

## WELLS FARGO BANK, N.A. MERCHANT HANDBOOK

This handbook sets forth the Rules, Policies and Procedures pursuant to which CTS Holdings, LLC and Wells Fargo Bank, N.A. (Collectively, "Servicers") are willing to provide, the services set forth in the Merchant Credit, Debit and EBT Agreement (the "Agreement") to the Merchant. The terms of the Merchant Handbook are incorporated into the Agreement by reference herein.

### I. DEFINITIONS

For purposes of the Agreement and the Merchant Handbook, the terms defined herein shall have the following meanings:

"The Acts" means the Federal Electronic Funds Transfer Act and their applicable rules and regulations as now or hereafter amended during the term of this Agreement.

"Applicable Law" shall mean any federal, state or local law, regulation, rule or ordinance and all other applicable judicial and administrative judgments, orders, stipulations, awards, writs, injunctions and consent decrees, in each case as in effect and applicable to the subject matter referenced.

"Card" means a plastic card, code or other means or any combination thereof, that identify a Cardholder of a FSI, for the purpose of permitting a Cardholder of Merchant to initiate an electronic fund transfer or other transaction at a POS Terminal.

"Cardholder" shall mean a person authorized to use a Card to initiate Transactions, or the maker of a check with respect to a check verification.

"Credit Card Association" shall mean the issuer of MasterCard and Visa credit cards or other cards for which Servicers provide Transaction services.

"Designated Account" shall mean an account opened at the Settlement Institution or financial institution chosen by Merchant for the purpose of reconciliation and settlement of financial transactions initiated at Merchant Stores through the System.

"EBT" shall mean electronic benefits transfers or transfer systems relating to the distribution of public assistance, food stamp, child support and other benefits to eligible recipients.

"EBT Contract Documents" refers to contracts (and related documents) entered into between the various states and third parties to provide service in connection with the state's delivery of various state and federal assistance benefits, and including any subcontracts to provide such services.

"FSI" means a financial institution, entity acting for a governmental agency or other entity who issues Cards, the customers of which are entitled to use the System.

"Internet Transaction" means any Transaction that utilizes the Internet as the means for obtaining, or attempting to obtain an authorization.

"Merchant Store(s)" means store facility(ies) owned or operated by Merchant.

"Network" shall mean an entity, organization or association that operates or arranges for computer hardware and software and telecommunications links to enable the interchange, under a common service mark, of electronic fund transfers among the participants in the entity, organization or association, including networks operated by a single card-issuing organization, such as American Express, Diner's Club or Discover, and EBT programs operated by or on behalf of governmental entities.

"POS Terminal" means point of sale electronic fund transfer device or other device using software to obtain access or process Transactions through the System, i.e., an information processing machine located on the premises of a Merchant which is connected to the System to effectuate financial transactions authorized by law.

"Rules" mean the operating rules, regulations, policies and procedures of a Credit Card Association and/or Network as may be amended from time to time.

"Settlement Institution" means such bank designated by Servicers to handle the reconciliation and settlement of financial transactions initiated at Merchant Store(s) through the System.

"Switch" means the computer-based switching system operated by or on behalf of Servicers and used in connection with the System.

"System" means all the necessary software and hardware and peripheral devices operated by or on behalf of Servicers to enable it to offer electronic financial services to their customers of Merchants through an electronic information communication and processing network.

"System Cutoff" means the time each day that the System will produce totals for purposes of later reconciliation or settlements of the day's Transactions, which is agreed to be 12:00 o'clock (Midnight, Central Time) or such other time as Servicers shall determine.

"Transaction" shall mean an electronic transfer of funds or transmission of information, including a purchase of goods or services, or a denial of any of the foregoing, initiated by the use of a Card, at a POS Terminal supported by the System and any adjustment, chargeback, representation or other correction thereof and shall specifically include Internet Transactions.

### II. CREDIT AND DEBIT

#### REQUIREMENTS, CONDITIONS AND PROCEDURES

**2.1 Acceptance of Bank Cards.** Merchant agrees to promptly honor, without discrimination, all valid and current Cards when properly presented as payment for merchandise or services by a Cardholder. Merchant shall not establish minimum or maximum Transaction amounts as a condition to honoring the Card, shall not impose any surcharge on Transactions, shall not make cash advances, and shall not collect any tax or other amounts due separately in cash. Merchant agrees to display the service marks of the Credit Card Associations and Networks in accordance with the Rules.

**2.2 Authorization.** Merchant must receive authorization of each Transaction from Servicers using a POS Terminal. Merchant understands and agrees that obtaining authorization does not constitute a guaranty of payment and does not release Merchant of liability for chargebacks. The Cardholder must present the Card and the Card must be swiped through the POS Terminal to entitle Merchant to receive payment under this Agreement. Merchants will be provided with sales drafts ("Sales Drafts") to record Transactions. The Merchant must date each Sales Draft, include a brief description of the merchandise and/or services sold and specify the price thereof (including any applicable taxes). The Merchant must compare the signature on the Sales Draft with the signature appearing on the Card. The Merchant agrees to emboss (imprint) the Sales Draft with the information on the Card. A Sales Draft generated by an electronic printer as the Card is swiped through a POS Terminal connected to the printer will be accepted as an embossed or imprinted Sales Draft. Merchant must obtain the Cardholder's signature on the Sales Draft whether it is embossed or electronically printed. If the Card information cannot be read by the POS Terminal and must be manually entered, the Sales Draft must be embossed manually. The Sales Draft should include the total cash price of the sale and the cash price for each item, the authorization code, and any additional information Servicers reasonably requires. The Merchant shall deliver to the Cardholder a true and complete copy of the Sales Draft at the time of delivery of goods or performance of services. In order to prove that the Sales Draft has been properly completed, Merchant agrees to retain a copy of the Sales Draft, other than the copy given to Cardholder, for a period of at least three (3) years after the date of the Transaction, or unless otherwise required by Servicers. At the request of Servicers, Merchant shall deliver to Servicers the Merchant's copy of any Sales Draft so requested, according to the Rules. In the event that

Merchant fails to deliver such Sales Draft, Merchant shall be liable to Servicers for damages incurred by Servicers, such as chargebacks, which result from the failure to retain Sales Drafts.

If the initial attempt to receive authorization is declined, Merchant shall not attempt to receive a subsequent authorization. Merchant shall retain or retrieve cards, as required by the Rules, which are expired or for which reasonable grounds exist to believe that such cards are counterfeit, fraudulent or stolen. Authorization may be obtained by voice over the telephone only if the POS Terminal is not operating. There is an additional charge for voice authorizations. Merchant understands that even authorized mail or telephone orders are discouraged, result in greater risk of loss and chargeback to Merchant and if excessive, may result in termination of this Agreement. Servicers reserves the right, WITHOUT PRIOR NOTICE and at Servicers' SOLE DISCRETION, to establish a chargeback reserve account to fund chargebacks arising from all Transactions. In the event Servicers authorizes the transaction by voice, they will transmit an authorization code, which must be written on the Sales Draft.

**2.3 Returned Merchandise.** If any merchandise is accepted for return or any services are terminated or canceled or any price adjustment is allowed by the Merchant, the Merchant shall not make any cash refund to the Cardholder, but shall issue promptly to Servicers via the POS Terminal for deposit a credit voucher evidencing such refund or adjustment. The refund or adjustment indicated by the credit voucher may not exceed the original Transaction amount. Merchant shall not accept any payments from Cardholder for merchandise and/or services if the purchase has been transmitted to Servicers via the POS Terminal. Any such remittance which is inadvertently received by Merchant shall be segregated and promptly delivered to Servicers properly endorsed or signed, or the Merchant shall prepare a Credit Voucher on the POS Terminal for the purpose of effecting a deposit to Cardholder's account. The per item Transaction Fee will still be applicable.

**2.4 Imprinters.** At the request of Merchant, Servicers will furnish Merchant, for a fee set forth in the Merchant Application attached hereto and incorporated herein by reference (the "Merchant Application"), a sufficient number of imprinters for Merchant's needs. Unless otherwise indicated in this Agreement, the imprinters are the property of Merchant. If Merchant has or supplies the imprinters, said imprinter must be approved by Servicers. Servicers will supply Merchant with imprinter plates, Sales Drafts, and other forms as necessary at Merchant's cost.

### III. ELECTRONIC BENEFIT TRANSFER

#### REQUIREMENTS, CONDITIONS AND PROCEDURES

**3.1 Merchant Requirements.** Merchant must be an approved Merchant for food stamps or a state approved "cash only" Merchant and must meet all of the requirements of a Merchant set forth in the EBT Contract Documents and comply with Applicable Law.

**3.2 Record Retention.** Merchant shall retain audit tapes, documents, vouchers and other records associated with performance of this Agreement for a period of (3) years from the date of Transaction in accordance with Applicable Law. Such data shall be made available for inspection by State or Federal Agency officials or auditors or Servicers' accountants upon request. Failure to produce such records, within the time requested, may result in financial liability to Merchant.

**3.3 Charges to Benefit Card Clients.** Unless specifically allowed by Applicable Law, Merchant shall not charge benefit Cardholders a fee for providing benefits or doing a balance inquiry, nor condition the providing of cash benefits on the purchase of goods or services, or similar condition except as permitted by Applicable Law. Merchant shall not require a balance inquiry as a condition to a food purchase or cash withdrawal.

**3.4 Advertising and Promotional Materials.** Merchant may state in advertisements or other promotional material that the Merchant is available for use by the benefit card clients in obtaining benefits, provided that all such advertising or promotional materials are approved prior to use by Servicers and are in accordance with the EBT Contract Documents, which approval shall not be unreasonably withheld.

**3.5 Operational Requirements.** POS Terminals must perform the following transactions: (a) cash withdrawal; (b) food stamp purchase; (c) food stamp return; and (d) balance inquiry. The POS Terminal must also be able to satisfy the requirements of the applicable contract requirements relating to message transmission, response time, message format and other requirements for the EBT System set forth in the EBT Contract Documents.

**3.6 Establishing a POS Terminal.** Merchant shall comply in all respects with applicable laws and regulations in the establishment and operation of its POS Terminals and the transactions initiated at such POS Terminals. Merchant is responsible for ensuring that each POS Terminal (i.e. Register platforms that support EBT) comply with the EBT specification.

**3.7 POS Terminal Characteristics.** Each POS Terminal must have the following characteristics in addition to any others required by law or the EBT Contract Documents:

- A customer receipt printer capable of providing a Transaction receipt conforming to the requirements of Regulation E and Servicers.
- A card reader capable of reading the Entire Track II.
- A keyboard that contains action keys and/or function keys and a data entry PIN pad.
- A method to indicate the disposition of the Transaction including an approval code or reject reason code.
- The ability to accept a four (4) character alpha and/or numeric PIN.
- The PIN must be encrypted at the PIN pad.

**3.8 Merchant Identification.** Merchant shall provide Servicers or their designated representatives with a list of POS Terminals by location. This information should include Merchant name, street address, city, state, etc. along with the Merchant's FCS number. Transactions that originate from a POS Terminal not identified as required by this section will be rejected.

**3.9 Security.** Merchant shall comply with Applicable Law and EBT program operating rules regarding POS Terminal security.

**3.10 Transaction Receipts.** All transaction receipts must comply with Applicable Law, the Rules and EBT Contract Documents. The Transaction receipt for a Transaction must contain the name of the Merchant in either pre-printed or POS Terminal printed form and must contain the following:

- Beginning balance (optional);
- Ending balance;
- Disposition as approved or denied, the reason;
- Amount;
- Type of Transaction;
- Calendar date and time of the day the Receipt initiated the transfer;
- Truncated Personal Account Number;
- One of the POS Terminal location descriptions specified by Applicable Law; and
- A sequence number or serial number of the Transaction.

A POS Terminal record must be maintained by the Merchant including, at a minimum, the same information provided on the Transaction receipt for a period of three (3) years. A copy of the POS Terminal receipt must be made available to the benefit card client in all transactions except balance inquiry Transactions.

**3.11 PINS.** All Transactions, except Transactions processed off-line, must contain a PIN entered by the benefit card client. The Merchant, its employees and its agents, are expressly prohibited from

entering a PIN into a POS Terminal. The PIN shall not be retained by anyone other than benefit card client at any time.

3.12 **Lost Card.** Benefit cards that are inadvertently left at a Merchant's location may be returned to the benefit card client by the Merchant on the day they are obtained if the benefit card client provides positive identification. If the benefit card cannot be returned to its owner by the close of business on the day it is obtained, it must be forwarded to the address located on the back of benefit card.

3.13 **EBT Operations.** Concord and the EBT Processor will use reasonable efforts to keep the EBT System available at all times, except for nominal periods when the EBT System will be closed for the purpose of testing, maintenance and loading of information.

3.14 **Vouchers.** Off-line vouchers are used when a POS Terminal is not working or the EBT System is not available and a Merchant needs to perform a food stamp purchase or return Transaction. If electronic authorization of food stamp benefits is not available, and the Merchant chooses to complete the sale, Merchant's employees must comply with the off-line processing procedures set out in the most current version of the EBT Contract Documents.

#### **IV. IN-STORE SIGNAGE**

Merchant agrees to display in-store signage. Any in-store signage developed by Merchant must be approved by Servicers before being deployed. Holders of EBT cards shall not be identified or otherwise singled out as recipients of the Food Stamp Program and/or the AFDC Program. Specifically prohibited is the designation of "Food Stamp only" or "Welfare only" lanes. Merchant agrees to maintain signage as requested by the State to indicate participation by the Merchant and within the store to allow the EBT cardholder to determine which lane(s) accept EBT cards without overly referencing the benefit card client's public assistance status. Signs and other information indicating which cards are accepted at such checkout stations shall identify EBT only by its logo and/or initials unless otherwise agreed to by the State.

#### **V. DATA SECURITY**

Merchant may be required to comply with an audit to verify Merchant's compliance with security procedures. For Internet Transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format. Merchant cannot (i) transmit Cardholder account numbers to Cardholders for Internet Transactions, (ii) store or retain the 3-digit CVV 2/CVC 2 value located on the back end of the Card within the signature panel or (iii) store or retain magnetic stripe data. Visa has implemented a program to protect Cardholder data. The Cardholder Information Security Program ("CISP") applies to Merchant if Merchant processes or stores Cardholder data. A copy of the complete Visa Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained from Concord's customer service department. Visa may impose restrictions, fines, or prohibit Merchant from participating in Visa programs if it is determined Merchant is non-compliant. The following is a highlight of the current CISP program requirements: (i) Install and maintain a working network firewall to protect data accessible via the Internet, (ii) keep security patches up-to-date, (iii) encrypt stored data, (iv) encrypt data sent across networks, (v) use and regularly update anti-virus software, (vi) restrict access to data by business "need to know", (vii) assign a unique ID to each person with computer access to data, (viii) don't use vendor-supplied defaults for system passwords and other security parameters, (ix) track access data by unique ID, (x) regularly test security systems and process, (xi) maintain a policy that addresses information security for employees and contractors and (xii) restrict physical access to Cardholder information.

#### **VI. WARRANTIES AND REPRESENTATIONS OF MERCHANT**

Merchant warrants and agrees to fully comply with Applicable Law and the Rules, as amended from time to time. Merchant also warrants not to change the nature of its business as indicated on the Merchant Application attached hereto and submitted herewith or to modify the ownership of the business and continue to use the services provided herein without the prior written consent of Servicers. As to each Transaction presented to Servicers for payment, Merchant specifically warrants that: (a) the Sales Draft is valid in form and has been completed in accordance with the Rules, Applicable Laws and all other applicable requirements; (b) Merchant has delivered goods to the Cardholder or completed the service described on the sales draft in accordance with the Merchant Handbook; (c) each Sales Draft represents a bona fide direct sales transaction between the Merchant and the cardholder in the Merchant's ordinary course of business and the Sales Draft shows the cardholder's indebtedness for the total amounts shown; (d) the Cardholder has no claim, defense, right of offset, or dispute against Merchant in connection with the purchase of the goods or services and Merchant will provide adequate services to Cardholders and will honor all warranties applicable thereto; (e) Merchant has not charged Cardholder a surcharge or any separate or additional fee(s) in connection with the Transaction other than as may be required by Applicable Law. The foregoing shall not prohibit Merchant from extending discounts to customers paying by cash; (f) Merchant warrants to Servicers that each Transaction was placed by a person who is the Cardholder or other authorized user of the Card; (g) all of the Merchant's business locations engage in the same or substantially similar business activity as that listed on the face of this Merchant Application; (h) the percentage of mail and/or telephone order sales listed by Merchant is consistent at all of Merchant's locations; (i) Merchant and its employees will not use their personal credit cards on the Merchant POS terminal; (j) Merchant uses both the name and address shown on the front of the Merchant Application on all Sales Drafts and does not use any other name; (k) Merchant has included all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft or Transaction record (Merchant shall not "split tickets"). Merchant has not submitted duplicates of any transaction; (l) no submitted Transaction is between a Cardholder and an entity other than Merchant subject to chargebacks and other claims by Servicers.

Merchant further warrants and agrees that it shall not, without the Cardholder's consent, sell, purchase, provide, or exchange Card account information in the form of Sales Drafts, mailing lists, tapes, or any other media obtained by reason of a Transaction or otherwise, to any third party other than to Merchant's agents approved by Servicers for the purpose of assisting Merchant in its business, to Servicers, the respective Card-issuer, Credit Card Association or Network or pursuant to lawful governmental demand. All media containing Card account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discharging in a manner that will render the data unreadable. Merchant represents and acknowledges that monies received by Servicers for payment to Merchant are not the property of Merchant until actually delivered to Merchant.

**CTS HOLDINGS, LLC  
MERCHANT CREDIT, DEBIT AND EBT AGREEMENT**

THIS AGREEMENT is made and entered into between CTS Holdings, LLC ("Concord"), Wells Fargo Bank N.A. ("Bank"), and the Merchant as identified on the merchant application attached hereto and incorporated herein by reference (the "Merchant Application"), and is effective on the date of execution by Bank, Concord and Bank are collectively referred to as "Servicers."

**Recitals:**

I. Servicers operate an electronic financial services system that utilizes electronic funds transfer networks and multi-purpose terminals to provide transaction processing services ("System").

II. Merchant owns and operates a business and/or store(s).

III. Merchant desires to use the System for use by customers of Merchant. In consideration of the foregoing and the following covenants and agreements, Merchant and Servicers agree as follows:

1. **Exclusive Right.** Subject to the terms and conditions set forth below, Merchant hereby grants the exclusive right to Servicers, and Servicers hereby accept the exclusive right to establish, operate and maintain an electronic funds transfer system, as regulated by the Acts, in Merchant Store(s).
2. **Servicers Responsibilities.** Servicers agree to provide to Merchant those electronic funds transfer services selected on the Merchant Application, through the use of the System (the "Services"). The Merchant Application may be amended at any time to provide additional services or to add additional Merchant Stores to which the Services will be provided upon the consent of the Merchant and Servicers. Servicers shall have no obligation to process any Transaction initiated with a Card type not selected by Merchant on the Merchant Application and Servicers shall be entitled to decline such Transaction without first attempting to obtain an authorization. In the event any such Transaction is inadvertently not declined by Servicers and is authorized by a Card-issuing organization, Credit Card Association or Network, Merchant shall be fully liable for such Transaction, as if the Card type initiating such Transaction was selected by Merchant on the Merchant Application. Servicers' obligations under this Agreement may be performed by Concord or Bank as they may determine. Merchant acknowledges that Bank's obligations shall be limited to the sponsorship of credit card transaction processing services, and Bank shall not have any obligation with respect to debit and EBT transactions or related services. Debit and EBT sponsorship services shall be provided by another financial institution selected by Concord. Debit and/or EBT sponsorship services may be provided by First Financial Bank ("FFB"), an affiliate of Concord, pursuant to an agreement between Concord and FFB. Merchant agrees to comply with all requirements related to its acceptance of debit and EBT transactions which may be imposed by law, the applicable Network, Concord, FFB or any other sponsoring financial institution.
3. **The System.** The System shall, subject to Applicable Law and depending upon the Services provided hereunder, be capable of providing POS debit, credit and EBT capabilities and other services for use by customers of Merchant. Servicers will provide switching services to national and regional debit networks associated with acceptance of credit, debit and EBT cards at Merchant Stores. Servicers will also provide switching services and/or direct processing with third party and independent proprietary card providers where specifically agreed upon on the Merchant Application.
4. **Merchant Responsibilities.** Merchant agrees that:
  - (a) If Servicers are to provide EBT, credit and/or debit Services, Merchant shall accept payment for goods by means of credit, debit and/or EBT cards associated with the Network(s) selected on the Merchant Application in the manner and in accordance with the terms set forth in the Wells Fargo Bank N.A. Merchant Handbook ("Merchant Handbook"), a copy of which has been provided to Merchant and whose terms and conditions are incorporated by reference herein;
  - (b) Merchant shall not establish minimum or maximum Transaction amounts as a condition to honoring the Card, shall not impose any surcharge on Transactions unless permitted by a particular Network, shall not make cash advances, and shall not collect any tax or other amounts due separately in cash;
  - (c) Merchant must receive authorization of each Transaction from Servicers using a POS Terminal. Merchant understands and agrees that obtaining authorization does not constitute a guaranty of payment and does not release Merchant of liability for chargebacks. The Cardholder must present the Card and the Card must be swiped through the POS Terminal to entitle Merchant to receive payment under this Agreement. Merchant will be provided with sales drafts ("Sales Drafts") to record Transactions. The Merchant must date each Sales Draft, include a brief description of the merchandise and/or services sold and specify the price thereof (including any applicable taxes). The Merchant must compare the signature on the Sales Draft with the signature appearing on the Card. The Merchant agrees to emboss (imprint) the Sales Draft with the information on the Card. A Sales Draft generated by an electronic printer as the Card is swiped through a POS Terminal connected to the printer will be accepted as an embossed or imprinted Sales Draft. Merchant must obtain the Cardholder's signature on the Sales Draft whether it is embossed or electronically printed. If the Card information cannot be read by the POS Terminal and must be manually entered, the Sales Draft must be embossed manually. The merchant agrees to disclose the return policy on the embossed or electronic receipt;
  - (d) Merchant shall participate with Servicers in training sufficient Merchant trainees to provide said customer service. Provided, however, that Merchant shall be responsible for training Merchant personnel in the use of the POS Terminal and with respect to EBT transactions;
  - (e) Merchant will provide and pay for such access to electrical power and communication circuits as is necessary to permit operation and utilization of the System and necessary equipment in Merchant Stores;
  - (f) Merchant will maintain a Designated Account with the Settlement Institution for receiving payment for approved credit, debit and EBT transactions;
  - (g) All Transactions shall be reconciled by Merchant with Servicers on a daily basis;
  - (h) Merchant shall obtain all necessary governmental and third-party approvals necessary to utilize or access the System.
  - (i) Merchant shall provide, as often as may be reasonably requested by Servicers, documentation, reports and other information as may be necessary for Servicers to review and analyze Merchant's financial condition, such documentation, reports and information includes, without limitation, Merchant's balance sheet, related profit, loss and surplus statements and/or federal and state tax returns.
  - (j) Merchant shall be entitled to discontinue acceptance of a particular Card type, upon the provision of thirty (30) days prior written notice to Concord. Such notice shall not be deemed effective until Merchant receives written notice from Concord acknowledging receipt of Merchant's written request. If, during the term of this Agreement, Merchant reinstates acceptance of any Card type discontinued in accordance with this provision, Merchant agrees to do so under this Agreement, in accordance with the exclusivity provision set forth in Section 1 above.
5. **Payment.** Merchant acknowledges that this Agreement provides for provisional settlement of Merchant's Transactions, subject to final settlement including but not limited to those enumerated charges herein and on the Merchant Application. All payments to Merchant for legitimate authorized and settled Transactions shall be made by Servicers through the ACH system and shall normally be

electronically transmitted directly to Merchant's Designated Account. Servicers, as applicable, settle Visa, MasterCard, debit and EBT Transactions. Unless expressly set forth in writing by Servicers, settlement of all other Card types will be provided by the third party provider/issuer of such Card. Merchant hereby authorizes Servicers to initiate debit and credit entries to Merchant's Designated Account. This authorization shall continue in effect for at least 180 days after termination of this Agreement, or at Servicers' discretion, for a longer period as determined by Servicers in the exercise of reasonable discretion to satisfy Merchant's obligations hereunder. Merchant understands that payments with respect to a Transaction date are transmitted by the following business day via ACH following the date Merchant closes such Transaction date batch provided that such transmission is before 5 p.m. Central Standard Time, or such other time as Servicers shall designate unless Servicers are investigating a Transaction for breach of warranty by Merchant or for other reasons. Servicers monitor account activity and Merchant agrees that Servicers may retain funds for a reasonable period to investigate account activity. Servicers will attempt to notify Merchant but Servicers shall have no liability for any such actions taken by Servicers. However, Servicers cannot guarantee the timeliness with which any payment may be credited by Merchant's bank. Merchant understands that due to the nature of the ACH system and the electronic networks involved and the fact that not all banks belong to an ACH, payment to Merchant can be delayed. In such cases, Merchant agrees to work with Servicers to help resolve any problems in crediting Merchant's Designated Account. All payments shall be made to Merchant, less deductions, for the following items, and others which may be added, all of which may be increased from time to time and for which Merchant shall be responsible: discount fee, Transaction fees, credits, chargebacks, reserves, adjustment fees, association fees, Network processor fees, interchange, performance penalties, as well as any other fees or charges for which Merchant is responsible pursuant to the Merchant Application or this Agreement, as modified or amended from time to time. Said charges and fees shall be deducted prior to payments to Merchant or may be debited against Merchant's Designated Account at Servicers' sole discretion, without any further notice or demand. Servicers may hold, offset or retain funds to protect against amounts owed Servicers or based on unusual transactions or Merchant's financial condition. Servicers will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by Servicers. Merchant represents and acknowledges that monies received by Servicers for payment to Merchant are not the property of Merchant until actually delivered to Merchant and continue to be subject to chargebacks and other charges and fees after delivery. Servicers may return any item to Merchant for correction. Merchant hereby waives the right to collect for any transaction not reconciled by Merchant within 120 days of the date of the Transaction.

6. **Internet Processing.** Merchant must obtain approval from Servicers to accept and process Internet Transactions through Servicers. If Merchant accepts Internet Transactions without such approval, the Merchant Agreement may be immediately terminated by Servicers and/or Servicers are authorized to establish a chargeback reserve account to protect it from risk of loss. If authorized to accept payment by Internet, the Sales Draft shall be completed without the Cardholder's signature or an Imprint but shall include the Cardholder's name, billing address, Card number, expiration date of the Card, a description of the merchandise or service and the date and amount of all charges. Unless approved in writing by Servicers, Merchant may authorize but shall not settle sales prior to delivery of product or service. All Internet Transactions will be settled by Servicers into a depository institution in the United States. Merchant shall process Internet Transactions only (a) if the Internet Transactions have been encrypted by Concord or by a third party vendor acceptable to Servicers and (b) Cardholder data is protected by Merchant behind firewalls or on servers inaccessible to third parties. Encryption is not a guarantee of payment to Merchant. Merchant acknowledges that Internet Transactions are authorized and settled through separate BIN/ICA numbers and interchanges and that Servicers will be unable to combine deposits of Internet Transactions and non-Internet credit and debit Card Transactions. Because the transactions processed via the Internet are higher risk, Merchant will be charged higher fees which are set forth on the Schedule of Fees. Internet Transactions are subject to a higher incidence of chargebacks and, as with other Transactions, receiving an authorization and following procedures will not relieve the Merchant of liability for chargebacks nor for any liability associated with the fraudulent use of customer data obtained off of Merchant's Web Sites. All communication costs related to Internet Transactions are Merchant's responsibility; provided, however, if Concord serves as a host for Merchant's Web Site, Concord will bear the cost of providing access of Merchant's Web Site to the World Wide Web. Neither Concord nor the Bank will manage the Internet telecommunication link which is also Merchant's responsibility; provided however, if Servicers serve as a host for Merchant's Web Site, Concord will monitor Concord's communication link to the World Wide Web and will act in a reasonable manner to re-establish communication if Concord's communication link is severed. However, Servicers shall have no liability for any direct, incidental or consequential damages suffered by Merchant by virtue of Concord's communication link being unavailable.

If indicated on the Merchant Application and approved by Servicers, in exchange for the consideration set forth on the Merchant Application, Servicers hereby grant to Merchant a non-exclusive, non-assignable sublicense to the software set forth on the Application as long as this Agreement is in full force and effect. If Transaction processing software is licensed from Servicers, it is Servicers' understanding that the licensor of such software has implemented security systems consisting of encryption and "firewall" technologies which are understood in the industry to provide adequate security for the transmission of information over the Internet. Servicers do not guarantee that such security is secure or impregnable, and Servicers will not be responsible in the event of the infiltration of its security systems. Merchant further acknowledges and agrees that Servicers are not responsible for the security of the Cardholder data or information stored on Merchant's Web Site.

7. **Schedule of Fees.** Servicers shall be entitled to increase fees and charges or add additional charges at any time and impose such increases and/or additional charges upon Merchant and any such increases shall become effective on the date Merchant is notified of such increases in writing. Any such increases resulting directly or indirectly from increases or additional charges imposed by third parties shall not constitute an amendment to this Agreement or be subject to the amendment provisions set forth in section 18. All other increases or additional charges shall be subject to the amendment provisions set forth in section 18.
8. **Chargebacks.** The Card issuing bank, not Servicers, maintains information about the Cardholder and is responsible for authorizing or declining each Transaction. After a Transaction is authorized by the Card-issuing bank, Servicers have the right to decline Transactions for its own protection, but has no obligation to do so and owes no duty to the Merchant to take such action. When Servicers forward the Card-issuing bank's authorization to the Merchant and/or settles the Transaction, Servicers are in no way assuring or guaranteeing payment to the Merchant nor are Servicers waiving any right hereunder. The risk in extending credit to the Cardholder is undertaken by Merchant and the Card-issuing bank, and Servicers are hereby authorized to charge back to Merchant for immediate payment any Transaction charged back to Servicers by the Card-issuing bank, including those which breach the terms of this Agreement and/or the Rules. In addition to its other rights and remedies, Servicers are authorized to offset against Merchant's funds to recover chargebacks or other amounts owed to Servicers by Merchant. Transactions that have been charged back and not represented may not be reauthorized.

Servicers are also authorized to establish a chargeback reserve account to protect themselves from risk of loss upon Servicers' sole determination that such a reserve is necessary including but not limited to the occurrence of any of the following occurrences: (i) excessive chargebacks (ii) charges which violate applicable risk management and standards (iii) any misrepresentation in the Merchant Application (iv) concerns about Merchant's financial stability, or (v) upon notice of termination of this Agreement by Merchant or Servicers.

The reserve account may be established by any means determined appropriate by Servicers, including the withholding of monies related to Merchant's transactions. Servicers may hold the

- reserve account for a period of up to 270 days following termination of this Agreement or such longer period which is consistent with Servicers' contingent liability under the Rules or otherwise.
- If the amount of Merchant's chargebacks becomes excessive, in the sole determination of Servicers, this Agreement may be terminated immediately without notice. Merchant understands that Servicers, in their sole discretion and upon notice to Merchant, may assess a fee for each chargeback. Furthermore, Servicers may assess Merchant for any fines imposed by the Networks plus a fee for processing such fine as may be required by Servicers at their sole discretion. Disputes relating to chargebacks shall be governed by the Rules, including Merchant's obligation to provide required documentation.
9. **Payment of Taxes.** Merchant shall be responsible for and pay promptly when due any and all sales, use, excise, income, and any other taxes (including interest, penalties and additions to tax) imposed by any federal, state or local government authority upon Servicers or Merchant arising out of or in connection with the Transactions and Services provided under this Agreement or with respect to property leased, rented or purchased by Merchant for use in connection with the Services provided pursuant to this Agreement.
  10. **Sponsorship.** Servicers shall sponsor or obtain sponsorship for Merchant into each Network listed on the Merchant Application. Such sponsorship shall extend only so long as the term of this Agreement. Merchant acknowledges that Servicers may enter into arrangements to sponsor other processors and Merchants into one or more Networks. Merchant further agrees that during the term of this Agreement, Merchant shall not enter into agreements with other electronic funds transfer service providers to receive the services provided pursuant to this Agreement.
  11. **Term and Termination.**
    - (a) This Agreement shall be in effect for a term of three (3) years, and thereafter shall be automatically renewed for successive one-year terms until terminated upon notice to the other party 90 days before expiration of the initial or extended terms or unless terminated pursuant to this Agreement.
    - (b) In addition to all other means of collection available to them, Servicers shall be entitled to debit any of Merchant's accounts for the full amount due for early termination and all other amounts which may be due hereunder.
    - (c) Servicers, in addition to any rights of immediate termination without notice as may be contained elsewhere in this Agreement, may terminate this Agreement upon the giving of notice, in writing or by discontinuing service to Merchant without prior warning in the event (i) Servicers determine that Merchant's type of business could expose Servicers to financial harm, (ii) Merchant files for bankruptcy or is otherwise shown to be insolvent, (iii) Merchant has chargebacks which are deemed excessive by Servicers, (iv) Merchant violates or breaches any terms of this Agreement, (v) Merchant owes money to Servicers and fails to make timely payment thereof after notice of such non-payment or (vi) Servicers determine that the Merchant Application contains incomplete or inaccurate information. Merchant's rights to perform Transactions and any other rights derived under this Agreement shall cease upon termination and Merchant shall immediately return all of Servicers property, forms, and equipment. All obligations for Transactions occurring prior to termination (including chargebacks) shall survive termination. Any funds or security held by Servicers are the property of Servicers and shall not be subject to any preference, claim or stay by reason of any bankruptcy or similar law. The termination of the Agreement shall be without prejudice to any rights that a party may otherwise have against the other under this Agreement or under law. Upon termination of this agreement, rights to use or display of the service marks or other proprietary information of that credit card associations or Networks shall terminate, and Merchant shall immediately cease all use of such proprietary information and service marks.
  12. **Early Termination Fee.** In the event that Merchant breaches this Agreement causing its early termination, Merchant shall be obligated to pay Concord a three hundred dollar (\$300.00) fee for such early termination, which amount shall be immediately due and payable.
  13. **Security Interest.** TO SECURE ALL OBLIGATIONS OF MERCHANT TO SERVICERS ARISING FROM THIS AGREEMENT, MERCHANT HEREBY GRANTS SERVICERS A SECURITY INTEREST IN ALL DEPOSITS AND FUNDS, REGARDLESS OF SOURCE, WHETHER IN MERCHANT'S DESIGNATED ACCOUNT OR IN OTHER BANK ACCOUNTS, AND ALL PROCEEDS OF SAID DEPOSITS. Said security interest may be offset or otherwise exercised by Servicers without notice or demand of any kind by making an immediate withdrawal from or freezing said account. The exercise of this security interest shall be in addition to any other rights of Servicers under this Agreement or applicable laws. The parties specifically acknowledge and affirm that pursuant to the Uniform Commercial Code of Tennessee, Servicers have a general lien and right of offset upon all funds held by Servicers and all funds on deposit with Servicers, which shall stand as one continuing collateral security for the timely performance by Merchant of all of its obligations to Servicers. To the extent permitted by law, Merchant irrevocably authorizes Servicers to execute any financing statement or other documents relating to this security interest.
  14. **Indemnification.** Merchant and Guarantor shall indemnify Servicers and the applicable Card-issuers, Card Associations and Networks selected by Merchant on the Merchant Application and hold them harmless from and against any and all claims, demands, losses, costs, liabilities, damages, judgments, or expenses arising out of or relating to (i) any material breach by Merchant of its representations, warranties or agreements under this Agreement, (ii) any act or omission by Merchant which violates any Applicable Law or which violates the Rules, (iii) any negligent act or negligent omission or tortious act or intentionally wrongful conduct of Merchant or of its agents, employees or other persons or entities acting on its behalf in any way related to this Agreement, or (iv) claims by cardholders whether related to Merchant's products, services, chargebacks or otherwise.
  15. **Force Majeure.** Neither of the parties hereto shall be liable for nonperformance or delays not caused by its neglect, nor for nonperformance or delays caused by wars, insurrections, rebellions, revolutions, civil wars, usurped power, or action taken by government authority in hindering, combating or defending against such occurrence, or confiscation by order of any government or public authority, strikes, lockouts, or other labor disturbances, riots, authority of law, acts of God or other means beyond its control (including unusually severe weather).
  16. **Waiver.** Any delay or failure of either party hereto at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that or any other provision, and any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of any provision, a waiver of this provision itself or a waiver of any other right under this Agreement.
  17. **Severability.** If any of the provisions of this Agreement are deemed or held to be invalid under any applicable statute or law, they are, to that extent, to be deemed omitted, but in that event, all other provisions shall remain valid and in full force and effect.
  18. **Integration.** This Agreement, the Merchant Handbook and the Merchant Application together with the Rules, as modified from time to time, which are incorporated hereby by reference, constitute the entire Agreement between Merchant, Guarantor and Servicers, and are binding on the parties hereto, and supersede all proposals oral or written and all other communications oral or written between the parties relating to the subject matter of this Agreement. Except as otherwise set forth in this Agreement, Servicers, in their sole discretion, may unilaterally amend this Agreement after giving Merchant thirty (30) days written notice of such amendment. Merchant shall have the right to terminate this Agreement within said thirty (30) day period by giving written notice to Servicers. If Merchant fails to give written notice of termination within said thirty (30) day period, the amendment shall be deemed to have been accepted by Merchant and shall be made a part of this Agreement. Otherwise, except as set forth in this Agreement, this Agreement may be modified only by written agreement signed by both parties.
  19. **Governing Law and Forum Selection.** This Agreement shall be governed by the laws of the State of Tennessee. Any legal action, including an original complaint or third party claim, by or in the right of any party to this Agreement or any action arising under or in any way related to this Agreement, including but not limited to a claim for payment under the Agreement, and also including any non-contract claim (collectively "Claims"), shall be brought and maintained exclusively in a state or federal court of competent subject matter jurisdiction in Shelby County, Tennessee and the parties hereby submit themselves to the personal jurisdiction and venue of those courts for the purpose of any such action and hereby waive any defense related to personal jurisdiction, process or venue. The prevailing party shall be entitled to recover from the other party all reasonable expenses incurred in said litigation including reasonable attorneys and accountant's fees and court costs.
  20. **Assignment.** Merchant may not assign its rights or obligations under this Agreement without the consent of Servicers. The obligations of Servicers hereunder may be performed by any assignee of Concord or Bank or any parent, affiliate, or successor corporation of Servicers or their parent. Servicers reserves the right in their sole discretion to delegate to third parties the performance of certain of Servicers servicing and settling obligations to Merchant. Servicers are not responsible for the performance of such third parties.
  21. **Fees and Expenses.** Merchant expressly agrees to pay Servicers on demand any and all indebtedness incurred pursuant to this Agreement including reasonable attorney's fees and costs.
  22. **Limitation of Liability.** Servicers shall have no liability for punitive damages or for direct, indirect, or consequential damages of any kind, including but not limited to claims for loss of profits or business, economic injury or damage to reputation, whether resulting directly or indirectly to Merchant or third parties for any Claims arising out of or related to performance under this Agreement or to the purchase or use of software or other e-commerce products or services, except as provided below. In the event a court adjudges Servicers liable for damages, the parties agree that such damage award for any and all Claims shall, in the aggregate, not exceed the amount of discount fees that would be paid to Servicers for three (3) months average volume of Transactions by Merchant taken over the twelve (12) months preceding the month in which the damage or injury is alleged to have occurred. MERCHANT FURTHER AGREES AND ACKNOWLEDGES THAT ITS CONSTITUTIONAL RIGHT TO A JURY TRIAL IS HEREBY KNOWINGLY AND VOLUNTARILY WAIVED IN CONNECTION WITH ANY AND ALL SUCH CLAIMS MERCHANT MAY HAVE.
  23. **Defined Terms.** The terms defined in this Agreement have the meanings assigned to them in the Merchant Handbook, and include the plural as well as the singular. By executing this Agreement, Merchant acknowledges that a copy of said handbook has been provided to Merchant and Merchant agrees to be bound by all the terms set forth therein.
  24. **Survival.** All representations, warranties and covenants contained in this Agreement, the Merchant Application and the Merchant Handbook shall survive termination of this Agreement.