

## MERCHANT AGREEMENT

**THIS MERCHANT AGREEMENT** is entered into among (i) the party that signed the Merchant Application and is requesting the Services ("Merchant"), (ii) Central Bank of Audrain County ("Bank"), and (iii) Clearent LLC ("Clearent").

The appendices, addenda, schedules, Card Acceptance Guide and Fee Schedule (if applicable) that accompany this Merchant Agreement, as amended from time to time as provided herein, are part of the terms and conditions of this Merchant Agreement, as are the Merchant Application and the Card Brand Rules, and are individually and collectively hereinafter referred to as the "Merchant Agreement".

Capitalized terms used and not otherwise defined herein will have their respective meanings set forth in Section 39 of this Merchant Agreement.

The parties hereby agree as follows:

**1. General.** Merchant agrees to participate in Clearent's Card processing program by honoring Cards and submitting Transactions and other electronic data to Clearent and Bank in accordance with the terms of this Merchant Agreement, the Card Acceptance Guide and applicable Card Brand Rules. Clearent and Bank are responsible to Merchant for processing Transactions under the Card Brand Rules for the Services to which Merchant subscribes, which may vary among Card Types.

**2. Merchant's Application and Information.** By completing the Merchant Application, Merchant applies for the Services covered by the Merchant Application and this Merchant Agreement. In their sole and absolute discretion, Clearent and Bank may accept or reject Merchant's Merchant Application. Merchant may present Transactions to Bank only for the activities and in the volumes described on the Merchant Application, including the percentage of Mail/Phone Order Transactions.

### 3. Merchant's General Duties.

3.1 Merchant will comply with this Merchant Agreement (including the terms of the Card Acceptance Guide), the Card Brand Rules and all applicable federal, state and local laws, rules and regulations (collectively "Laws"), including but not limited to laws and regulations regarding anti-money laundering compliance, as they may be modified and amended from time to time, for submitting and processing Transactions with Bank and Clearent, performing its obligations under this Merchant Agreement, and otherwise conducting its business. In the event of any inconsistency between this Merchant Agreement and the Card Brand Rules, the Card Brand Rules will govern. Merchant shall be charged an annual fee, beginning in the fourth month for each Merchant account for governmental and Card Brand compliance in support of programs developed by Clearent to ensure compliance with all federal regulations as mandated, inclusive of, but not limited to annual income reporting, Tax ID Number (TIN) and legal name matching. Notwithstanding the foregoing, additional fees may be assessed for a non-matching TIN and legal name, and Merchant may be subject to back up withholding as mandated by the Internal Revenue Service (IRS).

3.2 Merchant, and neither Bank nor Clearent, is responsible for any advice from, acts of, as well as omissions, acts of fraud or acts of misconduct by Merchant's employees, processors, consultants, advisors, contractors, servicers, agents, officers and directors. Merchant, and neither Bank nor Clearent, is responsible for the use, unauthorized use or misuse of Merchant's equipment, POS Equipment, or software.

3.3 Merchant will use only the electronic processing formats provided or approved in advance by Bank and Clearent. Bank and Clearent may change such formats from time to time, and, upon notification, Merchant will comply with any changes.

3.4 Merchant consents to receiving electronically rather than in paper form all written notices, disclosures and other documents ("Documents") which are to be provided by Clearent or Bank to Merchant under this Merchant Agreement. Clearent will notify Merchant that a Document is available at its web site with a link to that specific page of the web site containing the Document. Merchant agrees that such notification may be sent to Merchant at the e-mail address provided as part of the Merchant Application. Merchant understands and acknowledges that access to the Internet and e-mail are required for Merchant to access a Document electronically and Merchant confirms that Merchant has such access. At any time and without giving Merchant advance notice, Bank and/or Clearent may elect not to send a Document electronically, in which case a paper copy of the Document will be sent to Merchant or such Document shall otherwise be provided as provided for herein.

### 4. Acceptance Procedures.

4.1 In accepting Cards for the purchase of Merchant's goods and services, Merchant will comply with the requirements of the Card Brand Rules, this Merchant Agreement and the Card Acceptance Guide, as the same are revised from time to time.

4.2 Merchant will obtain and record an Authorization for all sales in accordance with the Card Brand Rules before submitting them for processing.

4.3 Merchant will submit to Bank and Clearent a Transaction only if the Transaction is made or approved by the Cardholder who is issued the Card used for the Transaction. Merchant will not submit directly or indirectly: (a) any Transaction that Merchant knows or should have known to be illegal, fraudulent or not authorized by the Cardholder; (b) any Transaction that results from a transaction outside of Merchant's normal course of business, as described on the Merchant Application; or (c) any Transaction containing the account of a Card issued to Merchant or any account numbers issued to Merchant's business owners, family members and principals for Transactions that do not represent a purchase of goods or services from Merchant or a related credit. Further, Merchant may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Merchant Agreement.

4.4 Merchant will retain in a secure and confidential manner original or complete and legible copies of each Sales Draft required to be provided to Cardholders, for at least 3 years or longer if required by law or the Card Brand Rules, and in compliance with Payment Card Industry ("PCI") Data Security Standards ("PCI DSS"). Merchant will store Sales Drafts in an area limited to selected personnel, and when record-retention requirements have been met, Merchant will destroy the records so that the same are rendered unreadable.

**5. Marketing.** In performing its obligations under this Merchant Agreement, Merchant shall adequately display Card Brand marks, symbols or logos as required by the Card Brand Rules. Notwithstanding the foregoing, Merchant may not (i) indicate or imply that the Card Brands, Clearent or Bank endorses any Merchant goods or services, (ii) refer to a Card Brand, Clearent or Bank in stating eligibility for Merchant's products, services or membership, or (iii) use any marks, symbols or logos owned by any Card Brand, Clearent or Bank for any purpose other than those permitted in the Card Brand Rules or the Card Acceptance Guide or after termination of this Merchant Agreement.

### 6. Payments; Fees.

6.1 Fees and charges payable by Merchant for the Services shall be as set forth in this Merchant Agreement, the Merchant Application and/or the Fee Schedule Addendum. Merchant is also liable for and agrees to pay any fines imposed on either Clearent or Bank by a Card Brand or Debit Card network resulting from Chargebacks or with respect to Merchant's acts or omissions. Any amounts due and owing by Merchant under this Merchant Agreement that are not paid when due will incur a late fee equal to the lesser of (i) one and one half percent (1 1/2 %) per month of the unpaid amount, or (ii) the highest rate allowable by law, in each case compounded monthly.

6.2 Fees and charges owed by Merchant to Bank and Clearent may be deducted by Bank from amounts due Merchant, or from the Settlement Account or from the Reserve Account. Merchant will pay the amounts due by the next business day if sufficient funds are not available in the Settlement Account. The following is a partial list of reasons for debits to the Settlement Account:

- Fees and Chargebacks not previously charged;
- All refunds processed on account of Cardholders;
- All taxes, penalties, charges and other items incurred by Bank or Clearent that are reimbursable pursuant to this Merchant Agreement;
- Processing Fees and the other fees or charges identified in this Merchant Agreement or on the Merchant Application;

- Any Card Brand fees, fines, penalties, or other charges assessed as the result of the Transactions; and
- Deposits posted in error.

6.3 Merchant acknowledges that all payments and credits provided to Merchant are provisional only and subject to suspension, revocation, to Chargebacks and to adjustments in accordance with this Merchant Agreement, the Card Brand Rules and the Card Acceptance Guide. Bank will provide provisional credit to Merchant for each valid Transaction which Merchant submits to Bank and Clearent by crediting Merchant's Settlement Account, provided Bank has received settlement for the valid Transaction by the Card Brand applicable to the Card used for the Transaction. Bank is not obligated to provide provisional credit to Merchant for Transactions submitted that are not valid Transactions, and may suspend or discontinue any provisional credit in Bank's and/or Clearent's sole and absolute discretion, including for any reason that would justify termination of this Merchant Agreement. **Provisional credit to Merchant for a Transaction disputed by a Cardholder for any reason is not final.**

### 7. Equipment; Supplies; Displays.

7.1 At Merchant's request, Clearent may supply Merchant with point-of-sale equipment ("POS Equipment") that Merchant may need to process and submit Transactions. Clearent will use good faith efforts to program the POS Equipment to operate at the Merchant locations in compliance with the Card Brand Rules; however, Clearent and Bank make no representations or warranties that Clearent's programming of the POS Equipment furnished by Clearent will operate in compliance with the Card Brand Rules.

7.2 All third party POS Equipment and services procured by Clearent under this Merchant Agreement are provided "AS-IS" but Clearent will, at Merchant's expense, use reasonable commercial efforts to assist Merchant in enforcing any warranty offered by the third party supplier of such POS Equipment or services.

7.3 Merchant will immediately notify Clearent of the third party it chooses to use or lease POS Equipment from ("Third Party Terminals") to process Transactions. If Merchant elects to use Third Party Terminals, Merchant assumes full responsibility and liability for any failure of that third party to comply with the Card Brand Rules, applicable Laws, or this Merchant Agreement. Neither Bank nor Clearent will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

**8. Merchant Financial Information.** Merchant will provide Clearent and Bank with such financial statements and information concerning Merchant, its owners, principals, partners, proprietors, guarantors or its affiliates as Clearent or Bank may from time to time request. At any reasonable time, Clearent, Bank, any Card Brand or any other entity having authority has the right to examine the books and records of Merchant relating to this Merchant Agreement, including records of Transactions.

### 9. Settlement Account.

9.1 Merchant must maintain a Settlement Account in Merchant's name in satisfactory condition at a depository institution under arrangements acceptable to Bank and Clearent. The Settlement Account will be subject to the provisions of Section 19 of this Merchant Agreement.

9.2 Merchant agrees to maintain a minimum balance of funds in the Settlement Account as Bank and Clearent may specify to Merchant in writing from time to time.

9.3 Subject to the terms and conditions of this Merchant Agreement, Bank agrees to provisionally credit Merchant for each Transaction that Bank and Clearent accepts from Merchant. Merchant agrees that Bank may charge the Settlement Account for the amount of any Transaction processed under this Merchant Agreement that results in a Chargeback, or for any Sales Draft or other reimbursement or Processing Fees to which Bank or Clearent may be entitled.

9.4 Merchant agrees that Bank and Clearent may audit all Transaction calculations and that Bank shall have the right, without notice, to make withdrawals, deposits, or other adjustments to or from the Settlement Account for any deficiencies or overages.

9.5 If the Settlement Account is closed, Bank or its designated representative may terminate this Merchant Agreement, effective immediately, upon written or oral notice (with written confirmation in the event of oral notice) unless Merchant opens another Settlement Account acceptable to Bank and Clearent. Merchant may change the Settlement Account upon prior written approval by Bank and Clearent, which approval will not be unreasonably withheld.

9.6 Merchant authorizes Bank or its agents or designated representatives to initiate debit and credit entries and adjustments to the Settlement Account or the Reserve Account through the ACH settlement process for amounts due under this Merchant Agreement. This authorization will remain in full force and effect until termination of the Merchant Agreement and the full and final payment of all obligations of Merchant due under this Merchant Agreement. Merchant agrees to be bound by all applicable terms and provisions of the ACH Rules or other applicable Card Brand or network, in effect from time to time. Merchant acknowledges and agrees that Bank and Clearent will not be liable for any delays in receipt of funds, any failure by Merchant to receive funds, or errors in debit or credit entries caused by Merchant, or third parties, including but not limited to any Card Brand or any financial institution. For each returned ACH debit, Merchant will be assessed a fee of \$15.

### 10. Merchant's Business; Other Processors.

10.1 Merchant will provide Clearent and Bank at least 30 days prior written notice of its intent to (a) sell, assign or otherwise transfer any substantial part (10% or more) of the total stock or assets of, and/or to liquidate, Merchant or any location of Merchant that accepts Cards; (b) change Merchant's name or location; (c) change the management of Merchant's business; (d) change the basic type or nature of the business carried out by Merchant; or (e) change any material information concerning Merchant in the Merchant Application. Upon the occurrence of any such event, the terms of this Merchant Agreement may be modified to address issues arising there from, including but not limited to requirements of applicable Card Brands.

10.2 Merchant agrees that it will use Clearent as its exclusive provider of all Services unless specifically agreed to in writing by Clearent.

**11. Assignment.** Merchant will not assign this Merchant Agreement to another entity without the prior written consent of Clearent and Bank. Any attempt by Merchant to assign its rights or to delegate its obligations without Bank's and Clearent's consent will be void. The rights and obligations of Clearent and Bank hereunder may be assigned by Clearent and Bank without notice to Merchant. Merchant acknowledges that the transferable right of Clearent and Bank hereunder shall include, but shall not be limited to, the authority and right to debit Merchant's account(s) as described herein.

**12. Merchant's Representations and Warranties.** Upon signing the Merchant Application, and each time Merchant submits a Transaction, Merchant represents and warrants to Clearent and Bank that: (a) each Transaction delivered hereunder represents a bona fide sale to a valid Cardholder by Merchant for the amount shown on the sales slip as the total sale and constitutes the binding obligation of the Cardholder, free from any claim demand, defense setoff or other adverse claim whatsoever; (b) each sales slip or other evidence of indebtedness accurately describes the goods and services which have been sold and delivered to the Cardholder; (c) Merchant has fully complied with this Merchant Agreement and all applicable Laws and the Card Brand Rules; (d) Merchant has fulfilled completely all of its obligations to the Cardholder and will resolve any customer dispute or complaint directly with the Cardholder; (e) the signature on the sales slip is genuine and authorized by Cardholder and not forged or unauthorized; (f) the Transaction has been consummated and the sales slip prepared in full compliance with the provisions of the Card Acceptance Guide and the Card Brand Rules; (g) none of the Transactions submitted hereunder represents sales to any principal, partner, proprietor, or owner of Merchant; (h) without limiting the generality of the foregoing, each Transaction and the handling, retention, and storage of information related thereto, complies with the Card Brand Rules as it relates to cardholder and transaction information security, including without limitation PCI DSS, Visa's Cardholder Information Security Program ("CISP"), MasterCard's Site Data Protection Program ("SDP"), Discover Information Security Compliance ("DISC"), and American Express's Data Security Requirements ("DSR"); (i) all of the information contained in the Merchant Application was true as of the date Merchant signed the Merchant Application agreeing to bind this Merchant Agreement; (j) there have been no materially adverse changes in information provided in the Merchant Application or in Merchant's financial condition or management; (k) Merchant does not do business under a trade name or style not previously disclosed in writing, and there has been no change in the nature of Merchant's business or the product lines that Merchant sells not previously disclosed; (l) the person who executes the Merchant Application on behalf of Merchant has the full power and authority to execute the Merchant Application and to enter into this Merchant Agreement; (m) this Merchant Agreement

is the legal, valid, and binding obligation of the Merchant enforceable against the Merchant in accordance with its terms; (n) Merchant has the power and authority to authorize the automatic funds transfer provided for in this Merchant Agreement; (o) the Settlement Account is owned and controlled by the Merchant and is a valid account for processing debit and credit transactions under this Merchant Agreement; (p) Merchant is not (i) a person or entity whose property is "blocked" and cannot be dealt in, or who or which is otherwise identified as the subject of U.S. economic sanctions administered by OFAC, or by being organized in or operating in or on behalf of a country, territory or government that is the subject of sanctions administered by OFAC, (ii) located in or operating under a license issued by a jurisdiction whose government has been identified by the U.S. Department of State as a sponsor of international terrorism under 22 U.S.C. 2371 or 50 U.S.C. App. 2405(j), (iii) located in or operating under a license issued by a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member, or (iv) located in or operating under a license issued by a jurisdiction that has been designated by the U.S. Secretary of Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns; and (q) Merchant will immediately notify Bank and Clearant of any material changes to any information provided herein including but not limited to a change in Merchant's legal entity, location, business type, or the types of goods and services offered for sale by Merchant. In the event that any of the foregoing representations or warranties is breached, the affected sales slips or other indebtedness may be refused, or prior acceptance revoked and charged back to the Merchant. Furthermore, if Merchant submits for purchase hereunder a Transaction that is not the result of a sale of Merchant's goods or services offered to the general public or if Merchant submits any Transactions for purchase hereunder which represents a sale to any principal, partner, proprietor, or owner of Merchant, such Transaction may be refused or charged back, and Merchant hereby agrees to pay (and Merchant's account(s) will be debited therefore) any additional fee that may be assessed for each such Transaction.

### 13. Merchant Web Sites; Third Party Servicers.

13.1 Merchant may use a point-of-sale software or a gateway service ("Third Party Servicers") that provides Merchant with an interface between Merchant and its customers so Merchant can accept sales from its customers. Merchant's choice of a Third Party Servicer is subject to Bank's and Clearant's approval. Notwithstanding any Third Party Servicer offered, suggested, or referenced by Bank or Clearant or its respective sales agents, Merchant acknowledges that all issues concerning its Third Party Servicer, including, but not limited to, its service and functionality, are solely between Merchant and such Third Party Servicer. The fees and terms for Merchant's Third Party Servicer and any services or products offered by such Third Party Servicer may be set forth in the Merchant Application or, if applicable, stated in a separate agreement between Merchant and its chosen Third Party Servicer.

13.2 Programming of Merchant's Web site, technical support, and its functionality with the Third Party Servicer chosen by Merchant, are the sole responsibility of Merchant. Neither Bank nor Clearant shall be liable in any manner whatsoever for any errors, disruptions or security breaches related to Merchant's Web site or any Third Party Servicer. Merchant shall be liable to and indemnify Bank and Clearant for all fees and liabilities incurred by Bank and Clearant regarding any errors, disruptions or security issues related to Merchant's Web site or any Third Party Servicer. Merchant will cause all of its Third Party Servicers to comply with the requirements of PCI DSS, DISC, SDP, DSR and CISP, in effect and as may be amended, supplemented or replaced from time to time, and any data security guidelines or operating guide provided by Bank at all times. Merchant will disclose to Clearant in writing all Third Party Servicers and any other third parties with access to Cardholder data, including their full legal name and contact information.

14. **Indemnification.** Merchant agrees to indemnify Clearant and Bank, including their respective officers, directors, employees, and agents against and to hold them harmless from and against any and all liabilities, losses, damages, disputes, offsets, claims or counterclaims of any party arising out of or relating to any act or omission of Merchant, Merchant's employees, or Merchant's designated representatives or agents, the duties to be performed by Merchant pursuant to this Merchant Agreement, any Transactions which Merchant submits to Bank and Clearant, including without limitation claims and complaints made by a Cardholder and/or Chargebacks, or Merchant's violation of the Card Brand Rules or any applicable Law. In the event that Bank or Clearant shall be made a party to any litigation, proceeding, arbitration, bankruptcy proceeding, or other legal process (collectively "Actions") commenced by any third party, Merchant shall protect and hold Bank and Clearant harmless from and with respect to the Actions and shall pay all costs, expenses, and attorney's fees incurred or paid in connection with the Action, together with any judgments rendered. Merchant shall indemnify, defend, and hold harmless Bank and Clearant for any hacking, infiltration, or compromise of Merchant's systems or the systems of designated representatives or other agents.

### 15. Limitation of Liability.

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

15.2 Neither Clearant nor Bank undertakes any duties to Merchant other than the duties expressly provided for in this Merchant Agreement, and any and all other or additional duties that may be imposed upon Clearant or Bank in law or equity are hereby irrevocably waived and released to the maximum extent permitted by law. In any event, Clearant's and Bank's cumulative liability to Merchant, whether arising in contract, tort (including without limitation negligence and strict liability) or otherwise, shall not exceed the lesser of one month's average charge paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous 12 months or such lesser number of months as shall have elapsed subsequent to the effective date of this Merchant Agreement or \$10,000.

15.3 UNDER NO CIRCUMSTANCES SHALL CLEARANT OR BANK BE LIABLE FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THIS MERCHANT AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING OUT OF PLACEMENT OF A MERCHANT'S NAME ON ANY TERMINATED MERCHANT LIST FOR ANY REASON, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR CLEARANT OR BANK WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

15.4 In no event will Clearant or Bank be liable for any claim, loss, billing error, damage, or expense arising out of or relating in any way to this Merchant Agreement which is not reported in writing to Clearant or Bank within 30 days of such failure to perform or, in the event of a billing error or adjustments to the Settlement Account, within 60 days of the date of the invoice or applicable statement. Merchant expressly waives any such claim that is not brought within the time periods stated herein.

### 16. Term; Termination.

16.1 The initial term of this Merchant Agreement shall be for the term of 3 years (the "Initial Term"), and shall automatically renew for successive 1-year periods unless this Merchant Agreement is terminated as set forth herein.

16.2 Bank, Clearant or Merchant may terminate this Merchant Agreement, without cause, upon 30 days prior written notice to the other parties.

16.3 Bank or Clearant may terminate this Merchant Agreement in its sole and absolute discretion, effective immediately, upon written, electronic or oral notice to Merchant, if Bank or Clearant reasonably determines that any of the following conditions exists: (a) Merchant has violated any provision of this Merchant Agreement; (b) there is a material adverse change in Merchant's financial condition, or Bank or Clearant determines in its sole discretion that Merchant's processing activity could result in a loss to Bank or Clearant; (c) a petition in bankruptcy has been filed by or against Merchant, the Merchant is generally unable to pay its debts as they become due, a receiver, custodian, trustee, liquidator or similar official is appointed for a substantial portion of Merchant's business, there is a general assignment for the benefit of creditors, or the business terminates; (d) the Card Brand Rules are amended in any way so that the continued existence of this Merchant Agreement would cause Bank or Clearant to be in breach of such Card Brand Rules; (e) any guaranty supporting Merchant's obligations is revoked, withdrawn or terminated or altered in any way; (f) if any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Brand; or (g) if required by a Card Brand to terminate this Merchant Agreement.

16.4 Merchant may terminate this Merchant Agreement in the event of a material breach of the terms of this Merchant Agreement by Bank or Clearant, provided Merchant gives Bank and Clearant written notice of any alleged breach and such breach remains uncured for a period of 30 days following receipt of written notice by Bank and Clearant.

16.5 The parties acknowledge and agree that in addition to all other remedies available to Bank and Clearant under this Merchant Agreement or as otherwise available in law or equity, if this Merchant Agreement is terminated by Merchant other than pursuant to Sections 16.2 or 16.4 or by Bank or Clearant pursuant to Section 16.3, Merchant agrees to pay Bank and Clearant an account closure fee in the amount of \$295.00 per location or the maximum amount allowed by law (the "Termination Fee"). Merchant agrees that such Termination Fee shall also be due to Bank and Clearant if Merchant discontinues submitting Transactions for processing during the term of the Merchant Agreement for a period of 90 consecutive days, and is not designated on the Merchant Application, or by notice to Bank and Clearant, as a seasonal merchant or as otherwise agreed to by Bank and Clearant. The Termination Fee shall be immediately due and payable to Clearant and Bank, and Merchant hereby authorizes Clearant and Bank to deduct this amount from Merchant's Settlement Account or Reserve Account, or otherwise withhold the total amount from amounts due to Merchant from Clearant and Bank, immediately on or after the effective date of termination. If Merchant's account does not contain sufficient funds for the debit or the amount cannot be withheld by Clearant and Bank from amounts due to Merchant, Merchant shall pay Clearant and Bank the amount due within 10 days of the date of Clearant and Bank's invoice for same. Merchant acknowledges and agrees that the Termination Fee is not a penalty, but rather is a reasonable computation of the financial harm caused by the termination of this Merchant Agreement by Merchant. Such amounts shall not be in lieu of, but in addition to any payment obligations for Services already provided hereunder (or that Clearant and Bank may continue to provide), which shall be additional cost, and any and all other damages to which Clearant and Bank may be entitled hereunder.

16.6 Bank's or Clearant's rights of termination under this Merchant Agreement are cumulative. A specific right of termination shall not limit any other right of Bank or Clearant to terminate this Merchant Agreement expressed elsewhere in this Merchant Agreement. Notice of termination may be given orally or in writing, and if given orally, shall be confirmed in writing.

16.7 Upon termination, Merchant's rights to complete Transactions and submit them to Bank and Clearant, and to use Transaction form or formats, promotional material and any other items provided by Bank or Clearant, will cease. Any Transaction that is accepted by Clearant and Bank after the effective date of termination will be returned to Merchant and will not be credited (or debited) to Merchant's account(s). If the deposit has already been posted to Merchant's account(s), said posting will be reversed.

16.8 Termination of this Merchant Agreement shall not affect Merchant's obligations which have accrued prior to termination.

16.9 Sections 3.4, 4, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 22, 25, 27, 28, 32, 33, 35, 38 and 39 will survive termination of this Merchant Agreement.

17. **Chargebacks.** To the extent that Bank and/or Clearant has paid or may pay a Chargeback, Merchant will be obligated to reimburse Bank and/or Clearant for any such sums paid and for related fees. A list of some common reasons for Chargebacks is contained in the Card Acceptance Guide provided; however, such list is not exclusive and does not limit the generality of the foregoing. Merchant understands that obtaining an authorization for any Transaction shall not constitute a guarantee of payment, and such Transaction can be returned or charged back to Merchant like any other item hereunder. Merchant acknowledges that its right to receive any amounts due from Bank or Clearant is subject to Bank's and Clearant's security interest and right of set off as set forth in this Merchant Agreement.

### 18. Reserve Account.

18.1 At any time, Bank may, at its option, establish a reserve account to secure the performance of Merchant's obligations (the "Reserve Account"). The Reserve Account may be funded through any or all of the following: (a) at the request of Clearant or Bank, Merchant will deposit funds in the Reserve Account within 1 business day after receiving Clearant's or Bank's oral or written request; or (b) without prior notice to Merchant, the transfer by Bank into the Reserve Account of funds deducted from any payment due to Merchant or from any funds in the Settlement Account or any other deposit account, including certificates of deposit, of Merchant with a designated depository or other financial institution. Merchant authorizes deductions from its accounts by ACH entry, sight draft, preauthorized check, reverse wire, or otherwise as Bank or Clearant deems appropriate under the circumstances. Whenever the balance in the Reserve Account is less than the minimum balance required, or is otherwise deficient, the same procedures set forth herein shall be followed in order to cure the deficiency. Without limiting Bank's or Clearant's remedies, Merchant's failure to deposit any deficiency on time will permit Bank or Clearant, without advance notice, to suspend or cease processing additional Transactions or terminate this Merchant Agreement, as determined by Bank or Clearant in its sole discretion.

18.2 Merchant acknowledges and agrees that the Reserve Account may contain both funds deposited by the Merchant and funds of other merchants of the Bank or Clearant. The Reserve Account will be separate from the Settlement Account. Merchant shall have no right of withdrawal from the Reserve Account. The Reserve Account shall be under the sole control of Bank, and Clearant shall not have access to or hold funds in the Reserve Account. Any funds held in the Reserve Account shall not bear interest.

18.3 At any time in Bank's or Clearant's sole and absolute discretion, Bank or Clearant may (i) designate the minimum balance required to be deposited in the Reserve Account, (ii) require that the amount on deposit in the Reserve Account be increased, (iii) require that the Merchant deposit, or Bank may deposit for Merchant into the Reserve Account a percentage of, or a fixed amount from each Transaction processed, or (iv) otherwise determine the amount to be deposited in the Reserve Account.

18.4 If funds are not available in the Settlement Account, Merchant hereby agrees that Bank may, without prior notice to Merchant, deduct from the Reserve Account any obligation of Merchant to Clearant or Bank under this Merchant Agreement, including all Fees, chargebacks and any and all additional fees, and sums sufficient to reimburse Clearant or Bank for the amount of any fines, penalty amounts and charges due to the Card Brands.

18.5 Bank may continue to hold or deposit funds in the Reserve Account after termination of this Merchant Agreement. All provisions which apply to a pre-termination Reserve Account will apply after termination, including requiring a minimum balance as determined by Bank or Clearant in their sole discretion and replenishment of deficiencies. The funds will be held by Bank or its designated agent for a period of not less than one hundred eighty (180) days from the date of the last Transaction processed under the Merchant Agreement, plus the period of any warranty, guarantee, and/or return policy on goods and/or services sold. Bank will return the balance in the Reserve Account to Merchant after Bank and Clearant reasonably determine that the risk of chargebacks and other fees has ended and after deducting all amounts that Merchant owes to Bank and Clearant under this Merchant Agreement or any other agreement. Under no circumstance shall the amount collected as a Termination Fee under the terms of this Merchant Agreement be construed to satisfy the requirements of this section.

### 19. Security Interest.

19.1 To secure Merchant's performance of its obligations under this Merchant Agreement, and any other agreement with Bank or Clearant, Merchant grants Clearant and Bank a security interest in each Transaction and its proceeds, the Settlement Account, the Reserve Account and any other deposit account of Merchant with a financial institution, whether now existing or established in the future, and in the proceeds of all those accounts, and any of Merchant's property held by Bank or Clearant. Bank or Clearant may enforce these security interests without notice or demand. The security interests granted under this Merchant Agreement will continue after this Merchant Agreement terminates, until Merchant satisfies all its obligations to Bank and Clearant.

19.2 Merchant also agrees that, in the event of a default by Merchant, Clearant or Bank has a right to setoff and may apply any of Merchant's balances or any other monies due Merchant from Clearant or Bank towards the payment of amounts due from Merchant under the terms of this Merchant Agreement. The rights stated herein are in addition to any other rights Clearant and Bank may have under applicable law.

19.3 Furthermore, and with respect to any security interests granted herein, Bank and Clearant will have all rights afforded under the Uniform Commercial Code, as the same may, from time to time, be in effect in the State of Missouri; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interests granted herein is governed by the Uniform Commercial Code as in effect in a jurisdiction other than

the State of Missouri, then Bank and Clearant will have all rights afforded under the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions relating to such attachment, perfection or priority of the security interests, as well as any other applicable law.

19.4 Upon request of Bank or Clearant, Merchant will execute one or more financing statements or other documents to evidence the security interests granted to Bank and Clearant under this Section 19. Merchant shall cooperate with Bank and Clearant in obtaining any control agreement or similar agreement with a depository bank necessary to perfect the security interests granted herein. In addition, Merchant agrees that its signature on the Merchant Application will be considered Merchant's signature agreeing to any control agreement as defined in Article 9 of the Uniform Commercial Code among Merchant, Bank, Clearant and any other financial institution under which Bank, Clearant, Merchant and any other financial institution agree to the disposition of funds in the Settlement Account, the Reserve Account or any other deposit account without further consent by Merchant.

**20. Waiver of Jury Trial; Governing Law; Venue.**

20.1 THE PARTIES SPECIFICALLY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING OUT OF THIS MERCHANT AGREEMENT, OR BETWEEN THE PARTIES FOR ANY REASON.

20.2 THIS MERCHANT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSOURI, NOTWITHSTANDING ANY CONFLICTS OF LAWS PRINCIPLES.

20.3 MERCHANT AND GUARANTOR HEREBY CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS LOCATED IN COLE COUNTY, MISSOURI FOR ANY DISPUTE ARISING OUT OF THIS MERCHANT AGREEMENT.

**21. Amendments.** Bank and Clearant may amend this Merchant Agreement at any time by providing Merchant with 15 days' prior notice by: (a) sending Merchant written notice of such amendment, or (b) posting such amendment to Clearant's web site and providing Merchant with electronic notice as provided in Section 3.4. The amendment will become effective on the effective date, provided however if such amendment increases Merchant's fees (other than with respect to any pass through of third party costs, including Card Brand fees, interchange, dues and assessments, or in connection with regulatory changes or introduction by Clearant or Bank of new products or services), Merchant will have the right to terminate this Merchant Agreement by providing Clearant and Bank written notice thereof before the effective date. Bank and Clearant may amend this Merchant Agreement upon less than 15 days' prior notice if Bank or Clearant reasonably determines immediate modification is required by Law, the Card Brand Rules, any adverse change in Merchant's financial condition or if Merchant's sales volume or average transaction amount does not meet Merchant's projections contained in the Merchant Application.

**22. Waiver.** Bank's or Clearant's failure to enforce this Merchant Agreement will not waive Bank's or Clearant's rights under this Merchant Agreement. Waivers of any provision of this Merchant Agreement must be in writing and signed by Bank and Clearant. A waiver in one instance will not apply to other occasions unless that intent is clear from the signed waiver.

**23. Reports About Merchant; Exchange of Information.** From time to time, Clearant and Bank may obtain credit and other information on Merchant or any owner, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant, from others (such as customers and suppliers of Merchant, lenders and credit reporting agencies), and furnish information on Merchant's relationship with Clearant and Bank and Clearant's and Bank's experience with Merchant to others seeking the information, including without limitation the IRS pursuant to any reporting requirements currently in place or those that may be enacted at any time by the United States government or any of its authorized agencies, any Card Brand, or any of their member financial institutions, or any other third party, without any liability whatsoever to Clearant or Bank.

**24. Account Monitoring.** Merchant agrees that Clearant or Bank may upon reasonable grounds, divert the disbursement of Merchant's funds to the Reserve Account and/or temporarily suspend processing under this Merchant Agreement and/or terminate this Merchant Agreement, and Clearant shall provide Merchant with notice of such action. Reasonable grounds shall include, but not be limited to, the following: suspicious or unusual Transaction activity; material variance in the nature of Merchant's business, type of product and/or service sold, average ticket size, monthly volume or swiped/keyed percentages, from such disclosures made by Merchant in this Merchant Agreement; Merchant does not authorize Transactions; receives excessive retrieval requests against Merchant's prior activity; or excessive ACH rejects or Chargebacks are debited against Merchant's prior activity. If Merchant's funds are diverted by Clearant or Clearant has temporarily suspended processing under this Merchant Agreement, such diversion or suspension shall be for any reasonable period of time required by Clearant to fully investigate Merchant's account activity and resolve, to Clearant's sole satisfaction, the subject questionable, suspect or fraudulent Transactions or activity of Merchant. Any funds diverted shall be maintained by Bank in a non-interest bearing account at Bank. Bank and Clearant shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any diversion of funds, suspension of processing or termination of this Merchant Agreement by Clearant pursuant to this Section. Clearant will assess all fees and expenses incurred in relation to its investigation of suspicious or unusual Transaction activity, which includes activity that deviates from this Merchant Agreement.

**25. Cardholder Account Information; Compliance with PCI DSS.** Merchant agrees that it will not disclose any Cardholder account information or other personal information to a third party for any purpose except to complete a Transaction pursuant to the Card Brand Rules or as otherwise required or permitted by the Card Brand Rules or Law. Merchant agrees that it will not request or use Cardholder account information for any purpose that Merchant knows or should have known to be fraudulent or in violation of the Card Brand Rules or for any purpose that the Cardholder did not authorize. Merchant agrees that it will only hold cardholder account information in compliance with PCI DSS. In the event of any actual or suspected loss or theft of Cardholder account information, Merchant is required to contact Bank and Clearant within 24 hours after becoming aware of such security breach. Merchant shall be responsible, at its own expense, to (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data, (ii) perform or cause to be performed any remedial actions recommended by such investigation, and (iii) fully cooperate with Bank, Clearant, the Card Brands or the United States government or any of its authorized agencies in the investigation and resolution of any security breach. Merchant shall receive information from Clearant about how to complete a PCI DSS Self-Assessment Questionnaire ("SAQ") after Merchant's Merchant Application has been accepted. If Merchant fails to complete the SAQ within two weeks of processing their first Transaction and once each calendar year thereafter then Merchant will be subject to a Non-Complete PCI Questionnaire fee of \$15.95 per month until such time as Merchant completes the SAQ. In addition, Merchant shall promptly pay any fines, fee or penalties that may be assessed by any Card Brand as the result of its non-compliance with PCI DSS.

**26. Publicity.** Clearant and Bank have the right to use or display Merchant's name and logo in order to publicize and promote Merchant's use of the Services.

**27. Attorneys Fees.** Merchant and/or Guarantor will be liable for and will indemnify and reimburse Clearant and Bank for all attorneys' fees and other costs and expenses paid or incurred by Clearant and/or Bank in the enforcement of this Merchant Agreement or in matters relating to this Merchant Agreement, in collecting any amounts due from Merchant to Clearant and/or Bank, or arising from any breach by Merchant of this Merchant Agreement, or any other wrongdoing by Merchant or Guarantor.

**28. Notices.** All notices required by this Merchant Agreement will be in writing (hard copy or electronic) and will be effective when delivered to and received by (i) Clearant at the address designated on the Merchant Application, or the return address on the Merchant's Card processing statements, (ii) Bank at the address designated on the Merchant Application, and (iii) Merchant at Merchant's address to which Clearant mails Merchant's statements or at the electronic mail address provided by Merchant in the Merchant Application, or at such other address as any party may provide by written notice to the other parties. Any address Merchant designates may also be the address to which Clearant mails Merchant's statements. Delivery by facsimile transmission or electronic mail will be considered effective when the sender receives electronic confirmation of the transmission.

**29. Entire Agreement.** This Merchant Agreement constitutes the entire agreement between Merchant and Clearant and Bank for the Services covered by this Merchant Agreement and supersedes all prior or contemporaneous negotiations, stipulations or agreements relating thereto, whether oral or in writing. If any provision of this Merchant Agreement is held to be unenforceable, the other provisions remain effective.

**30. Effective Date.** This Merchant Agreement becomes effective only when accepted by Clearant and Bank. No agreement is deemed accepted if only signed by an agent representing Clearant and/or the Bank for the purposes of soliciting processing business.

**31. Financial Accommodation; Bankruptcy.**

31.1 Merchant will notify Bank and Clearant immediately if any bankruptcy, insolvency or similar petition is filed by or against Merchant. Merchant acknowledges that the acquisition and processing of sales slips hereunder is a financial accommodation and, as such, in the event Merchant's bankruptcy, this Merchant Agreement cannot be assumed or assigned, and Clearant and Bank shall be excused from performance hereunder.

31.2 Merchant acknowledges and agrees that in the event of a bankruptcy proceeding, Merchant must establish a Reserve Account or maintain a previously established and then current Reserve Account in amounts required by Bank and Clearant and in accordance with any Reserve Account provision specified in this Merchant Agreement. Bank will have the right to setoff against the Reserve Account for any and all obligations which Merchant may owe Bank or Clearant, without regard to whether the obligations relate to Transactions initiated or created before or after the filing of the bankruptcy petition.

**32. Warranty.** BANK AND CLEARANT SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR CLEARANT GUARANTEES OR WARRANTS THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

**33. Independent Contractors.** Clearant and Bank and Merchant are and shall remain independent contractors of one another, and neither they, nor their respective employees or agents, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Merchant Agreement shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Clearant and Bank and Merchant.

**34. Special Provisions Regarding EBT Transactions.** Acceptance by Merchant of EBT transactions is governed by specific provisions of the Card Acceptance Guide. In accepting these transactions, Merchant agrees to abide by these provisions and failure to do so may result in additional fees.

**35. Limited Acceptance.**

35.1 If appropriately indicated on the Merchant Application, Merchant shall be a limited acceptance merchant, which means that Merchant has elected to accept only certain Visa and MasterCard Card types as indicated on the Merchant Application, or via later notification. The Visa or MasterCard credit acceptance option on the Merchant Application refers to Visa credit and business transactions, and is what MasterCard refers to as "Other Card" transactions. Notwithstanding anything to the contrary in the Merchant Application, Merchant can elect (i) to accept only Visa or MasterCard non-PIN based debit/stored value/electronic benefit transactions (sometimes referred to as "signature debit" transactions, whether or not an actual signature is required), (ii) to accept only Visa or MasterCard Credit transactions, or (iii) to accept all Visa or MasterCard credit and signature debit transactions; provided, however, that a Merchant who accepts any Visa or MasterCard Card types must accept all valid Visa or MasterCard Card types issued by a non-U.S. issuer. Merchant is not required to accept Cards of Card Brands other than Visa or MasterCard in order to accept Visa or MasterCard Cards (except that transactions using Diner's International Cards which also carry the MasterCard trademark must be accepted if Merchant accepts MasterCard Card transactions of the same type). Neither Clearant nor Bank has any obligation other than those expressly provided under the Card Brand Rules and applicable Law as they may relate to limited acceptance. Neither Clearant's nor Bank's obligations include policing card types at the point-of-sale. Merchant will be solely responsible for the implementation of its decision for limited acceptance including but not limited to policing the Card Brand type(s) of transactions at the point-of-sale submitted for processing by Clearant. Should Merchant submit a Transaction for processing for a card type it has indicated it does not wish to accept, Clearant may process that Transaction and Merchant will pay the applicable fees, charges, and assessments associated with that Transaction. Merchant will comply with any applicable Laws and Card Brand Rules and other applicable rules and regulations for the Card Brand type processed.

35.2 If Merchant has chosen to accept Discover Cards in the Merchant Application, Merchant must accept Discover Cards at all Merchant establishments, including in payment for purchases of goods and services, for charitable contributions and for Cash Over Transactions (subject to the terms of the Card Brand Rules and other applicable rules and regulations), when properly presented for payment by a Cardholder. Subject to this section, Merchant must create a Sales Draft for each Discover Card Transaction and deliver at least one copy of the Sales Draft to the Cardholder. A Merchant may issue a Cash Over (subject to the terms of the Card Brand Rules) in connection with a Discover Card Transaction. Merchant must deliver a single Authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount. In addition, the Sales Draft must include both the purchase amount and the Cash Over amount.

**36. Binding Effect.** This Merchant Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**37. Signature Provisions.** Any duplicate original (whether digital, photographic, or otherwise) or electronic record of this Merchant Agreement shall have the same force and effect as the original form of this Merchant Agreement. By signing the Merchant Application or by submitting Transactions, Merchant accepts and agrees to the terms and conditions of this Merchant Agreement.

**38. Required Merchant Information.** The USA PATRIOT Act and other applicable Laws require all financial institutions with which Clearant has relationships to obtain, verify, and record information that identifies each person (including business entities) who seeks to open an account with a financial institution. As a result of Merchant's status as an account holder with Bank, Merchant shall provide documentary verification of Merchant's identity, such as a driver's license or passport for an individual and certified copy of organization documents for an entity in manner acceptable to Bank and Clearant. Bank and Clearant reserves the right to verify Merchant's identity through other non-documentary methods as Bank or Clearant deems appropriate in its sole discretion. Bank and Clearant may retain a copy of any document it obtains to verify Merchant's identity with the financial institution.

**39. Continuing Guaranty.** As a primary inducement to Clearant and Bank to enter into this Merchant Agreement, and to approve the Merchant Application of Merchant, the Guarantor(s), individually and severally, who signed on the Guarantor signature line(s) on the Merchant Application, agree to be bound by all terms and provisions of this Merchant Agreement to the same extent and in the same manner as Merchant. Guarantor(s) understands that Clearant or Bank, without notice to Guarantor(s), may from time to time renew or extend this Merchant Agreement, modify rates, limits, charges and fees, or modify the amount or type of services provided to Merchant all of which may increase the Guarantor's obligations under this Guaranty. Guarantor(s) further understands that Clearant or Bank may proceed directly against Guarantor(s) without first exhausting Clearant's or Bank's remedies against the Merchant, any other person or entity responsible to Clearant or Bank or any security held by Clearant or Bank.

**40. Definitions.** As used in this Merchant Agreement, the following terms will have the following meanings:

"ACH Rules" means collectively, the National Automated Clearing House Association ("NACHA") Operating Rules and NACHA Operating Guidelines, as the same are amended from time to time.

"Authorization" means approval by, or on behalf of, the Card issuer to validate a Transaction for a Merchant or another affiliate bank. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.

"Card" means a valid credit card or debit card bearing the service mark of Visa or MasterCard, Discover, American Express, private-label credit card, ATM/debit card, or any other card which Bank may at any time specify in writing as an additional Card payment option available to a Merchant.

"Card Brand" means any entity formed to administer and promote Cards, including, without limitation, American Express Travel Related Services Company, Inc.; Discover; MasterCard International, Inc.; VISA U.S.A., Inc.; and VISA International, Inc., and in the case of debit Transactions, the debit networks.

"Card Brand Rules" means the rules, regulations, releases, interpretations and other requirements (whether contractual

or otherwise) imposed or adopted by any Card Brand.

"Cardholder" (sometimes referred to as "Card Member" in Card Brand materials) means the individual whose name is embossed on a Card and any authorized user of such Card.

"Chargeback" means the procedure by which a Sales Draft or other indicator of a Transaction (or disputed portion thereof) is returned to Bank or the issuer, the liability for which is the Merchant's responsibility.

"Processing Fees" means the fees payable by Merchant to Bank and Clearent for the Services Bank and Clearent provides to Merchant in connection with the Merchant Agreement, as the same may be revised from time to time.

"Sales Draft" means evidence of a purchase of goods or services by Cardholder from Merchant using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Card Brand Rules.

"Services" means the activities undertaken by Clearent and Bank to authorize, process and settle all United States Dollar-denominated American Express, Discover, MasterCard and Visa Card Transactions undertaken by Cardholders at Merchant's location(s) in the United States, and all other activities necessary for Clearent and Bank to perform the functions required by the Merchant Agreement for all other Cards covered by this Merchant Agreement.

"Settlement Account" means an account at a financial institution designated by Merchant as the account to be debited and credited by Bank for Transactions, fees, Chargebacks and other amounts due under the Merchant Agreement.

"Transaction" means acceptance of a Card for payment for goods sold and/or leased or services provided to Cardholder by Merchant and receipt of payment from Bank in accordance with the terms of the Merchant Agreement.