated to be due Bank from Merchant.
- Merchant agrees that if Bank does establish the Reserve Account, it shall be in any amount that Bank, in its sole discretion, deems reasonable under the circumstances. The Reserve Account may be funded and/or replenished by Bank's withholding or withdrawing from, or freezing all or any part of, the Commercial Account and/or accounts maintained by Merchant with Bank. Unless Bank agrees otherwise in writing with Merchant, the Reserve Account shall not bear interest.
- Bank may enforce its security interest in the Reserve Account without notice or demand. Bank's right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Bank's rights with respect to the Reserve Account, as well as the security interest granted Bank under this Agreement, shall survive the termination of this Agreement.

3.11 BANKRUPTCY

No assignee for the benefit of creditors, successor in interest, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement. In the event any party becomes insolvent, makes an assignment for the benefit of its creditors, files a petition or otherwise seeks relief under or pursuant to any other bankruptcy, insolvency or reorganization statute or proceeding, or if any party dissolves, discontinues or substantially discontinues its business or if a receiver, trustee, or similar officer is appointed for Merchant or for a substantial portion of Merchant's business or assets, or if any judgment, writ of attachment execution, levy or similar process against any party is served on the others or is issued with respect to any substantial part (valued at twenty percent (20%) or more of the total tangible assets) of the property of any party, the other parties may, at their sole election, terminate this Agreement by written notice to the others.

3.12 LAW AND VENUE

This Agreement shall be construed in accordance with, and governed by, California law as applied to contracts that are executed and performed entirely in California. The parties agree that any suit, action, or proceeding arising out of or relating to this Agreement, or the interpretation, performance or breach of this Agreement, shall be instituted in any court of the State of California located in Los Angeles County. Each party irrevocably submits to the jurisdiction of those courts and waives all objections to jurisdiction or venue that it may have under the laws of the State of California or otherwise in those courts in any suit, action, or proceeding. The parties expressly stipulate, consent to and agree that the specific geographic location as the place of performance of this Agreement, in its entirety, shall be within the county of Los Angeles in the State of California. By this special contract, the exclusive venue for any action between them shall be within the county of Los Angeles in the State of California.

3.13 ASSIGNABILITY

Merchant may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Bank and Cardservice International. For purpose of this Agreement, assignment shall include, but not be limited to, transfer of control of Merchant and any ownership change which results in a new majority owner. Without such written consent, Merchant shall continue to be bound by this Agreement.

3.14 ATTORNEYS' FEES AND COSTS

Merchant shall be liable for and shall indemnify and reimburse Bank and Cardservice International for any and all attorneys' fees and other costs and expenses paid or incurred by Bank and Cardservice International in the enforcement of this Agreement, or in collecting any amounts due from Merchant to Bank and Cardservice International hereunder or resulting from any breach of any of the terms or conditions of this Agreement.

In addition, whether legal action is contemplated or commenced against Merchant, Cardservice International shall be entitled to recover from Merchant all of its investigative and other costs related to searching for the whereabouts of Merchant or any Guarantor. Merchant authorizes Cardservice International, at its sole option and without prior notice, to deduct such investigative and other costs from any monies that Merchant may have on deposit with Cardservice International or which Merchant has previously authorized Cardservice International to access.

3.15 GUARANTORS

As a primary inducement to Bank and Cardservice International to enter into this Agreement with Merchant, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Bank and Cardservice International pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Merchant breaches this Agreement, Bank and Cardservice International may proceed directly against Guarantor or any other person or entity responsible for the performance of this Agreement, without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by Bank.

3.16 FORCE MAJEURE

Bank and Cardservice International shall have no liability to Merchant for delay or failure to perform any part of this Agreement on account of an act of God or the public enemy, fire, explosion, flood, earthquake, riot, war, sabotage, accident, embargo or any circumstances of like or different character beyond Bank's and Cardservice International's reasonable control or by interruption or delay in transportation, inadequacy or shortage or failure of supply of materials, utilities, computer software, or equipment breakdown, labor trouble, or compliance with any order, direction, action or request of any governmental officer, department or agency.

3.17 CUMULATIVE REMEDIES

All remedies of Bank and Cardservice International hereunder are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy and shall not preclude the exercise of any other remedy. No failure on the part of Bank and Cardservice International to exercise, and no delay in exercising any right or remedy hereunder, shall operate as a waiver of such right or remedy.

3.18 BREACH OF OTHER AGREEMENTS

This Agreement is the principal agreement between Merchant and Bank and Cardservice International. In order to further effectuate the subject matter of this Agreement, the parties acknowledge that a number of additional agreements may be entered into between them. Merchant hereby agrees that Merchant's breach of any of those additional agreements shall also constitute a breach of this Agreement.

3.19 FIDUCIARY RELATIONSHIP

As provided in California Financial Code Section 952 as it now exists and as it may be amended from time to time, whenever Merchant has a deposit held arising from or subject to this Agreement with any bank which, pursuant to this Agreement, Merchant is not entitled to, Merchant's entitlement to such deposit shall be as a fiduciary of Bank and Cardservice International until any claim by Bank and Cardservice International has been resolved. Merchant agrees that its failure to repay, within twenty (20) calendar days of notification, to Bank and Cardservice International funds Merchant is not entitled to, shall result in a presumption that Merchant intends to misappropriate such funds.

3.20 SECURITY INTEREST AND MERCHANT PERFORMANCE REQUIREMENT

To secure Merchant's performance under this Agreement, including without limitation, Merchant's obligations arising out of chargebacks, Merchant hereby grants, pursuant to the California Uniform Commercial Code, Bank and Cardservice International a security interest in Merchant's electronic terminal, printer, imprinter and imprinter plate. Further, Merchant grants to Bank a security interest in all sales drafts, credit drafts, and in all deposits, regardless of source, made to Merchant's account established or designated and maintained pursuant to this Agreement, as well as in the proceeds of those deposits; and in all other accounts maintained by Merchant. Bank may enforce this security interest by:

- Making an immediate debit (charge) to any account, without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any account through the Automated Clearing House (ACH) system; and/or
- Freezing the entire account, without notice or demand of any kind, upon Bank and Cardservice International's reasonable determination that Merchant has breached any term of this Agreement; and/or
- Taking possession of any or all of Merchant's sales drafts, verifications and confirmations of transactions; and/or
- Taking possession of any and/or all of Merchant's electronic terminals, printers, imprinters and imprinter plates.

Merchant shall provide any statement or notice that Bank and Cardservice International determines to be necessary to preserve and protect Bank's security interest. Merchant's granting of this security interest in no way limits Merchant's liabilities to Bank and Cardservice International under this Agreement.

3.21 SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to be fully valid, enforceable, and binding on the parties.

3.22 MERCHANT NAME AND BUSINESS TYPE

Changes, by way of example only, business name change, business telephone and/or address change, or any banking information shall be submitted, in writing to Bank and Cardservice International by Merchant under the terms provided in this Agreement. Merchant represents that it is engaged in the business specified on the Merchant Application portion of this Agreement. Merchant shall not process payment transactions for any other type of business.

ARTICLE 4 - GATEWAY PROGRAMMING

4.01 APPLICABILITY TO THIS AGREEMENT

In addition to all other provisions of this Merchant Agreement, the provisions of this Article 4 shall apply if Merchant has elected to utilize the electronic commerce payment system offered by Cardservice International.

4.02 ELECTRONIC PAYMENT SYSTEM

So long as Merchant is current in the obligations to Cardservice International and is not otherwise in breach of this Merchant Agreement, Cardservice International shall provide Merchant the use of its internet-based electronic payment system.

4.03 PROGRAMMING OF WEB SITE

While Cardservice International provides specific APIs or programming scripts to Merchant or Merchant's Web site programmer(s), Merchant acknowledges that such sample programming scripts are insufficient to allow the Merchant's Web site to function with the LinkPoint Secure Payment Gateway. Programming of the Merchant Web site and its functionality are the sole responsibility of Merchant.

4.04 MERCHANT'S PROGRAMMING AGENT

Merchant has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make the Merchant's Web site function correctly with the LinkPoint Secure Payment Gateway.

4.05 FEES SUBJECT TO FLUCTUATION

All fees for Gateway service are based on the number of monthly transactions processed by Merchant. The amount of these fees will therefore fluctuate based on Merchant's volume. The Merchant Agreement provisions requiring notice prior to a change in fees shall not apply to any transactions governed by this Article 4.

4.06 TECHNICAL SUPPORT

Merchant shall be responsible for all technical support for Web site-related issues.

4.07 SHUT-DOWNS

Cardservice International reserves the right, from time to time, without prior notice, to shut-down and restart the LinkPoint Secure Payment Gateway service for maintenance and/or software upgrades for time periods of at least one minute and generally not exceeding five minutes.

ARTICLE 5 - DEBIT CARD PROGRAM

5.01 APPLICABILITY TO THIS AGREEMENT

In addition to all other provisions of this Merchant Agreement, the provisions of this Article 5 shall apply if Merchant elected to utilize the debit card online network.

5.02 SERVICES

Bank shall sponsor Merchant for membership in the debit card online network that Merchant has selected. Merchant acknowledges that sponsorship does not guarantee acceptance. Cardservice International shall process and settle Merchant's debit card transactions.

5.03 MERCHANT OBLIGATIONS

Until and unless otherwise authorized by Cardservice International, Merchant shall utilize Cardservice International's compatible terminals, PIN pads or systems capable of processing all Automatic Clearing House (ACH) debit card transactions as well as online debit card transactions. Merchant shall abide by all applicable laws, statutes, and regulations in addition to all the rules and regulations of the debit card online network that Merchant has selected. Failure to do so shall subject Merchant, at Bank's or Cardservice International's sole discretion, to immediate termination. Merchant shall be responsible for all paper copy of debit card transactions, in accordance with the applicable debit card network rules. Within one business day of the original transaction, Merchant shall balance each location to the system for each business day that such location is open. Merchant shall be responsible for all telephone message unit costs, if any, as they are incurred by Merchant for any of the services that are provided. Unless specifically noted herein, the responsibility for the installation of and training in the use of terminals shall be with Merchant. Merchant shall be responsible for entering data correctly. If an entry is made incorrectly, Cardservice International shall use its best efforts to assist Merchant in correcting the entry, but cannot guarantee that the effort will be successful.

5.04 NO LIABILITY

Merchant agrees and acknowledges that neither Bank or Cardservice International shall have any liability, either in tort or in combination thereof, for claims arising from debit card transactions except in the case of gross or willful conduct on the part of Bank or Cardservice International. In no event shall Bank or Cardservice International be liable for special, consequential, indirect or exemplary damages, including lost profits, revenues and business opportunities.

5.05 DEBIT FEES

The debit fees as set forth on the Merchant Application are to be paid by Merchant. These fees are subject to change upon thirty (30) days prior notice to Merchant from Cardservice International. Merchant shall also be charged the network fees as set forth on the Merchant Application, on a per transaction, per network basis for the networks that service the Merchant's location. NOTE: All fees and other charges shall be settled monthly through the Automated Clearing House (ACH).

ARTICLE 6 - OTHER FEES AND SUPPORT

Fees			
Monthly Minimum Charge	\$25.00 minimum	Checking Account Charge	\$25.00 per charge
Customer Support Fee	\$10.00 per month	Reject Fee	\$15.00 per item, or
Providing Any Documentation	\$ 2.00 per page		\$25.00 per daily batch

DISCOUNT PERCENTAGES

Qualified - Negotiated percentage sets forth in the Merchant Application section of this Agreement.

Mid-Qualified - Qualified rate plus an additional .85% per transaction.

Non-Qualified - Qualified rate plus an additional 1.85% per transaction.

As mandated by VISA, all direct marketing merchants (businesses where the credit card is not present at the time of the sale) and non-direct marketing merchants who accept mail order and telephone order transactions must utilize the Address Verification Service (AVS) or face additional Non-Qualifying fees as well as increased risk. All AVS inquiries will incur a \$0.05 AVS fee.

BATCH HEADER FEE

A Merchant is billed a batch header fee each time a batch is transmitted to the Host for settlement. The batch header fee ranges from 20 cents to 30 cents. This fee is negotiated and assigned by the Agent or sales representative at the time the Merchant applies for an account.

TRANSACTION FEE

A Merchant is billed a transaction fee each time communication is made with the Host via the POS Terminal. This fee is negotiated and assigned by the Agent or sales representative at the time the Merchant applies for an account.

6.01 IMPRINTERS, TERMINALS AND SUPPLIES

Merchant shall have imprinter(s) and terminal(s) used to process Card transactions, and shall maintain them in good working order and shall notify Bank and Cardservice International prior to any change of the imprinted or programmed information. Merchant is under no obligation to purchase or lease imprinter(s) and terminal(s) from Cardservice International. However, all imprinters, terminal(s) or other equipment provided to Merchant by Cardservice International shall remain the property of Cardservice International until fully paid for. Merchant hereby grants to Cardservice International a security interest in such equipment for so long as any amount remains to be paid. Merchant agrees and authorizes Cardservice International to debit Merchant's bank account to pay for terminal(s), equipment and/or operational supplies until the entire balance of said terminals, equipment and/or operational supplies is paid in full. Cardservice International may upgrade or otherwise modify its computer system at any time without prior notice to Merchant. Merchant agrees to provide Cardservice International access to Merchant's computer terminals in the event that Cardservice International deems it necessary in order to upgrade or otherwise modify its system.

6.02 DISCOUNT PERCENTAGE

Merchant shall pay Bank discount percentages, batch header fees and transaction fees for processing the credit card drafts. The discount percentages shall include consideration for Qualifying, Mid-Qualifying, and Non-Qualifying transactions. Merchant hereby authorizes Bank to debit any of the Merchant's Accounts for payment of any and all fees and the discount percentage which shall be paid at the rate established as set forth on the Merchant Application portion of this Agreement. Said discount percentages may be revised from time to time upon thirty (30) days written notice to Merchant except as noted in section 1.17 of this Agreement.

6.03 MONTHLY MINIMUM

Merchant shall pay a monthly minimum charge of \$25.00 or such other sum as may be determined by Bank and Cardservice International from time to time upon thirty (30) days notice to Merchant.

6.04 CUSTOMER SUPPORT FEE

Merchant shall pay to Bank and Cardservice International a Customer Support Fee of \$10.00 per month or such other sum as may be determined by Bank and Cardservice International from time to time upon thirty (30) days notice to Merchant.

6.05 REJECT FEE

Merchant acknowledges that failure by Merchant to maintain sufficient funds in its checking account to execute its obligations under this Agreement will result in the imposition of a Reject Fee in the amount of \$15.00 per item or \$25.00 per daily batch as applicable. This fee is subject to change as may be determined by Bank and Cardservice International from time to time upon thirty (30) days notice to Merchant.

6.06 DOCUMENTATION FEE

If Bank and Cardservice International are required to provide documentation, such as, by way of example only, statement copies, Merchant shall pay to Cardservice International a fee of \$2.00 per page provided to Merchant. This fee is subject to change as may be determined by Bank and Cardservice International from time to time upon thirty (30) days notice to Merchant.

ARTICLE 7 - MISCELLANEOUS**7.01 FORMS**

Merchant shall use only such forms or modes of transmission for sales data as are provided or approved in advance by Bank and Cardservice International. Merchant shall not use forms or equipment available through Cardservice International except in connection with Card transactions hereunder. Cardservice International will make sales drafts and forms available by fee and on order of Merchant.

7.02 RECORDS

Merchant shall preserve a copy of the actual paper sales drafts and credit drafts for at least one year after the date Merchant presents the transaction data to Bank and Cardservice International. Merchant shall retain original transaction data or make legible microfilm copies of both sides of such actual paper Transaction Records, and store for a minimum of three (3) years. Within three (3) calendar days of receipt of Bank and Cardservice International's request, Merchant shall provide to Bank and Cardservice International, at Merchant's cost, either the actual paper Transaction Record, if requested by Bank and Cardservice International, or a legible microfilm thereof comparable in size to the actual paper Transaction Records. In addition, Merchant shall, within three (3) calendar days of Bank and Cardservice International's request, provide any other documentary evidence available to Merchant and reasonably requested by Bank and Cardservice International to meet its obligations under law, including, but not limited to, its obligations under the Fair Credit Reporting Act, or its obligations to otherwise respond to questions concerning Cardholder accounts. Following termination, for so long as Merchant is required to retain the same, Merchant shall promptly provide Bank and Cardservice International with all original and microfilm copies of records required to be retained at the time of termination.

(a) Merchant assumes full and exclusive responsibility for the security of all data and records it obtains, whether received or in transit, or accumulates, as a result of entering into the Merchant Agreement with Cardservice International. Neither Bank or Cardservice International or their agents, contractors, licensees, employees, officers, directors or affiliates warrant the security of such data and records. Losses to bank or to Cardservice International arising from any breach of such security shall give rise, inter alia, to charge back rights by Bank and Cardservice International.

7.03 CHANGE IN TRANSMISSION METHOD

Merchant shall give Bank and Cardservice International at least thirty (30) days prior written notice of its desire to alter in any material respect its medium of transmission of sales data and credit data to Bank and Cardservice International. Any change shall be subject to Bank's and Cardservice International's prior approval.

7.04 SUPPLEMENTARY DOCUMENTS

References to "this Agreement" include any supplementary agreements, addenda, appendices and amendments and any other agreements, schedules, appendices and amendments promulgated by Bank and Cardservice International and furnished to Merchant from time to time.

7.05 AMENDMENT

Bank and Cardservice International may amend this Agreement at any time by mailing written notice to Merchant of any amendment at least thirty (30) days prior to the effective date of the amendment. The amendment shall become effective on the date specified by Bank and Cardservice International unless Bank and Cardservice International receives Merchant's notice of termination of this Agreement before such effective date.

7.06 MERCHANT ACCOUNT

In order to facilitate the transfer of payments between the parties hereto, or any affiliate thereof, Merchant may maintain a commercial deposit account with Bank. Said account shall be subject to such terms and conditions (including, without limitation, the imposition of service charges and fees) as may be agreed to by Bank and Merchant. In the absence of any express written agreement, the standard terms and conditions applicable to commercial deposit accounts offered by Bank shall apply. As amounts become payable, whether or not under this Agreement, to Bank and/or Cardservice International (including any company affiliated with Cardservice International), or to Merchant under this Agreement, Bank may, unless otherwise agreed in writing, make payments to or receive payments from Merchant by crediting or debiting such account without prior notice. If such a commercial deposit account is not maintained by Merchant, payment between the parties shall be made in a manner satisfactory to Bank and Cardservice International.

7.07 ALL NOTICES

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if delivered personally. If Merchant transmits by U.S. Mail, postage pre-paid, notice shall be deemed served upon confirmed receipt by Bank and Cardservice International. If service by Cardservice International facsimile transmission is used, Merchant shall mail the original of the communication to the receiving party on the date of transmission, by first class mail, postage pre-paid and it shall be deemed served on the day of confirmed receipt by Bank and Cardservice International. If Bank and/or Cardservice International use service by Cardservice International facsimile transmission, service is deemed to have been duly given on the day of transmission. If Cardservice International facsimile transmission is not used, notice shall be given by first class mail, postage pre-paid and it shall be deemed served on the day of mailing. Unless otherwise required by this Agreement, all communications to Cardservice International must be addressed as follows:

Cardservice International, Inc.
Attention: Merchant Services
P.O. Box 2310
Agoura Hills, CA 91376-2310
Facsimile: (818) 880-8888

Communications to Merchant shall be addressed to the address appearing on the Merchant Application. Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

7.08 EFFECT OF HEADINGS

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

7.09 POINT-OF-SALE TERMINAL SERVICES

The point-of-sale terminal (POS) can be utilized to obtain various services, some of which originated with Bank and Cardservice International, and others which are provided by a third party. These services include authorization and electronic draft capture for major credit cards, and other data needed to process information electronically. Merchant agrees that when the services do not originate with Bank or Cardservice International, Merchant will abide by the regulations of the third party, provided that said regulations do not contradict or infringe upon MasterCard, VISA, Bank, and Cardservice International regulations. Merchant agrees to release Bank and Cardservice International from all liability for any damage to Merchant arising from services which do not originate from Bank and/or Cardservice International.

7.10 ADHERENCE

Merchant agrees to be responsible and liable for adhering to all provisions of this Agreement without exception and in full. Failure to abide by the provisions herein constitute, among other remedies provided for herein, grounds for possible interruption or termination of service.

7.11 CHANGE OF BANKING INFORMATION

Merchant shall notify Cardservice International of any change in business checking account, change of bank, or any other banking information. Merchant shall pay Cardservice International a fee in the amount of \$25.00 for each checking account change.

7.12 TIME LIMITATION FOR ASSERTING CLAIMS AND INSTITUTING ACTIONS

Despite any statute to the contrary, any claim arising from or relating to this Agreement (whether contract, tort, or both) shall be brought within two (2) years after it arises, provided that with respect to any claim or dispute concerning fees, charges or other costs charged to Merchant, Merchant must have, within ninety (90) days of the assessment of any disputed fee, charge or costs, appealed such determination to Cardservice International in writing by United States certified mail, return receipt requested, and such appeal must have been denied.

Cardservice International is a Registered Service Provider for the following FDIC insured banks: First Financial Bank, Atlanta, GA; Humboldt Bank, Eureka, CA; Redding Bank of Commerce, Redding, CA; Tehama Bank, Red Bluff, CA. Debit Network Sponsorship: Total Bank, Miami, FL; Hudson United Bank, Union City, NJ; Redding Bank of Commerce, Redding, CA.