



Terms & Conditions

Processing Terms & Conditions
Funds Transfer Instructions
Rate Descriptions
Equipment Agreement
Rules
Merchant Services Network Addendum
Voyager
Wright Express
Merchant Services Network Additional Information

Provided by
Merchant Services Network
888-668-2650
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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 U.S.A., Inc. ("VISA") and MasterCard International, Inc. ("MASTERCARD") and provides transaction processing and other services and products ("SERVICES") in relation to financial service cards issued by VISA, MASTERCARD, and other financial service card organizations, including ATM/Debit cards (together herein known as "CARD(S)"). VISA, MASTERCARD, 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 processing. Such rules and regulations, as amended from time to time, are incorporated by this reference herein 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 are calculated based on the following which include, but are not limited to, 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 agrees that this AGREEMENT is confidential and will not disclose it to any third party without the prior written consent of FNBO. MERCHANT agrees not to disclose any cardholder account information or other personal information or other ASSOCIATION transaction information except to MERCHANT's agents to assist in completing a transaction or as required by law. MERCHANT agrees to notify FNBO immediately if MERCHANT uses an agent that will have any access to cardholder data. MERCHANT agrees to maintain all systems containing account, cardholder, or transaction information in a secure manner, in accordance with the ASSOCIATION RULES, including the Payment Card Industry ("PCI") Data Security Standard, to ensure such information is not disclosed or misused. MERCHANT may not retain or store magnetic stripe, CVV2, or CVC2 data after authorization.
- 1.5 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.
- 1.6 MERCHANT has been supplied with the RULES and by signing AGREEMENT, acknowledges that it has received and read them.
- 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 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; and
 - 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 Section 2.2 of 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.
 - 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 whom FNBO has a relationship are members of certain ATM/DEBIT NETWORKS and are willing to sponsor MERCHANT as a participant in such ATM/DEBIT 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 ATM/DEBIT 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 (12 C.F.R. Part 205) 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.

3. PAYMENT OF SUMS DUE:

- 3.1 MERCHANT agrees to pay FNBO the fees as set forth in the Merchant Application and the Rate Descriptions 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.
- 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, 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. MERCHANT must batch out MERCHANT's terminal on a daily basis. Failure to batch out in a timely manner could lead to CHARGEBACKS and will affect the DISCOUNT rate at which MERCHANT's transactions qualify.
- 3.7 If the ASSOCIATIONS 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. In addition, if MERCHANT has any location, which has reached a CHARGEBACK level so as to have caused MERCHANT to be included in any of the ASSOCIATIONS' risk monitoring programs, FNBO may charge and MERCHANT agrees to pay a minimum Risk Administration Fee of ten thousand dollars per occurrence on a risk monitoring program.
- 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 SECURITY DEPOSIT, as defined below, is established MERCHANT authorizes FNBO to make withdrawals from the DESIGNATED ACCOUNT to replenish the SECURITY DEPOSIT as necessary.
- 3.9 MERCHANT agrees to provide FNBO with a deposit in the amount of money required by FNBO ("SECURITY DEPOSIT"), if necessary: (i) at the time this AGREEMENT is executed or (ii) 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 SECURITY DEPOSIT. The SECURITY DEPOSIT 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 SECURITY DEPOSIT to secure all of MERCHANT's obligations to FNBO under this AGREEMENT. If this AGREEMENT is terminated for any reason,

the SECURITY DEPOSIT 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 SECURITY DEPOSIT 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 SECURITY DEPOSIT, 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 Security Deposit. 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 AGREEMENT is terminated early either during the INITIAL TERM or any RENEWAL TERM for any reason other than set out in paragraph 5.1, 5.2.A or 5.2.B, MERCHANT agrees to pay FNBO an early termination fee ("EARLY TERMINATION FEE") as outlined below. MERCHANT agrees that the EARLY TERMINATION FEE is a compensatory payment and is a reasonable estimation of the actual damages which FNBO would suffer if FNBO were to fail to receive the processing business for the Term. If MERCHANT'S Annual Transaction Volume (as determined by dividing the Total Volume (\$) by the Average Ticket (\$) as set out in the Business Profile and Assumptions section of the Merchant Application) is 25,000 transactions or less, the EARLY TERMINATION FEE is two hundred fifty dollars (\$250.00) per Merchant Identification Number ("MID"). If MERCHANT'S Annual Transaction Volume is 25,001 transactions or more the EARLY TERMINATION FEE shall be calculated as follows: (i) Multiply the Annual Transaction Volume by \$0.10, and divide by twelve (12) to get the Monthly Amount; then (ii) Multiply the Monthly Amount by the number of months remaining in the current Term to reach the EARLY TERMINATION FEE. MERCHANT agrees that the EARLY TERMINATION FEE shall also be due to FNBO if MERCHANT discontinues submitting SALES for processing during the INITIAL TERM or any RENEWAL TERM of the AGREEMENT.
- 3.14 If this AGREEMENT is terminated, MERCHANT shall pay FNBO all fees associated with deconversion. Deconversion means FNBO's assistance in moving MERCHANT to a new processor. Deconversion costs include but are not limited to customer service or technical support during the period of deconversion, communication costs, and attorney's fees of FNBO's counsel.
- 3.15 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.
- 3.16 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) 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.
- 4.2 At the expiration of the INITIAL TERM, this AGREEMENT will automatically renew for successive one (1) year periods ("RENEWAL TERM") unless terminated as set out below.

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:
 - 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;
 - C. on thirty (30) days notice of termination accompanied by payment to FNBO of the EARLY TERMINATION FEE.
- 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 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 Upon the notice of termination or expiration of the AGREEMENT, FNBO is entitled to retain sufficient funds to cover anticipated FEES. If there is not enough money retained to cover the anticipated FEES, FNBO may require MERCHANT to remit additional funds. This sum will be retained by FNBO for a period of one hundred eighty (180) days from the date of the last SALE processed by MERCHANT, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as SALES under AGREEMENT. FEES due to FNBO received during this period will be debited from this sum. At the end of the period defined above, FNBO will release to MERCHANT the balance of the sums retained net any FEES that are then being processed or disputed.

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 **PATRIOT ACT NOTICE. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** 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 open an account. What this means: When MERCHANT opens an account, FNBO will ask for the applicant's and/or the MERCHANT's name, physical address, date of birth, taxpayer identification number, and other information that will allow FNBO to identify the applicant and the MERCHANT. FNBO may also ask to see the applicant's driver's license or other identifying documents. FNBO will let MERCHANT know 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 If in the opinion of FNBO, information received or discovered about MERCHANT reflects an adverse change in status, or in the event that any information requested by FNBO is not received, FNBO may require a reserve of funds be deposited in an account (the "RESERVE ACCOUNT") at FNBO with the deposit established to cover MERCHANT's obligations under AGREEMENT. FNBO may withhold the payment for SALES in 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. The RESERVE ACCOUNT shall be maintained 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.
- 7.6 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.
- 7.7 MERCHANT will notify FNBO immediately of any change in ownership, Corporate or "DBA" name, location address, or the information contained on MERCHANT's imprinter plates.
- 7.8 If MERCHANT participates in any FNBO third party program, MERCHANT agrees that FNBO may report information as required to such third party.
- 7.9 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.

8. PROCESSING RESTRICTIONS:

- 8.1 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. MERCHANT shall be responsible for any DISCOUNT rate tier downgrade.
- 8.2 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. FNBO may only process SALES from the BUSINESS as defined in the AGREEMENT.
- 8.3 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 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.
- 8.4 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) return this information to FNBO or (ii) provide acceptable proof of destruction of this information to FNBO.

9. USE OF THE INTERNET AND/OR SYSTEM INTEGRATORS:

- 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. 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.
- 9.3 MERCHANT agrees that FNBO is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted.
- 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 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, VISA International, 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, VISA INTERNATIONAL, 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, VISA INTERNATIONAL, 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 that it has not been terminated from depositing SALES with any other member of the ASSOCIATIONS.
- 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 International and 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 applicable federal, state, or local laws, regulations, or the RULES, or the rights of another person. 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> First National Bank of Omaha One First National Center 16th & Dodge Street P.O. Box 2196 Omaha, NE 68102 Attention: Merchant Legal and Compliance	<u>If to MERCHANT:</u> At the address set out herein or such alternative address as designated in writing by MERCHANT.
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- 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 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. This AGREEMENT and the guaranty contained herein shall be governed by and construed in accordance with the laws of the State of Nebraska. The PARTIES also agree, in the event of any dispute regarding this AGREEMENT, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES with venue in Douglas County, Nebraska. If MERCHANT brings legal action against FNBO for any reason, MERCHANT shall commence the action within one (1) year of the date the error 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. FNBO shall not be responsible for the costs incurred by MERCHANT in negotiating or implementing this AGREEMENT.

- 13.7 Survival. The obligations of all PARTIES incurred prior to the effective date of termination of AGREEMENT will survive the termination of AGREEMENT. If any portion of 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, MERCHANT represents that it has the full legal power and authority to enter into performance obligations under AGREEMENT. MERCHANT also represents that the entering into of this AGREEMENT has been duly authorized by MERCHANT; the signer is a duly authorized signatory for the MERCHANT; this AGREEMENT constitutes a legal, valid, and binding obligation of MERCHANT; and is enforceable against MERCHANT 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 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.
- 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 Third Party Providers. If MERCHANT is using a Member Service Provider's terminal, (i.e. dial terminal or equivalent sales capture device), 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.
- 13.15 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.
- 13.16 Monitoring. MERCHANT understands and agrees that any telephone conversation between MERCHANT and FNBO may be monitored and recorded.
- 13.17 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.
- 13.18 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 to 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.
- 13.19 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 authorization, 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.

RATE DESCRIPTIONS

ARU VERSION: THREE TIER WITH CHECK CARD PRICING (ARU Retail Merchants)

RATE 1

CPS Retail/2 Debit, EIRF Debit, MC Key Entered Debit, Merit 1 Debit, MC Emerging Market Debit

U.S. issued Visa or MasterCard Debit Card only. Electronic authorization; pertinent interchange fields passed; settled within 3 days of transaction approval date; amount tolerance test; key entry permitted.

RATE 2

CPS Retail/2 Credit, EIRF Credit, Commercial Electronic, MC Key Entered Credit, Merit 1 Credit, Corp Data II, Corp Int'l, ISI, Corp Data I, Corp Large Ticket, World Card T&E, World Card MC Key Entered*, World Card Merit 1**

Electronic authorization; pertinent interchange fields passed; settled within 3 days of transaction approval date (2 days for Corp Large Ticket); amount tolerance test; key entry permitted. Visa business, corporate and purchasing cards require commercial card data (sales tax only).

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.07%.

RATE 3

*Standard Credit and Debit, Commercial Standard, Corp Standard, World Card Standard**

Authorization over floor limit; settled within 30 days of transaction date.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

CARD PRESENT VERSION: FOUR TIER WITH CHECK CARD PRICING (Includes Retail, Fuel and Supermarket)

RATE 1

CPS Retail Debit, CPS Retail/2 Debit, CPS Supermarket Debit (Supermarket merchants only), CPS Small Ticket Debit, CPS Retail Service Station Debit (Fuel merchants only), CPS Automated Fuel Debit (Fuel merchants only), Merit 3 Debit, MC Supermarket Debit (Supermarket merchants only), MC Automated Fuel Debit (Fuel merchants only), MC Retail Service Station Debit (Fuel merchants only), MC Small Ticket Debit, MC Emerging Market Debit

U.S. issued Visa or MasterCard Debit Card only. Electronic authorization, obtained within 1 day of transaction date; settled within 2 days of transaction date; full contents of magnetic stripe read and passed in auth and settlement; all Visa CPS and MasterCard IC fields; amount tolerance test. For Emerging Markets (cable, insurance, schools, government), key entry permitted. For Fuel and Supermarkets, fuel-specific and supermarket-specific processing codes required.

RATE 2

CPS Retail Credit, CPS Retail/2 Credit, CPS Supermarket Credit (Supermarket merchants only), CPS Small Ticket Credit, CPS Retail Service Station Credit (Fuel merchants only), CPS Automated Fuel Credit (Fuel merchants only), Traditional Rewards 1, Signature Card Rewards 1*, Merit 3 Credit, Convenience Purchase Credit, IEI, Corp Face to Face, MC Supermarket Credit (Supermarket merchants only), World Card Merit 3*, World Card Convenience Purchase*, World Card Supermarket* (Supermarket merchants only)*

Electronic authorization, obtained within 1 day of transaction date; settled within 2 days of transaction date; full contents of magnetic stripe read and passed in auth and settlement; all Visa CPS and MasterCard IC fields; amount tolerance test. Commercial card data (sales tax, customer code) required for MasterCard business, corporate and purchasing cards. For Visa Emerging Markets (cable, insurance, schools, government), key entry permitted. For Fuel and Supermarkets, fuel-specific and supermarket-specific processing codes required.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

RATE 3

CPS Retail Key Entry Credit and Debit, EIRF Credit and Debit, Commercial Non T&E Level 2, Commercial Electronic, Traditional Rewards 2, Signature Card Rewards 2*, Public Sector Credit, MC Key Entered Credit and Debit, Merit 1 Credit and Debit, Corp Data II, Corp Int'l, ISI, Corp T&E I, Corp Data I, Corp Large Ticket, World Card T&E*, World Card Public Sector*, World Card MC Key Entered*, World Card Merit 1**

Electronic authorization; settled within 3 days of transaction date; key entry permitted; pertinent interchange fields passed.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.07%.

RATE 4

*Standard Credit and Debit, Commercial Standard, Corporate Standard, World Card Standard**

Authorization over floor limit; settled within 30 days of transaction date.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

CARD NOT PRESENT VERSION: THREE TIER WITH CHECK CARD PRICING (Includes MOTO, E-Commerce and Recurring)

RATE 1

CPS Card Not Present Debit, CPS E-Commerce Debit, CPS Retail Key Entry Debit, MC Key Entered Debit, Merit 1 Debit, CPS Retail/2 Debit (Emerging Market merchants only), SIIP Debit (Recurring Payment merchants only), MC Emerging Market Debit (Emerging Market merchants only)

U.S. issued Visa or MasterCard Debit Card only. Electronic authorization; settled within 2 days of transaction date for Visa, 3 days for MasterCard; all Visa CPS and MasterCard IC fields; amount tolerance test. Secure protocol required for e-commerce transactions. Address Verification required for Visa Consumer cards. Invoice number required for Visa cards.

RATE 2

CPS Card Not Present Credit, CPS E-Commerce Credit, CPS Retail Key Entry Credit, CPS Retail/2 Credit (Emerging Market merchants only), Purchasing Large Ticket, GSA Large Ticket, Commercial Non T&E Level 2, Traditional Rewards 2*, Signature Card Rewards 2*, Public Sector Credit, MC Key Entered Credit, Merit 1 Credit, Corp Data III, Corp Data II, Corp Int'l, ISI, Corp Large Ticket, SIIP Credit (Recurring Payment merchants only), World Card Public Sector*, World Card MC Key Entered*, World Card Merit 1*, World Card SIIP* (Recurring Payment merchants only)

Electronic authorization; settled within 2 days of transaction date for Visa, 3 days for MasterCard; all Visa CPS and MasterCard IC fields; amount tolerance test. Secure protocol required for e-commerce transactions. Address Verification attempt required for Visa Consumer cards for card not present transactions; Address Verification match required for Visa Consumer cards for card present transactions. Visa business, corporate and purchasing cards require commercial card data (sales tax only); non-taxed transactions are not eligible. MasterCard business, corporate and purchasing cards require commercial card data (sales tax plus customer code for purchasing cards). Invoice number required for Visa cards.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.07%.

RATE 3

EIRF Credit and Debit, Commercial Electronic, Standard Credit and Debit, Commercial Standard, Corp T&E I, Corp Data I, Corp Standard, World Card T&E*, World Card Standard*

Authorization over floor limit; settled within 30 days of transaction date. Includes Visa business, corporate and purchasing cards not meeting CPS and/or sales tax requirements.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.08%.

T&E VERSION: FOUR TIER WITH CHECK CARD PRICING (Includes Restaurant, Hotel and Car Rental)

RATE 1

CPS Retail Debit, CPS Restaurant Debit (Restaurant merchants only), CPS Small Ticket Debit, Merit 3 Debit, MC Restaurant Debit (Restaurant merchants only), MC Small Ticket Debit, MC TIPS Debit (Lodging and Car Rental only)

U.S. issued Visa or MasterCard Debit Card only. Single electronic authorization; obtained within 1 day of transaction date; settled within 2 days of transaction date; full contents of magnetic stripe read and passed in auth and settlement; all Visa CPS and MasterCard IC fields. Key entry permitted for MasterCard lodging and car rental merchants with TIPS registration code. For lodging and car rental merchants, additional data (check in/check out dates, folio or rental addenda) required for consumer cards.

RATE 2

CPS Retail Credit, CPS Restaurant Credit (Restaurant merchants only), CPS Small Ticket Credit, Traditional Rewards 1* (Hotel and Car Rental only), Traditional Rewards 2*, Merit 3 Credit, World Card Merit 3* (Restaurant merchants only), IEL, Convenience Purchase Credit (Restaurant merchants only), World Card Convenience Purchase* (Restaurant merchants only)

Single electronic authorization; obtained within 1 day of transaction date; settled within 2 days of transaction date; full contents of magnetic stripe read and passed in auth and settlement; all Visa CPS and MasterCard IC fields. For lodging and car rental merchants, additional data (check in/check out dates, folio or rental addenda) required for consumer cards. Business, corporate and purchasing cards are not eligible.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

RATE 3

CPS Hotel Credit and Debit (Hotel merchants only), CPS Car Rental Credit and Debit (Car Rental merchants only), CPS Retail Key Entry Credit and Debit (Restaurant merchants only), EIRF Credit and Debit, Commercial Electronic, MC Key Entered Credit and Debit (Restaurant merchants only), MC TIPS Credit (Hotel and Car Rental only), Merit 1 Credit and Debit, ISI, Corp Int'l, Corp T&E I and II, World Card T&E*, World Card Restaurant* (Restaurant merchants only)

Electronic authorization; settled within 3 days of transaction date; key entry permitted for consumer cards; full contents of magnetic stripe read and passed in auth and settlement for commercial cards; pertinent interchange fields passed. For lodging and car rental merchants, additional data (check in/check out dates, folio or rental addenda) required for consumer cards.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.07%.

RATE 4

Standard Credit and Debit, Commercial Standard, Corp Standard, World Card Standard*

Authorization over floor limit; settled within 30 days of transaction date.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

ARU VERSION: THREE TIER WITH CHECK CARD PRICING (ARU T&E Merchants)

RATE 1

CPS Retail/2 Debit, EIRF Debit, MC Key Entered Debit, Merit 1 Debit, MC Emerging Market Debit

U.S. issued Visa or MasterCard Debit Card only. Electronic authorization; pertinent interchange fields passed; settled within 3 days of transaction approval date; amount tolerance test; key entry permitted.

RATE 2

CPS Retail/2 Credit, EIRF Credit, Commercial Electronic, MC Key Entered Credit, Merit 1 Credit, Corp Data II, Corp Int'l, ISI, Corp Data I, Corp Large Ticket, Corporate T&E I, Corporate T&E II, World Card T&E, World Card MC Key Entered*, World Card Merit 1**
Electronic authorization; pertinent interchange fields passed; settled within 3 days of transaction approval date (2 days for Corp Large Ticket); amount tolerance test; key entry permitted. Visa business, corporate and purchasing cards require commercial card data (sales tax only).

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.07%.

RATE 3

*Standard Credit and Debit, Commercial Standard, Corp Standard, World Card Standard**

Authorization over floor limit; settled within 30 days of transaction date.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

PAPER VERSION: PAPER PRICING

RATE 1

*EIRF Credit and Debit, Standard Credit and Debit, Commercial Standard, ISI, Corp Data I, Corp Standard, World Card Standard**

Authorization over floor limit; settled within 30 days of transaction date.

* Visa Rewards, Visa Signature and MasterCard World cards in this Rate tier will be assessed an additional 0.12%.

PASS THROUGH PRICING

DISCOUNT: DISCOUNT equals the gross per item ("Processing") cost, plus Authorizations, plus pass through interchange, plus pass through Assessments.

1. Processing equals the per item processing rate on gross items (SALES plus Credits) as set forth in this AGREEMENT.
2. Authorization costs on SALES processed will be charged to MERCHANT at FNBO's rate;
3. Interchange costs on SALES processed will be charged to MERCHANT at FNBO's rate; and
4. Assessment costs on SALES processed will be charged to MERCHANT at FNBO's rate.

NOTES:

- CPS (VISA Custom Payment Service) and IC (MASTERCARD Interchange Compliance) fields contain enhanced transaction data required for CPS and IC interchange programs.
- Amount tolerance test: For Visa, the authorized amount and clearing amount must match. For MasterCard, beauty and barber shops are allowed a 25% variance between authorization and settlement amounts for sales over \$25, amounts under \$25 are exempt; other MCCs are allowed 10% variance; Corporate Large Ticket is allowed a 25% variance; hotel, car rental, restaurant and fast food are exempt.
- Timeliness test: Authorization date must be within 1 day of transaction date. For Consumer MOTO and E-Commerce, authorization date must be within 7 days of transaction date for Visa. MasterCard Merit 1 and Corporate Data transactions are exempt from authorization/transaction date timeliness.
- Commercial Cards: For Retail merchants, either CPS and IC requirements and/or sales tax data required for business, corporate and purchasing cards, otherwise Rate 4 will apply.

EQUIPMENT AGREEMENT

1. THIS Equipment Agreement ("EQUIPMENT AGREEMENT"), by and between MSN MERCHANT MARKETING INC. d/b/a MERCHANT SERVICES NETWORK ("MSN"), and "MERCHANT," the name of which is set out below, shall become effective as of the date of execution of the Merchant Transaction Processing Agreement ("EFFECTIVE DATE").
2. WHEREAS, First National Bank of Omaha ("FNBO") and MERCHANT are parties ("PARTIES") to a Merchant Transaction Processing Agreement (together with its amendments, attachments and schedules shall be hereinafter known as the "AGREEMENT"), under which FNBO receives specified credit card transactions ("SALES") from MERCHANT, processes such as SALES and pays MERCHANT the proceeds of such SALES subject to the terms and conditions more fully set out in AGREEMENT; and
3. WHEREAS MERCHANT desires to purchase or rent equipment to assist in the receipt of SALES ("EQUIPMENT") set out below from MSN.
4. 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:
5. MSN agrees to sell or rent to MERCHANT and MERCHANT agrees to buy or rent from MSN the EQUIPMENT described in the Merchant Application or as added from time to time via MERCHANT's request through MSN's customer service center. MERCHANT's payment for EQUIPMENT or delivery of the EQUIPMENT to MERCHANT will constitute MERCHANT's acceptance of the applicable following terms and conditions. Payment for EQUIPMENT and any related fees shall be due and payable on the EFFECTIVE DATE of this EQUIPMENT AGREEMENT if purchasing EQUIPMENT, monthly if renting, or upon an otherwise agreed upon date or payment schedule. MERCHANT agrees to pay the fee(s) set out in the Merchant Application and as added from time to time. MERCHANT is responsible for all sales, use, excise and other taxes that may result from this transaction. MERCHANT hereby authorizes MSN to debit payment from the MERCHANT's designated account established under the AGREEMENT for items ordered herein if payment does not accompany order.
6. Upon payment by MERCHANT to MSN of the entire purchase amount required herein, MSN shall sell, transfer and assign the purchased EQUIPMENT to MERCHANT for MERCHANT's use and benefit. All risks or expenses of loss, damage, or repair to the EQUIPMENT shall be borne by MERCHANT upon such transfer of title.
7. If MERCHANT is renting EQUIPMENT, MERCHANT agrees to pay MSN a monthly rental fee ("RENTAL FEE") for the EQUIPMENT until such time said EQUIPMENT is returned to MSN, which will be debited monthly from the MERCHANT's

DESIGNATED ACCOUNT established under the AGREEMENT or billed separately to merchant if the DESIGNATED ACCOUNT no longer exists. If MERCHANT is purchasing the EQUIPMENT via multiple payments and terminates the EQUIPMENT AGREEMENT prior to completing the monthly purchase payments, then MERCHANT agrees to immediately pay the remainder of the purchase price or, if MERCHANT returns the EQUIPMENT under the conditions specified herein, MERCHANT agrees to pay MSN's then current RENTAL FEE for the length of time MERCHANT had the use of the EQUIPMENT.

8. MERCHANT agrees to pay the RENTAL FEE on a per month basis as rental for the EQUIPMENT. MSN may amend the RENTAL FEE on thirty (30) days written notice to MERCHANT. Submission by MERCHANT of SALES after such notice period shall be evidence that MERCHANT has received the amended RENTAL FEE and has agreed to such amended RENTAL FEE.
9. The PARTIES agree to each of the terms and conditions set forth herein and acknowledge that such provisions are binding upon each of them, their successors, heirs and assigns.
10. MERCHANT understands that a telephone jack and other equipment may be required for its phone system to be compatible with EQUIPMENT at MERCHANT's expense.
11. Upon expiration or termination of the EQUIPMENT AGREEMENT, MERCHANT agrees to remove the rental EQUIPMENT from its locations and deliver it to MSN at MERCHANT's cost in the same condition as when the rental EQUIPMENT was installed, normal wear and tear excepted. The PARTIES agree that the rental EQUIPMENT is and will remain personal property of MSN.
12. MERCHANT hereby assumes the entire risk of loss, damage or destruction of the EQUIPMENT from any cause whatsoever, until the delivery of the rental EQUIPMENT to MSN. If the rental EQUIPMENT is damaged, lost, or not returned to MSN, MERCHANT shall, at the option of MSN, repair the rental EQUIPMENT at MERCHANT's expense or pay MSN the current replacement cost of the rental EQUIPMENT.
13. MERCHANT hereby grants to MSN the right, during normal business hours, to enter any location under MERCHANT's control for the purpose of inspecting, repairing, or replacing rental EQUIPMENT.
14. MERCHANT shall and does hereby agree to indemnify and hold MSN, its agents, employees, successors and assigns harmless from any and all liability, damages or loss (including attorney fees and costs) arising out of the ownership, selection, possession, leasing or renting, operation (regardless of where, how and by whom operated), control, use, condition (including, but not limited to, latent and other defects, whether or not discoverable by MSN) maintenance, delivery and return of the EQUIPMENT. This indemnification and the obligations contained herein shall survive termination or expiration of EQUIPMENT AGREEMENT.
15. MERCHANT shall keep rental EQUIPMENT insured against all risks for not less than replacement costs of rental EQUIPMENT, naming MSN as an additional insured as its interest may appear.
16. If this EQUIPMENT AGREEMENT is terminated, MSN shall have the right to enter MERCHANT's locations for the purpose of recovering rental EQUIPMENT.
17. Neither MERCHANT nor any third party is authorized to make any alterations, repairs or changes including programming changes to rental EQUIPMENT. Any personal property attached to rental EQUIPMENT shall become part of the EQUIPMENT. MSN will provide maintenance service to rental EQUIPMENT during the term of the EQUIPMENT AGREEMENT. MERCHANT shall not allow any other person or entity to maintain or tamper with rental EQUIPMENT without the express written consent of MSN.
18. MERCHANT's rights and remedies hereunder are exclusive and in lieu of all other rights and remedies. MSN shall not otherwise be liable for any error, omission, delay, loss of data or records or disclosure of confidential information which may occur as a result of, or in any way be connected with, any use of EQUIPMENT or services provided by MSN pursuant to this or any other agreement. In any event, MSN'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 aggregate of monthly RENTAL FEES paid to MSN by MERCHANT in the six-month period prior to the incident giving rise to liability. IN NO EVENT SHALL MSN BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSSES OR DAMAGES WERE FORESEEABLE OR MSN WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. MSN is not responsible for any loss or damages whatsoever sustained by MERCHANT arising as a result of any acts of God, strikes, flood, weather, shortages of parts or supplies or other events beyond its reasonable control.
19. MSN, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OF CONTRACT PERTAINING THERETO; THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE; THE ABSENCE OF ANY OBLIGATION BASED ON STRICT LIABILITY IN TORT. UPON SALE OF THE EQUIPMENT TO MERCHANT, MSN HEREBY ASSIGNS, TO THE EXTENT POSSIBLE, ALL WARRANTIES AND RIGHTS OF MSN WITH RESPECT TO THE EQUIPMENT PROVIDED BY THE MANUFACTURER OF THE EQUIPMENT. MSN DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE MANUFACTURER'S WARRANTY.
20. Except as expressly provided herein, MERCHANT may not assign its rights or delegate its responsibilities regarding rental EQUIPMENT under this EQUIPMENT AGREEMENT without the prior written consent of MSN, which will not be unreasonably withheld.

21. This EQUIPMENT AGREEMENT shall be governed by and construed in accordance with the laws of the State of Nebraska. The PARTIES further agree that in the event of any dispute regarding this EQUIPMENT AGREEMENT, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES to this EQUIPMENT AGREEMENT.
22. No delay or failure by either PARTY to exercise any right under EQUIPMENT AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of fact or any other right, unless expressly provided herein.
23. MSN shall not be responsible for the costs incurred by MERCHANT for negotiating or implementing this EQUIPMENT AGREEMENT and MERCHANT shall be responsible for installation of the EQUIPMENT.
24. The obligations of all PARTIES hereto incurred prior to the effective date of termination of EQUIPMENT AGREEMENT shall survive such termination.
25. In the event that any portion of EQUIPMENT AGREEMENT shall be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of the same and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of the same so as to render it valid, reasonable and enforceable.
26. This EQUIPMENT AGREEMENT may only be amended or modified by a subsequent written agreement by and between the PARTIES hereto.
27. MERCHANT hereby represents that the entering into of this EQUIPMENT AGREEMENT has been duly authorized by MERCHANT and that this EQUIPMENT AGREEMENT constitutes a legal, valid and binding obligation of MERCHANT, and is enforceable against MERCHANT in accordance with its terms.
28. This EQUIPMENT AGREEMENT constitutes the entire understandings of the PARTIES as to the subject matter contained herein and supersedes all prior contracts, agreements and negotiations whether oral or written.

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 and 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 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, 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.

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 (ie merchant copy, customer copy);
 - I. authorization code; and
 - J. clear imprint of the CARD unless successfully read by a magnetic stripe reader.
- 3.3 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.
- 3.4 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.
- 3.5 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 and the printed card numbers on the SALES DRAFT 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;
 - 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.
- 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 and MASTERCARD

- 12.1 MERCHANT is required to comply with the specific regulations, as set out in its agreements with ASSOCIATIONS other than VISA and/or MASTERCARD, 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 MASTERCARD or VISA 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 is missing from SALES DRAFT or is 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.

UNIQUE BUSINESS REQUIREMENTS

17. Card Not Present Merchants

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 MERCHANT assumes the risk associated with accepting Card Not Present SALES transactions.
- 17.7 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.
- 17.8 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:
- demonstrate its ability to prevent future loss or theft of account or transaction information; and
 - allow the ASSOCIATIONS, or an acceptable independent third party, to verify this ability by conducting a security review.

18. Vehicle Rental Authorization Procedures

- 18.1 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.
- 18.2 MERCHANT shall record on the SALES DRAFT the date, amount, and all authorization approvals obtained.
- 18.3 MERCHANT shall disclose to cardholder the amount authorized at the time of rental.
- 18.4 Subsequent Authorization:
- 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.
 - 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.

19. Paper Processing Merchants

- 19.1 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.
- 19.2 In the case of a MERCHANT depositing paper drafts, such drafts shall be deposited with FNBO within five (5) days of the SALE date.

20. Express Payment Services ("EPS")

- 20.1 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.

21. Travel and Entertainment ("T&E") Merchants

- 21.1 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.
- 21.2 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.

22. T&E Services

22.1 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

22.2 VISA/MasterCard Priority Check-Out Service

MERCHANT agrees to do the following for VISA transactions:

- A. accept all VISA CARDS;
- B. have cardholder complete, sign, and return a Priority Check-Out Agreement ("Agreement") which includes the cardholder's mailing address;
- C. complete a SALES DRAFT which includes the total SALES amount and the words "Priority Check-Out" on the signature line;
- D. review the completed Agreement and ensure the account number matches the account number on the SALES DRAFT if applicable;
- E. comply with normal Authorization and deposit requirements;
- F. 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
- G. MERCHANT must retain the itemized bill and signed Agreement for a minimum of six (6) months after the transaction date.

MERCHANT agrees to do the following for MasterCard transactions:

- A. accept all MasterCard CARDS;
- B. obtain a card imprint;
- C. 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;"
- D. retain and make available to the acquirer upon request the customer's written request to the merchant for pre-authorization; and
- E. 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.

22.3 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.

22.4 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.

22.5 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;
- 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.

23. Pre-authorized Health Care Transactions

23.1 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.

23.2 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; and
- 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.

23.3 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.

24. Visa Supermarket Program

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

25. Electron Card Program

25.1 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.

26. Automated Fuel Dispenser (“AFD”) Program

- 26.1 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.
- 26.2 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.
- 26.3 A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.
- 26.4 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).
- 26.5 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).
- 26.6 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.
- 26.7 The transaction ratio of CHARGEBACKS to total VISA Interchange for the MERCHANT chain must not exceed an average of .30 percent (0.003%) for the previous six (6) months.
- 26.8 The transaction ratio of fraud to total VISA Interchange for the MERCHANT chain must not exceed an average of .40 percent (0.004%) for the previous six (6) months.
- 26.9 Under no circumstances should the MERCHANT use an arbitrary estimation of the transaction amount to obtain an authorization.
- 26.10 An AFD must not dispense scrip.

27. Recurring Transactions

- 27.1 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.
- 27.2 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.
- 27.3 MERCHANT must retain a copy of the Order Form for the duration of the RECURRING SERVICES and provide it to FNBO upon request.
- 27.4 Upon completion of the SALES DRAFT, MERCHANT should write the words “Recurring Transaction” on the signature line.
- 27.5 When a RECURRING TRANSACTION is renewed, MERCHANT must obtain an updated Order Form (as set out above) from the cardholder.
- 27.6 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.
- 27.7 For RECURRING TRANSACTIONS, MERCHANT must not:
 - A. include partial payment for goods or services purchased in a single transaction;
 - B. include additional finance charges on a RECURRING TRANSACTION;
 - C. complete a RECURRING TRANSACTION if it does not receive an Authorization or if it receives a cancellation notice from the Cardholder; or
 - D. request or use a Cardholder account number for purposes other than as payment for its goods or services.
- 27.8 For RECURRING TRANSACTIONS of varying amounts, the MERCHANT must:
 - A. on the Order Form, allow the cardholder to specify a minimum and a maximum transaction amount to be charged;
 - B. 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;
 - C. allow the cardholder to choose to receive notice in any of the following ways:
 - (1) for every charge
 - (2) when the transaction amount is outside of the specified minimum and maximum amount range
 - (3) when the transaction amount will differ from the most recent charge by more than an agreed upon amount

OPERATIONAL REQUIREMENTS

28. Imprinters

- 28.1 All MERCHANTS must be in possession of a working imprinter, supply of blank SALES DRAFTS and an accurate imprinter plate showing their DBA name, city, state, and FNBO merchant number. In the event that MERCHANT is not in possession of the above equipment, MERCHANT must contact FNBO to obtain such equipment. Failure to use the equipment and supplies listed above will seriously increase MERCHANT’s liability for CHARGEBACKS.

29. Effect of Termination of Processing Agreement

- 29.1 In the event that AGREEMENT is terminated by FNBO for cause, FNBO is required to send to the ASSOCIATIONS the name and address of MERCHANT, and MERCHANT’s principals, for use in the ASSOCIATIONS’ programs to monitor merchants.
- 29.2 FNBO may report information about MERCHANT’s account to credit bureaus. Late payments, missed payments, or other defaults on MERCHANT’s account may be reflected in MERCHANT’s credit report.

THE FOLLOWING APPLY TO ATM/DEBIT SALES ONLY

CARD ACCEPTANCE PROCEDURES

1. Discrimination

- 1.1 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.
- 1.2 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.
- 1.3 MERCHANT may not require or request the cardholder's signature or any other means of verifying the cardholder's identity.
- 1.4 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.
- 1.5 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

- 2.1 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, applicable federal, state and local laws and regulations.
- 2.2 The following information must be included on the SALES DRAFT: CARD account number; MERCHANT's DBA name; MERCHANT's city and state; amount of SALE; and SALE date.
- 2.3 A SALES DRAFT shall be made available to the cardholder at each terminal.
- 2.4 MERCHANT may not require or request the cardholder to divulge the PIN belonging to that cardholder.
- 2.5 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, federal and state laws and regulations.
- 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 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: (i) 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; and
 - B. are available for use whenever open for business; and
 - 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 applicable federal, state and local laws and regulations.

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.

FNBO MISCELLANEOUS PROCEDURES

1. Use of Non-FNBO Terminals and/or software

- 1.1 If MERCHANT elects to use the terminal of third party providers of software (such as a POS or Accounting System Vendors) to capture and transmit to FNBO, MERCHANT must disclose the relationship to FNBO and MERCHANT assumes full responsibility and liability for third party providers failure to comply with the RULES. The third party provider is the source for information regarding authorizations and CHARGEBACKS that may be needed by FNBO. Certain CHARGEBACKS require authorization information to reverse. MERCHANT is responsible to obtain this information from third party provider. FNBO is not liable for SALES that were not received by it.

2. Communication Vendors

- 2.1 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.

3. Effect of Termination of Processing Agreement

- 3.1 In the event that AGREEMENT is terminated by FNBO for cause, FNBO may send the name and address of MERCHANT and MERCHANT's principals for use in the programs that monitor merchants.
- 3.2 In the event that 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.

4. Confidentiality of the MID

- 4.1 MERCHANT is responsible for insuring its Merchant Identification Number ("MID") is kept confidential. When a change to a MERCHANT account is required, MERCHANT shall disclose its MID to the FNBO representative as confirmation that the person requesting the change has authority. If the person requesting the change discloses the proper MID, FNBO shall assume that person has the proper authority to make the change. MERCHANT shall be fully liable for any changes to its account after disclosure of the MID. FNBO may request from MERCHANT additional information to further verify MERCHANT's identity.

5. CompletePay®

- 5.1 The CompletePay® Service allows MERCHANT to convert at the POS, MERCHANT's customer ("CUSTOMER") check payments to electronic funds transfer transactions and may include one or more of the following service types:
- A. Conversion Only – The transaction is approved or declined with no CUSTOMER Demand Deposit Account ("DDA") account verification processing. MERCHANT shall retain and bear all risk of loss associated with this service.
 - B. Verification with Conversion – The authorization request message is routed to the participating drawee bank or a third-party authorizing agent for verification of the probability that the transaction will be paid, based on information available at the time of the request. The authorizing agent makes an accept or decline decision based on access to the CUSTOMER DDA account and/or a third-party risk management database. MERCHANT shall retain and bear all risk of loss associated with this Service.
 - C. Guarantee with Conversion – The authorization request message is routed to the participating drawee bank or a third-party authorizing agent ("GUARANTOR") in order for the GUARANTOR to make an accept or decline decision, based on access to the CUSTOMER DDA account and/or a third-party risk management database. The GUARANTOR buys the accepted transaction from the MERCHANT at a specific discount and then bears all risk of loss associated with said accepted transaction.
- 5.2 Subscription to this service does not grant MERCHANT any proprietary rights with regard to the processes, procedures, documentation, hardware, software, equipment or other property used in connection with the service.
- 5.3 MERCHANT agrees to comply with all RULES, including VISA's rules and regulations, and all federal, state, and local laws, including but not limited to, the National Automated Clearing House Association ("NACHA") regulations, as may be amended from time to time, regarding this service. MERCHANT acknowledges that the AGREEMENT may be terminated for failure to comply with federal, state, and local laws or the RULES.
- 5.4 This Service may be discontinued at any time on thirty (30) days notice to MERCHANT by FNBO. If this service is no longer offered by VISA, notice of discontinuance may be less than thirty (30) days. If in the opinion of FNBO information received or discovered about MERCHANT is incorrect, FNBO may terminate the service or the AGREEMENT immediately.
- 5.5 MERCHANT is liable for payment of all transactions returned to FNBO as not collectable through the ACH system (each a "FATAL ITEM").

- 5.6 MERCHANT or CUSTOMER will at the POS swipe CUSTOMER'S check through a terminal and enter the required information at the terminal keypad. MERCHANT will stamp the CUSTOMER'S check with a legend voiding the check. MERCHANT will print a sales draft receipt containing the required information regarding the transaction and an authorization authorizing the origination of the electronic fund transfer payment to the MERCHANT. MERCHANT will obtain CUSTOMER'S signature on the receipt/authorization and provide the CUSTOMER with a copy of the signed receipt/authorization along with the voided check.
- 5.7 CUSTOMER may be charged a check service fee ("COLLECTION FEE") for a POS check transaction that has been refused payment by the CUSTOMER'S bank. MERCHANT must obtain CUSTOMER'S written authorization for applicable COLLECTION FEES at the POS. MERCHANT shall obtain required authorization by the authorization language approved by FNBO on the CUSTOMER receipt and by securing CUSTOMER'S signature on same.
- 5.8 MERCHANT must retain all CUSTOMER authorizations for a period of two (2) years or as required by federal or state law or regulations. MERCHANT acknowledges that FNBO may request a copy of the retained CUSTOMER authorizations and agrees to fax or mail a copy of such requested authorizations to FNBO within twenty-four (24) hours of request by FNBO.
- 5.9 If MERCHANT is participating in the check guarantee service, MERCHANT must also adhere to and follow the GUARANTOR'S rules and regulations including rules and regulations regarding fraudulent transactions or the transaction will be designated an ineligible transaction and returned without Guarantee and MERCHANT shall bear all risk of loss on that transaction. Said rules and regulations include, but are not limited to, the following:
- A. In order for a check to be eligible for Guarantee with Conversion, the check must meet the following requirements:
1. The check must be imaged.
 2. The check must be a first-party, personal check.
 3. The CUSTOMER's name must be imprinted on the check by the manufacturer.
 4. The check must be presented by the CUSTOMER whose name is imprinted on the check.
 5. Prior to imaging, CUSTOMER's complete residence address and residence phone number (including area code) must be imprinted or legibly written on the check. Residence must be in the U.S. If imprinted address is a P.O. Box, general delivery, APO, FPO, etc., the street address as indicated on the CUSTOMER's ID must be legibly written on the check.
 6. The check must be drawn on a U.S. bank or other U.S. financial institution.
 7. The check must not exceed the guarantee limit.
- B. Guarantee Conditions. MERCHANT acknowledges and agrees that if any of the following conditions exist, upon the receipt of a return by GUARANTOR such return will be considered an ineligible return, and BANK has the right to charge the MERCHANT back:
1. The check does not meet all the requirements set forth herein and all other provisions of this AMENDMENT.
 2. The check did not receive an approval response when processed as a Guarantee with Conversion transaction at the point of purchase.
 3. GUARANTOR did not receive an image of the check, and MERCHANT was unable to provide an image when requested to do so by FNBO.
 4. CUSTOMER did not sign the sales authorization at the point of purchase.
 5. Check was returned for return code R08 (stop payment), R37 (duplicate source) and R29 (corporate customer advises not authorized).
 6. Check was for cash back to CUSTOMER that exceeded the cash back limit authorized for MERCHANT.
 7. GUARANTOR can provide documentation of MERCHANT fraud, or MERCHANT error. MERCHANT fraud includes, but is not limited to, processing of multiple checks for a single purchase in an attempt to circumvent the Guarantee Limit.
 8. If a copy of a sales authorization requested by FNBO must be received within the required time frame.
 9. CUSTOMER provides documentation that MERCHANT has received full or partial payment on an eligible return.
- C. MERCHANT assigns, transfers, and conveys to GUARANTOR all rights, title and interests, including the right to collect and retain returned check service charges from the CUSTOMER, on all eligible returns for which MERCHANT was funded, pursuant to the terms and conditions of this AMENDMENT.
- 5.10 MERCHANT shall not sell or disclose to third parties any information related to the Service transactions including, but not limited to, database or files containing customer account numbers, CUSTOMER's personal information, other transaction information, CUSTOMER DDA account information, driver's license number, telephone number, or Social Security Number except for the purpose of completing a transaction or as specifically required by law. **MERCHANT DOES NOT HAVE THE RIGHT TO USE CUSTOMER DATA FOR ANY PURPOSE OTHER THAN TO SUPPORT THE SERVICE ITSELF.** MERCHANT shall treat all Service documents as confidential and proprietary information and protect it with the same degree of care as it would protect its own confidential and proprietary information. Such documents shall be disclosed only to employees of the MERCHANT with a specific need to know, and shall be disclosed only to the extent required to conform to the Operating Principles and Rules. This information must be destroyed or returned to FNBO upon discontinuation of the Services.
- 5.11 MERCHANT must only accept and convert personal checks for payment for a purchase. The CUSTOMER must be present at the time of conversion. Conversion transactions cannot be manually entered.
- 5.12 MERCHANT must not convert or attempt to convert checks which are:
- A. Associated with Card Not Present transactions;
 - B. Checks which do not contain a preprinted serial number;
 - C. Checks which have been previously negotiated;
 - D. Checks which have been voided in connection with another conversion;
 - E. Convenience checks, travelers checks, cashier's checks, money orders;
 - F. Corporate checks;
 - G. Federal Reserve Checks;

- H. Federal Home Loan Bank checks;
 - I. Government checks;
 - J. Third party checks;
 - K. U.S. Treasury Checks; or
 - L. Checks payable in a medium other than U.S. Currency.
- 5.13 MERCHANT shall be responsible for having the necessary hardware and software to implement this Service.
- 5.14 MERCHANT must promptly honor all CUSTOMER requests not prohibited for use of the Service.
- 5.15 If MERCHANT allows CUSTOMERS to initiate cashback transactions, it must establish minimum and maximum cashback amounts. MERCHANT must also transmit in its transaction message the amount of cashback given to the CUSTOMER. CUSTOMER may be charged a FATAL ITEM FEE.
- 5.16 MERCHANT is liable for all FATAL ITEMS associated with the Service.
- 5.17 MERCHANT must submit only real-time transactions for authorization at the POS. No batch transactions are allowed.
- 5.18 MERCHANT cannot initiate merchandise returns through this Service. Returns must be handled outside the Service by direct negotiation between the MERCHANT and CUSTOMER.
- 5.19 Any attempts by MERCHANT to deposit declined checks or checks that were not acceptable through the Service, shall be at MERCHANT's risk and MERCHANT shall be liable for any costs or losses associated with same.
- 5.20 In addition to any indemnity obligation already set out in the AGREEMENT, MERCHANT agrees to indemnify and hold harmless FNBO, GUARANTOR, and Vendors 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 applicable federal, state, or local laws, regulations, or the RULES, or the rights of another person. FNBO, GUARANTOR, or Vendors may defend on their own any such claims or demands or request MERCHANT to take up such defense. In either event MERCHANT will further indemnify FNBO, GUARANTOR, and Vendors for reasonable attorney's fees or any other necessary expenses incurred by reason of such defense.

6. First InfoCenter®

- 6.1 MERCHANT may not access First InfoCenter® ("FIC") without the express written consent of FNBO.
- 6.2 FIC displays information related to the MERCHANT'S transaction processing activity between the MERCHANT and FNBO via a web interface.
- 6.3 FNBO will provide MERCHANT access to FIC for the person(s) listed in the FIC Access Application form(s) signed and submitted by MERCHANT. Access will be provided through a web site designated by FNBO. MERCHANT agrees to pay all FEES associated with the FIC product as stated in the completed and signed FIC Access Application form(s). The PARTIES agree that any completed and signed FIC Access Application form which is submitted shall be fully incorporated and made part of the AGREEMENT.
- 6.4 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.
- 6.5 Information is encrypted by Secure Sockets Layer (SSL) technology. FNBO has made reasonable efforts to secure information, but does not guarantee security. MERCHANT is responsible for protecting access to FIC. Access to and use of password protected areas of FIC are restricted to authorized users only. It is the MERCHANT's obligation to immediately notify FNBO if its PIN has been lost or stolen or if there has been unauthorized access.
- 6.6 MERCHANT may terminate the use of FIC Web Site or any authorized user of the website by providing FNBO with written notification of said termination. The PARTIES agree that said written termination(s) shall be fully incorporated and made part of the AGREEMENT. MERCHANT is fully responsible for terminating MERCHANT employee access. FNBO may terminate MERCHANT access to the FIC web site immediately upon notice to MERCHANT and said termination(s) shall be incorporated into the AGREEMENT.
- 6.7 FNBO is not liable for any direct, indirect, incidental, consequential, or special damages arising out of or in any way connected with access to or use of FIC, even if FNBO has been advised of the possibility of such damages, including liability associated with any viruses which may infect MERCHANT's computer(s).
- 6.8 THE SERVICE AND CONTENT FROM OR THROUGH FIC ARE PROVIDED "AS IS," "AS AVAILABLE," AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED (INCLUDING BUT NOT LIMITED TO THE DISCLAIMER OF ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE). THE INFORMATION HEREIN MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. FNBO ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT CONTAINED ON THIS SITE.
- 6.9 MERCHANT's access to and use of FIC is subject to all applicable federal, state, and local laws and regulations, as well as, all ASSOCIATIONS' rules and regulations. FNBO reserves the right to seek all remedies available at law and in equity for violations of the AGREEMENT or any other applicable law, rule or regulation, including the right to block access from a particular Internet address to the designated web site.

ADDENDUM TO THE MERCHANT TRANSACTION PROCESSING AGREEMENT

THIS Addendum ("ADDENDUM") is by and between FIRST NATIONAL BANK OF OMAHA ("FNBO") and MERCHANT, the name of which is set out in the Merchant Transaction Processing Agreement.

WHEREAS, FNBO 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 delete Section 3.13 of the AGREEMENT and replace it in its entirety with the following:
 - 3.13 If AGREEMENT is terminated early either during the INITIAL TERM or any RENEWAL TERM for any reason other than set out in paragraph 5.1, 5.2.a or 5.2.b, MERCHANT agrees to pay FNBO an early termination fee ("EARLY TERMINATION FEE") as outlined below. MERCHANT agrees that the EARLY TERMINATION FEE is a compensatory payment and is a reasonable estimation of the actual damages which FNBO would suffer if FNBO were to fail to receive the processing business for the Term. The EARLY TERMINATION FEE amount shall be determined as follows: if the AGREEMENT is terminated within the first twelve months of the AGREEMENT, MERCHANT agrees to pay 100% of the average monthly billing (based on the most recent twelve months or as stated on the application if twelve months is not present) times the total number of months left on the AGREEMENT. If terminated after the first twelve months, MERCHANT agrees to pay 50% of the average monthly billing to date times the total number of months left on the AGREEMENT. At no time will the EARLY TERMINATION FEE assessed be less than \$250. MERCHANT agrees that the EARLY TERMINATION FEE shall also be due if MERCHANT discontinues submitting SALES for processing during the INITIAL TERM or any RENEWAL TERM of the AGREEMENT.
3. The PARTIES agree to add the following to Section 12:

MSN Merchant Marketing Inc. d/b/a Merchant Services Network 3031 Fortune Way, Wellington, FL 33414
4. The PARTIES agree to add the following to the Merchant Application:

At MERCHANT's request, certain additional services may be provided, and charged to MERCHANT pursuant to Section 3 of the AGREEMENT. In addition, a charge of twenty-five dollars (\$25) will be incurred for each of the following services: the shipping and handling of replacement equipment; receipt of a returned ACH item; or a requested change made to the merchant account (such as a change in bank account information, location address, or billing address).
5. 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.
6. Except as amended hereby, FNBO and MERCHANT reaffirm the obligations of each as they are contained in the AGREEMENT.

VOYAGER FLEET CARD AGREEMENT

This Voyager Fleet Card Agreement (together with its addenda, attachments, and schedules shall be hereinafter known as the "VOYAGER AGREEMENT"), by and between First National Bank of Omaha ("FNBO") and MERCHANT, the name of which is set out in the Voyager Application, and shall become effective on the date in the signature block of the Voyager Application.

- A. WHEREAS, MERCHANT, in furtherance of its business operations, wishes to accept Voyager Fleet Cards ("VOYAGER CARDS") and also wishes to have FNBO process the resulting transactions ("VOYAGER SALES") pursuant to the terms, conditions and rules set out below;
- B. WHEREAS, FNBO wishes to process said VOYAGER SALES; and
- C. WHEREAS, FNBO and Voyager Fleet Systems, Inc. ("VFSI") each have adopted rules and regulations relating to all aspects of VOYAGER SALES processing. Such rules and regulations, as amended from time to time, are incorporated by this reference herein and shall be referred to as the "VOYAGER RULES." The current VOYAGER RULES are attached hereto and fully incorporated herein by this reference.

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 VOYAGER SALES for processing to FNBO, FNBO will process such VOYAGER SALES and credit or debit MERCHANT'S DESIGNATED ACCOUNT (as defined herein) with the resulting financial proceeds of such VOYAGER 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 VFSI in accordance with the VOYAGER RULES. FNBO is not responsible for the outcome of any CHARGEBACK.
- 1.2 MERCHANT agrees that this AGREEMENT is confidential and will not disclose it to any third party without the prior written consent to FNBO.
- 1.3 MERCHANT shall comply with the VOYAGER RULES and additional VOYAGER RULES, which may be supplied from time to time.
- 1.4 FNBO reserves the right to amend the VOYAGER RULES at any time. Submission by MERCHANT of VOYAGER SALES at any time after seven (7) days from the date of distribution of amended VOYAGER RULES to MERCHANT'S address for processing statements, shall be evidence that MERCHANT has received the amended VOYAGER RULES and has agreed to abide by them.
- 1.5 MERCHANT agrees that this VOYAGER AGREEMENT is confidential and will not disclose it to any third party without the prior written consent of FNBO. MERCHANT agrees not to disclose any cardholder account information or other personal information or other transaction information except to MERCHANT's agents to assist in completing a transaction or as required by law. MERCHANT agrees to maintain all systems containing account, cardholder, or transaction information in a secure manner to ensure such information is not disclosed or misused.

- 1.6 Submission by MERCHANT of VOYAGER SALES at any time after seven (7) days from the date of distribution of amended VOYAGER RULES to MERCHANT'S address for processing statements, shall be evidence that MERCHANT has received the amended VOYAGER RULES and has agreed to abide by them.

2. TERM OF VOYAGER AGREEMENT:

- 2.1 This VOYAGER AGREEMENT shall run concurrent with the term of the MERCHANT's Merchant Transaction Processing Agreement for Visa and MasterCard processing.

3. PAYMENT OF SUMS:

- 3.1 MERCHANT agrees to pay FNBO the fees as set forth in this AGREEMENT. MERCHANT further agrees to pay all other sums owed to FNBO ("VOYAGER FEES") associated with VOYAGER SALES. MERCHANT agrees that it is jointly and severally liable for all VOYAGER FEES, charges, and other sums owed to FNBO by any affiliated entities of MERCHANT.
- 3.2 MERCHANT agrees that FEES not listed in the VOYAGER AGREEMENT will be charged at FNBO's current rate.
- 3.3 The FEES may be amended by FNBO on thirty (30) days written notice to MERCHANT unless provided otherwise herein.
- 3.4 MERCHANT agrees to pay FNBO for CHARGEBACKS. MERCHANT understands that FNBO is in no way financially responsible for CHARGEBACKS. MERCHANT'S obligation to pay CHARGEBACKS shall survive the termination or expiration of VOYAGER AGREEMENT.
- 3.5 If VFSI should levy a fine or penalty or assess a charge to FNBO as a result of MERCHANT's VOYAGER SALES or CHARGEBACK activity, MERCHANT agrees to pay such fines, penalties, or charges, and any administrative fees associated with same.
- 3.6 MERCHANT shall establish a designated account at the institution of its choice ("DESIGNATED ACCOUNT") for the credit and debit of sums between the parties pursuant to the Funds Transfer Instructions set out in MERCHANT's Merchant Transaction Processing Agreement for Visa and MasterCard processing. MERCHANT agrees to maintain a positive balance in the DESIGNATED ACCOUNT and to deposit funds so that the balance required by FNBO is maintained. If AGREEMENT is terminated for any reason, the DESIGNATED ACCOUNT shall be maintained for a minimum period of six months in order to secure the obligations of MERCHANT unless otherwise agreed by the PARTIES. 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.
- 3.7 MERCHANT agrees not to pledge or assign the DESIGNATED ACCOUNT, any proceeds of it or any other amounts due FNBO under this VOYAGER AGREEMENT to any person or entity and MERCHANT shall continually maintain the DESIGNATED ACCOUNT free from all liens and encumbrances. In the event a SECURITY DEPOSIT, as defined below, is established MERCHANT authorizes FNBO to make withdrawals from the DESIGNATED ACCOUNT to replenish the SECURITY DEPOSIT as necessary.
- 3.8 MERCHANT agrees to provide FNBO with a deposit in the amount of money required by FNBO ("SECURITY DEPOSIT"), if necessary: (i) at the time this VOYAGER AGREEMENT is executed or (ii) at any time during the term of this VOYAGER AGREEMENT.
- 3.9 FNBO agrees to pay MERCHANT for SALES less FEES owed to FNBO by MERCHANT. FNBO shall deduct FEES from incoming transactions or debit the same from MERCHANT's DESIGNATED ACCOUNT. FNBO is not obligated to pay MERCHANT or credit the DESIGNATED ACCOUNT for any VOYAGER SALES transmitted or delivered to FNBO after MERCHANT becomes insolvent, ceases to do business, or dissolves.
- 3.10 FNBO has the right of recoupment and set-off. This means that FNBO may 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 VOYAGER AGREEMENT or any other agreement. MERCHANT agrees that if MERCHANT files for bankruptcy, and to create adequate protection under Bankruptcy Code section 362 for FNBO, MERCHANT must create or maintain the SECURITY DEPOSIT as required by FNBO, and FNBO may offset against the SECURITY DEPOSIT for any and all obligations which MERCHANT may owe to FNBO, without regard to whether the obligations relate to VOYAGER SALES or SERVICES initiated or created before or after the filing of the bankruptcy petition.
- 3.11 If AGREEMENT is terminated early for any reason other than set out in paragraph 4.1, 4.2.1 or 4.2.2, MERCHANT agrees to pay FNBO an early termination fee ("EARLY TERMINATION FEE") of two hundred fifty dollars (\$250.00) per Merchant Identification Number ("MID"). MERCHANT agrees that the EARLY TERMINATION FEE shall also be due to FNBO if MERCHANT discontinues submitting VOYAGER SALES for processing during this AGREEMENT TERM.
- 3.12 If MERCHANT breaches VOYAGER AGREEMENT or if FNBO identifies suspicious or irregular activity related to VOYAGER SALES, FNBO may refuse to process VOYAGER SALES and/or may hold funds pending the cure of such breach or resolution of such activity.
- 3.13 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.
- 3.14 If this AGREEMENT is terminated, MERCHANT shall pay FNBO all fees associated with deconversion. Deconversion means FNBO's assistance in moving MERCHANT to a new processor. Deconversion costs include but are not limited to customer service or technical support during the period of deconversion, communication costs, and attorney's fees of FNBO's counsel.
- 3.15 If FNBO takes any action against MERCHANT to collect any VOYAGER 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.
- 3.16 FNBO has the right, at any time during the term of this VOYAGER AGREEMENT, to hold MERCHANT'S funds in order to establish a reserve in an amount necessary to ensure payment of all amounts due to FNBO; and/or, in an amount necessary to pay government entities which are attempting to collect from FNBO, or its parent, taxes due by MERCHANT associated with the use of VOYAGER CARDS at MERCHANT'S location(s). MERCHANT agrees that FNBO shall have the right to remit said tax amounts to said government entities regardless of whether such amounts are in dispute between the government entity and MERCHANT. MERCHANT shall hold FNBO harmless for said remittance, pursuant to paragraph 8.2 of this VOYAGER AGREEMENT.

3.17 If MERCHANT has been approved for Visa and MasterCard processing the following section does not apply. MERCHANT agrees that if it has only been approved to process VOYAGER SALES and has not applied for nor been approved to process Visa or MasterCard transactions, it is strictly prohibited from processing Visa and MasterCard transactions without further application and approval. If MERCHANT violates this provision and processes Visa or MasterCard transactions, MERCHANT will assume full liability for CHARGEBACKS and any fees on such transactions. Such CHARGEBACKS shall be deducted from the DESIGNATED ACCOUNT. MERCHANT further agrees to pay a Visa/MasterCard DISCOUNT RATE of ten percent (10%) per transaction and any other additional costs of processing these transactions. FNBO reserves the right to: (1) terminate this VOYAGER AGREEMENT; (2) refuse to process Visa or MasterCard transactions, and/or (3) hold all funds associated with such transaction(s) for one hundred and eighty (180) days to ensure payment for all CHARGEBACKS and/or fees.

4. TERMINATION OF VOYAGER AGREEMENT:

- 4.1 This VOYAGER AGREEMENT may be terminated by FNBO at any time effective upon thirty (30) days written notice.
- 4.2 MERCHANT may terminate this AGREEMENT as follows:
- 4.2.1 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; or
- 4.2.2 upon written notice of non-renewal at least thirty (30) days prior to the commencement of any RENEWAL TERM.
- 4.2.3 On thirty (30) days notice of termination accompanied by payment to FNBO of the EARLY TERMINATION FEE.
- 4.3 In order to protect FNBO AND VFSI, FNBO may terminate this AGREEMENT effective immediately for any of the following reasons:
- 4.3.1 insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of MERCHANT's assets for the benefit of MERCHANT's property creditors, or 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;
- 4.3.2 if MERCHANT fails to pay any VOYAGER FEES when due;
- 4.3.3 if MERCHANT has misrepresented or omitted any material information provided to;
- 4.3.4 if MERCHANT is in breach of the VOYAGER AGREEMENT or the RULES;
- 4.3.5 if MERCHANT, after FNBO's request, fails to send copies of VOYAGER SALES DRAFTS to FNBO;
- 4.3.6 if MERCHANT submits for processing VOYAGER SALES that were not originated as a result of a direct VOYAGER SALE transaction between a cardholder and MERCHANT in the normal course of business ("LAUNDERING");
- 4.3.7 if the number of CHARGEBACKS experienced by MERCHANT in any one (1) month exceeds one percent (1%) of the number of VOYAGER SALES in that or any prior month;
- 4.3.8 in the event the MERCHANT, its principal, or associated parties are identified under any program designed to monitor merchants; or
- 4.3.9 if MERCHANT is inactive for ninety (90) days and is not a seasonal MERCHANT.
- 4.4 Upon the notice of termination or expiration of the VOYAGER AGREEMENT, FNBO is entitled to retain sufficient funds to cover anticipated VOYAGER FEES. If there is not enough money retained to cover the anticipated VOYAGER FEES, FNBO may require MERCHANT to remit additional funds. This sum will be retained by FNBO for a period of one hundred eighty (180) days from the date of the last VOYAGER SALE processed by MERCHANT, plus the period of any warranty or guarantee on goods and/or services sold by MERCHANT and processed as VOYAGER SALES under VOYAGER AGREEMENT. VOYAGER FEES due to FNBO received during this period will be debited from this sum. At the end of the period defined above, FNBO will release to MERCHANT the balance of the sums retained net any FEES that are then being processed or disputed.

5. BANKRUPTCY:

- 5.1 It is not the intention of the PARTIES that FNBO remain obligated to continue processing VOYAGER SALES 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.
- 5.2 Credits to MERCHANT's DESIGNATED ACCOUNT and other payments to MERCHANT are provisional. The PARTIES acknowledge the VOYAGER 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, setoff, lien, and security interest rights of FNBO under this AGREEMENT without regard to whether such CHARGEBACKS, setoff, lien, and/or security interest rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

6. INFORMATION AND DOCUMENTATION:

- 6.1 MERCHANT agrees to comply with all requests for information and documentation regarding VOYAGER SALES and the VOYAGER CARDS utilized in processing such VOYAGER SALES under VOYAGER AGREEMENT within the time period stated by FNBO in its request.
- 6.2 Upon FNBO's request, MERCHANT shall provide FNBO with current financial statements in a format acceptable to FNBO.
- 6.3 MERCHANT and its signing officer/owner/partner authorizes 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 VOYAGER AGREEMENT. MERCHANT authorizes parties contacted by FNBO or any of its affiliates, in relation to this VOYAGER AGREEMENT, to release the credit information requested by FNBO or any affiliate.
- 6.4 If in the opinion of FNBO, information received or discovered about MERCHANT reflects an adverse change in status, or in the event that any information requested by FNBO is not received, FNBO may withhold the payment for VOYAGER SALES or require a reserve of funds be deposited in an account at FNBO with the deposit established to cover MERCHANT's obligations under AGREEMENT.

- 6.5 MERCHANT is supplied with monthly reports by FNBO regarding MERCHANT's VOYAGER SALES 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.
- 6.6 MERCHANT will notify FNBO immediately of any change in ownership, Corporate or "DBA" name, location address, or the information contained on MERCHANT's imprinter plates.

7. PROCESSING RESTRICTIONS:

- 7.1 MERCHANT agrees that FNBO is not responsible for and is not able to provide customer service for the 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 VOYAGER SALES received by FNBO, and any third party is responsible for ensuring VOYAGER SALES are formatted and transmitted to FNBO in accordance with the then current requirements of FNBO AND VFSI. FNBO may increase VOYAGER FEES if a third party presents VOYAGER SALES transactions not in accordance with the then current requirements. MERCHANT assumes full responsibility and liability for third party providers' failure to comply with the VOYAGER RULES. MERCHANT is responsible for obtaining from the third party provider any information needed by FNBO.
- 7.2 If actual monthly VOYAGER SALES volume substantially exceeds the projected annual VOYAGER SALES volume as provided in the Merchant Fleet Application and prorated to one month, FNBO may, at its option, do one or more of the following: (i) refuse to process VOYAGER SALES in excess of such sum; (ii) process such VOYAGER SALES and retain the proceeds of such VOYAGER SALES until the next month and release such sums to MERCHANT at that time counting this volume as VOYAGER SALES volume for that month; (iii) terminate VOYAGER AGREEMENT; and/or (iv) amend the VOYAGER 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 herein
- 7.3 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 transaction information to third parties. MERCHANT shall either (i) return this information to FNBO or (ii) provide acceptable proof of destruction of this information to FNBO.

8. USE OF INTERNET AND/OR SYSTEM INTEGRATORS:

- 8.1 If MERCHANT accepts VOYAGER 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 VOYAGER SALES associated with this VOYAGER 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.
- 8.2 MERCHANT shall be responsible for obtaining and contracting with any third party service provider(s), payment engine(s), payment gateway(s), and/or any other internet service provider(s) and/or system integrators. MERCHANT shall ensure that said third parties appropriately format and transmit SALES to FNBO in accordance with the then current VOYAGER RULES and requirements.
- 8.3 MERCHANT agrees that FNBO is not responsible for any services or equipment provided by any third party with which MERCHANT has contracted.
- 8.4 MERCHANT shall assume full liability and shall indemnify and hold FNBO and VSFI 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 VOYAGER RULES.

9. TAX CALCULATION, PAYMENT, AND INDEMNITIES:

- 9.1 MERCHANT shall be liable for the reporting, calculating, remittance and/or payment of tax, interest and penalties associated with the use of VOYAGER CARDS at its location(s). FNBO shall not be liable for and MERCHANT agrees to indemnify and hold harmless FNBO, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of tax associated with this VOYAGER AGREEMENT and the use of the VOYAGER CARD at MERCHANT'S location(s). FNBO 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 for reasonable attorney's fees or any other necessary expenses incurred by FNBO by reason of such defense.
- 9.2 For tax calculation purposes, MERCHANT shall be required to sign the Registration Form attached hereto and fully incorporated herein by this reference. Receipt of such signed registration form is a condition precedent to this VOYAGER AGREEMENT and must be received prior to acceptance of any VOYAGER CARDS by MERCHANT.

10. VOYAGER DISCOUNT PROGRAM, DISCOUNT PAYMENT, AND INDEMNITIES:

- 10.1 MERCHANT shall immediately notify FNBO in writing if MERCHANT is participating in a Voyager Discount Program. FNBO will begin processing the discount 60 days from the date FNBO receives written notice of participation.
- 10.2 MERCHANT shall be liable for the reporting, calculating, remittance, or payment of the discount. FNBO shall not be liable for and MERCHANT agrees to indemnify and hold harmless FNBO, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of the discount. FNBO 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 for reasonable attorney's fees or any other necessary expenses incurred by FNBO by reason of such defense.

11. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES:

- 11.1 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, loss of data or records or disclosure of confidential information, which may occur as a result of, or in any way be connected with this VOYAGER AGREEMENT. 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 aggregate of monthly VOYAGER FEES paid to FNBO by MERCHANT in the six-month period prior to the incident giving rise to liability. IN NO EVENT SHALL FNBO BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, 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.
- 11.2 FNBO SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF OR RELATED TO THIS VOYAGER AGREEMENT. THIS VOYAGER AGREEMENT IS A SERVICE AGREEMENT AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY TO IT.

12. WARRANTIES AND INDEMNITIES:

- 12.1 MERCHANT understands that FNBO merely provides processing services for VOYAGER SALES and is neither a partner in MERCHANT's business operations nor a guarantor of the receipt by MERCHANT of the proceeds of VOYAGER SALES. Furthermore, FNBO does not guarantee that VOYAGER SALES will not be subject to CHARGEBACKS.
- 12.2 MERCHANT warrants that it has not been terminated from depositing SALES with any other credit card transaction processor.
- 12.3 MERCHANT warrants that at the time of depositing VOYAGER 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 VOYAGER SALES under VOYAGER AGREEMENT; (ii) it has no knowledge of any fact that would impair the collectability of the VOYAGER SALES; and (iii) that the VOYAGER 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.
- 12.4 MERCHANT agrees to indemnify and hold harmless FNBO, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of any breach by MERCHANT of the terms of this VOYAGER AGREEMENT or arising from any act or omission by MERCHANT which violates any applicable federal, state, or local laws, regulations, or the VOYAGER RULES. FNBO 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 for reasonable attorney's fees or any other necessary expenses incurred by FNBO by reason of such defense.
- 12.5 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).

13. NOTICES:

- 13.1 All notices required under this VOYAGER AGREEMENT shall be written notices effective, unless otherwise stated in VOYAGER 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.
- 13.2 All notices shall be sent to the following addresses:

<u>If to FNBO:</u> First National Merchant Solutions Attn: Legal Department 1620 Dodge Street, Stop 3231 Omaha, NE 68197-3231	<u>If to MERCHANT:</u> At the address set out herein or such alternative address as designated in writing by MERCHANT.
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- 13.3 Either PARTY may designate alternate addresses by giving the other fourteen (14) days written notice of the change in address.

14. MISCELLANEOUS:

- 14.1 FNBO may, from time to time, delegate duties under VOYAGER AGREEMENT without giving notice to MERCHANT, provided, however, that FNBO will remain liable to MERCHANT for any obligations existing under AGREEMENT. Except as expressly provided in VOYAGER AGREEMENT, MERCHANT may not assign its rights or delegate its responsibilities under this VOYAGER AGREEMENT without the prior written consent of FNBO.
- 14.2 This VOYAGER AGREEMENT shall be governed by and construed in accordance with the laws of the State of Nebraska. The PARTIES also agree, in the event of any dispute regarding this AGREEMENT, the courts of the State of Nebraska shall have and be vested with personal jurisdiction over the PARTIES.
- 14.3 No delay or failure by either PARTY to exercise any right under VOYAGER 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 VOYAGER AGREEMENT.
- 14.4 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.
- 14.5 This VOYAGER 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.
- 14.6 FNBO shall not be responsible for the costs incurred by MERCHANT in negotiating or implementing this AGREEMENT.
- 14.7 The obligations of all PARTIES incurred prior to the effective date of termination of VOYAGER AGREEMENT will survive the termination of VOYAGER AGREEMENT. If that any portion of VOYAGER 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 VOYAGER AGREEMENT so as to render it valid, reasonable and enforceable.

- 14.8 This VOYAGER AGREEMENT may be amended or modified by FNBO effective upon thirty (30) days written notice.
- 14.9 By signing the VOYAGER AGREEMENT, MERCHANT represents that it has the full legal power and authority to enter into performance obligations under the VOYAGER AGREEMENT. MERCHANT also represents that the entering into of this VOYAGER AGREEMENT has been duly authorized by MERCHANT; the signer is a duly authorized signatory for the MERCHANT; this VOYAGER AGREEMENT constitutes a legal, valid, and binding obligation of MERCHANT; and is enforceable against MERCHANT in accordance with its terms.
- 14.10 If MERCHANT is using a Member Service Provider's terminal, (i.e. dial terminal or equivalent sales capture device), 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.
- 14.11 For security reasons, MERCHANT must disclose its MID thereby authorizing FNBO to make changes to its account. 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.
- 14.12 MERCHANT authorizes FNBO to release information contained in the VOYAGER AGREEMENT to third parties that provide services to FNBO or MERCHANT.
- 14.13 MERCHANT authorizes FNBO to disclose information to any third party that requests and has a reason to know such information.
- 14.14 MERCHANT understands the VOYAGER 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 the VOYAGER AGREEMENT, MERCHANT shall notify FNBO at the address set out in the VOYAGER AGREEMENT. MERCHANT must pay FNBO regardless of any disputes it has with any Member Service Provider.
- 14.15 This VOYAGER AGREEMENT shall be effective when signed in counterpart and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.
- 14.16 MERCHANT understands and agrees that any telephone conversation between MERCHANT and FNBO may be monitored and recorded.
- 14.17 This AGREEMENT shall not become a binding VOYAGER 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 programs designed to monitor merchants.

VOYAGER RULES

1. MERCHANT shall honor all valid VOYAGER CARDS for purchases under the terms, conditions and VOYAGER RULES contained in this AGREEMENT. MERCHANT shall check the expiration date and any printed restrictions for both electronic and manual transactions.
2. MERCHANT shall obtain a valid authorization for each transaction. MERCHANT shall bear all risks of accepting a VOYAGER CARD without obtaining a valid authorization. If MERCHANT receives a decline, the VOYAGER CARD shall not be used to complete the SALE. There shall be a \$0.00 floor limit for all electronic transactions.
3. For customer-activated terminals, MERCHANT shall pre-authorize the VOYAGER CARD to VFSI with values indicating that the VOYAGER SALE is a customer-activated sale. Upon approval, MERCHANT shall insure that the fuel dispenser authorizes for up to \$50.00. It is the responsibility of MERCHANT to find a third party processor or system integrator that is certified by VFSI to process VOYAGER transactions.
4. MERCHANT shall insure that all cashier-assisted electronic VOYAGER SALES drafts and credit vouchers shall be completed to include POS terminal print showing the VOYAGER CARD account name encoded in mag-strip (if POS function is applicable), account number, sub number, expiration date of the VOYAGER CARD, the signature of the authorized user, the transaction date and time, type of fuel sold, a description of the service rendered (if requested), odometer reading (as permitted by the electronic POS device), total VOYAGER SALE price, and the authorization number.
5. MERCHANT shall provide a copy of the VOYAGER SALES draft or receipt and credit vouchers to the VOYAGER cardholder at the time of the VOYAGER SALE or return. A copy of the VOYAGER SALES draft shall be retained by MERCHANT for a period of six (6) months from the date of purchase. MERCHANT shall provide copies of these VOYAGER SALES drafts to FNBO within the time frame specified by FNBO.
6. MERCHANT shall not process manually-prepared VOYAGER SALES drafts.
7. If there is a timeout or response message on the POS device indicating that the authorization system is unavailable, MERCHANT must telephone VFSI for authorization.
8. If an electronic authorization cannot be achieved at a card-activated POS device due to technical difficulties, the VOYAGER cardholder shall be referred to the station attendant if during MERCHANT'S open business hours.
9. MERCHANT shall establish a fair policy for the exchange and return of merchandise. MERCHANT shall promptly submit credits for any returns that are to be credited to the VOYAGER cardholder account.
10. MERCHANT shall not give any cash refunds to any VOYAGER cardholder in connection with a VOYAGER SALE.

WRIGHT EXPRESS® MERCHANT CHARGE CARD AGREEMENT

The merchant (the "Merchant") identified in the Wright Express Charge Card Agreement Application understands that Wright Express LLC ("WEX LLC") and Wright Express Financial Services Corporation ("WEX FSC"), a wholly-owned subsidiary of WEX LLC, each operate a commercial fleet charge card program (the "Program"). Pursuant to the Program, WEX LLC and WEX FSC issue and service commercial fleet charge cards which may be used by fleet purchasers of motor fuels and or vehicle-related products and services.

Merchant wishes to participate in the Program by accepting such charge cards at its retail locations. As used in the numbered sections of this Agreement, the term "WEX" shall mean and refer to (a) WEX FSC when the right, duty or liability hereunder arises from use of a charge card issued by WEX FSC bearing the Wright Express[®] trademark, and (b) WEX LLC when the right, duty or liability hereunder arises from use of any other charge card bearing the Wright Express[®] trademark. Charge cards issued or serviced by WEX LLC or WEX FSC bearing the Wright Express[®] trademark are hereafter collectively referred to as the "Card" or "Cards." Notwithstanding the foregoing, Card or Card(s) shall not include any charge card also bearing the MasterCard trademark. As settlement agent and servicer for WEX FSC, WEX LLC shall make all payments to Merchant on WEX FSC's behalf. WEX LLC, as WEX FSC's servicer, shall also be responsible for all of WEX FSC's communications with Merchant. WEX LLC shall not have any rights, duties or liabilities as principal hereunder for Cards issued by WEX FSC and acts solely as settlement agent and servicer with respect to such Cards. Likewise, WEX FSC shall not have any rights, duties or liabilities hereunder other than for Cards it issues. Merchant, WEX and WEX FSC agree as follows, subject to approval of the Application by WEX LLC and WEX FSC:

1. **Administration of Charge Card Program.**

Merchant understands and acknowledges that the Program is operated by WEX and that WEX has adopted certain procedures to be followed by Merchants participating in the Program. Such procedures now in effect, and as may be amended by WEX from time to time, are set forth in full and incorporated herein as WEX Exhibit A, Card Sale Procedures for Merchant Transactions ("Exhibit A"), and Merchant agrees to comply with such procedures.

2. **Honoring Charge Cards.**

Merchant agrees to honor at its participating retail sites any Cards properly presented by any person authorized to use such Card (the "Cardholder") for the purchase of goods or services, excluding cash equivalent transactions, authorized by WEX from time to time ("Products"). Transactions involving the use of any Card are hereafter referred to as "Card Sales." WEX will pay Merchant for each Card Sale generated and presented in accordance with this Agreement and the Card Sale Procedures for Merchant Transactions. Merchant shall not submit to WEX any sales draft except sales drafts arising from sales occurring under the Program in accordance with this Agreement and the Card Sale Procedures for Merchant Transactions.

3. **Honoring Sales Drafts.**

- (a) WEX will pay Merchant for each Card Sale reported by Merchant to WEX; provided, however, that WEX may reject any Card Sales that are not presented to WEX within thirty (30) days of the date of the Card Sale. Each Card Sale shall be deemed to create a sales draft issued by the Cardholder instructing the Card issuer to pay Merchant. WEX shall honor such sales drafts issued in conformity with the terms of this Agreement.
- (b) If information pertaining to any Card Sale is garbled in transmission such that part or all of the record is likely to vary from what Merchant transmitted, then WEX may advise Merchant of the suspected inaccuracy and request retransmission of the record or other appropriate confirmation. WEX may, with notice to Merchant, withhold payment for such Card Sales until the record is retransmitted or Merchant provides other appropriate confirmation. Similarly, if Merchant has not provided WEX with information that this Agreement requires Merchant to provide WEX and that WEX needs to interpret, verify, or validate a Card Sale, then WEX may, with notice to Merchant, withhold payment for such Card Sale until Merchant sends WEX the necessary information. WEX may make appropriate adjustments in its settlements with Merchant to reflect the receipt or correction of any such Card Sale information.
- (c) Merchant shall reimburse WEX upon demand all amounts previously paid to Merchant with respect to any Card Sale as to which (i) there shall have been any material breach by Merchant, its employee(s) or agents of any term, representation, condition or warranty set forth in this Agreement and such breach is not subject to cure or is not cured within ten (10) days of notice of such from WEX, or (ii) the Cardholder or any other person obligated for payment has asserted a defense, claim or offset against payment based upon (A) any act, omission or alleged wrongful conduct of Merchant or any employee or agent of Merchant, or (B) any other defense, claim or offset against payment based on the quality or sufficiency of Products which relate to such Card Sale (hereinafter collectively, "Chargeback").
 - (i) The amount due for any Chargeback shall be the aggregate of the unpaid indebtedness due on such Card Sale at the time of Chargeback.
 - (ii) Any obligation of Merchant to pay Chargebacks pursuant to this Agreement shall be unconditional and shall not be waived, released or affected by any settlement, extension, compromise or forbearance or other indulgence or agreement made or granted by WEX with or to any Cardholder or other obligor. Additionally, failure to issue a Chargeback with knowledge of a breach of warranty or other defect shall not be deemed a waiver of any of WEX's rights with respect to such Card Sale. WEX will expend normal business efforts to obtain remedies against Cardholder, but shall not be required to exhaust its remedies against Cardholder or other persons or Products as a condition precedent to requiring performance by Merchant of its Chargeback obligations hereunder.

4. **Fees.**

- (a) Merchant shall pay WEX a fee which shall be deducted by WEX from the amount of each Card Sale hereunder. The Discount Fee shall be 3.50% of the transaction value. The "transaction value," as such term is used in this Agreement, shall mean total amount charged for Product sold, as reflected on the data transmitted to WEX, including any taxes, if applicable.
- (b) The Discount Fee is exclusive of any network transaction fee incurred by Merchant.
- (c) It is understood between the parties that it is the intent of the parties to process all transactions electronically. WEX reserves the right to increase the Discount Fee to 6.5% if the Merchant continues to process transactions telephonically and does not process transactions electronically after ninety (90) days prior notice from WEX ("Telephonic Discount Fee").
- (d) Merchant shall not surcharge or impose additional fees upon Cardholders who present the Card for payment under the terms of this Agreement.

WEX reserves the right to change these fees upon thirty (30) days' notice to Merchant.

5. **Payment.**

- (a) WEX shall initiate an electronic funds transfer to an account at a bank participating in the automated clearing house network designated by Merchant as follows:
 - (i) for Merchants who sell Fuel: no later than thirty (30) days;
 - (ii) for Merchants who do not sell Fuel: no later than three (3) days;following the receipt of the required evidence of each Card Sale at the designated WEX Processing Center, in the face amount of each Card Sale as reflected on the sales slip or on data automatically transmitted to WEX, less any WEX Discount Fee. Any Card Sale data received by WEX from Merchant before 5:00 p.m. (eastern standard time) shall be treated as having been received on the next business day. WEX may periodically offset or deduct from Merchant's payment hereunder any amounts due to WEX from Merchant pursuant to this Agreement.
- (b) Any amounts due to Merchant from WEX as a result of the submission of a sales draft may be paid, at Merchant's option, to Merchant's network provider. WEX's payment to Merchant's network provider constitutes payment in full to Merchant under the terms of this Agreement.

6. **General Covenants, Representations and Warranties of Merchant.**

As of the date hereof, and as of the date of each Card Sale reported to WEX hereunder, Merchant hereby represents and warrants that it:

- (a) is a sole proprietor, partnership, corporation or limited liability company duly organized, validly existing and in good standing;
- (b) has all the necessary licenses and permits to conduct its business; and,
- (c) this Agreement constitutes Merchant's legal, valid and binding obligation, enforceable in accordance with its terms.

7. **Covenants, Representations and Warranties of Merchant with Respect to Card Sales.**

As of the date hereof and as of the date of each Card Sale reported to WEX, the Merchant represents and warrants that:

- (a) Each sales draft submitted to WEX shall represent a bona fide Card Sale of Products sold in the ordinary course of business of the Merchant identified in the Wright Express Merchant Charge Card Application for the total sales price reported in the invoice or other data concerning such account furnished by the Merchant to WEX. Merchant has paid or shall pay all taxes assessed by any authority with respect to the Card Sale;
- (b) The Merchant shall have performed all of its obligations to Cardholder in connection with the Card Sale evidenced thereby;
- (c) It shall involve no Card Sale other than the one described therein;
- (d) It shall be in complete compliance with this Agreement and all applicable material laws, rules and regulations governing the same and a true and complete copy of the sales slip or transaction receipt shall be made available to the Cardholder at the time of the Card Sale;
- (e) All Products covered by each Card Sale shall have been delivered by the Merchant to the buyer and accepted by such buyer;
- (f) Each Product covered by a Card Sale shall have such quality and grade as represented by the seller dispensing such Product;
- (g) All sales slips or other writings which bear a signature purporting to be that of a buyer or an authorized card user, and all electronically or hardware generated invoices, records or transactions, or memoranda of sales, shall be genuine and not forged or unauthorized. (h) Merchant hereby makes the additional warranties, representations and covenants set forth in Exhibit A of this Agreement. Each of the representations and warranties made by Merchant shall be true and correct as of the date hereof and as to the date of any Card Sale. Any breach of the representations, warranties, or covenants contained in this Agreement with respect to any Card Sale shall be cured if and when Merchant reimburses WEX for such Card Sale in accordance with the chargeback provisions of Section 3(c) above.

8. **Tax Exempt Motor Fuel Sales—FOR MOTOR FUEL SALES ONLY.**

- (a) WEX shall obtain from certain pre-qualified tax-exempt fleet Cardholders ("Exempt Fleet Cardholders") copies of any certificates or other documents that are necessary for the Exempt Fleet Cardholder to demonstrate its tax-exempt status, and shall provide copies of such documents to Merchant so that Merchant may seek a tax refund or credit from the applicable taxing authority for the portion of Card Sales to Exempt Fleet Cardholders that is exempt from taxation.
- (b) WEX shall pay the gross Card Sale amount, less applicable fuel taxes as calculated by WEX, of all Card Sales which involve tax-exempt sales to Exempt Fleet Cardholders.
- (c) WEX shall provide Merchant, on or before the 20th day of each month, a detailed report showing the total amount of tax-exempt Card Sales recorded by Merchant for the previous month's transactions for each taxing jurisdiction, together with a calculation of the amount of tax for each taxing jurisdiction by reason of such tax-exempt Card Sales.
- (d) Notwithstanding anything to the contrary contained in this Agreement, liability and loss with respect to any taxes, penalties, interest or other assessments arising out of incorrect tax exemption processing or documentation with respect to a particular tax-exempt Card Sale provided pursuant to this Section 9 of the Agreement ("Tax Losses") shall be allocated as follows:

- (i) WEX shall be responsible for Tax Losses which result from errors in data processing, including errors in interpretation, while calculating a tax-exempt amount.
 - (ii) WEX shall not be responsible for Tax Losses which arise from errors in calculation by WEX based on incorrect information and data, including, but not limited to, incorrect product codes and site information, supplied by Merchant to WEX, or for the accurate application of information provided to WEX by the applicable taxing jurisdiction or recognized expert information sources.
- (e) The total liability of WEX for all Tax Losses occurring in any Calendar Year shall not exceed two times the average monthly fees (including Discount Fees) charged by WEX to Merchant on account of tax-exempt Card Sales in the two calendar months immediately preceding the date of the Tax Loss in question. If there is more than one date of Tax Loss in any Calendar Year, the measuring months shall be the two calendar months immediately prior to the most recent Tax Loss. All Tax Losses must be asserted in writing to WEX no later than the earlier of: (i) six months after the audit report identifying the Tax Loss; or (ii) three years after the date of the transaction from which the Tax Loss arose.
- (f) If Merchant incurs a Tax Loss for which WEX is not liable, WEX will assist Merchant, as appropriate, in attempting to collect from the Exempt Fleet Cardholder and/or filing a refund claim, as appropriate.

9. **Report Production.**

- (a) WEX shall, on a timely basis, either transmit electronically or provide to Merchant or its designee, electronically or in a manner mutually agreed upon, a report of all transactions relating to the funds transferred.
- (b) WEX will provide daily summary settlement reports reflecting gross sales, net sales and amounts due to Merchant.
- (c) At Merchant's request, WEX shall also produce and deliver to Merchant such standard reports as are provided to Merchants in the Program from time to time. All such reports shall be provided to Merchant at its address set forth in the Application (or such other address as Merchant has in writing directed WEX LLC or WEX FSC to use) promptly upon completion thereof. Any reports in addition to customary reports shall be prepared and shipped at Merchant's expense in accordance with WEX's fee schedule as in effect from time to time.

10. **Data Input and Transmission.**

- (a) In the event that Merchant or its network fails to provide the input data or Card Sales at the time required, Merchant agrees that WEX may extend, as necessary, the time for the completion of the processing of such data; provided, WEX shall not extend the time for payment under §4 beyond the period provided therein.
- (b) Data supplied to WEX shall meet WEX's reasonable standard specifications as provided to Merchant from time to time and shall be in good and usable condition.
- (c) At no time shall Merchant send manual, paper tickets to WEX unless requested by WEX. It is the intention of both parties that all transactions shall be processed electronically by Merchant.
- (d) Any significant technical specification enhancements proposed by WEX are subject to 120 days written notification from WEX to Merchant or its designee and approval by Merchant, which approval shall not be unreasonably withheld.

11. **Responsibilities of Merchant.**

- (a) Merchant is responsible for the data entry of information by its personnel, or representatives, operation and maintenance of the associated input equipment, and provision of all networking services.
- (b) Merchant agrees that if corrections or additional processing is necessitated by incorrect posting or defective input by Merchant's employees or representatives, then SERVICE MERCHANT shall pay for all reasonable charges for such additional processing.
- (c) Merchant shall review each report promptly upon receipt. The failure of Merchant to notify WEX within sixty (60) days of receipt of the applicable report as to any errors contained in such report shall constitute Merchant's acceptance of such report as complete and satisfactory performance of WEX under this Agreement.
- (d) Merchant agrees that services rendered under this Agreement shall not relieve Merchant from any obligations to maintain records.
- (e) Payment of all taxes, fees and other charges relating to purchases made shall be the responsibility of Merchant, and WEX shall have no obligation with respect to the collection, payment or reporting of such taxes.
- (f) Prior to the initiation of the first live transaction, Merchant shall obtain from WEX the necessary acceptance certification for networks and point-of-sale (POS) services utilized by Merchant for processing of Card Sales pursuant to this Agreement. Merchant will also supply to WEX, as part of the certification process and for ongoing customer service needs, test terminals representing Merchant's site POS options. All software upgrades will be supplied to WEX as they are released for testing, and prior to being released for field use for WEX certification.
- (g) Merchant is responsible for the timely correction of all settlement report error file transaction listings reported by WEX on its error file report. Error file transactions include: unidentified site location, unidentified vehicle number, improper product code, and incorrect price. Timely correction is considered within ten (10) business days of receipt of the error file report from WEX. If Merchant fails to correct the error file report, WEX will not remit payment to Merchant in accordance with §5. Merchant can elect to have WEX work and correct the error file on Merchant's behalf by providing a request in writing. WEX will charge its prevailing rate for such services.
- (h) Merchant hereby authorizes WEX to refer to a default price per gallon table which may be used when the calculated price per gallon for the transaction falls outside of WEX's acceptable range of pricing which is currently less than \$0.50 per gallon or greater than \$3.00 per gallon. The table is based upon average price per gallon data collected from all merchants in the Merchant's service area. Use of the default price per gallon does not affect the transaction value submitted for settlement and is only used to facilitate reporting to fleet customers.

- (i) Merchant hereby authorizes WEX to refer to the authorization log to obtain information to complete the processing of transactions in the event that errors are detected by WEX during processing. It is understood by the parties that the information contained in the authorization log is the "actual, real-time" information received by WEX from the Merchant at the time the use of the charge card issued by or bearing the WEX logo was authorized. It is further understood that if sufficient information is not available in the authorization log to correct any errors in the transaction file received by Merchant or Merchant's network for processing, then these transactions will be returned in accordance with this Agreement for correction. Use of the authorization log does not relieve the Merchant from its obligations under this Agreement to provide accurate and timely transaction data for processing.

11. **Term.**

Unless sooner terminated pursuant to the provisions of §12 hereof, this Agreement shall remain in effect for five (5) years after the Application date. This Agreement shall automatically renew for additional two (2) year terms immediately upon expiration of the term then in effect, unless written notice of termination shall have been sent by certified or registered mail by either party to the other party at least six (6) months prior to termination of the term in effect. Upon termination, Merchant shall (a) cease entering into Card Sales using the Card or Cards with respect to which this Agreement is terminated; (b) cease promoting the same pursuant to this Agreement, and; (c) return an unused materials or supplies issued by WEX with respect to any Card. Termination shall not affect either party's respective rights with respect to transactions using such Card(s) entered into before termination.

12. **Termination.**

Either WEX or Merchant may terminate this Agreement upon the occurrence of any of the following: (a) the failure to comply with any of the covenants or the terms, conditions, agreements and limitations set forth in this Agreement, and such failure continues for more than thirty (30) days following written notice from any other party hereto; (b) any representation or warranty made in connection with the transaction contemplated by this Agreement shall prove to have been false or misleading in any material respect, except that for the purpose of this Section only, a breach of any representation or warranty made by Merchant with respect to any Card Sale pursuant to §7 hereof may be cured by reimbursement to WEX of the amount of the Card Sale in accordance with the provisions hereof; (c) the making of an assignment for the benefit of creditors or the institution of any bankruptcy or insolvency proceeding by any party hereto; (d) the institution by a third party of any bankruptcy proceeding against any party hereto which is not dismissed within thirty (30) days; or (e) the dissolution or determination of operations of any party hereto other than in connection with a merger or sale of substantially all of such party's assets. Notwithstanding the above, either party may terminate this Agreement at any time upon delivery of written notice of termination fifteen (15) days prior to the effective date of such termination. When terminated, whether for cause or not, Merchant and WEX shall both continue to be liable for any transactions entered into or rights created or obligations incurred prior to termination, subject to the provisions of this Agreement.

13. **Warranties and Disclaimers.**

- (a) WEX hereby agrees to exercise its best efforts to provide accurate and complete reports, based upon the data transmitted to WEX by Merchant or its network. Notwithstanding the foregoing or any other provision of this Agreement, except to the extent the amount due to Merchant may have been inaccurately reported, thereby requiring further payment to Merchant, WEX shall not be responsible for the accuracy and completeness of such reports and shall not be liable for any loss, liability or damages, including consequential damages resulting from any inaccuracy or incompleteness of such reports. EXCEPT AS EXPRESSLY STATED HEREIN, WEX HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, CONCERNING SERVICES COVERED BY THIS AGREEMENT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. Neither party shall be liable to the other for any damages resulting from performance or failure to perform pursuant to this Agreement, unless such performance or failure to perform is due to gross negligence or willful misconduct. Notwithstanding the foregoing, neither party shall be liable to the other for any indirect, special, incidental or consequential damages, including, but not limited to, lost profits even if the parties have knowledge of the possibility of such damages. Furthermore, Merchant agrees and acknowledges that WEX will not be liable to Merchant for any damages resulting from the performance or the failure to perform of any Automated Clearing House Association.

For any Cardlock or unattended sites, notwithstanding anything else contained in this paragraph, Merchant hereby indemnifies and agrees to hold WEX harmless of and from any and all loss, cost, damage or expense arising out of or relating to the claims of third parties for personal injury or property damage resulting from use or misuse of any of Merchant's facilities or products.

14. **Miscellaneous Provisions.**

- (a) Use of Other Charge Cards. Nothing in this Agreement is intended to restrict or prevent Merchant from honoring other charge cards.
- (b) Fraudulent Sales, Factoring or Laundering. Merchant shall never accept or process a fraudulent sale or sale made by any other merchant.
- (c) Returns and Credits. Merchant shall maintain a fair and reasonable policy with regard to the exchange, return and adjustment for Products. Merchant shall properly process a credit slip and shall not issue cash or Merchant's check for returns/adjustments of any Products.
- (e) Network Services. Merchant shall be responsible for providing and paying for any network services. Merchant shall provide notice to WEX of the termination of any agreement or contract between Merchant and the provider of its network services within fifteen (15) days of such termination.
- (f) Amendment. WEX may at any time, amend this Agreement, Exhibit A , or any part thereof as to future transactions by written notice containing a copy of the amendment mailed or delivered to Merchant at least fifteen (15) days before the effective date thereof and submission of sales drafts to WEX after the effective date shall constitute Merchant's acceptance of such amendment. Merchant agrees that such amendments may include changes in the fees and/or

any other terms of this Agreement, as well as the introduction of new fees and terms, provided the Merchant is given the advance written notice provided for herein.

- (g) Site Locations. Merchant shall provide WEX with a list of locations within its current marketing area. Merchant shall, as frequently as may be necessary and in all events prior to transmitting data from any new or reclassified site, provide WEX with updated information concerning sites within its marketing area.
- (h) Notice. Any notice required to be given to Merchant shall be in writing and mailed or delivered to Merchant at the address indicated on the Wright Express® Charge Card Agreement Application. Any notices to WEX shall be mailed or delivered to WEX at 97 Darling Avenue, So. Portland, Maine 04106. Either party may change its notice address by written notice to the other.
- (i) Requirements of a Writing: Merchant agrees that copies and telecopies of signed originals of this Agreement and the Wright Express® Merchant Charge Card Agreement Application shall be binding as originals.
- (j) Other Agreements. Merchant hereby consents to WEX's granting to its principal financing source (the "WEX Lender") a security interest in and collateral assignment of this Agreement and acknowledges that, upon the occurrence of an event of default, in connection with the present or future financing arrangements with WEX and the Lender that the Lender shall have all of the rights of WEX.
- (k) Assignment. This Agreement shall be binding upon the parties hereto, their successors and assigns. Any party hereto may assign this Agreement with the prior written approval of the other parties to this Agreement, which approval shall not be unreasonably withheld, subject to the following: (i) WEX shall be entitled to assign this Agreement without Merchant's consent if such assignment is in connection with a merger or sale of substantially all of the assets of WEX, or (ii) if such assignment is to an affiliate of WEX which is a financial institution that issues the Card, provided, in either case, that the assignee has the ability to perform WEX's obligations hereunder and such assignee expressly assumes such obligations.
- (l) Governing Law. This Agreement shall be governed and construed by the internal laws of the State of Utah (without reference to choice of law rules). This Agreement is not binding until approved and accepted in Utah by WEX FSC and in Maine by WEX LLC.
- (m) Discrimination. Merchant agrees that it will not discriminate in any manner against an employee on the basis of race, religion, creed, age, sex, marital status, national origin, ancestry or physical or mental handicap. In addition, Merchant agrees that it will not maintain or provide segregated facilities for its employees at any of its establishments nor will it allow its employees to perform services at segregated facilities.
- (n) Further Assurances. Merchant will promptly and fully cooperate with WEX if and to the extent that such cooperation is reasonably requested in connection with the enforcement and collection of all or any of the Card Sales and such request is of a commercially reasonable nature. Merchant shall defend the right, title and interest of WEX and its successors and assigns in and to the Card Sales against the claims and demands of all persons whomsoever arising by, through or under Merchant.

WEX EXHIBIT A, CARD SALE PROCEDURES FOR MERCHANT TRANSACTIONS

1.1 CARD SALES.

1. Merchant shall provide at Merchant's expense all necessary equipment to permit the electronic acceptance of the Card at sites (other than at manual sites as described in Section 1.3 of this Exhibit A), and to collect sales data and to transmit the same to WEX's data center. The sales data shall include the capture and transmission to WEX of account, vehicle, driver identification number, sales date, sales time, site identification number, authorization number, product, quantity, sales dollars, odometer, and such other information as WEX and Merchant may mutually agree upon.
2. Each Card Sale shall be evidenced by a record in a form mutually acceptable to Merchant and WEX from time to time.
 - a. Merchant will obtain and record for each Card Sale an authorization number provided by WEX or its designated authorizing network.
 - b. For Card Sales effected and recorded through an Island Card Reader machine or similar device (collectively "ICR") the transaction shall be completed and recorded in such a manner as WEX and Merchant may mutually agree upon from time to time. In addition, Merchant shall make available to the Cardholders a true and complete copy of a receipt of the transaction ("Transaction Receipt").
 - c. For Card Sales effected and recorded through an electronic authorization terminal, each transaction shall be evidenced by a record in a form mutually acceptable to Merchant and WEX from time to time ("Sales Slip") and completed by Merchant as follows:
 - i. Merchant shall legibly record on the Sales Slip all information required in accordance with operating procedures reasonably prescribed by WEX from time to time;
 - ii. Merchant shall require the Cardholder to sign the Sales Slip, assuming it is a non-island reader transaction; and
 - iii. Merchant shall provide to the Cardholder a true and complete copy of the Sales Slip upon completion of each Card Sale.
3. For all Card Sales effected, Merchant shall for a period of one year maintain a true and complete record of the transaction (the "Evidence") in a manner satisfactory to WEX (including the signed Sales Slip for transactions effected through an electronic authorization terminal).

4. Merchant shall maintain and provide the Evidence of Card Sales to WEX on reasonable request of WEX, such Evidence to be provided within ten (10) business days of WEX's request. Failure to provide such Evidence shall permit WEX to require Chargeback pursuant to Section 3 (c) of the Agreement.

1.2 **MANUAL CARD SALES AT ELECTRONIC SITES.**

It is the intent of the parties that all Card Sales will be effected and recorded electronically. In instances where this is not possible, the initial sale may be effected and recorded manually ("Manual Card Sale"), and thereafter recorded electronically by Merchant. In addition to the procedures contained in Sections 1.1 and 1.4 of this Exhibit A, the following procedures shall be followed:

1. As soon as possible after effecting the Manual Card Sale, the sales data shall be recorded electronically by Merchant. If Manual Card Sales data cannot be recorded electronically Merchant shall send a copy of the Sales Slip to WEX at such of WEX's processing centers as WEX may designate from time to time;
2. For those Manual Card Sales which are not subsequently recorded electronically by Merchant pursuant to Section 1.2(1) above, WEX reserves the right in addition to fees charged under Section 5 of the Agreement, to charge a manual transaction fee of \$0.20 per transaction;
3. Merchant shall follow such other procedures as may be reasonably prescribed by WEX from time to time.

1.3 **MANUAL CARD SALES AT MANUAL SITES.**

WEX and Merchant recognize that, due to anticipated Card Sales volume considerations, there may be certain sites which the parties may wish to have participate in the Card program but which will not have electronic authorization terminals ("Manual Sites"). At such Manual Sites, Card Sales will be effected and recorded in accordance with procedures prescribed by WEX and a supplemental fee schedule to be agreed upon in writing by the parties.

1.4 **AUTHORIZATION FOR MANUAL CARD SALES.**

Merchant shall effect no Manual Card Sales through use of an expired Card or when advised, upon authorization inquiry, that the Card is not to be honored. Merchant shall make an authorization inquiry to WEX or such authorization center as may be designated by WEX from time to time by telephone or other designated means before effecting any Manual Card Sales.

If Merchant is unable to obtain an authorization for a Manual Card Sale due to the fact that the communication facilities designated by WEX are at the time not operable, Merchant may make a Manual Card Sale. WEX will establish dollar limits for the amount of exposure WEX will accept on the above Manual Card Sales. These limits are currently \$20.00 per transaction and \$200.00 per day per location. WEX reserves the right to change these limits from time to time. All Manual Card Sales which exceed the established limits, both per transaction and in the aggregate, shall be at the credit risk of Merchant. Merchant shall never make a Manual Card Sale without specific authorization where Merchant believes or has reason to believe that the Card may be counterfeit or stolen or the transaction is in any way fraudulent or otherwise suspicious.

Upon approval by WEX or a designated authorization center, Merchant shall write the authorization number given by WEX or the authorization center on the Sales Slip. If the authorization inquiry is disapproved, Merchant shall follow the instructions of WEX or the authorization center, including without limitation the use of its reasonable efforts, by reasonable peaceful means to retrieve any Card which it is instructed to retrieve.

1.5 **SINGLE TRANSACTION.**

On a Manual Card Sale, Merchant shall not divide the price of goods and services purchased in a single transaction among two or more Sales Slips.

1.6 **SPLIT PAYMENT.**

Merchant shall effect no Card Sale when only a part payment is made by use of a Card, and the balance is made by another card.

1.7 **CARD SALES WITHOUT CARDS.**

No Card Sales shall be made unless the Card is presented at the time of sale.

1.8 **PRODUCT DISPUTE POLICY.**

Merchant shall maintain a fair and reasonable policy with regard to the exchange, return and adjustment for Products purchased with the Card.

1.9 **SIGNAGE.**

Merchant will not install any signage promoting the Card Programs without the prior written consent of WEX.

MERCHANT SERVICES NETWORK ADDITIONAL INFORMATION

Merchant Equipment & Supplies

Merchants without a Benefits Package

Point of Sale Supplies

Merchant Services Network offers a full line of competitively priced, high quality Point of Sale Supplies, with the convenience of having them delivered right to your door. All supplies will be shipped and billed directly to your Merchant Account, and REMEMBER plan ahead to insure ample time for delivery as supplies are shipped via ground. (*Overnight delivery is available for additional shipping charges*)

Point of Sale Equipment

Merchant Services Network extends the following offer to its existing and active merchants. Should your terminal, printer, check reader or pin pad malfunction, jam or have a mechanical breakdown and become inoperable, MSN will exchange the damaged item with a like or comparable item at the then current market price plus shipping.

Merchants with Benefits Package

Benefits Package Terms & Conditions

Merchants who participate in the Silver or Gold Benefits Package shall be entitled to receive free of charge roll receipt paper and printer supplies for their credit card terminal, up to 12 times a year. Merchants **MUST** plan ahead to insure ample time for delivery as supplies are shipped via ground. (*Overnight delivery is available at the merchant's expense*)

Merchants who participate in the Gold Benefits Package shall be entitled to a Lifetime Equipment Replacement Warranty

- Should your terminal, printer, check reader or pin pad be defective, malfunction, jam or have a mechanical breakdown and become inoperable, MSN will exchange the damaged item with a like or comparable item free of charge (*excluding shipping*)
- Every effort will be made to deploy the replacement equipment for next day delivery at a flat shipping cost of \$25.00 per incident.
- The inoperable piece of equipment must be returned to MSN within 15 days of receipt of the replacement. If the damaged equipment is not returned to MSN, your account will be billed \$350 each for a standard dial-up terminal, printer, check reader or pin pad or \$850 each if the damaged equipment was a wireless terminal. *If equipment is returned after this fee is assessed, a \$150.00 restocking fee will be deducted from any refund applied to your account.*
- Lifetime Equipment Replacement Warranty does not cover equipment damaged by an "Act of God" (i.e.: lightning, flood, earthquake, etc.); nor does it cover damage due to gross negligence
- Existing Merchant-owned equipment shall be included under the Terms of the Lifetime Equipment Replacement Warranty subject to a 60-day qualifying period from the date of account approval.
- Lifetime Equipment Replacement Warranty does not cover equipment that has become obsolete

DISCLAIMER

The Terms and Conditions for independent companies are contained herein. The Terms and Conditions for each company are clearly marked and differentiated from those of other companies. The Terms and Conditions of one company are not applicable to or binding on any other company. MERCHANT acknowledges and agrees that FNBO, or any of its affiliates, is in no way responsible for the actions, inactions, performance or nonperformance of the companies whose Terms and Conditions are included herein or referred to in documents supplied or that FNBO is responsible for disputes or responsible for resolving disputes of any kind arising under any agreements between MERCHANT and such parties.