



## DISTRICT SCHOOL BOARD OF PASCO COUNTY

Kurt S. Browning, Superintendent of Schools

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638

Department of Purchasing  
Michael J. Woodall, CPPO, Purchasing Agent  
813/ 794-2221 Fax: 813/ 794-2112  
727/ 774-2221 TDD: 813/794-2484  
352/ 524-2221 e-mail: mwoodall@pasco.k12.fl.us

December 18, 2012

### MEMORANDUM

TO: Honorable School Board Members

FROM: Michael J. Woodall, CPPO, Purchasing Agent *MJW*

RE: Merchant Services Agreement  
Tuition Express

The PLACE Program currently utilizes the Procure Software Package for handling student attendance and weekly billing for child care services. Procure offers an integrated point of sale credit or debit card processing program called Tuition Express that posts automatically to Procure. Please reference the attached memo from Ms. Mary Grey, Supervisor of Child Care Educational Programs, for further information regarding this agreement.

The anticipated cost is \$42,660, to be funded by the PLACE Program. Due to the integration of payment processing and direct posting to client accounts, this agreement is being forwarded to the Board for your consideration. The attached agreement has been reviewed and approved by the District School Board's Attorney, Ms. Nancy Alfonso.

At this time, we respectfully request your approval to enter into the one-year agreement with the above-referenced company. This agreement will commence upon Board approval and expire on December 17, 2013.

Should you have any questions regarding this matter, please contact Ms. Mary Grey, Supervisor of Child Care Educational Programs or me at your earliest convenience.

MJW/acf

Attachments

Date/Time: December 12, 2012 10:05:00



## District School Board of Pasco County

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638 • 813/794-2000

Heather Fiorentino, Superintendent

[www.pasco.k12.fl.us](http://www.pasco.k12.fl.us)

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Department of Community, Career and Technical Education  
Mary Grey, Supervisor of Child Care Educational Programs  
813/794-2180 Fax: 813/794-2487  
727/774-2180 TDD: 813/794-2484  
352/524-2180 E-Mail: [mgrey@pasco.k12.fl.us](mailto:mgrey@pasco.k12.fl.us)

Contact: Mary Grey, x42180

DATE: December 5, 2012

TO: Mike Woodall, Director of Purchasing

FROM: Rob Aguis, Director of Community, Career and Technical Education  
Mary Grey, Supervisor of Child Care Educational Programs

SUBJECT: **TUITION EXPRESS AGREEMENT**

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The PLACE Program utilizes the Procure v10 software package to safely and securely handle student attendance and weekly billing/receipting of payments for child care services. In order to utilize on-line or point of sale credit or debit card processing, Procure offers a service called Tuition Express. Since 2003 Tuition Express has processed millions of safe, on-time transactions for Procure users. Every transaction posts automatically into Procure.

Tuition Express processes payment four ways – parent initiated online transactions, POS/credit card swipe transactions, recurring credit card payments and recurring bank-to-bank transactions. Not only will every transaction post to our Procure system, each one of our clients can receive a free emailed receipt for payment. Tuition Express is a Payment Card Industry (PCI) Level 1 Service Provider.

Because of the unique integration of payment processing and direct posting to client accounts, we are requesting approval to enter into a contract with Tuition Express in order to offer this alternate payment option for our clients. Funding for the monthly processing fees will be provided by PLACE and \$42,660 has been budgeted for such expense.

## MERCHANT SERVICES AGREEMENT INSTRUCTIONS

This "Electronic" application allows you to conveniently enter your data by typing directly into the form's fields.

To assist you further, each field will "pop-up" a helpful explanation of the data required as you "rollover" that field with your mouse.

**Use of this "Electronic" form is required. Any handwritten Applications will be returned for "Electronic" submission.**

- 
- BUSINESS PROFILE** - Complete the Business Profile section in its entirety.
  - OWNER / OFFICER INFORMATION**- Complete the Owner / Officer section. *C Corporations, Non-Profits and Government Entities do not need to complete this section.*
  - BANK INFORMATION** - Complete all fields in the Bank Information section.
  - PAYMENT ASSUMPTIONS** - For credit card processing complete all fields in the "Credit Card Processing" section. For ACH processing complete all fields in the "ACH Processing" section (use mouse rollover for assistance).
  - IMPORTANT DISCLOSURE** - This section **MUST** be completed by ALL applicants whether you currently process ACH transactions only or ACH and credit card transactions.
  - Complete the remaining sections of the application on page #2.
  - Once the application has been completed click the "**SUBMIT APPLICATION INFORMATION**" button on page #3.
    - Select Desktop Email Application if you use Outlook etc. for email services
    - Select Internet Email Application if you use Yahoo, Hotmail, Gmail etc. for email services
    - Complete the submittal process (you will receive an email confirmation if successful)

### **YOU'RE NOT DONE YET!**

- Print the completed application; sign, and date the following sections:
  - Important Disclosure (page #1)
  - Agreement Acceptance (page #2)
  - Personal Guaranty (page #3) Non-Profits exempt
  - Tuition Express Processing Agreement (page #7)
- Attach the following Required Supporting Documentation:
  - Copy of Voided Check (pre-printed checks only-no state checks accepted)
  - Copy of Business/Daycare License
  - Copy of Drivers License of the Authorized Signor
  - Copy of the 501(c) Filing (Non-Profits only)
  - Copy of SS-4 (or an IRS document that shows your Legal Business Name and Tax ID Number)
- Fax, mail or scan the completed application to:

**Fax:**  
541-858-7008  
Attn. Marlaina Steil

**Mail:**  
Procure Software  
3581 Excel Drive  
Medford, OR 97504  
Attn. Marlaina Steil

**Scan:**  
Marlaina@procaresoftware.com

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*M.W 12-7-12*

**TUITION EXPRESS  
MERCHANT SERVICES AGREEMENT**

3581 Excel Drive ♦ Medford OR 97504

BUSINESS PROFILE			
OWNERSHIP TYPE: Government (Fed. St. Local)		SERVICES REQUESTED: ACH + All Credit Card Services	
LEGAL/BUSINESS NAME: District School Board of Pasco County		DOING BUSINESS AS: The PLACE Program	
BUSINESS ADDRESS (NO PO BOXES): 7227 Land O' Lakes Blvd		CITY: Land O' Lakes	STATE: FL ZIP: 34638
MAILING ADDRESS (if different):		CITY:	STATE: ZIP:
CONTACT NAME / TITLE: Mary Grey Supervisor of Child Care Educational Programs		BUSINESS PHONE: 813-794-2180	BUSINESS FAX: 813-794-4287
BUSINESS E-MAIL: mgrey@pasco.k12.fl.us		ADDITIONAL EMAIL ADDRESS:	
BUSINESS WEB SITE ADDRESS: www.pasco.k12.fl.us		FEDERAL TAX ID #: 59-6000792	# OF LOCATIONS: 38
		START OF BUSINESS 02/04/2013	MCC/SIC: 8351
TYPES OF GOODS & SERVICES: School Age Child Care	TYPE OF CREDIT CARD PROCESSING: All Credit Card Services	Is a Third Party Fulfillment House used to complete orders? <b>NO</b>	Do any 3rd parties or software vendors have access to cardholder data? <b>PROCARE SOFTWARE</b>
Seasonal Business: <input type="radio"/> Yes <input checked="" type="radio"/> No	Months Ctr. is Closed: J F M A M J J A S O N D ○○○○○○○○○○○○○○○○	CARD CHARGING POLICY: When are the merchant's clients billed for services? <b>N/A</b>	Delivery Method of Services: <b>N/A</b>
OWNER / OFFICER INFORMATION			
- Not required for Non-Profit Organizations and Public Corporations -			
PRIMARY OWNER / OFFICER:		TITLE:	SOCIAL SECURITY #: % OWNERSHIP: %
RESIDENTIAL ADDRESS:		CITY:	STATE: ZIP:
PHONE NUMBER:	HOW LONG AT THIS ADDRESS:	DATE OF BIRTH:	DRIVERS LICENSE NUMBER STATE ISSUED:
SECOND OWNER / OFFICER:		TITLE:	SOCIAL SECURITY #: % OWNERSHIP: %
RESIDENTIAL ADDRESS:		CITY:	STATE: ZIP:
PHONE NUMBER:	HOW LONG AT THIS ADDRESS:	DATE OF BIRTH:	DRIVERS LICENSE NUMBER STATE ISSUED:
BANK INFORMATION			
In accordance with the agreed to Terms & Conditions, all fund transfers will be made to/from the account set forth in the voided check attached to this application and referenced below.			
BANK NAME: Bank of America		TRANSIT # (ABA Routing):	ACCOUNT NUMBER: ACCOUNT TYPE: <input checked="" type="radio"/> Checking <input type="radio"/> Savings
BANK ADDRESS:		CITY:	STATE: FL ZIP: -
PAYMENT ASSUMPTIONS			
CREDIT CARD PROCESSING:		ACH PROCESSING (debits from checking or savings accounts):	
Requested Credit Types: <u>Visa / MasterCard / Disc</u>		Avg. Monthly ACH Volume (\$): <u>0</u>	Avg. Single ACH Transaction (\$): <u>0</u>
Types of Transactions		ACH Entry Type: <u>PPD</u>	
Internet / Recurring: <u>60</u> %	POS / Swiped: <u>40</u> %	Avg. Monthly ACH Volume (# of Items): <u>0</u>	Highest Single ACH Transaction (\$): <u>0</u>
Total must add up to 100%		ACH Reclear: <u>NO</u>	
Avg. Monthly Volume (\$): <u>97,000</u>			
Avg. Single Transaction (\$): <u>40</u>			
Highest Single Transaction (\$): <u>500</u>			
IMPORTANT DISCLOSURE			
MEMBER BANK (ACQUIRER) INFORMATION	IMPORTANT MEMBER BANK (ACQUIRER) RESPONSIBILITIES	IMPORTANT MERCHANT RESPONSIBILITIES	
First National Bank of Omaha One First National Center 16th and Dodge Street Omaha, NE 68102 800-228-2443	1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant. 2. A Visa Member must be a principal (signer) to the Merchant Agreement. 3. The Visa Member is responsible for educating Merchants of pertinent Visa Operating regulation with which Merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the Merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.	1. Ensure compliance with cardholder data security and storage requirements. 2. Maintain fraud and chargebacks below thresholds. 3. Review and understand the terms of the Merchant Agreement. 4. Comply with Visa Operating Regulations.	
The responsibilities listed above do not supersede the terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Merchant have any problems.			
BUSINESS NAME (no DBA's): <b>X</b>		SIGNATURE: <b>X</b>	
ADDRESS (Street, City, State, Zip): <b>X</b>		PRINT NAME: <b>X</b>	

Blum Investment Group, Inc. ("Procure") is a registered ISO/MSP of First National Bank of Omaha 1620 Dodge St. Omaha NE 68197 Phone (800-228-2443) , Member FDIC

**CONTRACT REVIEWED AND  
APPROVED AS AMENDED:**

*M.W 12.7.12*

**REFUND POLICY**

No Refunds  No Refunds After 30 Days  Other

Please describe your refund policy here:

Please attach a copy of your Refund / Return Policy (if Applicable) to your application or describe your policy in detail in the area provided.

**EXISTING MERCHANT ACCOUNT INFORMATION** (if applicable)

Visa/MasterCard/Discover Currently Accepted:  Yes  No

Do you currently Accept American Express:  Yes  No

AMERICAN EXPRESS MID#

If you currently have a Merchant Services account, please provide Tuition Express with your most recent three (3) months of Merchant Statements.

**SCHEDULE OF FEES**

MERCHANT APPLICATION FEE \$195.00 (New Applicants Only)	ACCOUNT SET UP FEE \$0.00 per location	MERCHANT ACH RETURN FEE \$25.00 per return	ONLINE STATEMENT / REPORTING FEE \$0.00 per location
ADDITIONAL LOCATION FEE \$65.00 ea. (New Applicants Only)	MONTHLY MAINTENANCE FEE \$18.50 per location	BATCH TRANSMISSION FEE \$0.00 per batch	PAPER STATEMENT FEE* \$7.95 per account

**VISA / MASTERCARD / DISCOVER DISCOUNT RATES**

Rate 1: 0.95% discount + 0.33 per item    Rate 2: 1.40% discount + 0.33 per item

Rate 3: 2.00% discount + 0.33 per item    Rate 4: 2.25% discount + 0.33 per item

Rate 5: 2.50% discount + 0.33 per item    Rate 6: 2.75% discount + 0.33 per item

Rate 7: 3.00% discount + 0.33 per item    Rate 8: 3.25% discount + 0.33 per item

Chargeback Fee: \$25.00 each    Retrieval Fee: \$15.00 each    Refund Fee: \$5.00 each

**AMERICAN EXPRESS (AMEX)**

Discount Rate (%): TBD    Annual Volume: TBD

Average Ticket: TBD    Per Item Fee: \$0.33  
Paid to Tuition Express

Monthly Fees: TBD

For information on AMEX rates and fees please contact your Tuition Express representative or American Express directly.

**ACH FEES**

Per Item Fee: \$0.33 each    NOC Fee: \$3.50 each

Rtn Item Fee: \$3.50 each    Submittal Fee: \$0.00

**EQUIPMENT FEE:**

Model/Brand: Magtek    Cost: \$65.00 each

\* All Monthly Statements will be Delivered Electronically unless Merchant "Opts-Out".

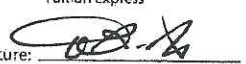
> Other Credit Card Industry Fees may apply. For more information, please contact Tuition Express.

**AGREEMENT ACCEPTANCE**

MERCHANT has indicated above which services it is requesting. MERCHANT agrees that FNBO is not a party to any agreement for services from the following companies: American Express, and that any such agreements are strictly between MERCHANT and each individual company. MERCHANT must be approved by American Express and American Express may send its agreement to the address of MERCHANT indicated herein upon such approval. MERCHANT agrees to be bound by American Express' agreement. As it pertains to American Express, by signing the Merchant Services Agreement, I represent that I have read and am authorized to sign and submit this application on behalf of MERCHANT and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("AXP") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct AXP to inform me directly, or through MERCHANT, of reports about me that AXP has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize AXP to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon AXP's approval of MERCHANT to accept the AXP Card, the terms and conditions for American Express' Card Acceptance ("AXP Terms and Conditions") will be sent to MERCHANT along with a Welcome Letter. By accepting the AXP Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the MERCHANT agrees to be bound by the AXP Terms and Conditions.

BY THEIR EXECUTION BELOW, THE UNDERSIGNED PARTIES AGREE TO ABIDE BY THE MERCHANT SERVICES AGREEMENT (THE "AGREEMENT") AND THE AMERICAN EXPRESS DATA SECURITY POLICY (LOCATED AT [https://www.209.americanexpress.com/merchant/singlevoice/pdfs/en\\_US/DSOP\\_Service\\_Provider\\_US.pdf](https://www.209.americanexpress.com/merchant/singlevoice/pdfs/en_US/DSOP_Service_Provider_US.pdf)), THE AGREEMENT CONSISTS OF THE MERCHANT SERVICES AGREEMENT AND THE TERMS AND CONDITIONS (LOCATED AT [http://www.procuresoftware.com/pdfs/TuitionExpress/Procure%20Merchant%20T&Cs\\_Rev\\_2.pdf](http://www.procuresoftware.com/pdfs/TuitionExpress/Procure%20Merchant%20T&Cs_Rev_2.pdf)), AND MERCHANT ACKNOWLEDGES RECEIPT OF THE TERMS AND CONDITIONS AT THE TIME OF SIGNING. MERCHANT WARRANTS THAT THE INFORMATION PROVIDED ON THE APPLICATION IS COMPLETE AND ACCURATE. MERCHANT AUTHORIZES FNBO TO PROVIDE A COPY OF THIS APPLICATION TO ANY THIRD PARTY FOR THE SERVICES REQUESTED. MERCHANT, AND ITS SIGNING OFFICER/OWNER/PARTNER, AUTHORIZE FNBO, OR ITS AGENTS OR ASSIGNS, TO MAKE, FROM TIME TO TIME, ANY BUSINESS AND PERSONAL CREDIT AND OTHER INQUIRIES. IF APPLICABLE, MERCHANT AGREES BY ITS SIGNATURE BELOW TO THE EQUIPMENT AGREEMENT. DEPENDING UPON MERCHANT'S AUTHORIZATION AND SETTLEMENT COMPOSITION, THE REFERENCES TO DISCOVER NETWORK IN THIS AGREEMENT MAY NOT APPLY, AND MERCHANT MAY CONTRACT DIRECTLY WITH DISCOVER NETWORK FOR THESE SERVICES.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES EFFECTIVE ON THE DATE SIGNED OR APPROVED BY FNBO.

MEMBER BANK (ACQUIRER) First National Bank of Omaha	PROCARE SOFTWARE Tuition Express	MERCHANT (both owners / officers must sign if applicable)	
Signature: _____	Signature: 	Signature: X	Signature: X
Print Name: _____	Print Name: <b>DAN RICHARDS</b>	Print Name: X	Print Name: X
Job Title: _____	Job Title: <b>DIRECTOR-TE</b>	Job Title: X	Job Title: X
Date: _____	Date: <b>DEC 6, 2012</b>	Date: X	Date: X

Blum Investment Group, Inc. ("Procure") is a registered ISO/MSP of First National Bank of Omaha  
1620 Dodge St. Omaha NE 68197 Phone (800-228-2443) , Member FDIC

**CONTRACT REVIEWED AND APPROVED AS AMENDED:**

*MW 12-7-12*

**PERSONAL GUARANTY**

- Not required for Non-Profit Organizations and Public Corporations -

**GUARANTY:** This general, absolute, and unconditional continuing Guaranty ("GUARANTY") by the undersigned (collectively "GUARANTOR(S)" or "my" or "I" or "me" or "we"), is for the benefit of Procare Software (referred to as "Procare") and First National Bank of Omaha (referred to as "FNBO"). For value received, and in consideration of the mutual undertakings contained in the Merchant Services Agreement and allied agreements ("AGREEMENT") between Procare, FNBO and ("MERCHANT") as set forth below, I absolutely and unconditionally guarantee the full performance of all MERCHANT's obligations to Procare and FNBO, together with all costs, expenses, and attorneys' fees incurred by Procare and/or FNBO in connection with any actions, inactions, or defaults of MERCHANT. I waive any right to require Procare and/or FNBO to proceed against other entities or MERCHANT. There are no conditions attached to the enforcement of this GUARANTY.

I authorize Procare, FNBO, its agents or assignees to make from time to time any personal credit or other inquiries and agree to provide, at Procare or FNBO's request, financial statements and/or tax returns. I agree that this GUARANTY shall be governed and construed in accordance with the laws of the state of Nebraska, and that the courts of the state of Nebraska shall have and be vested with personal jurisdiction over me. This is a continuing GUARANTY and shall remain in effect until one hundred eighty (180) days after receipt by Procare and/or FNBO of written notice by me terminating or modifying the same. The termination of the AGREEMENT or GUARANTY shall not release me from liability with respect to any obligations incurred before the effective date of termination. No termination of this GUARANTY shall be effected by any change in my legal status or any change in the relationship between MERCHANT and me. This GUARANTY shall bind and inure to the benefit of the personal representatives, heirs, administrators, successors and assigns of GUARANTOR and FNBO.

OWNER / OFFICER #1

OWNER / OFFICER #2

Signature: X \_\_\_\_\_

Signature: X \_\_\_\_\_

Print Name: X \_\_\_\_\_

Print Name: X \_\_\_\_\_

Date: \_\_\_\_\_

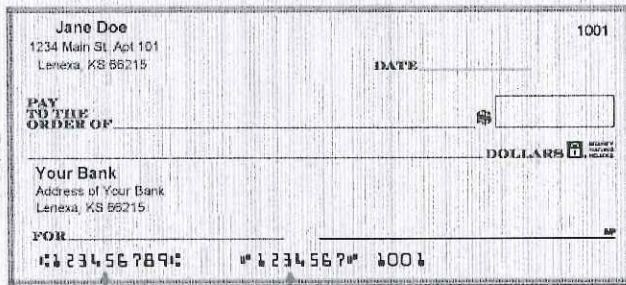
Date: \_\_\_\_\_

**PLEASE ATTACH A PRE-PRINTED VOIDED CHECK HERE**

**The voided check must match the bank information submitted on page 1 of this application**

In the event you do not have a pre-printed check, please submit a bank letter with the following information:

1. Must be on bank letterhead.
2. Must reference your center's legal business name.
3. Must reference the Routing/Transit number and the Bank Account Number.
4. Must be signed and dated by a bank representative.



**APPLICATION SUBMITTAL PROCESS**

- STEP #1 - Click on "Submit Application Information" button to transmit your information digitally.\*
- STEP #2 - Print this Merchant Services Agreement & Processing Agreement; sign both documents.
- STEP #3 - For multiple locations, Click here to download **Additional Locations Form**.
- STEP #4 - Fax or mail the completed documents to Tuition Express:

\*If using Internet based email (i.e. hotmail, yahoo, gmail etc.) you may be prompted to "save" your information and manually email it. Please email to [teapplications@procaresoftware.com](mailto:teapplications@procaresoftware.com).

Submit Application  
Information

**FAX**

**Attn: Tuition Express  
541-858-7008**

**MAIL**

**Procare Software  
Attn. Tuition Express  
3581 Excel Dr.  
Medford, OR 97504**

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*Zhuo 12-7-12*

TUITION EXPRESS - PROCESSING AGREEMENT

This Tuition Express Processing Agreement together with its addenda, attachments, and schedules (hereafter known as the "AGREEMENT") is entered into by and among Blum Investment Group, Inc. ("PROCARE") and MERCHANT. This AGREEMENT shall become effective as set out in the signature block of this Agreement.

- A. WHEREAS, PROCARE is a registered Independent Sales Organization / Merchant Service Provider (together "ISOMSP") of First National Bank of Omaha ("FNBO") located at 1620 Dodge Street, Omaha NE 68197.
B. WHEREAS, FNBO is the sponsoring bank of PROCARE and a Member of VISA, Inc. ("VISA"), MasterCard International, Inc. ("MASTERCARD") and the DISCOVER NETWORK ("DISCOVER NETWORK"), and provides transaction processing and other products and services ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, DISCOVER NETWORK and other financial service card organizations, (together herein known as "CARDS(S)"). VISA, MASTERCARD, DISCOVER NETWORK, and the other card organizations shall be collectively known as "ASSOCIATIONS".
C. WHEREAS, FNBO is the sponsoring bank of PROCARE and is a member of the National Automated Clearing House Association (NACHA) and PROCARE utilizes FNBO to transact all ACH entries submitted by MERCHANT, and has attached hereto the ACH ADDENDUM ("ADDENDUM") outlining all Parties rights and obligations with respect to ACH transactions;
D. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and/or ACH Entries and have PROCARE facilitate and process the resulting transactions ("SALES") through FNBO pursuant to the terms and conditions herein;
E. WHEREAS, ASSOCIATIONS, FNBO and PROCARE each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated within the TERMS & CONDITIONS by this reference and shall be referred to as the "RULES"; and
F. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing.

WHEREAS, MERCHANT understands that this agreement is solely between PROCARE and MERCHANT and that MERCHANT has additional obligations to FNBO as defined in the TERMS AND CONDITIONS submitted to MERCHANT and available on PROCARE'S website at www.tuitionexpress.com.

Delete DR

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. GENERAL:

1.1 As a result of MERCHANT submitting SALES for processing to PROCARE, PROCARE will submit such SALES to FNBO for processing and FNBO will credit or debit MERCHANT'S DESIGNATED ACCOUNT (as defined herein) with the resulting financial proceeds of such SALES. In addition when a disputed transaction ("CHARGEBACK") occurs, MERCHANT agrees to provide all requested information to FNBO and/or PROCARE and FNBO and/or PROCARE agrees to forward such information to the ASSOCIATIONS in accordance with the RULES and the ASSOCIATIONS' dispute resolution guidelines. Neither FNBO nor PROCARE are responsible for the outcome of any CHARGEBACK.

1.2 CARDS designated herein will be processed under the TERMS AND CONDITIONS of the AGREEMENT as long as PROCARE is contractually permitted to offer such SERVICES by its sponsoring bank and the respective ASSOCIATIONS.

1.3 On an exclusive basis, MERCHANT agrees to submit all SALES for processing from CARDS accepted in MERCHANT'S business as described in the Merchant Services Agreement to PROCARE in accordance with the RULES and pursuant to the terms of this AGREEMENT.

1.4 MERCHANT and PROCARE agree to abide by the RULES, a summary of which is contained in the TERMS AND CONDITIONS. MERCHANT has been supplied with the RULES and by signing the AGREEMENT, acknowledges that it has received and read them. MERCHANT agrees to comply with all applicable state, federal and local laws, rules and regulations ("LAWS"). MERCHANT agrees to assist PROCARE in complying in a complete and timely manner with all LAWS and RULES now or hereafter applicable to any SALE or this AGREEMENT. MERCHANT will execute and deliver to PROCARE all such instruments that PROCARE may from time to time deem necessary. It is MERCHANT'S responsibility to know all applicable LAWS and the RULES that apply to MERCHANT'S acceptance of CARDS. MERCHANT agrees to indemnify, defend, and hold PROCARE harmless from and against any loss, cost or damage (including reasonable legal fees and court costs) incurred as a result of MERCHANT'S failure to comply with applicable LAWS or RULES.

1.5 MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by law. MERCHANT must not request or use cardholder account information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize. In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT'S cost, to provide all information requested by PROCARE, FNBO, ASSOCIATIONS, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will, (as between MERCHANT and PROCARE) be considered PROCARE'S confidential information. MERCHANT agrees that PROCARE may release to the ASSOCIATIONS, financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provides to PROCARE in connection with a suspected or confirmed loss or theft of transaction information.

1.6 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of amended RULES to MERCHANT shall be evidence that MERCHANT has received the amended RULES and has agreed to abide by them.

2. PAYMENT OF SUMS DUE:

2.1 MERCHANT agrees to pay PROCARE the fees as set forth in the Merchant Services Agreement and all other sums owed to PROCARE ("FEES") for SALES and SERVICES as set forth in this AGREEMENT and as amended from time to time. MERCHANT acknowledges that FNBO will facilitate the collection of said FEES in accordance with the RULES. FEES include but are not limited to delinquent obligations and CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to PROCARE by any affiliated entities of MERCHANT.

2.2 PROCARE will notify MERCHANT in writing of any change in FEES caused by action of ASSOCIATIONS prior to any such change becoming effective. Notice to MERCHANT of any change in FEES caused by ASSOCIATIONS may be less than thirty (30) days.

2.3 DISCOUNT is quoted by PROCARE as set forth in the Merchant Services Agreement. MERCHANT agrees that the FEES are based on the term of this AGREEMENT, the method of processing, and the information set forth in the Merchant Services Agreement. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, PROCARE may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change. MERCHANT agrees to pay such amended and/or additional FEES.

2.4 The FEES may be amended by PROCARE on thirty (30) days written notice to MERCHANT unless provided otherwise herein. MERCHANT agrees that FEES not listed in the Merchant Services Agreement will be charged at PROCARE'S then current rate.

2.5 MERCHANT agrees to pay PROCARE for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that PROCARE is in no way financially responsible for CHARGEBACKS. MERCHANT'S obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.

2.6 If the ASSOCIATIONS or a regulatory body governing PROCARE should levy a fine or penalty or assess a charge to PROCARE as a result of MERCHANT'S SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same. In the event FNBO notifies PROCARE that MERCHANT FEES are delinquent and uncollected by FNBO, MERCHANT agrees to pay all uncollected FEES directly to PROCARE. PROCARE shall have the right to collect all uncollected FEES through any legal means including the use of a third party collection agency.

2.7 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions, authorizes FNBO to make deposits and withdrawals from the DESIGNATED ACCOUNT on behalf of PROCARE. MERCHANT hereby grants to PROCARE a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT'S (or any related entity under MERCHANT'S control) obligations to PROCARE under this AGREEMENT. If required by PROCARE, MERCHANT agrees to cooperate with PROCARE and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount sufficient to cover all operating costs associated with this AGREEMENT. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days so PROCARE may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to PROCARE under this AGREEMENT or any other agreement MERCHANT or MERCHANT'S related entities have with PROCARE without prior notice to MERCHANT.

2.8 PROCARE agrees to pay MERCHANT for SALES less FEES owed to PROCARE by MERCHANT. PROCARE shall recoup and deduct FEES from incoming transactions or recoup and debit the same from MERCHANT'S DESIGNATED ACCOUNT. MERCHANT agrees that PROCARE has the right to deduct these FEES at any time including on a daily basis if necessary. PROCARE is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to PROCARE after MERCHANT becomes insolvent, ceases to do business, or dissolves.

2.9 PROCARE has the right of recoupment and set-off. This means that PROCARE may recoup and offset any outstanding or uncollected amounts owed to PROCARE from (i) any amounts PROCARE would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts PROCARE may owe MERCHANT under this AGREEMENT or any other agreement.

2.10 If MERCHANT does not pay any sums due within thirty (30) days from date of notice, PROCARE will charge, and MERCHANT agrees to pay, a late fee of one and one-half percent (1.5%) per month on the balance outstanding or the highest amount allowed by law. If MERCHANT breaches AGREEMENT or if PROCARE identifies suspicious or irregular activity related to SALES or SERVICES, PROCARE may refuse to process SALES or to provide SERVICES and/or may hold funds pending the cure of such breach or resolution of such activity.

2.11 If PROCARE takes any action against MERCHANT to collect any FEES or monies due to PROCARE from MERCHANT, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney's fees, to the extent allowed by law.

3. TERM OF AGREEMENT:

3.1 The initial term of this AGREEMENT shall be for one (1) month ("INITIAL TERM") commencing on the date this AGREEMENT is executed by an authorized agent of PROCARE.

3.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive one (1) month periods ("RENEWAL TERM") unless terminated as set out below.

4. TERMINATION OF AGREEMENT:

4.1 This AGREEMENT may be terminated by PROCARE at any time effective upon ten (10) days written notice.

4.2 MERCHANT may terminate this Agreement upon written notice of non-renewal at least ten (10) days prior to the commencement of any RENEWAL TERM.

4.3 In order to protect the ASSOCIATIONS, FNBO and PROCARE, PROCARE may terminate this AGREEMENT effective immediately for any of the following reasons:

- A. insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT'S assets for the benefit of MERCHANT'S property creditors, or if any part of MERCHANT'S property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter;
B. if MERCHANT fails to pay any FEES when due;
C. if MERCHANT has misrepresented or omitted any material information provided to PROCARE;
D. if MERCHANT is in breach of the AGREEMENT or the RULES;
E. if MERCHANT, after PROCARE'S request, fails to send copies of SALES DRAFTS to PROCARE;
F. if MERCHANT submits for processing SALES that were not originated as a result of a direct SALES transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");

Not to exceed 12 months DR

CONTRACT REVIEWED AND APPROVED AS AMENDED:

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- G. if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of SALES in that or any prior month;
- H. in the event of a material change of MERCHANT's business as described in the Merchant Services Agreement;
- I. in the event the ASSOCIATIONS identify MERCHANT, its principal, or associated parties under any program designed to monitor merchants, or MERCHANT creates circumstances that cause harm or loss of goodwill to the VISA system;
- J. if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT; or
- K. in the event that Guarantor (if designated) gives notice of its intention to withdraw the Guaranty.

**4.4 Effect of Termination of the AGREEMENT:**

- A. In the event that this AGREEMENT is terminated by PROCARE or FNBO for cause, PROCARE and/or FNBO may be required to report the name and address of MERCHANT and MERCHANT's principals to the ASSOCIATIONS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to PROCARE for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.
- B. MERCHANT hereby releases, indemnifies and holds PROCARE, FNBO and the ASSOCIATIONS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by PROCARE or its Agents on the ASSOCIATIONS merchant monitoring lists.

**5. INFORMATION & DOCUMENTATION:**

- 5.1 MERCHANT agrees to comply with all requests for information and documentation regarding SALES and the CARDS utilized in processing such SALES or SERVICES under AGREEMENT within the time period stated by PROCARE in its request.
- 5.2 **USA PATRIOT ACT REQUIREMENTS.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. PROCARE is required to get the following information from the applicant: name, physical address, date of birth, taxpayer identification number, and other information that will allow PROCARE to identify the applicant. PROCARE may also ask to see the applicant's driver's license or other identifying documents. PROCARE will advise MERCHANT if additional information is required.
- 5.3 Upon PROCARE's request, MERCHANT shall provide PROCARE with current financial statements in a format acceptable to PROCARE.
- 5.4 MERCHANT and its signing officer/owner/partner/principal authorize PROCARE to make, from time to time, any business and personal credit and other inquiries PROCARE considers necessary to review the acceptance and continuation of this AGREEMENT. MERCHANT authorizes parties contacted by PROCARE or any of its affiliates, in relation to this AGREEMENT, to release the credit information requested by PROCARE or any affiliate.
- 5.5 MERCHANT is supplied with monthly reports by PROCARE regarding MERCHANT's SALES or SERVICES activity. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to PROCARE within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
- 5.6 MERCHANT will notify PROCARE immediately of any change in ownership, corporate or "d/b/a" name, location or address.
- 5.7 MERCHANT is solely responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, SALES and any other customer information in accordance with this AGREEMENT, LAWS, and RULES.

**6. PROCESSING RESTRICTIONS:**

- 6.1 MERCHANT agrees that it will not materially change its BUSINESS without informing PROCARE in advance of such change. PROCARE may only process SALES from the BUSINESS as defined in the AGREEMENT.
- 6.2 If actual monthly SALES volume substantially exceeds the projected monthly SALES volume as provided in the Merchant Services Agreement PROCARE may, at its option, do one or more of the following: (i) amend this AGREEMENT in a way as to ensure that PROCARE has security for the increased volume. (ii) refuse to process SALES in excess of such sum; (iii) terminate this AGREEMENT. Such rights of termination and retention of funds are in addition to those already provided for herein.
- 6.3 In the event of failure, including bankruptcy, insolvency, or other suspension of business operations by MERCHANT, MERCHANT shall not sell, transfer, or disclose any materials that contain cardholder account numbers, personal information, or other ASSOCIATION transaction information to third parties. MERCHANT shall either (i) provide this information to PROCARE upon PROCARE's request or (ii) provide acceptable proof of destruction of this information to PROCARE.

**7. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:**

- 7.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. PROCARE shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. PROCARE shall not be liable for any services or products of third parties. In any event, PROCARE's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid to PROCARE by MERCHANT in the month prior to the incident giving rise to liability. In no event shall ASSOCIATIONS, or VISA's contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL PROCARE, FNBO, ASSOCIATIONS, OR VISA'S CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR PROCARE WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

7.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY PROCARE, ASSOCIATIONS, AND VISA'S CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PROCARE ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

**8. WARRANTIES AND INDEMNITIES:**

- 8.1 MERCHANT understands that PROCARE merely provides processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, PROCARE does not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 8.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the ASSOCIATIONS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to PROCARE.
- 8.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to PROCARE and does by this reference assign all its rights, title, and interest to payment for such SALES to PROCARE so that PROCARE may process SALES under AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.
- 8.4 MERCHANT agrees to indemnify and hold harmless PROCARE, FNBO and ASSOCIATIONS, including VISA's contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. PROCARE, FNBO or the ASSOCIATIONS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify PROCARE, FNBO, and the ASSOCIATIONS for reasonable attorney's fees or any other necessary expenses incurred by PROCARE by reason of such defense.
- 8.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 8.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

**9. NOTICES:**

- 9.1 All notices required under this AGREEMENT from MERCHANT shall be written notices effective, unless otherwise stated in AGREEMENT, upon the actual receipt thereof.
- 9.2 All written notices shall be sent to the following addresses, which may be changed by either PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:

**If to PROCARE:**  
 Procare Software  
 Tuition Express  
 3581 Excel Drive  
 Medford, OR 97504

**If to MERCHANT:**

- At the address set out in the Merchant Services Agreement or such alternative address as designated by MERCHANT
- 9.3 MERCHANT consents to receiving electronically rather than in paper form all statements, notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at PROCARE's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Services Agreement. MERCHANT agrees that it is the MERCHANT's responsibility to assure that the email address used for said notifications is accurate and that it is the responsibility of the MERCHANT to notify PROCARE of any changes to MERCHANT's email address. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that MERCHANT has such access. MERCHANT understands that there are costs related to accessing DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 10.1 and 10.2. MERCHANT agrees that there are costs associated with written paper statements and agrees to the fees associated with written paper statements as defined in the Merchant Services Agreement.

**10. MISCELLANEOUS:**

- 10.1 **Assignment.** Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of PROCARE. PROCARE may assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT.
- 10.2 **Governing Law and Forum.** MERCHANT and PROCARE acknowledge and agree that this AGREEMENT and the Guaranty contained herein was, and shall be deemed to have been, made and delivered in Jackson County, Oregon. The laws of the State of Oregon, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or otherwise characterized) arising out of or relating to this AGREEMENT and the Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or the Guaranty contained herein, the courts of the State of Oregon shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or the Guaranty contained herein shall be filed and litigated only in courts located in Jackson County, Oregon, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or the Guaranty contained herein. If MERCHANT brings legal action against PROCARE for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.

CONTRACT REVIEWED AND  
 APPROVED AS AMENDED:

*[Signature]*  
 12-7-12



## AUTOMATED CLEARING HOUSE ("ACH") SERVICES ADDENDUM

**10.3 Waiver.** No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.

**10.4 Force Majeure.** PROCARE is not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.

**10.5 Entire Agreement.** This AGREEMENT and its addenda, attachments and schedules constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.

**10.6 Costs.** Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.

**10.7 Survival.** The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.

**10.8 Amendment.** This AGREEMENT may be amended or modified by PROCARE effective upon thirty (30) days written notice. This AGREEMENT may be amended upon less than thirty (30) days notice should events arise that would place the PARTIES at risk. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.

**10.9 Authority.** By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.

**10.10 Taxes.** MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes which may be assessed in connection with the services and related products provided under this AGREEMENT.

**10.11 Disclosure of MID.** For security reasons, MERCHANT must disclose its MID thereby authorizing PROCARE to make changes to its account. PROCARE may request from MERCHANT additional information to further verify MERCHANT's identity. PROCARE may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.

**10.12 Information Release.** MERCHANT authorizes PROCARE to release MERCHANT's information to third parties that provide services to PROCARE or MERCHANT or to any third party that requests and has a reason to know such information.

**10.13 Counterparts/Facsimile.** This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes PROCARE and its affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.

**10.14 Monitoring.** MERCHANT understands and agrees that any telephone conversation between MERCHANT and PROCARE may be monitored and recorded.

**10.15 Binding Agreement.** This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is signed by an authorized Agent of PROCARE; and (ii) PROCARE has received a negative response to its inquiry of the ASSOCIATIONS' programs designed to monitor merchants.

**10.16 Products and Services.** PROCARE may from time to time add products and/or services to SERVICES. At MERCHANT's request, PROCARE may provide such additional products and/or services to MERCHANT at PROCARE's then current rate. MERCHANT agrees to abide by all parameters set by PROCARE for such products and/or services as set out in any product specification or documentation as amended from time to time. PROCARE has made reasonable efforts to secure information and abides by the ASSOCIATIONS security guidelines but PROCARE does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify PROCARE immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. PROCARE shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. Either PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.

**10.17 Solicitation.** MERCHANT authorizes PROCARE and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by PROCARE, and will hold PROCARE and its affiliates harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.

THIS Addendum ("ADDENDUM") is by and between BLUM INVESTMENT GROUP, INC. d/b/a PROCARE SOFTWARE ("PROCARE"), and MERCHANT, the name of which is set out in the Merchant Services Agreement.

WHEREAS, PROCARE, and MERCHANT are PARTIES to a Merchant Services Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which PROCARE provides transaction processing and other services regarding credit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and WHEREAS, the PARTIES desire to amend the AGREEMENT to add Automated Clearing House ("ACH") Services.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

### 1. GENERAL

1.1 Capitalized terms that are not defined herein shall have the same meaning as when defined in the AGREEMENT or the REGULATORY RULES (as defined herein).

1.2 The PARTIES agree to add ACH Services (as set forth below) to the definition of SALES and SERVICES as defined in the AGREEMENT.

### 2. ACH SERVICES TERMS AND CONDITIONS

2.1 **Services.** PROCARE agrees to support the ACH entry types, the FEES, and Services designated in the Merchant Services Agreement. PROCARE will act as the Third Party Service Provider (TPS) and FNBO will act as the Originating Depository Financial Institution ("ODFI") for ACH entries submitted to them and will debit and/or credit the amount thereof to the DESIGNATED ACCOUNT. The Parties agree to comply with the terms of this ADDENDUM and agree to use ordinary care in performing ACH services hereunder. So long as PROCARE exercises such diligence as the circumstances may require, our failure or delay in performance will be excused if due to interruption of communications or computer facilities, failure of equipment, emergency conditions, or other circumstances beyond our control.

2.2 **Debits and Credits.** All debits and credits made pursuant to this ADDENDUM shall be posted to the DESIGNATED ACCOUNT. All ACH and credit card transaction debits and credits must be deposited into one DESIGNATED ACCOUNT per Merchant Identification Number ("MID"). You agree to maintain sufficient balances in available funds in the DESIGNATED ACCOUNT to cover all transactions you submit. If the DESIGNATED ACCOUNT does not have a sufficient balance, we may, at our option, either debit any other account (set-off) of yours to provide such balances or decline to forward such transactions. MERCHANT agrees to immediately reimburse us for any overdrafts created by transactions initiated by MERCHANT, whether through originating credit transactions for which there were not sufficient funds, or for returns received by us in respect of originating debit transactions or otherwise.

2.3 **Operating Procedures.** You agree to follow the Operating Procedures that are established for use of the services, including, without limitation, delivery deadlines. We may at any time place a hold on, and if necessary interplead, funds if we receive a request to do so or other demand or claim from the Receiver of one of your ACH entries with respect to such funds. We are not responsible for canceling or amending any ACH entry once sent, dishonoring returns, refusing notifications of change or for any other matter not specifically provided herein. We reserve the right to modify or discontinue the ACH Services and/or modify the Operating Procedures at any time.

2.4 **Merchant Responsibility.** Except as otherwise provided herein, you are responsible for the accuracy and adequacy of the ACH entries transmitted on your behalf. We are not responsible for collecting on items we are unable to process through our system. If a third party claim is made against us arising out of your ACH entries, breach of the AGREEMENT or ADDENDUM, or breach of any warranty under the REGULATORY RULES, you agree to defend, indemnify and hold us harmless against such claim, including without limitation claims by Receivers of entries. We may defend on our own any such claims or demands or request you to take up such defense. In either case as set out above you will further indemnify us for reasonable attorney fees or other necessary expenses incurred by us by reason of such defense or claims. The provisions of this section are in addition to and not in lieu of any existing provisions in the AGREEMENT.

### 2.5 Fees

2.5.1 You agree to pay us the FEES for the ACH Services set forth in the Merchant Service Agreement. These FEES may be amended upon thirty (30) days notice to you.

2.5.2 MERCHANT agrees that FNBO will debit ACH fees on behalf of PROCARE, from your DESIGNATED ACCOUNT for the ACH Services set forth in the Merchant Services Agreement. These FEES may be amended upon thirty (30) days notice to you.

2.5.3 In either case, you agree to pay any additional FEES, fines, or charges levied against us by any regulatory agencies or NACHA due to your actions or inactions associated with the ACH Services, which include, but are not limited to, your compliance with the REGULATORY RULES.

### 2.6 Compliance with the Law

2.6.1 Regulation E: National Automated Clearing House Association ("NACHA") Rules. You agree to comply with the Electronic Fund Transfer Act, Federal Reserve Regulation E, and other applicable federal and state laws and regulations, to the extent that the same may be applicable to the transactions processed hereunder. You represent that all ACH entries initiated on your behalf are the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context. You understand that you will be considered the Originator of all ACH entries submitted hereunder, and agree to comply with all rules and operating guidelines of the NACHA Rules and other relevant clearing house associations which are applicable to Originators, as the same may be applicable to transactions processed hereunder. Collectively, the Electronic Fund Transfer Act, Federal Reserve Regulation E, other applicable federal and state laws and regulations, and all NACHA rules and operating guidelines and other relevant clearing house associations, are hereinafter referred to as the "REGULATORY RULES." You understand that Sections 2.6.1.1 through 2.6.1.8 are not a complete or exclusive summary of NACHA Rules, and agree that we may provide you with revised summaries of REGULATORY RULES from time to time in the future. If you continue to initiate entries after we provide such an update, you will be considered to have agreed to the terms set forth in that update (except that if you cease initiation of entries within 45 days after the date of such an update, initiation of entries during that 45-day period will not constitute your agreement). You are responsible for obtaining and being in compliance with the most current REGULATORY RULES.

information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC.)

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*[Signature]* 12-7-12

2.6.1.1 Compliance with NACHA Rules and Law. By providing information about ACH entries to us, you authorize us to transmit, and to debit or credit the amount of those entries (referred to below as "your entries") to the Receiver's account. You agree not to initiate entries that violate the laws of the United States. \* (IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It is your responsibility to obtain

2.6.1.2 Receiver Authorization. You represent that you are and shall remain in compliance with all REGULATORY RULES, including but not limited to rules regarding ACH Authorizations from and notifications due to Receivers. As to each of your entries you represent that: (1) The Receiver has authorized you to initiate your entries to the Receiver's account; (2) In the case of debit entries to Consumer Accounts you have obtained the consumer's authorization in the form, content and manner required by the Rules; You agree to retain and promptly provide copies or other evidence of such authorizations, notifications, and other materials within one (1) business day from request by us or as required by the REGULATORY RULES or as otherwise requested by us.

2.6.1.3 Notifications of Change. You agree to make changes requested in a Notification of Change within the time frames identified by the REGULATORY RULES or prior to initiating another entry to the Receiver's account (whichever is later).

2.6.1.4 Returns, Adjustments, Etc. All credits we send to your DESIGNATED ACCOUNT are considered provisional until we receive final settlement, and we reserve the right to reverse those entries or initiate correcting debit entries for SPECIAL HANDLING CLAIMS (as defined herein). To the extent that any credits to your DESIGNATED ACCOUNT are revoked or affected by any third party claim or demand or any other process recognized by the REGULATORY RULES (such as, but not limited to, returns, reversals, adjustments, reclamations, notifications of change, or claims based on breach of any warranty made by Originators or ODFIs under the REGULATORY RULES) or to the extent that we are required to indemnify any Receiver, RDFI or other third party in respect of your entries (collectively, "SPECIAL HANDLING CLAIMS"), you agree to reimburse us through the DESIGNATED ACCOUNT or other method as designated by us. Our right of reimbursement is absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If SPECIAL HANDLING CLAIMS become excessive (in our judgment) we may adjust fees, require reserves and/or modify or discontinue services.

2.6.1.5 Information Security. You agree to comply with all relevant data security requirements (including, but not limited to, those requiring the use of encryption technology where ACH information is transmitted over unsecured networks such as the Internet).

2.6.1.6 Other Compliance. You are prohibited from using our services in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us or our vendors to investigation, prosecution, or legal action. You further agree: (1) to receive, resolve and respond to consumer alleged errors under applicable laws, regulations and the REGULATORY RULES; and (2) you are responsible for promptly handling and, if necessary, responding to and resolving at your own expense any SPECIAL HANDLING CLAIMS we refer to you.

2.7 Risk Management. You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, and contractors, any persons granted signature authority on your accounts and any persons who are permitted to initiate and/or give us instructions in respect of your entries (collectively, "YOUR PERSONNEL"). We are entitled, without further inquiry or investigation, to assume that the actions of YOUR PERSONNEL are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls that will prevent (or at least allow the early detection of) fraud or other unauthorized activity by YOUR PERSONNEL. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of YOUR PERSONNEL.

2.8 Fraud. You are responsible for all unauthorized or fraudulent transactions of or pertaining to the ACH Services. You agree to reimburse and/or pay us the principal amount of the transaction, plus any corresponding losses, damages, or other amounts, associated with said transaction.

2.9 Notices with Respect to Credit Transactions. Under the operating rules of NACHA, which are applicable to ACH transactions involving your account, we are not required to give notice to you of your ACH activity. However, we may notify you of ACH exception items (receipt of payments, notification of change, and the debiting of your account for returns via an automated e-mail notification). You must provide us with your e-mail address and advise us of any updates to that e-mail address on a timely basis. We will not notify you of exception items if we do not have a valid e-mail address on file. At MERCHANT'S option MERCHANT can receive reporting for ACH via www.tuitionexpress.com which displays information related to your ACH services and your credit card transaction processing activity via a web interface, you must be currently enrolled for access to www.tuitionexpress.com.

2.10 Warranty. You warrant that the information you provided in the Merchant Services Agreement is complete and accurate, and contains material facts, which may be used to calculate FEES and establish transaction parameters. If any of this information is incorrect or inaccurate, you agree that we may, among other actions, immediately amend FEES, revise transaction parameters, and/or terminate your ACH services, as we deem necessary in our sole discretion.

2.11 Disclaimer. CUSTOMER UNDERSTANDS AND AGREES THAT PROCARE'S SOLE LIABILITY WITH RESPECT TO SERVICES PROVIDED HEREUNDER SHALL BE AS SET FORTH HEREIN. IN THE EVENT THAT PROCARE FAILS TO PERFORM SERVICES PROPERLY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PROCARE'S SOLE OBLIGATION SHALL BE FOR PROCARE TO REPERFORM THE SERVICES AT ITS OWN EXPENSE. PROCARE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICES ARE NOT WARRANTED TO BE FREE FROM ERROR OR INTERRUPTION. PROCARE SHALL HAVE NO LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR PROCARE'S SERVICES, IN NO EVENT WILL PROCARE BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER FNBQ WAS INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER'S REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES IN LAW OR EQUITY.

2.12 Term. This ADDENDUM shall remain in effect until the earlier of: (i) termination by either PARTY, with or without cause, upon ten (10) days notice to the other; or (ii) expiration of the Agreement. Terminations shall be effective as to prospective transactions only, and shall not alter the rights of the PARTIES as to transactions prior to the effective date of termination.

2.13 Privacy. Provision of services hereunder may require that we receive certain information concerning your consumers (e.g., their checking account numbers). We agree to use reasonable efforts to maintain the confidentiality of such information and agree not to use or disclose the same except as necessary in connection with the provision of services to you. Disclosures of the type described in the Privacy of Consumer Financial Information (12 C.F.R. Sections 40.11, 40.13, 40.14 and 40.15) shall not be deemed prohibited by the foregoing. You are solely responsible for obtaining and maintaining any and all necessary rights, power, and authority to provide this information to us and for providing applicable privacy disclosures, if any, to your consumers.

3. MISCELLANEOUS

3.1 This ADDENDUM, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing and ACH Services, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.

3.2 Except as amended hereby, PROCARE and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

3.3 CHANGES TO THESE TERMS AND CONDITIONS MUST BE APPROVED BY AN AUTHORIZED OFFICER OF BLUM INVESTMENT GROUP, INC. SALES REPRESENTATIVES ARE NOT PERMITTED TO MAKE ANY REPRESENTATION OR WARRANTY NOT CONTAINED HEREIN AND CANNOT WAIVER, ALTER OR AMEND THE PRINTED TERMS AND CONDITIONS HEREOF.

NOTICE

Credit given by PROCARE to you with respect to an ACH credit entry is provisional until PROCARE receives final settlement for such entry through a Federal Reserve Bank. If PROCARE does not receive such final settlement, you are hereby notified and agree that PROCARE is entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not be deemed to have paid you in the amount of such entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, PROCARE is not required to give next day notice to you of receipt of an ACH item and PROCARE will not do so. However, PROCARE will continue to notify you of the receipt of payments via First InfoCenter®. PROCARE may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and PROCARE, Oregon law shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date(s) indicated below.

MERCHANT

Merchant Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PROCARE

Procure Software

3581 Excel Drive

Medford, OR 97504

800-338-3884

Authorized Signature: 

Print Name: DAN RICHARDS

Title: DIRECTOR - TUITION EXPRESS

Date: DEC 6, 2012

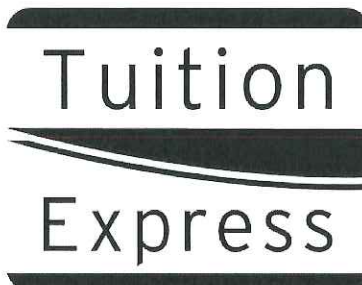
CONTRACT REVIEWED AND APPROVED AS AMENDED:

CU. NO. 12.7.12

# Terms and Conditions

Processing Terms and Conditions  
Funds Transfer Instructions  
Addendum  
ACH Services Addendum  
Association Rules

Provided by



powered by **Procare Software**  
3581 Excel Drive  
Medford, Oregon 97504

First National Bank of Omaha  
800.228.2443  
Member Bank for Visa, Inc. and MasterCard International, Inc.

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First National Bank of Omaha, Omaha Nebraska. All rights reserved.

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*L.W. 12-7-12*

## PROCESSING TERMS AND CONDITIONS

This Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), is by and among the parties in the Merchant Application (the "PARTIES"). The AGREEMENT shall become effective as set out in the signature block of the Merchant Application.

- A. WHEREAS, FNBO is a Member of VISA, Inc. ("VISA"), MasterCard International, Inc. ("MASTERCARD") and the DISCOVER NETWORK ("DISCOVER NETWORK"), and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, DISCOVER NETWORK and other financial service card organizations, including ATM/Debit networks (together herein known as "CARD(S)"). VISA, MASTERCARD, DISCOVER NETWORK, ATM/Debit Networks, and the other financial service card organizations shall be collectively known as "ASSOCIATIONS";
- B. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept CARDS and have FNBO process the resulting transactions ("SALES") pursuant to the terms and conditions set out below. For purposes of this AGREEMENT, ATM/Debit transactions shall mean those transactions processed on an ATM/Debit network ("NETWORK(S)") in an on-line real time environment requiring the entry of a personal identification number ("PIN");
- C. WHEREAS, MERCHANT may desire to be sponsored as a participant in certain NETWORKS, under the terms of the rules and regulations of each such NETWORK;
- D. WHEREAS, ASSOCIATIONS and FNBO each have adopted rules and regulations relating to all aspects of SALES and SERVICES. Such rules and regulations, as amended from time to time, are incorporated herein by this reference and shall be referred to as the "RULES"; and
- E. WHEREAS, MERCHANT understands that this is an agreement for transaction processing and that the DISCOUNT (as defined herein) for the SERVICES is calculated based on certain factors, including without limitation, the term of this AGREEMENT, the number of transactions processed, the business type, the type of goods and/or services sold, and the method of processing.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

### 1. GENERAL:

- 1.1 As a result of MERCHANT submitting SALES for processing to FNBO, FNBO will process such SALES and credit or debit MERCHANT's DESIGNATED ACCOUNT (as defined herein) with the resulting financial proceeds of such SALES. In addition, when a disputed transaction ("CHARGEBACK") occurs, MERCHANT agrees to provide all requested information to FNBO and FNBO agrees to forward such information to the ASSOCIATIONS in accordance with the RULES and the ASSOCIATIONS' dispute resolution guidelines. FNBO is not responsible for the outcome of any CHARGEBACK.
- 1.2 The CARDS designated herein will be processed under the terms and conditions of the AGREEMENT as long as FNBO is contractually permitted to offer such SERVICES by the respective ASSOCIATIONS.
- 1.3 On an exclusive basis, MERCHANT agrees to submit all SALES for processing from CARDS accepted in MERCHANT's business as described in the Merchant Application to FNBO in accordance with the RULES and pursuant to the terms of this AGREEMENT.
- 1.4 MERCHANT and FNBO agree to abide by the RULES, a summary of which is attached hereto. FNBO and ASSOCIATIONS may from time to time amend the RULES or operating procedures related to SALES and SERVICES. MERCHANT has been supplied with the RULES and by signing AGREEMENT, acknowledges that it has received and read them. MERCHANT agrees to comply with all applicable state, federal and local laws, rules and regulations ("LAWS"). MERCHANT agrees to assist FNBO in complying in a complete and timely manner with all LAWS and RULES now or hereafter applicable to any SALE or this AGREEMENT. MERCHANT will execute and deliver to FNBO all such instruments that FNBO may from time to time deem necessary. It is MERCHANT's responsibility to know all applicable LAWS and the RULES that apply to MERCHANT's acceptance of CARDS and to ensure that MERCHANT's equipment complies with all LAWS and RULES. MERCHANT agrees to indemnify, defend, and hold FNBO harmless from and against any loss, cost or damage (including reasonable legal fees and court costs) incurred as a result of MERCHANT's failure to comply with applicable LAWS or RULES.
- 1.5 MERCHANT agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of FNBO, including but not limited to the terms of this AGREEMENT, and will safeguard such information and data by using a reasonable degree of care but in no event less than the same degree of care that MERCHANT uses to protect its own confidential information.
- 1.6 MERCHANT agrees it will not disclose to any third party any cardholder account information or other personal information except to their agent assisting in completing a card transaction, or as required by law. MERCHANT must not request or use cardholder account number information for any purpose that MERCHANT knows or should have known to be fraudulent or in violation of the RULES, or for any purpose that the cardholder did not authorize, except to MERCHANT's agent assisting in completing a card transaction, or as required by law. MERCHANT must keep all systems and media containing account, cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than MERCHANT's authorized personnel. MERCHANT must destroy, in a manner that will render the data unreadable, all such media that MERCHANT no longer deems necessary or appropriate to store (except for Sales Drafts maintained in accordance with this AGREEMENT, LAWS or RULES). Further, MERCHANT must take all steps reasonably necessary to ensure cardholder information is not disclosed or otherwise misused. MERCHANT may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. MERCHANT must not store, and must ensure that all of MERCHANT's third party providers that have access to cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction.

If MERCHANT uses any third parties who will have access to cardholder data ("Merchant Provider(s)"), or any third party payment application(s) or software, MERCHANT must notify FNBO of the identity of the Merchant Provider(s) and/or the name and version of the payment application(s) or software. In addition, MERCHANT must (1) only allow the Merchant Providers access to the

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cardholder data for purposes that are authorized by the RULES, (2) have proper security measures in place for the protection of cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry ("PCI") Data Security Standard, as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at [www.visa.com](http://www.visa.com)), the MasterCard Site Data Protection Program ("SDP") (found at [www.mastercard.com](http://www.mastercard.com)), Discover Information Security and Compliance ("DISC") (found at <http://www.discovernetwork.com/fraudsecurity/disc.html>), and the American Express Data Security Operating Policy ("DSOP") (found at [https://www209.americanexpress.com/merchant/singlevoice/pdfs/en\\_US/DSOP\\_Service\\_Provider\\_US.pdf](https://www209.americanexpress.com/merchant/singlevoice/pdfs/en_US/DSOP_Service_Provider_US.pdf)), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. MERCHANT will immediately notify FNBO of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. MERCHANT is responsible for demonstrating MERCHANT's and Merchant Providers' compliance with the CISP, SDP, DISC, DSOP, and PCI programs, and providing reasonable access to MERCHANT's locations and ensuring Merchant Providers provide reasonable access to their locations to verify MERCHANT's and Merchant Providers' ability to prevent future security violations. Any fees, fines or penalties resulting from non-compliance will be passed through to MERCHANT. MERCHANT agrees to indemnify FNBO and the ASSOCIATIONS against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information.

In addition, in the event of a suspected or confirmed loss or theft of information, MERCHANT agrees, at MERCHANT's cost, to provide all information requested by FNBO, an ASSOCIATION, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation. Any information provided in response to such investigation will (as between MERCHANT and FNBO) be considered FNBO's confidential information. You agree that FNBO may release to the ASSOCIATIONS, financial institutions and/or regulatory, local, state or federal officials, any information MERCHANT provide to FNBO in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to cardholder data regardless of the medium in which the information is contained and regardless of whether MERCHANT processes transactions via Internet, mail, phone, face-to-face or a

- 1.7 Submission by MERCHANT of SALES or participation in SERVICES at any time after seven (7) days from the date of distribution of amended RULES to MERCHANT shall be evidence that MERCHANT has received the amended RULES and has agreed to abide by them.

## **2. SPECIFIC OPERATING PROCEDURES:**

- 2.1 MERCHANT agrees that it will comply with all Card Acceptance Procedures in the RULES for each SALE, including, but not limited to the following:
  - A. MERCHANT agrees that it will obtain and record a valid positive authorization for all SALES in accordance with the RULES before submitting them to FNBO for processing;
  - B. MERCHANT must be able to prove, by evidence of a terminal capture of the magnetic stripe or a signed SALES DRAFT (as defined in the RULES) showing imprint of the CARD, that the CARD was present at the time of SALE, unless specifically set up for Card Not Present transactions; and
  - C. Failure to read the magnetic stripe on the card may result in a DISCOUNT rate tier downgrade or a CHARGEBACK.
- 2.2 FNBO and/or third party banks with which FNBO has a relationship are members of certain NETWORKS and are willing to sponsor MERCHANT as a participant in such NETWORKS ("SPONSOR") as set forth in the Merchant Application. Additional NETWORKS may be available from time to time. FNBO does not warrant the continuing availability of any NETWORK. MERCHANT agrees to pay FNBO the then current FEES for any NETWORK added or deleted after the effective date of this AGREEMENT.
- 2.3 MERCHANT agrees to accept valid CARDS of each of the selected NETWORKS and will not impose purchase minimums, maximums, or surcharges, unless specifically allowed by the NETWORKS. MERCHANT agrees to comply with Federal Regulation E and the rules, procedures, fees, assessments, penalties, and other obligations of each NETWORK, as from time to time are in effect.
- 2.4 FNBO may provide MERCHANT access through MERCHANT's terminals to the NETWORKS as set forth herein.
- 2.5 MERCHANT must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which MERCHANT totals and settles all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to FNBO. In all cases, MERCHANT must present the record within three (3) business days after the transaction date, unless otherwise permitted by the RULES. Transactions contained in an untimely Batch Out may incur higher rates, be refused, be held for a one hundred eighty (180) day period, or become subject to a CHARGEBACK. MERCHANT is responsible for re-submitting a Batch Out or a sales ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. FNBO is not liable to MERCHANT for higher rates or for amounts FNBO did not collect, including but not limited to amounts collected by third party service providers.

## **3. PAYMENT OF SUMS DUE:**

- 3.1 MERCHANT agrees to pay FNBO the fees as set forth in the Merchant Application and all other sums owed to FNBO ("FEES") for SALES and SERVICES as set forth in this AGREEMENT as amended from time to time. FEES include but are not limited to all CHARGEBACKS. MERCHANT agrees that it is jointly and severally liable for all FEES, charges, and other sums owed to FNBO by any affiliated entities of MERCHANT.
- 3.2 As set out in the Merchant Application and the Rate Descriptions, discount ("DISCOUNT") is a FEE charged as a percentage of gross SALES submitted by MERCHANT, which generally includes "Processing," "Authorizations," "Assessments," and "Interchange." Assessments and Interchange are the standard fees that the ASSOCIATIONS charge for the clearing of SALES transactions and are subject to change by the ASSOCIATIONS. FNBO has no direct control over these fees. Any adjustment in Interchange and Assessments by the ASSOCIATIONS may result in an adjustment to MERCHANT's DISCOUNT. FNBO will notify MERCHANT in writing of any change in FEES caused by action of ASSOCIATIONS prior to any such change becoming effective. Notice to MERCHANT of any change in FEES caused by ASSOCIATIONS may be less than thirty (30) days.

*24.12.12*

- 3.3 DISCOUNT is quoted by FNBO based on the information supplied by MERCHANT as set forth in the Merchant Application. MERCHANT agrees that the FEES are based on the term of this AGREEMENT the method of processing, and the information set forth in the Merchant Application. MERCHANT agrees that such information is a material fact in the calculation of the DISCOUNT and other FEES. MERCHANT agrees that if such information is shown to be incorrect or if such information changes, FNBO may amend FEES on less than thirty (30) days notice as set out herein and/or add FEES on less than thirty (30) days notice to reflect such change. MERCHANT agrees to pay such amended and/or additional FEES.
- 3.4 MERCHANT agrees that FEES not listed in the AGREEMENT will be charged at FNBO's current rate.
- 3.5 The FEES may be amended by FNBO on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.6 MERCHANT agrees to pay FNBO for CHARGEBACKS related to SALES or SERVICES. MERCHANT understands that FNBO is in no way financially responsible for CHARGEBACKS. Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS. MERCHANT's obligation to pay CHARGEBACKS shall survive the termination or expiration of AGREEMENT.
- 3.7 If the ASSOCIATIONS or a regulatory body governing FNBO should levy a fine or penalty or assess a charge to FNBO as a result of MERCHANT's SALES or SERVICES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.8 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the PARTIES. MERCHANT, pursuant to the Funds Transfer Instructions set out herein, authorizes FNBO to make deposits and withdrawals from the DESIGNATED ACCOUNT. MERCHANT hereby grants to FNBO a security interest and lien upon the DESIGNATED ACCOUNT to secure all of MERCHANT's (or any related entity under MERCHANT's control) obligations to FNBO under this AGREEMENT. If required by FNBO, MERCHANT agrees to cooperate with FNBO and the depository bank maintaining the DESIGNATED ACCOUNT to cause a Control Agreement to be executed with respect to the DESIGNATED ACCOUNT. MERCHANT agrees to maintain a balance in the DESIGNATED ACCOUNT in an amount specified by FNBO and MERCHANT agrees to deposit funds into the DESIGNATED ACCOUNT so that the minimum balance required by FNBO is maintained. If this AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. FNBO may recoup and debit from the DESIGNATED ACCOUNT all FEES and other obligations due to FNBO under this AGREEMENT or any other agreement MERCHANT or MERCHANT's related entities have with FNBO without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the DESIGNATED ACCOUNT, if any, shall be paid to MERCHANT. MERCHANT agrees to indemnify and hold harmless all financial institutions from any loss or claim incurred for acting on instructions from FNBO with respect to the DESIGNATED ACCOUNT. MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due FNBO under this AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a RESERVE ACCOUNT, as defined below, is established, MERCHANT authorizes FNBO to make withdrawals from the DESIGNATED ACCOUNT to replenish the RESERVE ACCOUNT as necessary.
- 3.9 MERCHANT agrees to provide FNBO with a deposit in the amount of money required by FNBO ("RESERVE ACCOUNT"), if determined necessary by FNBO: (i) at the time this AGREEMENT is executed; (ii) if in the opinion of FNBO, information received or discovered about MERCHANT reflects an adverse change in status; (iii) in the event that any information requested by FNBO is not received; (iv) upon the notice of termination or expiration of the AGREEMENT; or (v) at any time during the term of this AGREEMENT. FNBO may withhold the payment for SALES in an amount reasonably determined by FNBO as necessary to secure payment by MERCHANT of all FEES and other obligations under this AGREEMENT and the amounts so withheld shall be deposited into the RESERVE ACCOUNT. If there is not enough money retained to cover the anticipated FEES, FNBO may require MERCHANT to remit additional funds. The RESERVE ACCOUNT shall be maintained in a bank account with FNBO in the name of FNBO and under the sole control of FNBO, and MERCHANT grants to FNBO a security interest and lien upon the RESERVE ACCOUNT to secure all of MERCHANT's obligations to FNBO under this AGREEMENT. If this AGREEMENT is terminated for any reason, the RESERVE ACCOUNT shall be maintained for a period of one hundred eighty (180) days, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES, from the date of the last SALE processed by MERCHANT under AGREEMENT. FNBO may recoup and debit from the RESERVE ACCOUNT all FEES and other obligations due to FNBO under this AGREEMENT without prior notice to MERCHANT. After all obligations of MERCHANT under this AGREEMENT are satisfied in full, the balance in the RESERVE ACCOUNT, if any, shall be paid to MERCHANT.
- 3.10 FNBO agrees to pay MERCHANT for SALES less FEES owed to FNBO by MERCHANT. FNBO shall recoup and deduct FEES from incoming transactions or recoup and debit the same from MERCHANT's DESIGNATED ACCOUNT or the RESERVE ACCOUNT. MERCHANT agrees that FNBO has the right to deduct these FEES at any time including on a daily basis if necessary. FNBO is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any SALES transmitted or delivered to FNBO after MERCHANT becomes insolvent, ceases to do business, or dissolves.
- 3.11 FNBO has the right of recoupment and set-off. This means that FNBO may recoup and offset any outstanding or uncollected amounts owed to FNBO from (i) any amounts FNBO would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts FNBO may owe MERCHANT under this AGREEMENT or any other agreement.
- 3.12 If MERCHANT does not pay any sums due within thirty (30) days from date of notice, FNBO will charge, and MERCHANT agrees to pay, a late fee of one and one-half percent (1.5%) per month on the balance outstanding or the highest amount allowed by law. If MERCHANT breaches AGREEMENT or if FNBO identifies suspicious or irregular activity related to SALES or SERVICES, FNBO may refuse to process SALES or to provide SERVICES and/or may hold funds pending the cure of such breach or resolution of such activity.
- 3.13 If FNBO takes any action against MERCHANT to collect any FEES or monies due to FNBO from MERCHANT, MERCHANT agrees to pay all costs of collection, including but not limited to, attorney's fees, to the extent allowed by law.

3.14 If MERCHANT is a participant in an FNBO third party program including, but not limited to, Agent Bank and/or Association programs, and MERCHANT subsequently leaves such third party, FNBO may amend the FEES or terminate the AGREEMENT.

**4. TERM OF AGREEMENT:**

4.1 The initial term of this AGREEMENT shall be for ~~three (3)~~ <sup>one (1)</sup> years ("INITIAL TERM") commencing on the date this AGREEMENT is executed by an authorized agent of FNBO or approved and uploaded by FNBO's Risk Department. (DR)

4.2 At the expiration of the INITIAL TERM, this AGREEMENT ~~will automatically renew~~ <sup>maybe renewed</sup> for successive two (2) year periods (DR) ("RENEWAL TERM") unless terminated as set out below. *by mutual agreement of both parties*

**5. TERMINATION OF AGREEMENT:**

5.1 This AGREEMENT may be terminated by FNBO at any time effective upon thirty (30) days written notice.

5.2 MERCHANT may terminate this AGREEMENT as follows: *either party* (DR)

A. upon FNBO's default of any material obligation to MERCHANT thereunder and the failure of FNBO to cure such default within thirty (30) days after written notice of such default;

B. upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM, ~~or on thirty (30) days notice of termination accompanied by payment to FNBO of the EARLY TERMINATION FEE.~~ (DR)

5.3 In order to protect the ASSOCIATIONS and FNBO, FNBO may terminate this AGREEMENT effective immediately for any of the following reasons:

A. insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT's assets for the benefit of MERCHANT's property creditors, or if any part of MERCHANT's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter;

B. if MERCHANT fails to pay any FEES when due;

C. if MERCHANT has misrepresented or omitted any material information provided to FNBO;

D. if MERCHANT is in breach of the AGREEMENT or the RULES;

E. if MERCHANT, after FNBO's request, fails to send copies of SALES DRAFTS to FNBO;

F. if MERCHANT submits for processing SALES that were not originated as a result of a direct SALE transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");

G. if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of SALES in that or any prior month;

H. in the event of a material change of MERCHANT's business as described in the Merchant Application ("BUSINESS");

I. in the event the ASSOCIATIONS identify MERCHANT, its principal, or associated parties under any program designed to monitor merchants, or MERCHANT creates circumstances that cause harm or loss of goodwill to the VISA system;

J. if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT; or

K. in the event that Guarantor (if designated) gives notice of its intention to withdraw the Guaranty.

5.4 Effect of Termination of the AGREEMENT:

A. In the event that this AGREEMENT is terminated by FNBO for cause, FNBO may be required to report the name and address of MERCHANT and MERCHANT's principals to the ASSOCIATIONS for inclusion on the Terminated Merchant File and in other programs that monitor merchants. In the event that this AGREEMENT is terminated for cause and MERCHANT is obligated to FNBO for sums due and the principals of MERCHANT are liable for such debts, a negative credit report may be submitted to a credit-reporting agency.

B. MERCHANT hereby releases, indemnifies and holds FNBO and the ASSOCIATIONS harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a result of reporting MERCHANT or its principals to a credit reporting agency hereunder or as a consequence of MERCHANT or its principals being placed by FNBO or its Agents on the ASSOCIATIONS merchant monitoring lists.

**6. BANKRUPTCY:**

6.1 It is not the intention of the PARTIES that FNBO remain obligated to continue processing SALES or providing SERVICES in the event of a bankruptcy filing by MERCHANT. Upon filing voluntary or involuntary bankruptcy proceedings by or against MERCHANT, MERCHANT must notify FNBO in writing within five (5) days. Notification must be sent by certified mail to FNBO at the address for NOTICES set out herein.

6.2 Credits to MERCHANT's DESIGNATED ACCOUNT and other payments to MERCHANT are provisional. The PARTIES acknowledge the AGREEMENT is an agreement whereby FNBO is extending financial accommodations to MERCHANT within the meaning of Section 365 of the Bankruptcy Code as amended from time to time. The right of MERCHANT to receive any amounts due or to become due from FNBO is expressly subject and subordinate to the CHARGEBACKS, recoupment, setoff, lien, and security interest rights of FNBO under this AGREEMENT without regard to whether such CHARGEBACKS, recoupment, setoff, lien, and/or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

**7. INFORMATION AND DOCUMENTATION:**

7.1 MERCHANT agrees to comply with all requests for information and documentation regarding SALES and the CARDS utilized in processing such SALES or SERVICES under AGREEMENT within the time period stated by FNBO in its request.

7.2 **USA PATRIOT ACT REQUIREMENTS.** To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person (including business entities) who opens an account. What this means: When MERCHANT opens an account, FNBO will ask for the applicant's name, physical address, date of birth, taxpayer identification number, and other information that will allow FNBO to identify the applicant. FNBO may also ask to see the applicant's driver's license or other identifying documents. FNBO will advise MERCHANT if additional information is required.

- 7.3 Upon FNBO's request, MERCHANT shall provide FNBO with current financial statements in a format acceptable to FNBO.
- 7.4 MERCHANT and its signing officer/owner/partner/principal authorize FNBO, or its agents or assigns, to make, from time to time, any business and personal credit and other inquiries FNBO considers necessary to review the acceptance and continuation of this AGREEMENT. MERCHANT authorizes parties contacted by FNBO or any of its affiliates, in relation to this AGREEMENT, to release the credit information requested by FNBO or any affiliate.
- 7.5 MERCHANT is supplied with monthly reports by FNBO regarding MERCHANT's SALES or SERVICES activity. It is MERCHANT's sole responsibility to report any error or discrepancies detected by MERCHANT in writing to FNBO within ninety (90) days following the end of the monthly reporting period. After such period, MERCHANT will be deemed to have accepted the monthly reports as delivered.
- 7.6 MERCHANT will notify FNBO immediately of any change in ownership, corporate or "d/b/a" name, location address, or the information contained on MERCHANT's imprinter plates.
- 7.7 If MERCHANT participates in any FNBO third party program, MERCHANT agrees that FNBO may report information as required to such third party.
- 7.8 MERCHANT is solely responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, SALES and any other customer information in accordance with this AGREEMENT, LAWS, and RULES.

**8. PROCESSING RESTRICTIONS:**

- 8.1 MERCHANT agrees that it will not materially change its BUSINESS or the method in which it markets or sells the goods and services of BUSINESS without informing FNBO in advance of such change. FNBO may only process SALES from the BUSINESS as defined in the AGREEMENT.
- 8.2 If actual monthly SALES volume substantially exceeds the projected annual SALES volume as provided in the Merchant Application and pro-rated to one month, FNBO may, at its option, do one or more of the following: (i) refuse to process SALES in excess of such sum; (ii) process such SALES and retain the proceeds of such SALES until the next month and release such sums to MERCHANT at that time counting this volume as SALES volume for that month; (iii) terminate this AGREEMENT; and/or (iv) amend this AGREEMENT in a way as to ensure that FNBO has security for the increased volume. Such rights of termination and retention of funds are in addition to those already provided for herein.
- 8.3 In the event of failure, including bankruptcy, insolvency, or other suspension of business operations by MERCHANT, MERCHANT shall not sell, transfer, or disclose any materials that contain cardholder account numbers, personal information, or other ASSOCIATION transaction information to third parties. MERCHANT shall either (i) provide this information to FNBO upon FNBO's request or (ii) provide acceptable proof of destruction of this information to FNBO.

**9. USE OF THE INTERNET, SYSTEM INTEGRATORS, AND/OR THIRD PARTY SERVICE PROVIDERS:**

- 9.1 If MERCHANT accepts SALES through its web site or through a system integrator, MERCHANT shall at all times maintain and be responsible for the security of the transmission of data relating to the processing of SALES associated with this AGREEMENT. MERCHANT shall be responsible for obtaining and maintaining web site security, for the encryption of all data, and for any and all storage of data. MERCHANT shall display on its web site its (i) consumer data privacy policy and (ii) security method for transmission of payment data. An e-commerce MERCHANT must display the address of its "permanent establishment" on its web site along with MERCHANT's country of domicile, either a) on the same screen view as the checkout screen used to present the total purchase amount; or b) within the sequence of web pages the cardholder accesses during the checkout process.
- 9.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and any other Internet service provider(s) and/or system integrator(s). MERCHANT shall ensure that said third parties appropriately format and transmit SALES to FNBO in accordance with the then current RULES and requirements of FNBO and ASSOCIATIONS. If MERCHANT is using a Member Service Provider's terminal or software application, (i.e. dial terminal or equivalent sales capture solution), and the Member Service Provider is providing the customer service, then such Member Service Provider is a separate entity and is not an agent of FNBO. MERCHANT understands the AGREEMENT is between FNBO and MERCHANT. Disputes involving a Member Service Provider shall be dealt with independently from FNBO. If disputes are unresolved and relate to SERVICES provided under the AGREEMENT, MERCHANT shall notify FNBO at the address set out in the AGREEMENT. MERCHANT must pay FNBO regardless of any disputes it has with any Member Service Provider. If MERCHANT elects to use the terminal or software of third party providers to capture and transmit SALES to FNBO, MERCHANT must disclose the relationship to FNBO and MERCHANT assumes full responsibility and liability for such third party provider's failure to comply with the RULES. The third party provider may be the source for information regarding SALES, authorizations and CHARGEBACKS that may be needed by FNBO. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible for obtaining this information from such third party provider. FNBO is not liable for SALES that it did not receive. MERCHANT understands that in the event MERCHANT uses FNBO terminals, the communications vendor is not responsible for losses arising from the SALES processed using the vendor's service.
- 9.3 MERCHANT agrees that FNBO is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted. MERCHANT agrees that FNBO is not responsible for and is not able to provide customer service for the point of sale ("POS") devices installed by and/or operated by any third party with which MERCHANT has contracted. MERCHANT should contact the third party for service of this equipment. MERCHANT shall not allow any third party to install, remove, or modify any terminal software application of FNBO without the express written consent of FNBO. MERCHANT agrees FNBO can only process SALES received by FNBO, and any third party is responsible for ensuring SALES are formatted and transmitted to FNBO in accordance with the then current requirements of FNBO and ASSOCIATIONS. FNBO may increase FEES if a third party presents SALES transactions not in accordance with the then current ASSOCIATIONS' requirements. MERCHANT assumes full responsibility and liability for DISCOUNT rate tier downgrades caused by any third party. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by FNBO.



9.4 MERCHANT shall assume full liability and shall indemnify and hold FNBO and ASSOCIATIONS harmless for: (i) the actions and/or inactions of any third party with which MERCHANT has contracted or (ii) the failure of any third party with which MERCHANT has contracted to comply with the LAWS or RULES.

**10. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:**

- 10.1 MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. FNBO shall not otherwise be liable for any error, omission, delay, computer virus, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, the rendering of SERVICES hereunder. FNBO shall not be liable for any services or products of third parties. In any event, FNBO's liability to MERCHANT, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to MERCHANT or an amount equal to the processing portion of the DISCOUNT paid to FNBO by MERCHANT in the month prior to the incident giving rise to liability. In no event shall ASSOCIATIONS, or VISA's contractors be liable for losses, damages, or liabilities whether in contract, tort (including negligence), strict liability or under any other theory incurred by MERCHANT, MERCHANT's customers, or any other person or entity arising under this AGREEMENT. IN NO EVENT SHALL FNBO OR ASSOCIATIONS, OR VISA'S CONTRACTORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, VIRUSES, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR FNBO WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- 10.2 THE SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY FNBO, ASSOCIATIONS, AND VISA'S CONTRACTORS, INCLUDING BUT NOT LIMITED TO, THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. FNBO ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY.

**11. WARRANTIES AND INDEMNITIES:**

- 11.1 MERCHANT understands that FNBO merely provides processing services for SALES or SERVICES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of SALES or SERVICES. Furthermore, FNBO does not guarantee that SALES or SERVICES will not be subject to CHARGEBACKS.
- 11.2 MERCHANT warrants there is no action, suit or proceeding pending or to MERCHANT's knowledge threatened, which, if decided adversely, would impair MERCHANT's ability to carry on MERCHANT's business substantially as now conducted or which would adversely affect MERCHANT's financial condition or operations. MERCHANT warrants that it, or its principals or sales agents have not been terminated from depositing SALES with any other member of the ASSOCIATIONS, have never been placed on the MasterCard MATCH system, or on the Combined Terminated Merchant File except as disclosed in writing to FNBO.
- 11.3 MERCHANT warrants that at the time of depositing SALES for processing: (i) it has the right to assign such SALES to FNBO and does by this reference assign all its rights, title, and interest to payment for such SALES to FNBO so that FNBO may process SALES under AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the SALES; and (iii) that the SALES represent a valid obligation of the cardholder: (a) in the amount indicated; (b) for merchandise sold and delivered or services rendered to the cardholder by the MERCHANT; and (c) it does not involve any element of credit for any other purpose.
- 11.4 MERCHANT agrees to indemnify and hold harmless FNBO, SPONSORS, and ASSOCIATIONS, including VISA's contractors, from and against any claims, demands, or judgments, made or recovered against it, arising out of any misrepresentation or breach by MERCHANT of the terms of this AGREEMENT or arising from any act or omission by MERCHANT which violates any LAWS, the RULES, or the rights of another person or otherwise injures any third party. FNBO, SPONSORS, or the ASSOCIATIONS may defend on its own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify FNBO, SPONSORS, and the ASSOCIATIONS for reasonable attorney's fees or any other necessary expenses incurred by FNBO by reason of such defense.
- 11.5 MERCHANT shall be solely responsible for losses and CHARGEBACKS incurred as a result of, or arising out of, any fraud including LAUNDERING, negligence, or willful misconduct on the part of MERCHANT, or MERCHANT's employee(s) or agent(s).
- 11.6 MERCHANT is responsible for any electronic virus or viruses that may be encountered and is responsible for routinely scanning its computers and diskettes using a reliable virus product to detect and remove any viruses found.

**12. NOTICES:**

- 12.1 All notices required under this AGREEMENT from MERCHANT shall be written paper notices effective, unless otherwise stated in AGREEMENT, upon the earlier of actual receipt thereof or the third (3rd) business day following such notices being deposited postage prepaid in the United States Postal System.
- 12.2 All written paper notices shall be sent to the following addresses, which may be changed by either PARTY by designating an alternate address, effective upon fourteen (14) days notice of such change:
- |   |  |
|---|--|
| <u>If to FNBO:</u><br>First National Bank of Omaha<br>Attention: Merchant Legal Department<br>1620 Dodge Street, Stop 3231<br>Omaha, NE 68197 | <u>If to MERCHANT:</u><br>At the address set out in the Merchant Application or such alternative address as designated in writing by MERCHANT. |
|---|--|
- 12.3 MERCHANT consents to receiving electronically rather than in paper form all notices, disclosures and other documents ("DOCUMENTS") which are to be provided to MERCHANT under this AGREEMENT. MERCHANT will be notified that a DOCUMENT is available at FNBO's web site with a link to that specific page of the web site containing the DOCUMENT. MERCHANT agrees that such notification will be sent to MERCHANT at the e-mail address provided as part of the Merchant Application. Any DOCUMENT sent to MERCHANT electronically will be maintained on the website for not less than six (6) months from the date of its posting on the web site. MERCHANT understands and acknowledges that access to the Internet, e-mail and the worldwide web are required for MERCHANT to access a DOCUMENT electronically and MERCHANT confirms that

MERCHANT has such access. MERCHANT understands that there are costs related to access DOCUMENTS electronically and MERCHANT agrees that MERCHANT is responsible for these related access costs. Without advance notice to MERCHANT and at any time, electronic DOCUMENTS may no longer be sent to MERCHANT, in which case a paper copy of the DOCUMENT will be sent to MERCHANT pursuant to Sections 12.1 and 12.2.

**13. MISCELLANEOUS:**

- 13.1 Assignment. Except as expressly provided in this AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this AGREEMENT without the prior written consent of FNBO. FNBO may assign its rights or delegate duties under this AGREEMENT without the prior consent of MERCHANT.
- 13.2 Governing Law and Forum. MERCHANT and FNBO acknowledge and agree that this AGREEMENT and the Guaranty contained herein was, and shall be deemed to have been, made and delivered in Douglas County, Nebraska. The laws of the State of Nebraska, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this AGREEMENT and the Guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the AGREEMENT and Guaranty. The PARTIES agree that, in the event of any dispute regarding, arising out of or relating to this AGREEMENT or the Guaranty contained herein, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES. The PARTIES further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this AGREEMENT or the Guaranty contained herein shall be filed and litigated only in courts located in Douglas County, Nebraska, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this AGREEMENT or the Guaranty contained herein. If MERCHANT brings legal action against FNBO for any reason, MERCHANT shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.
- 13.3 Waiver. No delay or failure by either PARTY to exercise any right under AGREEMENT and no partial or single exercise of that right shall constitute a waiver of that right or any other right, unless expressly provided for in AGREEMENT.
- 13.4 Force Majeure. FNBO is not liable or responsible for any failure or delay in performance caused by any Act of God, strikes, flood, fire, war, public enemy, electrical or equipment failure, failures by third parties, or other events beyond its control.
- 13.5 Entire Agreement. This AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements, and negotiations between the PARTIES whether verbal or written.
- 13.6 Costs. Neither PARTY shall be responsible for the costs incurred by the other in negotiating or implementing this AGREEMENT.
- 13.7 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of this AGREEMENT will survive the termination of this AGREEMENT. If any portion of the AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability will not affect the remainder of the same and the remaining provisions will remain in full force and effect. The PARTIES agree that the Court of competent jurisdiction may modify any objectionable provision of the AGREEMENT so as to render it valid, reasonable and enforceable.
- 13.8 Amendment. This AGREEMENT may be amended or modified by FNBO effective upon thirty (30) days written notice. Any alteration or strikeover in the text of this pre-printed AGREEMENT will have no binding effect and will not be deemed to amend this AGREEMENT.
- 13.9 Authority. By signing the AGREEMENT, each PARTY represents that it has the full legal power and authority to enter into performance obligations under this AGREEMENT. Each PARTY represents that the entering into of this AGREEMENT has been duly authorized; the signer is a duly authorized signatory; this AGREEMENT constitutes a legal, valid, and binding obligation of each PARTY; and that this AGREEMENT is enforceable against each PARTY in accordance with its terms.
- 13.10 P-Card. FNBO agrees not to use any information supplied by MERCHANT in the Purchasing Card Information that is required for acceptance of purchasing cards, in its decision as to whether to accept MERCHANT for processing. MERCHANT agrees to hold FNBO harmless from any and all claims relating to the collection, processing, dissemination, and use or misuse of the information contained in the Purchasing Card Information. MERCHANT acknowledges that the information from the Purchasing Card Information will be sent to MERCHANT's corporate customers who pay with a purchasing card. MERCHANT agrees that FNBO is not responsible for any actions or omissions of others regarding this information.
- 13.11 Taxes. MERCHANT agrees to pay all federal, state, and local sales, use, property and excise taxes which may be assessed in connection with the services and related products provided under this AGREEMENT.
- 13.12 Disclosure of MID. For security reasons, MERCHANT must disclose its MID thereby authorizing FNBO to make changes to its account. FNBO may request from MERCHANT additional information to further verify MERCHANT's identity. FNBO may assume that the person disclosing the MID has the authority to make changes to MERCHANT's account. MERCHANT is responsible and liable for changes made after disclosure of its MID. MERCHANT is responsible for insuring its MID is kept confidential.
- 13.13 Information Release. MERCHANT authorizes FNBO to release MERCHANT's information to third parties that provide services to FNBO or MERCHANT or to any third party that requests and has a reason to know such information.
- 13.14 Counterparts/Facsimile. This AGREEMENT may be executed and delivered in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Any photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. MERCHANT hereby authorizes FNBO and its affiliates to send facsimiles to the MERCHANT's facsimile number set forth in this AGREEMENT.
- 13.15 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and FNBO may be monitored and recorded.
- 13.16 Binding Agreement. This AGREEMENT shall not become a binding AGREEMENT between the PARTIES until (i) it is signed by an authorized Agent of FNBO; and (ii) FNBO has received a negative response to its inquiry of the ASSOCIATIONS' programs designed to monitor merchants.
- 13.17 Products and Services. FNBO may from time to time add products and/or services to the SERVICES. At MERCHANT's request, FNBO may provide such additional products and/or services to MERCHANT at FNBO's then current rate. MERCHANT agrees to

abide by all parameters set by FNBO for such products and/or services as set out in any product specification or documentation as amended from time to time. MERCHANT is responsible for any coding and testing, if necessary, for such products and/or services. FNBO has made reasonable efforts to secure information and abides by the ASSOCIATIONS security guidelines but FNBO does not guarantee security. MERCHANT is responsible for protecting access to any passwords or user identification numbers. Access to and use of password protected areas of any products and/or services are restricted to authorized users only. It is the MERCHANT's obligation to notify FNBO immediately if its passwords or user identification numbers have been lost or stolen or if there has been unauthorized access. FNBO shall at all times retain all title to and ownership of the products and SERVICES. MERCHANT agrees not to, directly or indirectly, modify, reverse engineer, decompile, disassemble or derive source code from the products and SERVICES. Either PARTY may terminate a product and/or service at any time upon thirty (30) days written notice to the other without terminating the AGREEMENT.

- 13.18 Solicitation. MERCHANT authorizes FNBO and its affiliates to communicate with, solicit and/or market to MERCHANT via regular mail, telephone, e-mail and facsimile in connection with the provision of goods or services by FNBO, its affiliates, or any third party that FNBO shares, transfers, exchanges, discloses or provides information with or to pursuant this AGREEMENT and will hold FNBO, its affiliates and such third parties harmless against any and all claims pursuant to the federal CAN-SPAM ACT of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above.
- 13.19 Disclosure. The ASSOCIATIONS require that the following be disclosed to MERCHANT: (i) if applicable, FNBO is in control of Independent Sales Organization's ("ISO") and/or Member Service Provider's ("MSP") performance under this AGREEMENT; (ii) FNBO must pre-approve all FEES; (iii) the AGREEMENT may not be amended without FNBO's express written consent; (iv) if applicable, ISO and/or MSP may not have access to MERCHANT's funds; and (v) FNBO may not waive the foregoing requirements.

#### FUNDS TRANSFER INSTRUCTIONS

MERCHANT desires to effect settlement of credits and debits from MERCHANT's DESIGNATED ACCOUNT by means of ACH and/or wire transfer in conjunction with the processing of SALES transactions or SERVICES as anticipated by AGREEMENT. In accordance with this desire, MERCHANT authorizes FNBO to initiate debit and credit entries to the DESIGNATED ACCOUNT (the details of which are set out herein and in the Merchant Application). MERCHANT agrees to maintain sufficient funds in DESIGNATED ACCOUNT to cover debit transactions. By signing this AGREEMENT, MERCHANT states that it has authority to agree to such transactions and that the DESIGNATED ACCOUNT indicated is a valid and legitimate account for the handling of these transactions. This authority is to remain in effect until FNBO receives written notice from MERCHANT revoking it. This authorization is for the payment of SALES, returns and FEES, CHARGEBACKS, or any other sums owed between the PARTIES. MERCHANT also certifies that the appropriate authorizations are in place to allow MERCHANT to authorize this method of settlement. All changes to the identification of the DESIGNATED ACCOUNT under this authorization must be made in writing in accordance with AGREEMENT. MERCHANT agrees that if the DESIGNATED ACCOUNT is an IBA and MERCHANT closes the IBA, the DESIGNATED ACCOUNT shall become the Home Account without further written notification and these instructions will apply. MERCHANT understands that if the information supplied as to the ABA Routing Number and Account Number of the DESIGNATED ACCOUNT is incorrect, and funds are incorrectly deposited, FNBO will attempt to assist MERCHANT in the recovery of such funds but has no liability as to restitution of the same. FNBO's assistance in recovering the funds, where available, will be billed to MERCHANT at FNBO's current hourly rate for such work. MERCHANT acknowledges that the origination of ACH transactions to the DESIGNATED ACCOUNT must comply with the provisions of U.S. law.

#### ADDENDUM

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("FNBO"), BLUM INVESTMENT GROUP, INC. d/b/a PROCARE SOFTWARE ("PROCARE"), and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

WHEREAS, FNBO, PROCARE, and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which FNBO provides transaction processing and other services regarding credit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and

WHEREAS, the PARTIES desire to amend the AGREEMENT as set forth below.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

1. Capitalized terms which are not defined herein shall have the same meaning as when defined in the AGREEMENT.
2. The PARTIES agree to replace Sections 4.1 and 4.2 of the AGREEMENT in their entirety with the following:
  - 4.1 The initial term of this AGREEMENT shall be for one (1) month ("INITIAL TERM") commencing on the date this AGREEMENT is executed by an authorized agent of FNBO or approved and uploaded by FNBO's Risk Department.
  - 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive one (1) month periods ("RENEWAL TERM") unless terminated as set out below.
3. The PARTIES agree to add the following to Section 12.2:

If to PROCARE: Blum Investment Group, Inc. d/b/a Procure Software  
3581 Excel Drive  
Medford, Oregon 97504
4. This ADDENDUM, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
5. Except as amended hereby, FNBO and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

M.W. 12-7-10

**ACH SERVICES ADDENDUM**

**AUTOMATED CLEARING HOUSE ("ACH") SERVICES ADDENDUM**

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("FNBO"), BLUM INVESTMENT GROUP, INC. d/b/a PROCARE SOFTWARE ("PROCARE"), and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

WHEREAS, FNBO, PROCARE, and MERCHANT are PARTIES to a Merchant Transaction Processing Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "AGREEMENT"), under which FNBO provides transaction processing and other services regarding credit card sales transactions ("SALES"), subject to the terms and conditions more fully set out in AGREEMENT; and

WHEREAS, the PARTIES desire to amend the AGREEMENT to add Automated Clearing House ("ACH") Services.

NOW THEREFORE, in consideration of the mutual promises made herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the PARTIES do hereby agree as follows:

**1. GENERAL**

- 1.1 Capitalized terms that are not defined herein shall have the same meaning as when defined in the AGREEMENT or the REGULATORY RULES (as defined herein).
- 1.2 The PARTIES agree to add ACH Services (as set forth below) to the definition of SALES and SERVICES as defined in the AGREEMENT.

**2. ACH SERVICES TERMS AND CONDITIONS**

- 2.1 **Services.** We agree to support the ACH entry types, the FEES, and Services designated in the Merchant Application. The "ACH Services" contemplated by this Agreement will be either: (i) our standard ACH services, which we will provide to you and which will consist of, but may not be limited to, processing ACH transactions based on information you provide; or (ii) if you have engaged a third party service provider (your "TPS"), our services will consist of serving as the Originating Depository Financial Institution ("ODFI") for ACH entries submitted to us by your TPS and debiting and/or crediting the amount thereof to the DESIGNATED ACCOUNT. We agree to comply with the terms of this ADDENDUM and agree to use ordinary care in performing ACH services hereunder. So long as we exercise such diligence as the circumstances may require, our failure or delay in performance will be excused if due to interruption of communications or computer facilities, failure of equipment, emergency conditions, or other circumstances beyond our control. You are responsible for any implementation required on your end, including but not limited to systems and personnel required to collect and transmit the files to us or your TPS in the required format, as well as fraud detection tools, and any other obligations designated by the REGULATORY RULES, as defined herein.
  - 2.1.1 **Your Use of a Third Party Sender.** If you are using a TPS, then that TPS must have an agreement with us. The TPS shall be considered your agent with full power and authority to act on your behalf until we receive written notice from you to the contrary and have had a reasonable opportunity to act thereon. **YOU UNDERSTAND AND AGREE THAT YOUR TPS HAS FULL POWER AND AUTHORITY TO PROVIDE US WITH INSTRUCTIONS PERTAINING TO ACH ENTRIES FOR WHICH YOU WILL BE RESPONSIBLE AND THE AUTHORITY TO INITIATE ACH DEBITS AND CREDITS TO THE DESIGNATED ACCOUNT. WE HAVE NO OBLIGATION OR LIABILITY WHATSOEVER WITH RESPECT TO: (1) ACTS, ERRORS, OMISSIONS OR DELAYS BY YOUR TPS; (2) REPRESENTATIONS OR WARRANTIES MADE BY YOUR TPS; (3) LOSSES TO YOU ARISING OUT OF YOUR TPS'S INSOLVENCY; OR (4) MISAPPROPRIATION OF YOUR FUNDS BY YOUR TPS. YOUR TPS IS NOT AN AGENT OR REPRESENTATIVE OF OURS AND HAS NO POWER OR AUTHORITY TO ACT OR MAKE COMMITMENTS ON OUR BEHALF. WE DO NOT INTEND TO AND HAS NO OBLIGATION TO MONITOR THE TRANSACTIONS YOUR TPS INITIATES IN RESPECT OF YOUR FUNDS.**
- 2.2 **Debits and credits.** All debits and credits made pursuant to this ADDENDUM shall be posted to the DESIGNATED ACCOUNT. All ACH and credit card transaction debits and credits must be deposited into one DESIGNATED ACCOUNT per Merchant Identification Number ("MID"). You agree to maintain sufficient balances in available funds in the DESIGNATED ACCOUNT to cover all credit transactions you submit to us. If the DESIGNATED ACCOUNT does not have a sufficient balance, we may, at our option, either debit any other account of yours to provide such balances or decline to forward such transactions. We may require you to pre-fund certain types of ACH transactions. You agree to immediately reimburse us for any overdrafts created by transactions initiated for you, whether through originating credit transactions for which there were not sufficient funds, or for returns received by us in respect of originating debit transactions or otherwise.
- 2.3 **Operating Procedures.** You agree to follow and require your TPS to follow the Operating Procedures that we establish for use of the services, including, without limitation, required input formats, and delivery deadlines. We may at any time place a hold on, and if necessary interplead, funds if we receive a request to do so or other demand or claim from the Receiver of one of your ACH entries with respect to such funds. We are not responsible for canceling or amending any ACH entry once sent, dishonoring returns, refusing notifications of change or for any other matter not specifically provided herein. We reserve the right to modify or discontinue the ACH Services and/or modify the Operating Procedures at any time.
- 2.4 **Your Responsibility.** Except as otherwise provided herein, you are responsible for the accuracy and adequacy of the input data provided to us and the ACH entries transmitted on your behalf. We are not responsible for collecting on items we are unable to process through our system. If a third party claim is made against us arising out of your ACH entries, breach of the AGREEMENT or ADDENDUM, or breach of any warranty under the REGULATORY RULES, you agree to defend, indemnify and hold us harmless against such claim, including without limitation claims by Receivers of entries. We may defend on our own any such claims or demands or request you to take up such defense. In either case as set out above you will further indemnify us for reasonable attorney fees or other necessary expenses incurred by us by reason of such defense or claims. The provisions of this section are in addition to and not in lieu of any existing provisions in the AGREEMENT.

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2.5 Fees.

- 2.5.1 Unless you are using a TPS, you agree to pay us the FEES for the ACH Services set forth in the Merchant Application. These FEES may be amended upon thirty (30) days notice to you.
- 2.5.2 If you are using a TPS, we may, on behalf of your TPS, debit from your DESIGNATED ACCOUNT the TPS's FEES for the ACH Services set forth in the Merchant Application. These FEES may be amended upon thirty (30) days notice to you. All disputes with regard to these FEES shall be resolved solely between you and your TPS.
- 2.5.3 In either case, you agree to pay any additional FEES, fines, or charges levied against us by any regulatory agencies or NACHA due to your actions or inactions associated with the ACH Services, which include, but are not limited to, your compliance with the REGULATORY RULES.

2.6 Compliance with Law.

2.6.1 Regulation E: National Automated Clearing House Association ("NACHA") Rules. You agree to comply with the Electronic Fund Transfer Act, Federal Reserve Regulation E, and other applicable federal and state laws and regulations, to the extent that the same may be applicable to the transactions processed hereunder. You represent that all ACH entries initiated on your behalf are the result of bona fide business transactions between you and your customer and no such entries are, directly or indirectly, for the benefit of any third party, whether in a service bureau or other context. You understand that you will be considered the Originator of all ACH entries submitted hereunder, and agree to comply with all rules and operating guidelines of the NACHA Rules and other relevant clearing house associations which are applicable to Originators, as the same may be applicable to transactions processed hereunder. Collectively, the Electronic Fund Transfer Act, Federal Reserve Regulation E, other applicable federal and state laws and regulations, and all NACHA rules and operating guidelines and other relevant clearing house associations, are hereinafter referred to as the "REGULATORY RULES." You understand that Sections 2.6.1.1 through 2.6.1.8 are not a complete or exclusive summary of NACHA Rules, and agree that we may provide you with revised summaries of REGULATORY RULES from time to time in the future. If you continue to initiate entries after we provide such an update, you will be considered to have agreed to the terms set forth in that update (except that if you cease initiation of entries within 45 days after the date of such an update, initiation of entries during that 45-day period will not constitute your agreement). You are responsible for obtaining and being in compliance with the most current REGULATORY RULES.

- 2.6.1.1 **Compliance with NACHA Rules and Law.** By providing or permitting your TPS to provide information about ACH entries to us, you authorize us to transmit, and to debit or credit the amount of those entries (referred to below as "your entries") to the Receiver's account. You agree not to initiate entries that violate the laws of the United States.\* (*\*IMPORTANT: These laws include, but are not limited to, sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It is your responsibility to obtain information regarding OFAC enforced sanctions. You may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC.*)
- 2.6.1.2 **Receiver Authorization.** You represent that you are and shall remain in compliance with all REGULATORY RULES, including but not limited to rules regarding ACH Authorizations from and notifications due to Receivers. As to each of your entries you represent that: (1) The Receiver has authorized you to initiate your entries to the Receiver's account; (2) In the case of CBR, CCD and CTX entries, the Receiver has an agreement with you to be bound by these rules as in effect from time to time; (3) In the case of debit entries to Consumer Accounts (including, but not limited to, TEL and WEB entries), you have obtained the consumer's authorization in the form, content and manner required by the Rules; (4) In the case of WEB entries, you have implemented a commercially reasonable fraudulent transaction detection system to screen entries, you have taken commercially reasonable steps to verify the routing number, you establish secure Internet sessions utilizing commercially reasonable technology prior to consumer key entry of banking information, and you have complied with the security audit requirements set forth in the REGULATORY RULES (and you agree to provide us with copies of such audit reports promptly after they are completed); and (5) In the case of TEL entries, you have given the consumer the notices required by the Rules and you have taken commercially reasonable steps to verify the consumer's identity and routing number. You agree to retain and promptly provide copies or other evidence of such authorizations, notifications, and other materials within one (1) business day from request by us or as required by the REGULATORY RULES or as otherwise requested by us.
- 2.6.1.3 **Prenotifications.** If you initiate prenotifications, you agree to send them as required by the REGULATORY RULES. If the RDFI indicates it cannot accept such entries, you agree not to initiate the entries.
- 2.6.1.4 **Credit Entries.** In the case of credit entries subject to UCC Article 4A (in general, this means non-consumer credit entries), you are hereby notified that: (1) these entries may be transmitted through the ACH; (2) your rights and obligations concerning these entries shall be governed by and construed in accordance with New York law (in all matters between you and us, however, Nebraska law shall govern); (3) credit given by the Receiving Depository Financial Institution ("RDFI") to Receivers is conditional until final settlement or payment in accordance with UCC 4A; and (4) if an RDFI does not receive such payment, the RDFI is entitled to a refund from the Receiver and you will not be considered to have paid the Receiver.
- 2.6.1.5 **Rejection of Entries; Originating Depository Financial Institution ("ODFI") Exposure Limits.** We may refuse to transmit entries that would violate the general or special exposure limits that we have adopted with respect to you or your TPS. We also reserve the right to refuse entries in our discretion, including but not limited to, entries which we determine may expose us to a risk of loss, including, but not limited to, insufficient funds in your account.

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- 2.6.1.6 **Your Entries.** We make numerous warranties and indemnities to third parties concerning your entries and files, as specified in the REGULATORY RULES. You agree to reimburse us for any payments we are required to make to these third parties with respect to your entries or files. You also agree to comply with all of your obligations in Article Three of the NACHA Rules (Obligations of Originators). If we are fined due to your infractions of the REGULATORY RULES, you are responsible for reimbursing us for the amount of that fine and any other associated costs related thereto. You agree not to reinitiate entries except as permitted by the REGULATORY RULES. You agree that reversing entries and reversing files must be transmitted on a timely basis as required by the REGULATORY RULES and in accordance with our instructions.
- 2.6.1.7 **Notifications of Change.** You agree to make changes requested in a Notification of Change within the timeframes identified by the REGULATORY RULES or prior to initiating another entry to the Receiver's account (whichever is later).
- 2.6.1.8 **Returns, Adjustments, Etc.** All credits we send to your DESIGNATED ACCOUNT are considered provisional until we receive final settlement, and we reserve the right to reverse those entries or initiate correcting debit entries for SPECIAL HANDLING CLAIMS (as defined herein). To the extent that any credits to your DESIGNATED ACCOUNT are revoked or affected by any third party claim or demand or any other process recognized by the REGULATORY RULES (such as, but not limited to, returns, reversals, adjustments, reclamations, notifications of change, or claims based on breach of any warranty made by Originators or ODFIs under the REGULATORY RULES) or to the extent that we are required to indemnify any Receiver, RDFI or other third party in respect of your entries (collectively, "SPECIAL HANDLING CLAIMS"), you agree to reimburse us through the DESIGNATED ACCOUNT or other method as designated by us. Our right of reimbursement is absolute and unconditional, shall survive any termination of our relationship with you, and shall not, for any reason whatsoever, be subject to any reduction, setoff, defense, counterclaim, deferment, or right of recoupment. If SPECIAL HANDLING CLAIMS become excessive (in our judgment) we may adjust fees, require reserves and/or modify or discontinue services.
- 2.6.1.9 **Entries based on Paper Items.** If your entries are based on paper items (for example, XCK, RCK, POP or ARC entries), you are responsible for compliance with all requirements of the REGULATORY RULES that pertain to those entries. This responsibility includes, but is not limited to, responsibility for requirements pertaining to initiation of entries (including rules regarding eligibility of the underlying items), required notices to Receivers, opt out rights, separation of fees, and requirements regarding keeping, destroying or providing copies or originals of the underlying items. You also have the responsibility specified in the preceding paragraph with respect to any special warranties or indemnities that we make under the rules as to these entries. If we are processing ARC entries for you and also providing lockbox services: (1) you must provide the identifying information that we request to identify those of your customers that have opted out of ARC entries, in which case we will use reasonable efforts to match incoming items to those customers and process those customers' items as paper items not ARC entries; and (2) in the event that our ability to process ARC entries is interrupted, we will process the affected items as paper items until the interruption is eliminated.
- 2.6.10 **Information Security.** You agree to comply with all relevant data security requirements (including, but not limited to, those requiring the use of encryption technology where ACH information is transmitted over unsecured networks such as the internet).
- 2.6.2 **Other Compliance.** You are prohibited from using our services in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject us or our vendors to investigation, prosecution, or legal action. You further agree: (1) to receive, resolve and respond to consumer alleged errors under applicable laws, regulations and the REGULATORY RULES; and (2) you are responsible for promptly handling and, if necessary, responding to and resolving at your own expense any SPECIAL HANDLING CLAIMS we refer to you.
- 2.7 **Risk Management.** You are solely responsible for all acts and omissions of your officers, directors, partners, employees, agents, representatives, contractors, and third party service providers (such as third party payroll administrators), including your TPS, any persons granted signature authority on your accounts and any persons who are permitted to initiate and/or give us instructions in respect of your entries (collectively, "YOUR PERSONNEL"). We are entitled, without further inquiry or investigation, to assume that the actions of YOUR PERSONNEL are appropriate and authorized by you. This authorization will remain in effect unless we receive written notice to the contrary from you and have had a reasonable opportunity to react thereto. You are strongly advised to establish and maintain policies and procedures and accounting and auditing controls that will prevent (or at least allow the early detection of) fraud or other unauthorized activity by YOUR PERSONNEL. As between you and us, you agree to accept sole responsibility for losses attributable to any and all acts and omissions of YOUR PERSONNEL.
- 2.9 **Fraud.** You are responsible for all unauthorized or fraudulent transactions of or pertaining to the ACH Services. You agree to reimburse and/or pay us the principal amount of the transaction, plus any corresponding losses, damages, or other amounts associated with said transaction.
- 2.10 **Notices with Respect to Credit Transactions.** Under the operating rules of NACHA, which are applicable to ACH transactions involving your account, we are not required to give notice to you of your ACH activity. However, we may notify you of ACH exception items (receipt of payments, notification of change, and the debiting of your account for returns via an automated e-mail notification. You must provide us with your e-mail address on Schedule A, and advise us of any updates to that e-mail address on a timely basis. We will not notify you of exception items if we do not have a valid e-mail address on file. If you prefer to receive reporting for ACH via First InfoCenter®, which displays information related to your ACH services and your

credit card transaction processing activity via a web interface, you must be currently enrolled for access to First InfoCenter®. You may obtain such access by completing the applicable amendment and the First InfoCenter® Access Application form, which will be made available upon request.

- 2.11 **Warranty.** You warrant that the information you provided in the Merchant Application is complete and accurate, and contains material facts, which may be used to calculate FEES and establish transaction parameters. If any of this information is incorrect or inaccurate, you agree that we may, among other actions, immediately amend FEES, revise transaction parameters, and/or terminate your ACH services, as we deem necessary in our sole discretion.
- 2.12 **Disclaimer.** CUSTOMER UNDERSTANDS AND AGREES THAT FNBO'S SOLE LIABILITY WITH RESPECT TO SERVICES PROVIDED HEREUNDER SHALL BE AS SET FORTH HEREIN. IN THE EVENT THAT FNBO FAILS TO PERFORM SERVICES PROPERLY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FNBO'S SOLE OBLIGATION SHALL BE FOR FNBO TO REPERFORM THE SERVICES AT ITS OWN EXPENSE. FNBO DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL IN RESPECT OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICES ARE NOT WARRANTED TO BE FREE FROM ERROR OR INTERRUPTION. FNBO SHALL HAVE NO LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR FNBO'S SERVICES. IN NO EVENT WILL FNBO BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER FNBO WAS INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER'S REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES IN LAW OR EQUITY.
- 2.13 **Term.** This ADDENDUM shall remain in effect until the earlier of: (i) termination by either PARTY, with or without cause, upon thirty (30) days notice to the other; or (ii) termination or expiration of the Agreement. Terminations shall be effective as to prospective transactions only, and shall not alter the rights of the PARTIES as to transactions prior to the effective date of termination.
- 2.14 **Privacy.** Provision of services hereunder may require that we receive certain information concerning your consumers (e.g., their checking account numbers). We agree to use reasonable efforts to maintain the confidentiality of such information and agree not to use or disclose the same except as necessary in connection with the provision of services to you. Disclosures of the type described in 12 C.F.R. Sections 40.11, 40.13, 40.14 and 40.15 shall not be deemed prohibited by the foregoing. You are solely responsible for obtaining and maintaining any and all necessary rights, power, and authority to provide this information to us and for providing applicable privacy disclosures, if any, to your consumers.

### **3. MISCELLANEOUS**

- 3.1 This ADDENDUM, together with the AGREEMENT and its other amendments, attachments, exhibits, and schedules, constitutes the entire AGREEMENT between the PARTIES as to transaction processing and ACH Services, and any other representations, inducements, promises, or agreements not contained herein shall be of no force and effect as to transaction processing.
- 3.2 Except as amended hereby, FNBO and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.
- 3.3 **CHANGES TO THESE TERMS AND CONDITIONS MUST BE APPROVED BY AN AUTHORIZED OFFICER OF FIRST NATIONAL BANK OF OMAHA. SALES REPRESENTATIVES ARE NOT PERMITTED TO MAKE ANY REPRESENTATION OR WARRANTY NOT CONTAINED HEREIN AND CANNOT WAIVER, ALTER OR AMEND THE PRINTED TERMS AND CONDITIONS HEREOF.**

#### **NOTICE**

Credit given by FNBO to you with respect to an ACH credit entry is provisional until FNBO receives final settlement for such entry through a Federal Reserve Bank. If FNBO does not receive such final settlement, you are hereby notified and agree that FNBO is entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e., the originator of the entry) shall not be deemed to have paid you in the amount of such entry. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your Account, FNBO is not required to give next day notice to you of receipt of an ACH item and FNBO will not do so. However, FNBO will continue to notify you of the receipt of payments via First InfoCenter®. FNBO may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern. In all matters between you and FNBO, Nebraska law shall govern.

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## ASSOCIATION RULES

**NOTICE:** This information is FNBO's summary of common ASSOCIATION regulations; however card acceptance, processing and chargeback procedures are subject to change. If there are any differences between the ASSOCIATIONS' regulations and these RULES, the ASSOCIATIONS' regulations will prevail in every instance. The ASSOCIATIONS publish summaries of the regulations for merchants. These summaries may be accessed at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

### ASSOCIATION CARD ACCEPTANCE PROCEDURES

#### 1. Honor All CARDS:

- 1.1 Prior to January 1, 2004, MERCHANT shall honor all CARDS issued by an ASSOCIATION, when presented in accordance with these RULES, for the purchase of goods or services by an authorized holder of CARD or in processing a request for credit resulting from such a transaction. On and after January 1, 2004, MERCHANT must continue to honor all CARDS as set forth above, unless MERCHANT provides FNBO with a thirty (30) day written notice that it no longer wishes to accept either credit or debit cards, including check or prepaid cards (i.e., non-PIN based debit). If MERCHANT has provided such notice to FNBO, upon the expiration of the thirty (30) day notice period, MERCHANT will no longer be required to accept such cards.
- 1.2 If a cardholder presents a VISA CARD that is in the MERCHANT'S category of acceptance and that bears a mark representing another payment service: (i) MERCHANT must honor the cardholder's request if the cardholder indicates that the transaction is to be processed as a VISA transaction and (ii) MERCHANT may process the transaction as something other than a VISA transaction despite an initial indication by the cardholder that the transaction is to be processed as a VISA transaction, but only if the cardholder agrees that the transaction may be processed as something other than a VISA transaction. MERCHANT may not mislead the cardholder concerning what payment service or system will be used. These rules do not require MERCHANT to explain any loss of consumer rights if the transaction is not processed as a VISA transaction, but if MERCHANT provides any information on this topic, that information must be accurate.
- 1.3 PROHIBITIONS - A MERCHANT must not:
- A. Accept cardholder payments for previous Visa Card or Visa Electron Card charges incurred at the MERCHANT location;
  - B. Establish a minimum or maximum Transaction amount as a condition for honoring a Visa Card or Visa Electron Card;
  - C. Require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed;
  - D. Add any surcharge to transactions;
  - E. Add any tax to transactions, unless applicable law expressly requires that a MERCHANT be permitted to impose a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately;
  - F. Enter into interchange any transaction receipt for a transaction that was previously charged back to FNBO and subsequently returned to the MERCHANT irrespective of cardholder approval. The MERCHANT may pursue payment from the customer outside the VISA system;
  - G. Request or use an account number for any purpose other than as payment for its goods or services, except to support the Health Care Eligibility Service or VISA Activation and Load Service, as specified in VISA regulations;
  - H. Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from MERCHANT;
  - I. Disburse funds in the form of cash, unless:
    - 1) MERCHANT is dispensing funds in the form of travelers cheques, Visa TravelMoney Cards, or Foreign Currency. In this case, the transaction amount is limited to the value of the travelers cheques, Visa TravelMoney Card, or Foreign currency plus any commission or fee charged by the MERCHANT; or
    - 2) MERCHANT is participating in the Visa Cash Back Service, as further specified in the VISA regulations.
  - J. Accept a Visa Card or Visa Electron card for the purchase of Scrip;
  - K. Accept a Visa electron Card for Manual Cash Disbursement;
  - L. Accept a Visa TravelMoney Card for a Manual Cash Disbursement;
  - M. Accept a card to collect or refinance an existing debt that has been deemed uncollectible by the merchant providing the associated goods or services. (Note: A transaction that represents a payment on an existing obligation must be identified by the appropriate indicator in the Authorization Request and Clearing Record.);
  - N. Enter into interchange a transaction that represents collection of a dishonored check; or
  - O. Require a cardholder to waive his or her rights to dispute the transaction as a condition of the SALE.

#### 2. Sales Transactions:

- 2.1 No SALE may be completed if cardholder (the duly authorized holder and user of CARD) fails to present his/her CARD to MERCHANT at time of SALE, except in the case of Card Not Present where permitted by FNBO.
- 2.2 IF USING A MANUAL IMPRINTER, MERCHANT MUST IMPRINT THE CARD. IF USING AN ELECTRONIC DEVICE, MERCHANT MUST HAVE THE CARD SUCCESSFULLY READ BY A MAGNETIC STRIPE CARD READER/TERMINAL WITH PRINTER ATTACHED. If MERCHANT's terminal cannot successfully read the magnetic stripe, MERCHANT must imprint the card, even if it is a key entered transaction. MERCHANT must imprint the CARD on the same SALES DRAFT (a paper record evidencing the purchase of goods or services using a CARD) containing the remainder of the transaction information and the cardholder signature. Failure to obtain a signed and imprinted SALES DRAFT when a transaction is not captured by swiping through a magnetic stripe reader will expose MERCHANT to a CHARGEBACK on such a transaction regardless of the authorization that may or may not be received. Failure to read the magnetic stripe on the card may result in a DISCOUNT rate tier downgrade.
- 2.3 MERCHANT shall require cardholder to sign the SALES DRAFT.
- 2.4 Unless specifically permitted by FNBO, goods and services purchased must be delivered to cardholder at time of SALE.



- 2.5 MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a SALE, unless required by the RULES.
- 2.6 FNBO, ASSOCIATIONS, or their designated agent, on behalf of itself or others, shall have the right to inspect MERCHANT's security systems and procedures from time to time after reasonable notice to MERCHANT.
- 2.7 If MERCHANT receives BIN information from FNBO, MERCHANT must not use such information for any reason other than to identify VISA debit category products at the point of sale, unless authorized by VISA. VISA BIN information is proprietary and confidential information belonging to VISA. MERCHANT must not disclose VISA BIN information to any third party without prior written permission from VISA. If MERCHANT uses an agent or Merchant Servicer, MERCHANT must include the foregoing provisions in its agreement or contract with such agent or Merchant Servicer.

**3. SALES DRAFTS**

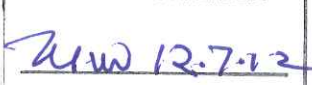
- 3.1 MERCHANT shall deliver to the cardholder, at the time of a SALE, a true, complete, and legible copy of the SALES DRAFT or suitable receipt evidencing a SALE involving use of CARD.
- 3.2 The following information must be included on the SALES DRAFT:
  - A. final four digits of CARD account number;
  - B. MERCHANT's d/b/a name;
  - C. MERCHANT's city and state;
  - D. amount of the SALE (including any applicable taxes);
  - E. date of the SALE;
  - F. space for cardholder signature if applicable;
  - G. transaction payment type;
  - H. legend identifying the party to whom it will be delivered (i.e. merchant copy, customer copy);
  - I. authorization code; and
  - J. clear imprint of the CARD unless successfully read by a magnetic stripe reader.
- 3.3 Under federal law, MERCHANT is prohibited from displaying more than the last five digits of the account number or the expiration date of the CARD on any electronically generated SALES DRAFT.
- 3.4 MERCHANT shall not disclose a cardholder's account information or any other personal information to third parties other than MERCHANT's agents for the purpose of completing the transaction or as specifically required by law or by the RULES.
- 3.5 MERCHANT shall store all SALES DRAFTS and transaction records in a limited access area for at least one (1) year after the date of SALES. MERCHANT shall retain all original SALES DRAFTS or legible microfilm copies of all SALES DRAFTS and transaction records for at least three (3) years.
- 3.6 MERCHANT shall not deposit SALES DRAFTS that it knows or should have known to be either fraudulent or not authorized by the cardholder.

**4. Security Features:**

- 4.1 In all cases, MERCHANT is required to examine the card security features prior to completing a SALE.
- 4.2 When an Electronic Cash Register ("ECR") or Electronic Draft Capture ("EDC") terminal reads the magnetic stripe on the CARD, MERCHANT must check the CARD account number on the terminal (if displayed) against the account number embossed on the CARD or follow such other security check as is mandated by FNBO from time to time. If the CARD is read with a terminal that displays the CARD number and the SALES DRAFT is printed, MERCHANT shall verify that the account number displayed on the terminal match the embossed numbers on the face of the CARD. In the event that they do not match, the SALE must not be completed. Failure to follow these checks and procedures will expose MERCHANT to CHARGEBACKS.
- 4.3 In the event that the terminal is programmed to require MERCHANT to key the last four (or more) digits of each CARD used for a SALE, and the terminal indicates that the numbers keyed are not the same as those present on the card, the SALE must not be completed.
- 4.4 In order to protect the integrity of the ASSOCIATIONS' systems, FNBO may hold funds settled by MERCHANT in the event of a breach of AGREEMENT, irregular SALES activity, or receipt of detrimental financial information.

**5. Authorization:**

- 5.1 On all SALES, MERCHANT shall request an authorization for the total amount of the SALE and shall record the positive authorization response code on the SALES DRAFT prior to completing the SALE. If MERCHANT receives a negative authorization response, MERCHANT shall not complete the SALE and may receive further instructions from the authorization center.
- 5.2 MERCHANT may not, after receiving a negative response or decline on an authorization request:
  - A. split the SALE amount into multiple transactions in order to obtain a valid authorization for each one, so that the separate transactions total the original dollar amount of the SALE; or
  - B. attempt any further electronic or voice authorizations.
- 5.3 In the event that an unsigned CARD is presented at the point of sale, MERCHANT must request that cardholder provide proof of identification and sign the card before completing the SALE. Details of the identification provided must be placed on the SALES DRAFT unless prohibited by local law. In the event that the cardholder refuses to do so, the SALE must not be completed.
- 5.4 In any of the following cases, MERCHANT shall obtain authorization from the voice authorization center, designated or approved by FNBO, before completing a SALES transaction:
  - A. paper MERCHANTS whose SALES exceed MERCHANT's floor limit as established by FNBO, or amended from time to time;
  - B. an unsigned CARD is presented;

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- C. if MERCHANT believes the CARD may be counterfeit or stolen or that the SALE is in some other manner suspicious or unusual, MERCHANT should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or
  - D. in any other circumstances hereinafter established by FNBO or stated in the RULES and/or AGREEMENT.
- 5.5 If permitted in writing by FNBO, a retail store that accepts an infrequent telephone order transaction should obtain an authorization using the above authorization procedures. The floor limit for Card Not Present authorization is zero. In such cases, the authorization does not protect the MERCHANT from CHARGEBACKS where the cardholder disputes that the CARD use was authorized.
- 5.6 MERCHANT shall indicate to the voice authorization center the reason for the authorization request except where the sole reason for the request is that the SALE exceeds the MERCHANT's floor limit.
- 5.7 When MERCHANT requests and receives a positive authorization code, MERCHANT shall enter such code onto the SALES DRAFT. In the event that a negative response is obtained, the MERCHANT shall not complete the SALE and, if instructed, shall attempt to pick up CARD by reasonable and peaceful means and notify the voice authorization center and ask for further instructions.

**6. Recovery of Cards:**

- 6.1 MERCHANT shall use its best effort to recover any CARD, by reasonable and peaceful means, if:
- A. the account number thereon is listed on an Electronic Exception File;
  - B. the printed four digits do not match the first four digits of the embossed account number (VISA);
  - C. MERCHANT is advised to do so by the authorization center; or
  - D. MERCHANT has reasonable grounds to believe such CARD is counterfeit, fraudulent, or stolen.
- 6.2 This obligation upon MERCHANT in no way authorizes a breach of the peace or any injury to persons or property, and MERCHANT will hold FNBO harmless from any claim arising from any injury to person or property or other breach of peace.

**7. Multiple SALES and SALES DRAFTS and Partial Consideration:**

- 7.1 Generally, all SALES accomplished at the same time should be included on one SALES DRAFT.
- 7.2 MERCHANT shall not affect a SALE when only part of the amount due is included on the single SALES DRAFT except:
- A. when the balance of the amount due is paid by the cardholder at the time of the SALE in cash, by check, with another CARD, or any combination thereof; or
  - B. when the cardholder executes two separate SALES DRAFTS in a delayed delivery transaction, whereby a deposit is made by completion of one SALES DRAFT and payment of the balance is tendered by completion of a second SALES DRAFT, conditioned upon delivery of merchandise or performance of services. If the total amount of both SALES DRAFTS exceeds the floor limit, authorization must be obtained.
- 7.3 The use of multiple CARDS for one purchase is permissible, as long as an individual SALES DRAFT is used for each CARD. The use of multiple SALES on one CARD, for one purchase, is not permitted.

**8. Returned Merchandise and Adjustments:**

- 8.1 If MERCHANT agrees to credit a cardholder for any merchandise or service that was the subject of a SALE, MERCHANT must provide a Credit Transaction Receipt using the same CARD as in the original SALE. Such credit shall not exceed the original SALE amount. MERCHANT shall not make any cash refund on SALES.
- 8.2 MERCHANT may limit its acceptance of returned merchandise or establish a policy to make price adjustments for any SALE provided proper disclosure is made and purchased goods and service are delivered to the cardholder at the time of the SALE.
- 8.3 Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the SALES DRAFT prior to obtaining the cardholder's signature on the SALES DRAFT. MERCHANT may stipulate other special circumstances or terms of the SALE on the SALES DRAFT.
- 8.4 For each credit transaction, MERCHANT must be able to provide FNBO with evidence of the original purchase.

**9. Cash Transaction:**

- 9.1 MERCHANT shall not receive money from a cardholder and subsequently prepare a credit voucher for the purpose of depositing to the cardholder's account.
- 9.2 Cash disbursement by MERCHANT to a cardholder is not permitted. Additionally, MERCHANT shall not make any cash advance to an employee, principal, or family member of MERCHANT, who is a cardholder.
- 9.3 MERCHANT will not accept SALES from cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

**10. Quasi Cash Transactions:**

- 10.1 MERCHANT shall not accept SALES for processing that are classified as "Quasi-Cash Transactions" including, but not limited to, the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip.
- 10.2 No MERCHANT shall accept a CARD or use a VISA and MASTERCARD processing terminal to issue scrip exchangeable for cash, products, or services as a result of a SALE.

**11. Promotional Materials:**

- 11.1 MERCHANT will adequately display promotional materials provided by FNBO to inform the public that MERCHANT will honor CARDS.
- 11.2 All uses by MERCHANT of decals, signs, printed and broadcast materials, and other promotional materials must be in conformity with the requirements of ASSOCIATIONS. MERCHANT will not at any time do or cause to be done any act or deed in any way impairing or intended to impair FNBO's, or ASSOCIATIONS' exclusive right, title, and interest in and to its respective protected marks.

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- 11.3 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS' services.
- 11.4 MERCHANT may not refer to the CARDS in stating eligibility for its products, services, or membership.
- 11.5 MERCHANT shall permit FNBO or ASSOCIATIONS, at all reasonable times, to inspect the MERCHANT's use of the promotional materials. Should any materials so submitted fail to meet with FNBO's, or ASSOCIATIONS' approval, for any reason whatsoever, the MERCHANT agrees to cease using such material. Neither FNBO nor ASSOCIATIONS shall have any liability to MERCHANT relating to disapproved materials using a protected mark.

**12. CARDS Other than VISA, MASTERCARD and DISCOVER:**

- 12.1 MERCHANT is required to comply with the specific regulations, as set out in its agreements with ASSOCIATIONS other than VISA, MASTERCARD, and/or DISCOVER with regard to the acceptance of cards issued by such ASSOCIATIONS. FNBO is not responsible for the funding of such transactions.

**CHARGEBACKS**

**13. General:**

- 13.1 Failure to comply with the RULES will reduce FNBO's ability to reverse CHARGEBACKS and increase the likelihood of MERCHANT receiving a CHARGEBACK.
- 13.2 MERCHANT may be subject to a CHARGEBACK on SALES for a minimum period of 180 days from the date the SALE was entered into the ASSOCIATIONS' processing system.
- 13.3 FNBO agrees to mail all CHARGEBACK documentation to the address provided by MERCHANT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If FNBO elects, at its discretion, to take action on CHARGEBACKS after the ASSOCIATION time limits have expired, such action shall be done at additional cost.
- 13.4 MERCHANT agrees that it will not re-deposit SALES that have been previously charged back and not represented. This restriction applies whether or not the cardholder consents to such activity.
- 13.5 MERCHANT agrees that if it receives a CHARGEBACK for an international cardholder, the MERCHANT is responsible for any currency conversion differences in the dollar amount.

**14. CHARGEBACK Reasons:**

- 14.1 The summary of reasons for CHARGEBACKS includes, but is not limited to, any one of the following:
  - A. an invalid CARD account number submitted by MERCHANT;
  - B. neither the cardholder nor a person authorized by the cardholder received the goods or services requested;
  - C. the cardholder received the good or services but disputes the quality;
  - D. the cardholder never received credit for a returned item or a canceled order;
  - E. the cardholder was charged incorrectly;
  - F. the amount of the SALE exceeded the Floor Limit and an Authorization was not obtained or was denied;
  - G. the SALE was authorized but not for the correct amount;
  - H. the Authorization code provided is invalid;
  - I. the CARD was expired at the time of the SALE or had not reached its effective date;
  - J. the SALES DRAFT was not signed. An exception will be made where Card Not Present SALES are permitted by FNBO;
  - K. the CARD issuer has information that a MERCHANT fraud has occurred;
  - L. the CARD account number and the amount of SALE are missing from SALES DRAFT or are illegible;
  - M. the SALES DRAFT bears the imprint of a CARD which to the ASSOCIATIONS is a counterfeit CARD because the CARD is not embossed in accordance with the standards set forth in the ASSOCIATIONS' regulations, even if the SALE was authorized.

**15. CHARGEBACK Monitoring Programs:**

- 15.1 Any MERCHANT location that exceeds a one percent (1%) CHARGEBACK to Interchange ratio for all incoming CHARGEBACKS for that location is considered an excessive chargeback merchant and may be subject to Visa and MasterCard's monitoring programs. Merchants are responsible for monitoring their monthly chargeback percentage and developing chargeback reduction plans as required by Visa and MasterCard. Excessive CHARGEBACK activity for an unreasonable period of time may result in termination of this AGREEMENT. MERCHANT will pay FNBO for any fine or charge levied by the ASSOCIATIONS on FNBO or MERCHANT as a result of its chargeback activity. This section may be amended from time to time as a result of action by ASSOCIATIONS.

**16. Other Association Monitoring Programs:**

- 16.1 If MERCHANT is identified by certain ASSOCIATION monitoring programs, FNBO's ability to reverse CHARGEBACKS may be severely restricted.
- 16.2 Certain monitoring programs review the number of lost, stolen and counterfeit CARDS accepted by MERCHANT in its normal course of business and the percentage of CARDS used for SALES that were not read electronically by terminals or ECRs. The purpose of these programs is to reduce the use of lost, stolen and counterfeit CARDS.
- 16.3 In the event that MERCHANT is identified under these programs as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on lost, stolen, or counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated by FNBO.

**17. ASSOCIATION Registration Programs:**

- 17.1 If MERCHANT is identified by certain ASSOCIATION registration programs, FNBO will take the necessary steps to register the merchant. MERCHANT will pay FNBO for any fine or charge levied by the ASSOCIATIONS on FNBO or MERCHANT as a result of the registration program including but not limited to one-time registration fees, ongoing registration fees and non-compliance fees. This section may be amended from time to time as a result of action by ASSOCIATIONS.

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## UNIQUE BUSINESS REQUIREMENTS

### 18. Card Not Present Merchants:

- 18.1 MERCHANT may not accept Card Not Present SALES unless AGREEMENT specifically refers to Card Not Present SALES. If this is not the case, MERCHANT should contact FNBO if they wish to accept Card Not Present SALES and provide descriptions of product types and marketing methods. FNBO may refuse MERCHANT permission to accept Card Not Present SALES.
- 18.2 If MERCHANT is specifically authorized by FNBO to accept Card Not Present SALES, no SALE shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the cardholder.
- 18.3 Card Not Present SALES do not require the cardholder's signature on the SALES DRAFT. MERCHANT is required to obtain the valid dates for each CARD used for a SALE. The expiration date must be submitted as part of the Authorization inquiry.
- 18.4 If MERCHANT supplies goods and/or services under a Pre-Authorization Order ("PO"), it shall not charge a cardholder for goods after receiving notice from a cardholder that the authorization for goods or services is canceled.
- 18.5 The receipt of a valid Authorization does not protect MERCHANT from CHARGEBACKS on SALES for the Unauthorized Purchaser reason code. The shipping documents indicating the address the goods were shipped to and a signature of an individual (even cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code.
- 18.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.
- 18.7 Card Not Present MERCHANTS are encouraged to investigate the CHARGEBACK protection attributes of the various Address Verification Services and Card Verification Value Services available from ASSOCIATIONS.
- 18.8 MERCHANT, or its agent, shall implement and maintain all of the security requirements specified in PCI. MERCHANT shall immediately notify FNBO of the use an agent. MERCHANT shall immediately notify FNBO of any suspected or confirmed loss or theft of material or records that contain account information and both:
- A. demonstrate its ability to prevent future loss or theft of account or transaction information; and
  - B. allow the ASSOCIATIONS, or an acceptable independent third party, to verify this ability by conducting a security review.
- 18.9 Electronic Commerce Merchants (VISA):
- A. VISA makes the 3-D Authentication system available to Electronic Commerce Merchants as a way to reduce fraud in Internet Transactions. Electronic Commerce Merchants may elect to implement 3-D Secure. Electronic Commerce Merchants that process 3-D Secure Transactions must comply with requirements specified in the: (i) VISA Operating Regulations; (ii) the VISA 3-D Secure: Merchant Implementation Guide and (iii) VISA Cardholder Information Security Program.
  - B. A web site operated by an Electronic Commerce Merchant must contain all of the following information: (i) a complete description of the goods or services offered; (ii) the merchant's returned merchandise and refund policy; (iii) the merchant's customer service contact, including electronic mail addresses and/or telephone number; (iv) the transaction currency; (v) any export or legal restrictions (if known); (vi) the merchant's delivery policy; (vii) the address of the merchant's permanent establishment; (viii) the merchant's consumer data privacy policy; and (ix) the security method for the transmission of payment data.
  - C. Electronic Commerce Merchants must offer cardholders a secure transaction method, such as: (i) Secure Sockets Layer (SSL), or (ii) 3-D Secure.
- 18.10 Installment Billing Transactions (VISA):
- A. If it offers an Installment Billing Transaction option, MERCHANT must:
    - 1) disclose, in writing, the terms, including but not limited to, whether the installment terms are limited to certain goods that a cardholder may purchase. The written disclosure must also include the shipping and handling charges and any applicable tax;
    - 2) Inform a cardholder not billed in the transaction currency of the MERCHANT that each Installment Billing Transaction amount may vary due to currency conversion rate fluctuations;
    - 3) Ensure that the sum of the Installment Billing Transactions does not include any finance charge or exceed the total price of the goods; and
    - 4) Authorize all transactions (zero floor limit).
  - B. MERCHANT must not add finance charges to an Installment Billing Transaction.
  - C. MERCHANT must not deposit the first installment Billing Transaction with FNBO until the shipment date of the goods. MERCHANT must deposit subsequent Installment Billing Transaction Receipts at either of the following intervals: (i) 30 calendar days or more, or (ii) monthly anniversary of the shipment date (same day of each month).
- 18.11 Card Identification Data (CID) (Discover):
- A. MERCHANT is required to submit the CID with the authorization request for a Card Not Present CARD sale. MERCHANT'S failure to include the CID in an authorization request where required may result in a negative authorization response and may increase the fees MERCHANT is obligated to pay. If MERCHANT does not submit CID with an authorization request for a Card Not Present CARD sale, MERCHANT may lose a dispute of the CARD sale. MERCHANT is prohibited from retaining, archiving or otherwise storing the CID in any form or format for any reason, including the recording of the CID on SALES DRAFTS or the making of photocopies of the front or back of CARDS.

### 19. Vehicle Rental Authorization Procedures:

- 19.1 A special authorization procedure is available if MERCHANT estimates the transaction amount based upon cardholder's intended rental length at time of rental, the applicable rental rate, tax, and/or mileage rates. Such estimated transaction amount shall not include ancillary charges representing amounts to cover potential vehicle damages or insurance deductibles when cardholder waives insurance at time of rental.
- 19.2 MERCHANT shall record on the SALES DRAFT the date, amount, and all authorization approvals obtained.
- 19.3 MERCHANT shall disclose to cardholder the amount authorized at the time of rental.

19.4 Subsequent Authorization:

- A. If no Authorization was obtained at time of rental and MERCHANT, based upon cardholder's actual charges later estimates the transaction amount will exceed the applicable floor limit, MERCHANT may obtain an Authorization approval code for the new estimated amount.
- B. MERCHANT may obtain Authorization for additional amounts (above any amount not authorized) on the car rental pick-up date or prior to the car rental return date. Additional Authorization is not necessary if the sales transaction does not exceed the sum of the authorized amounts plus fifteen percent (15%) of the sum of the authorized amounts.

**20. Paper Processing Merchants:**

- 20.1 Paper processing MERCHANTS shall authorize by using the established Floor Limits. Any MERCHANT that wishes to accept a SALES transaction under the established Floor Limits, and which is not authorized, is liable for the resulting CHARGEBACKS from those CARD numbers listed on the Electronic Exception File.
- 20.2 In the case of a MERCHANT depositing paper drafts, such drafts shall be deposited with FNBO within five (5) days of the SALE date.

**21. Express Payment Services ("EPS"):**

- 21.1 Any "fast food" restaurant, motion picture theater, or parking lot MERCHANT that wishes to participate in the VISA or MASTERCARD EPS program must first obtain an EPS Agreement with FNBO.

**22. Travel and Entertainment ("T&E") Merchants:**

- 22.1 A MERCHANT whose primary function is to provide travel related services shall be referred to as a Travel & Entertainment ("T&E") MERCHANT. These include but are not limited to car rental, lodging, and central reservation services.
- 22.2 A T&E MERCHANT may process delayed or amended charges if the cardholder has consented to be liable for those charges. These charges may NOT include charges for loss, theft, or damage.

**23. T&E Services:**

- 23.1 A T&E MERCHANT may participate in any of the following VISA T&E Services:

- A. Priority Check-Out Service
- B. T&E Advance Deposit Service
- C. T&E Cash Disbursement Service
- D. VISA Reservation Service

RULES which apply to the VISA T&E Services are available from FNBO upon request.

23.2 Priority Check-Out Service:

- A. MERCHANT agrees to do the following for VISA transactions:

- 1) accept all VISA CARDS;
- 2) have cardholder complete, sign, and return a Priority Check-Out Agreement ("Agreement") which includes the cardholder's mailing address;
- 3) complete a SALES DRAFT which includes the total SALES amount and the words "Priority Check-Out" on the signature line;
- 4) review the completed Agreement and ensure the account number matches the account number on the SALES DRAFT if applicable;
- 5) comply with normal Authorization and deposit requirements;
- 6) at the cardholder's request, MERCHANT must mail the SALES DRAFT copy, the itemized bill, and the signed Agreement to the cardholder within three (3) business days of the cardholder's departure; and
- 7) MERCHANT must retain the itemized bill and signed Agreement for a minimum of six (6) months after the transaction date.

- B. MERCHANT agrees to do the following for MasterCard transactions:

- 1) accept all MasterCard CARDS;
- 2) obtain a card imprint;
- 3) complete a SALES DRAFT with one of the following typed or legibly printed on the signature line: telephone order ("TO"), mail order ("MO") "PO," "Guaranteed Reservation/No Show," "Signature on File-Express Check-out," or "Advance Deposit;"
- 4) retain and make available to the acquirer upon request the customer's written request to the merchant for pre-authorization; and
- 5) not deliver goods or perform services covered by a pre-authorization after receiving notification that the pre-authorization is canceled or that the MasterCard card covered by the pre-authorization is not to be honored.

- C. MERCHANT agrees to do the following for Discover transactions:

- 1) If MERCHANT offers priority check-out services, MERCHANT must comply with the following requirements: (i) require the cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a SALES DRAFT at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the cardholder signature line of the SALES DRAFT; (iv) obtain a final authorization code for any additional amounts from the check-in estimate to equal the total amount to be billed to the cardholder by following the normal authorization procedures; and (v) mail (at the address shown on the registration card) or otherwise deliver a copy of the SALES DRAFT and the itemized lodging bill (portfolio) to the cardholder within seven (7) calendar days of check-out.

23.3 T&E Advance Deposit Service: MERCHANT agrees to:

- A. accept all VISA CARDS;
- B. obtain the cardholder name, account number, expiration date on the card, telephone number, mailing address, scheduled date of arrival/embarkation/rental, and intended length of stay/term/rental;
- C. determine the Advance Deposit amount, which is the cost of the intended length of stay, cost of the cruise, or cost of the intended term of rental, not to exceed fourteen (14) days;
- D. apply the deposit amount to the total obligation;
- E. provide: (1) reservation confirmation code to the cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
- F. advise the cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;
- G. advise the cardholder that MERCHANT will retain the deposit amount if the cardholder has not canceled the reservation within the specified timeframes;
- H. MERCHANT must not charge for a no-show transaction;
- I. complete the SALES DRAFT including Advance Deposit amount, cardholder name/ mailing address/telephone number/account number, expiration date, the words "Advance Deposit" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- J. follow normal Authorization procedures;
- K. mail a SALES DRAFT copy and cancellation policy to the cardholder within three (3) business days of the SALES date;
- L. accept all cardholder cancellations within the time limits specified by MERCHANT;
- M. upon cancellation, MERCHANT shall complete a Credit Transaction Receipt with the information set out in I above and including the cancellation code. MERCHANT must deposit the Credit Transaction Receipt within five (5) days of the transaction date and mail a copy to the cardholder within three (3) days of the transaction date of the Credit Transaction Receipt;
- N. for a lodging MERCHANT, if the reserved accommodations are unavailable, the MERCHANT must provide the cardholder the following services without charge: refund the entire Advance Deposit amount, provide a copy of the Credit Transaction Receipt to the cardholder, comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed fourteen (14) nights or until the reserved accommodations become available, two (2) three (3) minute telephone calls, message forwarding to the alternate establishment, transportation to the alternate establishment and return to the original establishment and if requested, daily transportation to and from the alternate establishment and the MERCHANT location; and
- O. for a car rental MERCHANT, if the reserved vehicle is unavailable, the MERCHANT must provide the cardholder the following services without charge: refund the entire Advance Deposit amount and provide a comparable vehicle for the number of days specified in the reservation, not to exceed fourteen (14) days or until the reserved vehicle becomes available.

23.4 T&E Cash Disbursement Service: MERCHANT may make cash disbursement to a registered VISA Gold or Platinum cardholder under the following conditions:

- A. cardholder indicates at registration the intent to pay for services with a VISA CARD;
- B. before disbursement, the MERCHANT reviews positive identification, and if permitted by applicable law, records type and number on the SALES DRAFT;
- C. MERCHANT completes an eighty (80) column Cash Disbursement SALES DRAFT or a fifty-one (51) column Cash Disbursement SALES-T&E that includes the cardholder's positive identification or a Cash Disbursement Record;
- D. MERCHANT does not disburse more than two hundred fifty dollars (\$250.00) during the cardholder's stay. Cash availability may limit cash disbursements; and
- E. MERCHANT must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.

23.5 Visa Reservation Service: Any MERCHANT who accepts CARDS to guarantee reservations must do so in accordance with the following requirements:

- A. MERCHANT must accept all VISA CARDS;
- B. MERCHANT will obtain the cardholder's account number, expiration date, and name embossed on the CARD. MERCHANT must quote to cardholder the rate of reserved accommodation, MERCHANT name and address, and the Confirmation Code advising that it be retained. Advise the cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the cardholder will be billed for one night's lodging plus applicable taxes. If requested, the MERCHANT will provide a written confirmation with the above information including the VISA Reservation Service provisions relating to the cardholder's obligation, and any other reservation details;
- C. MERCHANT must accept all cancellations prior to the specified time. The MERCHANT must not require more than seventy-two (72) hours cancellation notification prior to the scheduled arrival date. But, if the cardholder makes the reservation within seventy-two (72) hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If the MERCHANT requires that the cardholder cancel before 6:00 p.m. on the arrival date, the MERCHANT must mail the cancellation policy to the cardholder;
- D. if the reservation is properly canceled, MERCHANT must provide a cancellation code and advise the cardholder to retain it. If requested, MERCHANT must mail a confirmation of cancellation that includes the following: cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;

- E. if cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. MERCHANT may then complete a SALES DRAFT for one night's lodging plus applicable tax, indicating the cardholder's account number, expiration date, and name embossed on the CARD and the words "No Show" on the cardholder signature line. MERCHANT must obtain an authorization code for the no show transaction; and
- F. if guaranteed accommodations are unavailable, MERCHANT must provide cardholder with comparable accommodations for one night at another establishment, transportation to the location of the alternative establishment, and if requested, provide cardholder with a three (3) minute telephone call and message forwarding to the alternate establishment. These services shall be provided at no cost to cardholder.

**24. Pre-authorized Health Care Transactions:**

- 24.1 MERCHANTS accepting Pre-authorized Health Care Transactions must have the cardholder complete an order form containing the following:
  - A. a request for the services to be charged to the cardholder's account;
  - B. assignment of insurance benefits to the MERCHANT;
  - C. authorization for the MERCHANT to charge the cardholder's account for only that portion of the bill subsequent to MERCHANT's receipt of any applicable insurance payment;
  - D. duration of time, not to exceed one (1) year, for which permission is granted; and
  - E. if the Pre-authorized Health Care Transaction is renewed, the cardholder must provide an updated order form.
- 24.2 MERCHANT must:
  - A. retain a copy of the order form during the period it is in effect;
  - B. provide a copy of the order form upon FNBO's request;
  - C. type or print the words "Pre-authorized Health Care" on the signature line of the SALES DRAFT; and
  - D. submit a SALES DRAFT within ninety (90) days of the service date and request authorization for the amount due upon receipt of notice of adjudication from the cardholder's insurance company.
- 24.3 MERCHANT must not complete a Pre-authorized Health Care Transaction after receiving a notice of cancellation from cardholder or FNBO or if the MERCHANT receives a decline response.

**25. Visa Supermarket Program:**

- 25.1 Any MERCHANT that wishes to participate in the VISA Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement with FNBO.

**26. Electron Card Program:**

- 26.1 MERCHANT may accept Electron Cards. If a MERCHANT chooses to accept Electron Cards, it must accept all Electron Cards when properly presented and process all transactions as Electron Card transactions.

**27. Automated Fuel Dispenser ("AFD") Program:**

- 27.1 When an AFD transaction takes place, the card must be present and the entire, unaltered contents of either track 1 or track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.
- 27.2 The MERCHANT name, city, state, and zip code of the actual station location where the transaction took place must be included in any authorization or clearing message.
- 27.3 A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.
- 27.4 MERCHANT must obtain an authorization for the exact amount of the transaction or use the Status Check Procedure that requires the MERCHANT to request an authorization for no more than one dollar (\$1.00).
- 27.5 MERCHANT must use the Status Check Procedure if the floor limit is zero and the actual transaction amount is no more than fifty dollars (\$50.00).
- 27.6 MERCHANT must have an established self-service terminal operating plan on file with FNBO and must establish a velocity-check program that monitors the volume and frequency of account transactions.
- 27.7 The transaction ratio of CHARGEBACKS to total VISA Interchange for the MERCHANT chain must not exceed an average of 0.30 percent (0.003%) for the previous six (6) months.
- 27.8 The transaction ratio of fraud to total VISA Interchange for the MERCHANT chain must not exceed an average of 0.40 percent (0.004%) for the previous six (6) months.
- 27.9 Under no circumstances should the MERCHANT use an arbitrary estimation of the transaction amount to obtain an authorization.
- 27.10 An AFD must not dispense scrip.

**28. Recurring Transactions:**

- 28.1 MERCHANT will not accept recurring SALES transactions where the delivery of, provision of, or billing for, goods or services is performed on a periodic basis ("RECURRING TRANSACTIONS") without the express written consent of FNBO and without following the rules stated below.
- 28.2 MERCHANT must obtain from the cardholder a completed Order Form containing a written request for the goods or services to be charged to the cardholder's CARD. The Order Form must include the transaction amount (unless the RECURRING TRANSACTIONS are for varying amounts), the frequency of the recurring charges, and the duration of time for which the cardholder's permission is granted. The cardholder signature (including electronic signature or other similar authentication) must be effective under applicable law.
- 28.3 MERCHANT must retain a copy of the Order Form for the duration of the RECURRING SERVICES and provide it to FNBO upon request.
- 28.4 Upon completion of the SALES DRAFT, MERCHANT should write the words "Recurring Transaction" on the signature line.

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- 28.5 When a RECURRING TRANSACTION is renewed, MERCHANT must obtain an updated Order Form (as set out above) from the cardholder.
- 28.6 For an Electronic Commerce Transaction, include the frequency and duration of the RECURRING TRANSACTION, as agreed to by the cardholder, on the SALES DRAFT and provide a simple and easily accessible online cancellation procedure, if the cardholder's request for goods or services was initially accepted online.
- 28.7 For RECURRING TRANSACTIONS, MERCHANT must not:
- include partial payment for goods or services purchased in a single transaction;
  - include additional finance charges on a RECURRING TRANSACTION;
  - complete a RECURRING TRANSACTION if it does not receive an Authorization or if it receives a cancellation notice from the cardholder; or
  - request or use a cardholder account number for purposes other than as payment for its goods or services.
- 28.8 For RECURRING TRANSACTIONS of varying amounts, the MERCHANT must:
- on the Order Form, allow the cardholder to specify a minimum and a maximum transaction amount to be charged;
  - inform the cardholder of his/her right to receive, with at least ten (10) days notice before the transaction date, a written notification of the amount and date of the next charge; and
  - allow the cardholder to choose to receive notice in any of the following ways: (i) for every charge; (ii) when the transaction amount is outside of the specified minimum and maximum amount range; and (iii) when the transaction amount will differ from the most recent charge by more than an agreed upon amount.

**29. Delayed Delivery Transactions:**

- 29.1 MERCHANT must obtain an authorization if the cumulative total of both SALES DRAFTS exceeds the floor limit. MERCHANT must obtain authorization for each SALES DRAFT on each transaction sale.
- 29.2 MERCHANT must:
- Assign a separate authorization number for each SALES DRAFT; and
  - Write the following information on the appropriate SALES DRAFT:
    - Words "Delayed Delivery;"
    - Word "Deposit" or "Balance," as appropriate; and
    - Authorization date and authorization code, if applicable.
- 29.3 MERCHANT may deposit the SALES DRAFT for the delayed delivery deposit before delivery of the goods or service.
- 29.4 MERCHANT must not deposit the SALES DRAFT for the balance before delivery of the goods or service.

**30. Card Checks (Discover):**

- 30.1 Card checks are frequently issued to cardholders. MERCHANT agrees to accept Card checks on a basis consistent with the terms of MERCHANT'S policy applicable to the acceptance of other payment card checks. MERCHANT should handle these Card checks like any other personal check drawn upon a bank in United States.

**31. Employee Purchases:**

- 31.1 MERCHANT is prohibited from conducting Cash Advances, Card Sales or returns for goods or services with the MERCHANT'S owners, officers or employees using such individuals' personal Card(s), except for bona fide Card Transactions in the ordinary course of MERCHANT'S business. MERCHANT is responsible for the actions and omissions of MERCHANT'S principals, officers, employees and agents, including any fraud committed by, and/or any intentional or negligent acts or omissions by, any owner, officer or employee of MERCHANT.

**THE FOLLOWING APPLY TO ATM/DEBIT SALES ONLY**

**CARD ACCEPTANCE PROCEDURES**

**1. Discrimination:**

- MERCHANT shall honor all valid CARDS without discrimination. When MERCHANT has multiple locations, the MERCHANT shall instruct each location not to discriminate between the cardholder and other customers.
- MERCHANT shall not require cardholders to provide personal information (such as telephone number or address) as a condition for honoring a CARD, unless required by the RULES.
- MERCHANT may not require or request the cardholder's signature or any other means of verifying the cardholder's identity.
- MERCHANT shall place the PIN Entry Device in an area accessible by all cardholders and that can reasonably prevent others from observing the entered PIN.
- MERCHANT shall not request or require the cardholder to provide or disclose their PIN in any oral or written manner to the MERCHANT.

**2. SALES DRAFTS:**

- MERCHANT shall deliver to the cardholder at the time of a SALE a true and completed copy of the SALES DRAFT evidencing a SALE involving use of a CARD. The SALES draft must comply with the requirements of all RULES, and LAWS.
- The following information must be included on the SALES DRAFT: (i) CARD account number; (ii) MERCHANT'S DBA name; (iii) MERCHANT'S city and state; (iv) amount of SALE; and (v) SALE date.
- A SALES DRAFT shall be made available to the cardholder at each terminal.
- MERCHANT may not require or request the cardholder to divulge the PIN belonging to that cardholder.
- MERCHANT shall not impose any fee or charge without the prior written consent of FNBO. If surcharging is approved by FNBO, it must be a separate line item on the SALES draft and must be in compliance with all NETWORKS' rules, and LAWS.



- 2.6 MERCHANT shall not process any SALE if the terminal does not receive an authorization code. When a denial to an authorization request is received, the POS transaction shall not be completed, unless completed as a MERCHANT Store and Forward Transaction or Resubmission Transaction.
- 2.7 A SALE shall not be completed if the MERCHANT knows or should know that the SALE is fraudulent or not authorized by the cardholder.
- 2.8 A SALE may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the SALE was initiated. To effect a reversal or void, cardholder must re-enter the PIN, the magnetic stripe reader must read the card, and MERCHANT must transmit the trace number and the exact dollar amount of the SALE to be reversed or voided. A reversal or void must be initiated at the same MERCHANT identified on the SALES draft at which the original SALE was initiated, but need not be initiated at the same POS terminal.
- 2.9 All returns shall be processed in accordance with the MERCHANT's normal procedures, except that MERCHANT or cardholder shall not attempt to reverse a previously approved POS Transaction, unless otherwise permitted in accordance with the rules.
- 2.10 Any SALES known by the MERCHANT to be erroneous should be canceled and re-billed, in the cardholder's presence.
- 2.11 Balance inquiries may be performed only by the cardholder at a cardholder-operated terminal and shall at all times require the cardholder to enter the PIN and use the magnetic stripe reader.

**3. SALES DRAFTS - Distribution and Storage of Information:**

- 3.1 MERCHANT shall not disclose a cardholder's account information or any other personal information to third parties other than to MERCHANT's agents for the purpose of completing the SALE or as specifically required by law or by the RULES.
- 3.2 MERCHANT shall store in a limited access area for at least one (1) year after the date of SALES all transaction records and MERCHANT shall make and retain for at least two (2) years the original or legible microfilm copies of both sides of all transaction records; Prior to discarding, MERCHANT shall destroy or make unreadable all material containing cardholder account numbers.
- 3.3 There are no voice authorizations for transactions and no manually imprinted SALES drafts.

**4. Promotional Materials:**

- 4.1 MERCHANT will adequately display promotional materials to inform the public that MERCHANT will honor CARDS.
- 4.2 All uses by MERCHANT of decals, signs, printed and broadcast materials and other promotional materials must be in conformity with the requirements of the NETWORKS and FNBO. MERCHANT will not at any time do, or cause to be done, any act or deed in any way impairing or intended to impair FNBO's or SPONSOR's exclusive right, title and interest in and to its respective protected marks.
- 4.3 MERCHANT may use promotional materials only to indicate that CARDS are accepted for payment and shall not indicate, directly or indirectly, that MERCHANT has received endorsement of any goods or services other than the CARDS' services.
- 4.4 MERCHANT may not refer to CARDS in stating eligibility for its products, services, or membership.
- 4.5 MERCHANT shall permit FNBO or SPONSOR, at all reasonable times, to inspect the MERCHANT's use of the promotional materials. Should any materials fail to meet FNBO's or SPONSOR's approval, for any reason, the MERCHANT agrees to cease using such material. Neither FNBO nor SPONSOR shall be liable to MERCHANT for losses relating to the disapproval of use of such materials.
- 4.6 MERCHANT shall be responsible for all costs associated with promotional material.
- 4.7 All advertising or publicity by any terminated MERCHANT using the Service mark shall immediately cease upon such termination.

**CHARGEBACKS**

**5. General:**

- 5.1 MERCHANT agrees to pay FNBO for any NETWORK fees, fines or charges imposed on MERCHANT or FNBO. Such reimbursement will be accomplished by the debit of the sum(s) involved from the MERCHANT's DESIGNATED ACCOUNT.
- 5.2 Failure to comply with the RULES will increase MERCHANT's exposure to CHARGEBACKS.
- 5.3 FNBO agrees to mail all CHARGEBACK documentation to MERCHANT promptly to MERCHANT's address shown on AGREEMENT. MERCHANT agrees to respond promptly to all CHARGEBACKS. If FNBO elects, at its discretion, to take action on CHARGEBACKS after the NETWORK time limits have expired, such action shall be done at additional cost. Upon request of NETWORK, processor, or FNBO, the MERCHANT will retrieve and forward to FNBO, within the time frame required by the NETWORKS, either the original or a readable copy of the Terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the NETWORK such information from such transaction records as it requests by telephone. The MERCHANT will, on request of the NETWORK, cooperate fully with the NETWORK and the card-issuing participant in order that the participant may comply with the error resolution procedures.

**6. Monitoring Programs:**

- 6.1 If certain monitoring programs identify MERCHANT, FNBO's ability to reverse CHARGEBACKS can be severely restricted.
- 6.2 Certain Monitoring Programs review the number of Lost, Stolen and Counterfeit CARDS accepted by MERCHANT in its normal course of business. The purpose of these Programs is to reduce the use of Lost, Stolen and Counterfeit CARDS.
- 6.3 In the event that MERCHANT is identified under these PROGRAMS as exceeding the acceptable threshold value of such CARDS, MERCHANT may become liable for CHARGEBACKS and SALES on Lost, Stolen, or Counterfeit CARDS regardless of the CARD ACCEPTANCE PROCEDURES followed, and AGREEMENT may be terminated on notice by FNBO.

**OPERATIONAL REQUIREMENTS**

**7. MERCHANT Name and Address:**

- 7.1 All forms submitted to FNBO must bear both the corporate and "Doing Business As" ("DBA") name.

**8. Use of Service Marks:**

- 8.1 The MERCHANT shall prominently display service marks at or near all major public access points to inform the public that MERCHANT will honor CARDS. The service marks of all POS services shall be displayed in the same location and shall be of

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equal size. MERCHANT shall always display the service marks in their full color version. The MERCHANT must display the service marks upon acceptance of the CARDS.

- 8.2 The MERCHANT shall not use the service marks for any other purpose without the express written consent of the NETWORKS.
- 8.3 The NETWORKS shall have the right to inspect the MERCHANT's use of the service marks and require the MERCHANT to cease use of its respective service mark if not in compliance with these RULES or any other of its respective NETWORK rules.
- 8.4 The MERCHANT's right to use and display the service marks shall terminate upon termination of this agreement. Upon termination, voluntary or involuntary, the MERCHANT shall immediately remove all service marks from all terminals and from any other display location maintained by such MERCHANT or otherwise associated with such terminals.
- 8.5 MERCHANTS who use the service marks shall obtain no interest in the service marks except the right to use them in accordance with the RULES.

**9. Equipment:**

- 9.1 A MERCHANT shall take all necessary steps to insure that all POS Terminals and PIN Pads operated in all of its locations:
  - A. are placed in an area accessible by all cardholders;
  - B. are available for use whenever open for business;
  - C. will function with a minimum of error meeting all applicable technical specifications and security regulations; and
  - D. will require the cardholder to enter the cardholder's PIN at or near the check out location when initiating a POS Transaction.
- 9.2 A PIN pad or PIN processor must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released.
- 9.3 Terminals must have a Magnetic Stripe reader capable of reading Track 2 on the CARDS.
- 9.4 PINS used in conjunction with any store and forward transaction or MERCHANT resubmission must be encrypted and stored within a Tamper Resistant Security Module.
- 9.5 If MERCHANT's authorization system is capable of store and forward, it must comply with the NETWORKS' rules and regulations regarding this capability. FNBO, the Issuer and the NETWORKS shall not be liable for any losses suffered by a MERCHANT arising from the use of the store and forward function.
- 9.6 A PIN must never be logged in any form as a function of software either in the clear or encrypted.

**MISCELLANEOUS RULES**

**10. Liability of MERCHANT:**

- 10.1 MERCHANT shall be liable for all actions of its employees and agents and shall insure that they comply with the RULES and all LAWS.

**11. Supply of Information:**

- 11.1 MERCHANTS must submit all information requested by the NETWORKS or FNBO, including, but not limited to, lists and mailing addresses of terminals.
- 11.2 A MERCHANT shall not sell, purchase, provide, or exchange account number information in the form of transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, or other media obtained by reason of a SALE to any third party other than to the MERCHANT's agents for the purpose of assisting the MERCHANT in its business; or to the NETWORK and FNBO; or pursuant to a government request.

**12. Left CARDS:**

- 12.1 CARDS that are inadvertently left at a MERCHANT location must be held under dual control during the time they are retained.
- 12.2 CARDS inadvertently left at a MERCHANT location may be returned to the cardholder by MERCHANT under the following conditions: (i) the CARD was inadvertently left by the cardholder at an on-premise location, and (ii) the cardholder requests the CARD within one business day, and (iii) the cardholder provides two forms of current identification, one of which is a photo identification.
- 12.3 If the cardholder has not requested the CARD within one business day, the CARD should be destroyed by cutting it in half through the stripe and processed in the normal manner.

**13. Security Features:**

- 13.1 FNBO, SPONSOR, or their designated agent, on behalf of itself or others, shall have the right to inspect MERCHANT's security systems and procedures from time to time.

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*T.W. 12.7.12*