

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	Case No. 09-13038(KG)
CD LIQUIDATION CO., LLC, f/k/a	)	Jointly Administered
CYNERGY DATA, LLC, <i>et al.</i> ,	)	Ref. Docket Nos. 258 & 935
	)	
Debtors,	)	Objection Deadline: 6/17/2011
	)	Hearing Date: 6/24/2011 at 11:00 AM
	)	

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**MOTION REQUESTING AN ORDER COMPELLING COMPLIANCE WITH THE  
SALE ORDER (DOCKET NO. 258) AND THE SETTLEMENT  
ORDER (DOCKET NO. 935)**

Eden Cosmetics, LLC (“Eden”), Total Mobile Control, LLC (“Total Mobile”), Natural Body Scapes, LLC (“Natural Body”), and Buyers Advantage Solutions, Inc. (“Buyers Advantage”) (collectively, the “Merchants”), through their undersigned counsel and pursuant to Section 105(a) of the Bankruptcy Code, hereby respectfully submit this Motion (the “Motion”) requesting an Order compelling Cynergy Holdings, LLC (“New Cynergy”) to comply with the *Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) the Sale of Transferred Assets Free and Clear of Liens and Encumbrances and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the “Sale Order”) (Docket No. 258) and the *Order Approving, Pursuant to Section 105(A) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and among the Debtors, Harris, N.A., Moneris solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data, LLC Regarding Reconciliation of Amounts Related to the Rolling Reserve*



*Funds and for Certain Related Relief* (the “**Settlement Order**”) (Docket No. 935), and directing New Cynergy to disburse \$197,656.90 to the Merchants, and as grounds therefore states as follows:

## **I. INTRODUCTION**

1. In connection with this bankruptcy proceeding, New Cynergy assumed numerous Merchant Processing Agreements that were previously entered into between the Debtors and the Merchants (the “**Merchant Agreements**”), and the accompanying repayment obligations contained therein. Shortly thereafter, however, New Cynergy terminated each Merchant Agreement and refused to return the Merchants’ funds in breach of its repayment obligations under the Merchant Agreements and orders of this Court. To that end, on September 13, 2010, this Court entered its Settlement Order, providing a procedure by which a merchant could request a repayment of its funds from New Cynergy. In accordance with this procedure, the Merchants properly requested a return of their funds, but New Cynergy has refused to return the funds and continues its wrongful withholding of funds belonging to the Merchants. Based on the foregoing, the Merchants request that this Court enter an order compelling New Cynergy to release the Merchants’ funds, in compliance with its assumed obligations under the Merchant Agreements, the commands of the Sale Order, and the procedures set forth in the Settlement Order.

## **II. FACTUAL BACKGROUND**

### **A. The Merchant Agreements**

2. The Merchants are engaged in the business of selling and marketing various consumer products sold over the internet through their various tradenames.

3. In 2008 and 2009, the Merchants entered into seven identical Merchant Processing Agreements (previously defined as the “**Merchant Agreements**”) with Cynergy Data, LLC n/k/a CD Liquidation Co., LLC (“**CD Liquidation**”), for processing services related to the Merchants’ internet product sales. *See* Merchant Agreements, attached hereto collectively as **Exhibit A**.

4. Specifically, on November 7, 2007, CD Liquidation entered into a Merchant Agreement with Total Mobile d/b/a Precision Niche Products and established MID: 3899000000982783 for processing services related to its tradename “Age Invisible.”

5. On April 1, 2008, CD Liquidation entered into a Merchant Agreement with Total Mobile d/b/a Precision Niche Products and established MID: 3899000001081031 for processing services related to its tradename “ColoSlim.”

6. On May 15, 2008, CD Liquidation entered into a Merchant Agreement with Eden and established MID: 3899000001139193 for processing services related to its tradename “Mineral Elements.”

7. On December 11, 2008, CD Liquidation entered into a Merchant Agreement with Natural Body d/b/a BerrySLIM 86666743960V and established MID: 3899000001311826 for processing services related to its tradename “BerrySlim.”

8. On December 15, 2008, CD Liquidation entered into a Merchant Agreement with Natural Body d/b/a GreenTea8006249971-V and established MID: 3899000001313251 for processing services related to its tradename “GreenTea.”

9. On March 11, 2009, CD Liquidation entered into a Merchant Agreement with Buyers Advantage d/b/a IDSECURE8667960118 and established MID: 3899000001371457 for processing services related to its tradename “ID Secure.”

10. Finally, on March 16, 2009, CD Liquidation entered into a Merchant Agreement with Buyers Advantage d/b/a MYFATSAVE8668512501 and established MID: 3899000001381357 for processing services related to its tradename “My Fat Savings.”

11. Under each Merchant Agreement, CD Liquidation agreed to hold aside a percentage of every transaction processed (the “**Reserve Funds**”) for temporary placement in each Merchant’s designated reserve account (collectively, the “**Merchants’ Rolling Reserves**”).

12. Pursuant to Section 7(B) of each Merchant Agreement, “[Reserve Funds] will remain in the [r]eserve [a]ccount until 270 calendar days following the later of termination of this [a]greement or [a Merchant’s] last transmission of a sales draft.” *See e.g.*, **Ex. A** at p. 6.

13. Each Merchant Agreement was accompanied by a Rolling Reserve Agreement, which provided that “[Reserve Funds] will be held...for a period of not less than 180 days from the date of the last card transaction processed and a reasonable period thereafter. Bank will return the balance... to [the] Merchant after Bank reasonably determines that the risk of chargebacks and other fees...has ended.” *See e.g.*, **Ex. A** at p. 9. When read in tandem with the 270 day provision (together the “**Post-Termination Repayment Obligation**”), it was clear that each Merchant would receive repayment of their Reserve Funds no later than 270 days post termination and reasonable period thereafter to cover any subsequent chargebacks (the “**Post-Termination Repayment Period**”).

**B. The Cynergy Bankruptcy**

14. On August 26, 2009, CD Liquidation, Cynergy Data Holdings, Inc., and Cynergy Prosperity Plus, LLC n/k/a CD Liquidation Co. Plus, LLC (collectively, the “**Debtors**”), entered into an Asset Purchase Agreement (the “**APA**”) with New Cynergy, pursuant to which New Cynergy agreed to purchase the assets of the Debtors (the “**Asset Sale**”). The APA, along with its schedules, is attached hereto as **Exhibit B**.

15. As part of the Asset Sale, New Cynergy agreed to assume each of CD Liquidation’s merchant processing agreements and its obligations as set forth therein. *See* Exhibit B at p. 8-11. Specifically, the APA provided that:

Assumed Liabilities. At the Closing [New Cynergy] shall assume and in due course pay, discharge, perform or otherwise fully satisfy only the following liabilities of [the Debtors] arising out of, relating to or otherwise in respect of...the Transferred Assets<sup>1</sup>...[including:]...(c) all liabilities of [the Debtors] under the Assumed Contracts, solely to the extent arising, relating to and to be performed on or after, and in respect of periods following, the [c]losing [d]ate.

*See* Ex. B at p. 10-11, ¶ 2.3.

16. On September 1, 2009 (the “**Petition Date**”), the Debtors filed their voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, initiating the current matter (the “**Cynergy Bankruptcy**”). *See* Petition (Docket No. 1).

17. On the Petition Date, the Debtors also filed *Debtors’ Motion for an Order Pursuant to Sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules*

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<sup>1</sup> Under the APA, the “Transferred Assets” specifically include “Assumed Contracts.” The Merchant Agreements fall squarely within the APA’s definition of “Assumed Contracts,” which includes “all Contracts, including, without limitation...any merchant agreements, whether active, inactive or cancelled.”

2002, 6004, 6006, 9007 and 9014 (I)(a) Authorizing and Scheduling an Auction at Which the Debtors will Solicit Higher and Better Offers in Connection with the Sale of Certain Assets, (b) Approving the Bid Procedures for Such Assets, (c) Approving Break-Up Fee and Expense Reimbursement and (d) Approving the Form and Scope of Notice of the Bid Procedures and Auction; (II) Approving the Sale of Assets Free and Clear of All Liens, Claims, and Encumbrances; (III) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief as Requested Herein (the “**Sale Motion**”), requesting that this Court approve the proposed Asset Sale. See Sale Motion (Docket No. 13).

18. On September 8, 2009, New Cynergy entered its Notice of Appearance in the Cynergy Bankruptcy, submitting itself to the jurisdiction of this Court. See Notice of Appearance and Demand for Notices and Papers (“**New Cynergy’s Appearance**”) (Docket No. 69).

19. On October 6, 2009, Moneris, the Term B Parties, and other creditors filed objections to the proposed sale process and/or the treatment of Cure Amounts as defined in the Sale Motion (the “**Cure Objections**”).<sup>2</sup>

20. On October 9, 2009, this Court entered the Sale Order approving the Asset Sale as contemplated in the APA and the Sale Motion. The Sale Order provided that the Debtors would reserve an amount “sufficient to pay in full all Cure Amounts” (the “**Cure Reserve**”), including

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<sup>2</sup> See *Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts*, dated October 6, 2010 (Docket No. 207); *Objection of Term B Parties and Second Lien Parties to the Debtor’s Notice of Intent to Assume And Assign Certain Unexpired Leases and Executory Contracts and Settling Cure Amounts*, dated October 6, 2009 (Docket No. 204).

the full amount of Reserve Funds withheld by the Debtors pursuant to active merchant processing agreements. *See* Sale Order at p. 13 (Docket No. 258).

21. The Sale Order also contained a retention of jurisdiction clause, whereby the Court retained jurisdiction to “among other things, interpret, implement, and enforce the terms and provisions of the [Sale Order], the APA...and the Assumed Contracts,<sup>3</sup>... including but not limited to, retaining jurisdiction to...compel distributions from the Cure Reserve.” *See* Sale Order at p. 25.

22. Furthermore, the Sale Order states that, upon closing of the sale, New Cynergy will have assumed and assigned the merchant processing agreements. Sale Order at p. 25, ¶11. The Merchants’ Merchant Agreements were assumed and assigned by New Cynergy. *See* Settlement Order, Ex. B (Docket No. 935).<sup>4</sup>

23. In accordance with the terms of the Sale Order and in response to the Cure Objections, the Debtors established an escrow (the “**Cure Escrow**”) to hold the funds necessary to satisfy the Cure Reserve. With the establishment of the Cure Escrow, the Asset Sale closed on October 26, 2009 (the “**Closing Date**”), with New Cynergy assuming CD Liquidation’s obligations under each merchant processing agreement.

24. On June 2, 2010, the Debtors, New Cynergy, Harris/Moneris, the Term B Parties, and the Term A Parties entered into the Settlement Term Sheet (the “**Term Sheet**”), whereby the

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<sup>3</sup> As defined by the APA, the “Assumed Contracts” include “all Contracts, including, without limitation...any merchant agreements, whether active, inactive or cancelled.”

<sup>4</sup> Six of the seven Merchant Agreements are expressly included in Exhibit B of the Settlement Order. The Merchant Agreement for ColoSlim - MID: 3899000001081031 – is not found expressly included. However, Merchants believe the ColoSlim Merchant agreement was assumed and assigned by New Cynergy because said agreement was not included on the Excluded Liabilities schedule of the APA. *See* Ex. B, Schedule 2.2(d).

parties settled a majority of the Cure Objections. *See* Term Sheet, attached hereto as **Exhibit C**.

25. On August 10, 2010, the Debtors filed their *Motion for Entry of An Order Approving, Pursuant to Section 105(A) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Stipulation and Order Between and Among the Debtors, Harris, N.A., Moneris Solution, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC, and Cynergy Data, LLC Regarding Reconciliation of Amounts Related to the Rolling Reserve Funds and for Certain Related Relief* (the “**Settlement Motion**”), whereby the Debtors requested that this Court authorize the settlement as set forth in the Term Sheet. *See* Settlement Motion (Docket No. 863).

26. In connection with the Settlement Motion, the Debtors produced a list of the amounts withheld in the Cure Escrow pursuant to each rolling reserve account as of the Closing Date (the “**Cure Balance List**”). *See* Settlement Motion, Ex. B. Importantly, the Cure Balance List contained an accounting of the amounts withheld pursuant to each of the Merchants’ Rolling Reserves. *See* Cure Balance List attached hereto as **Exhibit D**.

27. The Settlement Motion also outlined a specific procedure whereby a merchant could request the return of its reserve funds from New Cynergy (the “**Merchant Repayment Procedure**”). Specifically, the Merchant Repayment Procedure provided that:

Merchants seeking return payment of a reserve, which was designated as a Rolling Reserve and deposited into the Cure Reserve as defined in the Sale Order, may contact a representative at [New Cynergy] requesting such return in accordance with the applicable merchant processing agreement. Payment of any such reserve to a merchant is subject to the terms and conditions of the applicable merchant processing agreement by and among the merchant, the Debtors, [New Cynergy], as assignee, and Moneris. Accordingly, a merchant with unfunded rolling reserves as of



October 26, 2009 may proceed in accordance with its contractual rights under an assumed merchant processing agreement to obtain payment of funds remaining in the Settlement Escrow Account.

*See* Settlement Motion at p. 10; Ex. C at 11.

28. On September 13, 2010, this Court granted the Settlement Motion through the entry of the Settlement Order. *See* Settlement Order (Docket No. 935).

29. In the Settlement Order, this Court fully adopted and incorporated the terms and conditions of the Term Sheet, which also included the Merchant Repayment Procedure. *See* Settlement Order at p. 3.

30. Additionally, the Settlement Order included a retention of jurisdiction clause, which provided that “[t]his Court shall retain jurisdiction to the full extent permitted by law to determine any disputes concerning or relating to the Settlement.” *See* Settlement Order at p. 3.

**C. New Cynergy’s Current Withholding**

31. As of January 10, 2010, New Cynergy unilaterally terminated each of the Merchant Agreements, triggering New Cynergy’s assumed obligations to remit payment to each Merchant on or before the Post-Termination Repayment Period as provided therein.

32. The final Post-Termination Repayment Period expired on October 7, 2010, 270 days after the final Merchant Agreement was terminated, and the final chargeback received in connection with any of the Merchants’ accounts was issued on May 31, 2010.

33. However, to date, and despite demand, New Cynergy has yet to release any of the Merchants’ Reserve Funds.

34. Specifically, in accordance with the Merchant Repayment Procedure, the Merchants have made numerous requests to New Cynergy for the release of their respective

Reserve Funds, which collectively total \$197,656.90. New Cynergy agreed to release certain funds withheld pursuant to a single, unrelated Eden merchant agreement, but has ignored every other request by the Merchants.<sup>5</sup>

35. Recently, the Merchants delivered a letter to New Cynergy's ISO Compliance Manager, Danette G. Smith, requesting repayment of the entire amount of collective Reserve Funds. *See* Merchants' Letter dated April 22, 2011, attached hereto as **Exhibit E**. New Cynergy similarly ignored this request.

### **III. RELIEF REQUESTED**

36. By this Motion, the Merchants seek entry of an order (i) compelling New Cynergy to comply with the Merchant Repayment Procedure and its obligations under the Merchant Agreements, the APA, the Sale Order, and the Settlement Order; and (ii) directing the disbursement of \$197,656.90 in the Merchants' collective Reserve Funds, which are currently withheld in connection with each Merchant's Rolling Reserve, and which rightfully belong to each respective Merchant pursuant to its contractual rights under each Merchant Agreement.

### **IV. JURISDICTION**

#### **A. Subject Matter Jurisdiction**

37. This Court has proper subject matter jurisdiction to hear the dispute outlined in this Motion as a "core proceeding" under 28 U.S.C. § 157(b)(2)(N). This Court "may hear and determine...all core proceedings arising under title 11, or arising in a case under title 11...and may enter appropriate orders and judgments." 28 U.S.C. §157(b)(1); *In re Resorts Int'l, Inc.*, 372

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<sup>5</sup> Eden requested the release of its Reserve Funds withheld pursuant to MID: 3899000001139193 in a letter dated January 24, 2011 and again in a letter dated March 25, 2011. Both letters were ignored by New Cynergy.

F.3d 154, 162 (3d Cir. 2004). As such, the District of Delaware has previously held that “Orders granting the sale of assets . . . are core proceedings.” *In re FormTech Industries, LLC*, 439 B.R. 352, 357 (Bankr. D. Del. 2010) (citing 28 U.S.C. § 157(b)(2)(N)). More to this point, the “[e]nforcement and interpretation of orders issued in core proceedings are also considered core proceedings within the bankruptcy court’s jurisdiction.” *Id.* (emphasis added); *see also Travelers Indemn. Co. v. Bailey*, 129 S.Ct. 2195, 2205 (2009) (“the Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders.”); *In re Trans World Airlines, Inc.*, 278 B.R. 42, n.16 (Bankr. D. Del. 2002) (“[C]ore proceedings under § 157(b)(2)(N) are those which arise from, concern, or have some impact on orders approving the sale of property”).

38. By way of this Motion, the Merchants are asking this Court to *enforce* its prior rulings under the Sale Order and the Settlement Order. The Sale Order approved the APA, and thus confirmed the sale of property, the assignment of the Merchant Agreements, and the assignment of all obligations therein to New Cynergy. *See* Sale Order at p. 15. Additionally, in the Settlement Order, this Court adopted the Merchant Repayment Procedure, which outlined the steps for collecting payments from New Cynergy. In this sense, the Sale Order and Settlement Order did not merely confirm the sale of assets and assignment of contracts to New Cynergy; the bankruptcy court also set the parameters of how the Merchants should be paid, and the bankruptcy court retains the power to enforce both orders where a party does not comply. *See In re FormTech Industries, LLC*, 439 B.R. at 357. Accordingly, the Merchants ask this Court to “give effect to its previous sale orders,” which render this a core proceeding. *In re Allegheny Health Educ. & Research Found.*, 383 F.3d 169, 175–76 (3d Cir. 2004). In other words, the dispute at issue in this Motion specifically “arise[s] from” the Court’s orders concerning the

Merchant Agreements and the payment procedures. *See In re Trans World Airlines, Inc.*, 278 B.R. at n.16. Because the Merchants are asking the Court to *enforce* its Sale Order and Settlement Order, this is a “core proceeding” under 28 U.S.C. § 157(b)(2)(N).

39. In addition, as evidenced by the Sale Order and the Settlement Order, this Court recognized its retention of subject matter jurisdiction to decide this matter. Specifically, pursuant to the Sale Order, the Court provided that it “retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of ...the APA... and the Assumed Contracts...including but not limited to, retaining jurisdiction to...compel distributions from the Cure Reserve.” *See* Sale Order at p. 25. Similarly, in the Settlement Order, the Court provided that it “shall retain jurisdiction to the full extent permitted by law to determine any disputes concerning or relating to the Settlement.” *See* Settlement Order at p. 13. In this Motion, the Merchants are asking this court to enforce, *inter alia*, the APA and the Merchant Agreements (as “Assumed Contracts”) in a dispute that concerns and relates to the Sale Order and the Merchant Repayment Procedure of the Settlement Order. Accordingly, this dispute falls squarely within the Court’s jurisdiction as contemplated under either retention of jurisdiction clause.

**B. Personal Jurisdiction**

40. This Court has proper personal jurisdiction over New Cynergy, as it entered into the APA and previously entered an appearance in the Cynergy Bankruptcy. Specifically, a party consents to the bankruptcy court’s jurisdiction when it enters into an asset purchase agreement with a debtor-in-possession. *In re Victor Dye Works, Inc.*, 48 B.R. 943, 946 (Bankr. D. Pa. 1985) (“The general principle of law . . . that one who contracts with a trustee or receiver in

bankruptcy contracts with the court itself and submits himself to the jurisdiction of that court for all purposes flowing out of the contract is well supported.”) (internal quotations omitted); *see also In re Rouge Indus., Inc.*, 326 B.R. 55, 60 (Bankr. D. Del. 2005); *Edgcomb Metals Co. v. Eastmet Corp.*, 89 B.R. 546, 550 (Bankr. D. Md. 1988). In the instant matter, New Cynergy entered into the APA with the Debtors, and the APA specifically provides that New Cynergy “irrevocably and unconditionally consent[s] to submit to the jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to [the APA].” *See* Ex. B at ¶ 12.6. Accordingly, this Court has personal jurisdiction over New Cynergy, as this is a dispute flowing out of New Cynergy’s assumption of the Merchant Agreements under the APA.

41. Even assuming, *arguendo*, that New Cynergy’s status as a party to the APA is not sufficient for this Court to retain personal jurisdiction, proper personal jurisdiction over New Cynergy was obtained after New Cynergy submitted itself to the jurisdiction of this Court by entering an appearance in the Cynergy Bankruptcy on September 8, 2009. *See* New Cynergy’s Appearance (Docket No. 69).

## V. ANALYSIS

42. The issue presented in this Motion is whether the Merchants are entitled to an order of this Court compelling New Cynergy to release the entire amount of withheld Reserve Funds based on: (1) New Cynergy’s obligations under the assumed Merchant Agreements; (2) New Cynergy’s obligations under the APA and the Sale Order; and (3) by virtue of the Merchant Repayment Procedure adopted by this court and incorporated into the Settlement Order. The entry of such an order is necessary for the reasons set forth below:

43. Pursuant to the APA and this Court’s authorization and direction in the Sale

Order, New Cynergy expressly assumed responsibility for all contractual obligations arising from the Merchant Agreements, including the Post-Termination Repayment Obligation owed to each Merchant. *See* Ex. B at p. 10-11, ¶2.3; Sale Order at p. 20.

44. In connection therewith, upon termination of a Merchant Agreement, New Cynergy owed the Merchant a contractual duty to release the full amount of any withheld Reserve Funds on or before the expiration of the corresponding Post-Termination Repayment Period.

45. Similarly, pursuant to the Settlement Order and the Merchant Repayment Procedure established by this Court, New Cynergy was ordered to comply with the terms and conditions of each Merchant Agreement and release each Merchant's Reserve Funds upon request.

46. Hence, when New Cynergy arbitrarily terminated the Merchant Agreements and refused to return any of the Merchants' Reserve Funds on or before the expiration of the Post-Termination Repayment Period, New Cynergy breached: (1) its obligations under each Merchant Agreement; (2) its fiduciary duties owed to each Merchant; (3) its obligations under the APA; and (4) its obligations under the Sale Order.

47. Likewise, when New Cynergy ignored the Merchants' requests for repayment and continued to wrongfully withhold the Reserve Funds, New Cynergy disregarded the Merchant Repayment Procedure in violation of this Court's Settlement Order.

48. As of the date of this Motion, New Cynergy has yet to release any of the Merchant's Reserve funds and remains in wrongful possession of \$197,656.90, collectively owed to the Merchants. A full accounting of the specific amount owed to each Merchant is set forth in

the Merchant Rolling Reserve Breakdown, attached hereto as **Exhibit F**.

49. This continued withholding is groundless and egregiously exceeds the Post-Termination Repayment Period. Specifically, more than 480 days have passed since New Cynergy's termination of the final Merchant Agreement, the processing of the final card transaction, or the final transmission of a sales draft. Additionally, more than 340 days have passed since the last chargeback was received on any of the Merchants' accounts.

50. Based on New Cynergy's refusal to comply with its contractual obligations and its disregard for the procedures set forth by the Court, the Merchants ask that this Court give effect to its previous rulings and enter an order (i) compelling New Cynergy to comply with the Merchant Repayment Procedure and its obligations under the Merchant Agreements, the APA, the Sale Order, and the Settlement Order; and (ii) directing the disbursement of \$197,656.90 in the Merchants' collective Reserve Funds.

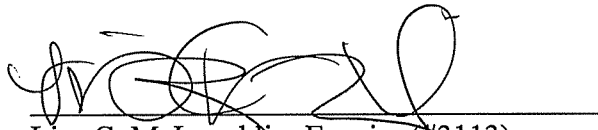
## **VI. NOTICE**

51. Notice of this Motion has been given to the Office of the United States Trustee and those requesting service pursuant to Rule 2002.

WHEREFORE, By this Motion, the Merchants seek entry of an order (i) compelling New Cynergy to comply with the Merchant Repayment Procedure and its obligations under the Merchant Agreements, the APA, the Sale Order, and the Settlement Order; (ii) directing the disbursement of \$197,656.90 in Reserve Funds, which are currently withheld in connection with the Merchants' Rolling Reserves and rightfully belong to the Merchants pursuant to their contractual rights under the Merchant Agreements.

Respectfully submitted this 17th day of May, 2011.

PHILLIPS, GOLDMAN & SPENCE, P.A.



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*Counsel for the Merchants*

Date: May 17, 2011



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	Case No. 09-13038 (KG)
CD LIQUIDATION CO., LLC, f/k/a	)	Jointly Administered
CYNERGY DATA, LLC, <i>et al.</i> ,	)	Ref. Docket Nos. 258 7 935
	)	Objection Deadline: 6/17/2011
Debtors.	)	Hearing Date: 6/24/2011 at 11:00 AM.

**NOTICE OF MOTION**

Eden Cosmetics, LLC, Total Mobile Control, LLC, Natural Body Scapes, LLC, and Buyers Advantage Solutions, Inc.(collectively, the “Merchants”), through their undersigned counsel, have filed a motion to force Cynergy Holdings, LLC to comply with the *Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) the Sale of Transferred Assets Free and Clear of Liens and Encumbrances and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (Docket No. 258) and the *Order Approving, Pursuant to Section 105(A) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and among the Debtors, Harris, N.A., Moneris solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data, LLC Regarding Reconciliation of Amounts Related to the Rolling Reserve Funds and for Certain Related Relief* (Docket No. 935), and directing New Cynergy to disburse \$197,656.90 to the Merchants (the “Motion”).

You are required to file a response to the Motion on or before **June 17, 2011**.

At the same time, you must also serve a copy of the response upon Movant’s counsel:

Lisa C. McLaughlin, Esquire (#3113)  
Stephen W. Spence, Esquire (#2033)  
Stephen A. Spence, Esquire (#5392)  
Phillips, Goldman & Spence, P.A.  
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Wilmington, DE 19806

Giovanni M. Ruscitti, Esquire  
Berg Hill Greenleaf & Ruscitti LLP  
1712 Pearl Street  
Boulder, CO 80302

HEARING ON THE MOTION WILL TAKE PLACE ON JUNE 24, 2011 AT 11:00 A.M. BEFORE THE HONORABLE KEVIN GROSS, U.S. BANKRUPTCY COURT, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM 3, WILMINGTON, DE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PHILLIPS, GOLDMAN & SPENCE, P.A.



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*Counsel for the Merchants*

Date: May 17, 2011

**CERTIFICATE OF SERVICE**

I, CELESTE A. HARTMAN, Senior Paralegal, do hereby certify that I am over the age of 18, and that on May 17, 2011, I caused a copy of the foregoing *Motion Requesting a Court Order Compelling Compliance with the Sale Order (Docket No. 258) and the Settlement Order (Docket No. 935)* to be served on all those parties receiving service by the Court's ecf notification and on all parties on the attached list via U.S. First Class Mail.

Under penalty of perjury, I certify the foregoing to be true and correct.

  
\_\_\_\_\_  
CELESTE A. HARTMAN

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CLEARVIEW BRANCH  
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**DEPT OF LABOR & INDUSTRY**  
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NASHVILLE TN 37219

# Exhibit “A”



**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>EDEN COSMETICS, LLC</b>		Name of Business (Doing Business As / Same as Signage):	
Corporate / Billing Address: <b>4075 LINGLESTOWN RD, # 225</b>		Location Address (Attach Additional Locations - No P.O. Box): <b>1414 N. CAMERON ST, STE 3</b>	
City: <b>HARRISBURG</b>	State: <b>PA</b>	Zip: <b>17112</b>	City: <b>HARRISBURG</b>
Telephone #: <b>866-514-8949</b>	Federal Tax ID: <b>26-2407521</b>	Telephone #: <b>866-514-8949</b>	Fax #: <b>717-213-6977</b>
Web Address: <b>HTTP://PREVIEW.MINERALELEMENTSBYEDEN.COM</b>		Email Address: <b>CATHY@EDEN-COSMETICS.COM</b>	
Have you been placed on the 'CTMF' (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Have you ever declared bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
How long in present business? Years: _____ Months: <b>INCORPORATED ON 3.3.08</b>		Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address	
		Attention: <b>CATHY BURGER-GRAY</b>	

**OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)**

Title: <b>PRESIDENT</b>	Percent Ownership: <b>100 %</b>		
Last Name: <b>BURGER-GRAY</b>	First Name: <b>CATHY</b>	Middle Initial: <b>A</b>	Date of Birth: (mm/dd/yyyy): <b>08.20.1952</b>
Residence Address: <b>108 STINE RD</b>		City: <b>DANVILLE</b>	State: <b>PA</b> Zip: <b>17821</b>
Residence Tel. No.: <b>570-437-3510</b>	SS #: <b>167-44-7282</b>	Driver's Lic. #: <b>15 923 477</b>	State: <b>PA</b>
Title:	Percent Ownership: _____ %		
Last Name:	First Name:	Middle Initial:	Date of Birth: (mm/dd/yyyy):
Residence Address:		City:	State: Zip:
Residence Tel. No.:	SS #:	Driver's Lic. #:	State:

**BUSINESS PROFILE**

**SALES PROFILE**

Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Not for Profit <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> PA or PC	Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other	<b>Visa/MasterCard Sales Profile (be accurate):</b> Card Swipe: <b>0.0 %</b> Manual Key Entry with Imprint, Card Present: <b>0.0 %</b> Mail Order / Telephone Order: <b>0.0 %</b> Internet: <b>100 0.0 %</b> <b>100 Total 100%</b>
Type of Goods Sold: <b>VANITY PRODUCTS</b>	SIC Code:	
Do you currently accept Visa/MasterCard? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Name of Current Processor:		
Average C.C. Ticket Size: \$ <b>40</b>	Average C.C. Monthly Volume: \$ <b>50,000</b>	Total Sales/mth: \$ <b>50,000</b>

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

**TRADE / REFERENCES**

Name: <b>RADICAL COSMETICS, LLC</b>	Contact: <b>FENTON BAIJNATH</b>
Address: <b>350 COMSTOCK ST, NEW BRUNSWICK NJ, 08901</b>	Phone Number: <b>732-828-8787</b>
Name:	Contact:
Address:	Phone Number:

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

A voided check from this account must be attached.	Bank Name: <b>GRAYSTONE BANK</b>	Telephone #: <b>717-724-4657</b>	Name on DDA Account: <b>EDEN COSMETICS</b>	
	Address: <b>112 MARKET ST</b>	City: <b>HARRISBURG</b>	State: <b>PA</b>	Zip: <b>17101</b>
	Transh No. <b>031318907</b>	DDA No. <b>1610015115</b>		



**RATES**

Visa / MasterCard Standard Retail & High Risk Retail Rates				Mail / Phone / Internet / Touchtone Rates			
Merchant Chooses to Accept the Following:				Merchant Chooses to Accept the Following:			
Visa CKCD Discount Rate:	0.0 %	MC CKCD Discount Rate:	0.0 %	Visa CKCD Discount Rate:	%	MC CKCD Discount Rate:	%
Visa C.C. Discount Rate:	0.0 %	MasterCard C.C. Discount Rate:	0.0 %	Visa C.C. Discount Rate:	%	MasterCard C.C. Discount Rate:	%
VS/MC MID Qualified(+)	0.0 %	VS/MC Non Qualified(+)	0.0 %	VS/MC MID Qualified(+)	%	VS/MC Non Qualified(+)	%
AMEX Discount Rate:	0.0 %	Discover Discount Rate:	0.0 %	AMEX Discount Rate:	%	Discover Discount Rate:	%
<b>Fees:</b>				<b>Fees:</b>			
VS/MC Transaction Fee:	\$	Per Item		VS/MC Transaction Fee:	\$	Per Item	
Non-Bankcard Transaction Fee:	\$	Per Item		Non-Bankcard Transaction Fee:	\$	Per Item	
Statement Fee:	\$	Monthly		Statement Fee:	\$	Monthly	
Online Reporting Service:	\$	Monthly		Online Reporting Service:	\$	Monthly	
Monthly Minimum:	\$	25 Monthly		Monthly Minimum:	\$	Monthly	
Annual Fee:	\$	Per Year		Annual Fee:	\$	Per Year	
Debit (PIN-based) Transaction + Network Fees:	\$	Per Item		MO/TO/Internet Surcharge:	\$	Per Item	
AVS Surcharge:	\$	Per Item		AVS Surcharge:	\$	Per Item	
EBT Transaction Fee:	\$	Per Item		Batch Fee:	\$	Per Batch	
EBT Statement Fee:	\$	Monthly		Chargeback Fee:	\$	Per Item	
Batch Fee:	\$	Per Batch		ACH Reject Fee:	\$25	Per Item	
Chargeback Fee:	\$	25 Per Item		Retrieval Fee:	\$5	Per Item	
ACH Reject Fee:	\$25	Per Item		Voice Authorization Fee:	\$0.95	Per Call	
Retrieval Fee:	\$5	Per Item		Gateway Fee:	\$	Monthly	
Voice Authorization Fee:	\$0.95	Per Call		Gateway Transaction Fee:	\$	Per Item	
Terminal Protection Plan:	\$	Monthly		Other (please specify):			
Merchant Club:	\$	Monthly					
Other (please specify):							

**GUARANTY**

This is a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

**CATHY BURGER-GRAY**

Name of Personal Guarantor (please print)

*Cathy Burger Gray* Date: 5/15/08  
(mm/dd/yyyy)

Name of Co-Personal Guarantor (please print)

Signature \_\_\_\_\_ Date: \_\_\_\_\_  
(mm/dd/yyyy)

**AMERICAN EXPRESS**

By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Signature *Cathy Burger Gray* Date: 5/15/08 (mm/dd/yyyy)

**DISCOVER**

I agree to accept Discover® Network Cards. Discover Network will deliver a starter kit with my merchant services agreement and materials.

Signature *Cathy Burger Gray* Date: 5/15/08 (mm/dd/yyyy)

**FOR ALL CORPORATIONS - CORPORATE RESOLUTION**

The officer(s) identified in numbers 1 and/or 2 below represent that each have the right and authority to execute the Merchant Processing Agreement on behalf of the Merchant. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED. I HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AS SET OUT ABOVE AND IN THE SUBSEQUENT MERCHANT PROCESSING AGREEMENT (COLLECTIVELY, "AGREEMENT"). AS INDICATED BY MY SIGNATURE BELOW, I ACCEPT THE OFFER AS OUTLINED IN THE AGREEMENT.

**EDEN COSMETICS, LLC**

Print Legal Name of Merchant Business

*Cathy Burger Gray*  
#1 From Application - Signature

Accepted by Pivotal Payments, Inc.

#2 From Application - Signature

Accepted by Processor

Accepted by Bank of America, N.A., Charlotte, NC

## Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Pivotal Payments, Inc. ("PP"), Cynergy Data ("CD"), BA Merchant Services, LLC. ("BAMS") (CD and BA Merchant Services, LLC. are collectively referred to as Processor), and Bank of America, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Visa or MasterCard cards issued by a non-U.S. bank, a Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. **Without Discrimination.** You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. **Cardholder Identification.** You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. **Card Recovery.** You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. **Surcharge.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. **Return Policy.** You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. **No Claim Against Cardholder.** You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
- G. **Disputes With Cardholder.** All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. **Required on all Transactions.** You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. **Effect.** Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. **Unreadable Magnetic Stripes.** When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. **Forms.** You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. **Signatures.** Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. **Reproduction of Information.** If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. **Delivery and Retention of Sales Drafts.** You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. **Electronic Transmission.** In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- i. **Deposits.** You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- i. **Provisional Credit.** Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
- ii. **Processing Limits.** Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. **Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. **Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. **Credit.**
- i. **Credit Memoranda.** You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.
- ii. **Revocation of Credit.** Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. **Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. **Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. **Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
- ii. **Credit Refunds.** You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
- ii. **Adjustments.** Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
- iv. **Error Resolution.** You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. **Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. **Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. **Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. **Partial Completion.**
- i. **Prior Consent.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
- ii. **Acceptance.** If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. **Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce. You may process electronic commerce ("EC") transactions only if you have indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, Discover, JCB and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Discover, JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express and Discover. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction

or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished by a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Processor and with each Card Association in the event that Processor or any Card Association determines that there is a substantial risk of fraud arising from your access to the Card Association. You will take whatever actions Processor or Card Associations reasonably deem necessary in order to protect such Card Association, its members, and its Cardholders. Neither the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

#### J. Debit Card Transactions.

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by BAMS or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by BAMS and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party.

#### 6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.



C. **Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any claim against Processor or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. **Indemnity.** You will indemnify and hold PP, Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

E. **ACH Authorization.** You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

i. **Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to PP, Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to PP, Processor and Bank to secure your obligations under this Agreement upon PP, Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by PP, Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. **Perfection.** Upon request of PP, Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

i. **Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. **Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. **Assurance.** In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. **Recoupment and Set-Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. **Remedies Cumulative.** The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

## 8. Fees and Other Amounts Owed Bank.

A. **Fees and Taxes.** You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. **Other Amounts Owed.** You will immediately pay PP, Processor and Bank any amount incurred by PP, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

## 8. Application, Indemnification, Limitation of Liability.

Application. You represent and warrant to PP, Processor and Bank that all information in the Application is correct and complete. You must notify PP and Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by PP and Processor within 10 business days of the change. You will provide updated information to PP and Processor within a reasonable time upon request. You are liable to PP and Processor for all losses and expenses incurred by PP and Processor arising out of your failure to report changes to it, PP, Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

- B. Indemnification. You will hold harmless and indemnify the Card Associations, PP, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.
- C. Limitation of Liability. Any liability of PP, Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of PP's, Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither PP, Processor, Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.
- D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **PP, Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither PP, Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, PP and Processor are the exclusive agents of Bank and Bank is at all times entirely responsible for, and in control of PP's and Processor's performance.
10. Representations and Warranties. You represent and warrant to PP, Processor and Bank at the time of execution and during the term of this Agreement the following:
- A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.
- B. Entirety Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.
- C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.
- D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.
- E. Rule compliance. You will comply with the Laws and Rules.

## 11. Audit and Financial Information.

- A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

## B. Financial Information.

- i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.
- ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

## 12. Third Parties.

- A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.
- B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorize designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.
- C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

## 13. Term and Termination

- A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.
- B. Termination. The Agreement may be terminated by PP, Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and BAMS or CD will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.
- C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

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- ii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

#### D. Early Termination

- i. Merchant acknowledges and agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is terminated by Merchant prior to the expiration of the applicable Term of the Agreement, or for any reason other than for a material, uncured breach by Bank or Processor, Merchant agrees to pay Bank or Processor damages (the "Damages") determined by (a) computing the number of months remaining from the date of termination to the end of the then current Initial or Renewal Term; and (b) multiplying that number by the average monthly processing fees.
- ii. Merchant agrees that such Damages shall also be due PP or Bank or Processor if Merchant discontinues submitting card transactions during the Term for a period of ninety (90) consecutive days, and is not designated as a seasonal merchant or as otherwise agreed to by Bank or Processor.
- iii. Merchant acknowledges that the Damages are not a penalty but rather are a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws and Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, JCB, any other issuer of Cards, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Processing Handbook ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa and MasterCard trademarks must fully comply with the Rules. Your use of Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

- i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2 data after authorization.
- ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
- iii. Disclosure. You authorize PP, Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

- A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Processing Handbook, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.
- C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.
- D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
- E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.
- F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.
- G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated, by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.
- H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse PP, Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
- I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.
- J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.
- K. Independent Contractors. PP, Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.
- L. Employee Actions. You are responsible for your employees' actions while in your employment.
- M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B and 16.H will survive termination of this Agreement.
- N. Bank Contact. You may contact Bank at the following address:  
Bank of America, N.A.  
1231 Durrett Lane  
Louisville, KY 40285-0001

## ROLLING RESERVE AGREEMENT

THIS ROLLING RESERVE AGREEMENT is entered into by and between Eden Cosmetics, LLC ("Merchant") and Bank of America ("Bank").

WHEREAS as a condition for the provision of payment processing services, Cynergy Data and Bank require that Merchant enter into this agreement; and

WHEREAS Merchant wishes to receive such services;

NOW THEREFORE, Merchant and Bank agree as follows:

### 1. RESERVE ACCOUNT

1.1 Establishment. Merchant hereby agrees to deposit into a non-interest bearing account maintained by Bank (the "Reserve Account") ten percent (10%) of each transaction processed under the Merchant Processing Agreement ("MPA"). Following the 7<sup>th</sup> month of initial funding of the Reserve Account (and every month thereafter) the 10% in deposits generated from the 1<sup>st</sup> month (and every month thereafter) may be released to Merchant, if Merchant's risk profile so warrants, as determined by Bank.

1.2 Additional Deposits. Based upon Merchant's processing history and/or anticipated risk of loss to Bank, Bank may require Merchant to deposit additional amounts into the Reserve Account, or to furnish other security.

1.3 Deposits and Deductions. Merchant hereby authorizes Bank to ACH to Merchant's account monies due and payable to Merchant, and to ACH funds due and payable to Bank in accordance with this agreement.

Bank Name: GRAYSTONE BANK  
Bank ABA Number: 031318907  
Bank Account No.: 1610015115  
Account Name: EDEN COSMETICS

1.4 Merchant hereby warrants to Bank that Merchant shall maintain its banking information current with Bank and shall

conduct its business affairs in accordance with the terms and conditions of the MPA, and all applicable State, and Federal laws and regulations, as well as all operating rules governing credit card, debit card and check transactions.

### 2. TERM

2.1 Term. This agreement shall be effective commencing on the date of execution and continue in effect for a period coterminous with the MPA, subject to Section 2.3 below.

2.2 Immediate Termination. Merchant's failure to pay any amount requested by Bank in accordance with this agreement will result in the immediate termination of Merchant's MPA without advance notice.

2.3 Survival. Bank may continue to hold or deposit funds in the Reserve Account after termination of the MPA, regardless of who terminates the MPA. Upon such termination, Bank may retain sufficient funds to satisfy any and all processing fees, chargebacks, damages, and any and all additional fees, fines, penalty amounts and charges due the Card Associations, third-party suppliers or Bank. Reserve Account funds will be held by Bank for a period of not less than 180 days from the date of the last card transaction processed under the MPA and a reasonable period thereafter during which cardholder disputes may remain valid under applicable Card Association rules. Bank will return the balance in the Reserve Account to Merchant after Bank reasonably determines that the risk of chargebacks and other fees, expenses or losses has ended and after deducting all amounts that Merchant owes under this agreement, the MPA or any related agreement.

### 3. GENERAL

This agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction. If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the parties.

MERCHANT (Eden Cosmetics, LLC)

Cathy Burger-Gray  
(Signature)  
President, Cathy Burger-Gray  
(Name and Title of Signor)  
June 5, 2008  
(Date)

BANK OF AMERICA

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name and Title of Signor)  
\_\_\_\_\_  
(Date)





Merchant#: \_\_\_\_\_

 New Location  Additional Location  Existing Location

Sales Code: \_\_\_\_\_

**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>Total Mobile Control, LLC</b>			Name of Business (Doing Business As / Same as Signage): <b>Precision Niche Products</b>		
Corporate / Billing Address: <b>6059 Allentown Blvd, Ste 311</b>			Location Address (Attach Additional Locations - No P.O. Box): <b>1414 N. Cameron Street</b>		
City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17112</b>	City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17103</b>
Telephone #: <b>717-213-6899</b>	Federal Tax ID: <b>20-5878466</b>		Telephone #: <b>717-213-6899</b>	Fax #: <b>717-828-1002</b>	
Web Address: <b>http://preview.coloslim.com/site/free/index.html</b>			email Address: <b>bwr@totalmobilecontrol.com</b>		
Have you been placed on the 'CTMF' (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Have you ever declared bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
How long in present business? <b>Years 1 year</b> <b>Months 5 months</b>			Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>Barry Rynearson</b>		

**OWNERS OR OFFICERS** (Ownership must be equal to or greater than 50%)

Title: <b>President</b>			Percent Ownership: <b>100 %</b>		
Last Name: <b>Rynearson</b>	First Name: <b>Barry</b>	Middle Initial: <b>W</b>	Date of Birth: (mm/dd/yyyy): <b>01 / 02 / 1968</b>		
Residence Address: <b>132 Kestrel Ct</b>		City: <b>Hummelstown</b>	State: <b>PA</b>	Zip: <b>17036</b>	
Residence Tel. No.: <b>717-566-9536</b>	SS #: <b>145-52-4710</b>	Driver's Lic. #: <b>23-580-274</b>	State: <b>PA</b>		
Title:			Percent Ownership: %		
Last Name:	First Name:	Middle Initial:	Date of Birth: (mm/dd/yyyy): / /		
Residence Address:		City:	State:	Zip:	
Residence Tel. No.:	SS #:	Driver's Lic. #:	State:		

**BUSINESS PROFILE**

Type of Ownership:  
 Sole Proprietorship     Partnership     Not for Profit  
 Limited Liability Company     Corporation     PA or PC

Type of Goods Sold: **vanity products**    SIC Code:

Do you currently accept Visa/MasterCard?  Yes  No

Name of Current Processor: **Pivotal**

Average C.C. Ticket Size: \$ **40**    Average C.C. Monthly Volume: \$ **50000**

**SALES PROFILE**

Merchant Type:  
 Retail  
 Restaurant  
 Lodging  
 Service  
 MO/TO  
 Internet  
 Home Based  
 Other

**Visa/MasterCard Sales Profile (be accurate):**

Card Swipe: %

Manual Key Entry with Imprint, Card Present: %

Mail Order / Telephone Order: %

Internet: **100 %**

Total 100%

Total Sales/mth: \$ **50000**

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

**TRADE / REFERENCES**

Name: <b>Vitaquest International</b>	Contact: <b>Mark Stanisci</b>
Address: <b>8 Henderson Drive, West Caldwell NJ, 07006</b>	Phone Number: <b>973-575-9200</b>
Name: <b>The Planet</b>	Contact:
Address: <b>Houston TX</b>	Phone Number: <b>866-362-5478</b>

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

Voided check from this account must be attached.	Bank Name: <b>Graystone Bank</b>	Telephone #: <b>717-724-4657</b>	Name on DDA Account: <b>Precision Niche Produ</b>	
	Address: <b>112 Market Street</b>	City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17101</b>
	Transk No. <b>0 3 1 3 1 8 9 0 7</b>	DDA No. <b>1 6 1 0 0 1 2 2 7 8</b>		

RATES			
1 / MasterCard Standard Retail & High Risk Retail Rates		Mail / Phone / Internet / Touchtone Rates	
Merchant Chooses to Accept the Following:		Merchant Chooses to Accept the Following:	
Visa CKCD Discount Rate: %	MC CKCD Discount Rate: %	Visa CKCD Discount Rate: <b>3.25</b> %	MC CKCD Discount Rate: <b>3.25</b> %
Visa C.C. Discount Rate: %	MasterCard C.C. Discount Rate: %	Visa C.C. Discount Rate: <b>3.25</b> %	MasterCard C.C. Discount Rate: <b>3.25</b> %
VS/MC MID Qualified(+): %	VS/MC Non Qualified(+): %	VS/MC MID Qualified(+): <b>0.75</b> %	VS/MC Non Qualified(+): <b>1.72</b> %
AMEX Discount Rate: %	Discover Discount Rate: %	AMEX Discount Rate: %	Discover Discount Rate: %
<b>Fees:</b>		<b>Fees:</b>	
VS/MC Transaction Fee: Per Item		VS/MC Transaction Fee: <b>0.30</b> Per Item	
Non-Bankcard Transaction Fee: Per Item		Non-Bankcard Transaction Fee: <b>0.30</b> Per Item	
Statement Fee: Monthly		Statement Fee: <b>10.00</b> Monthly	
Online Reporting Service: Monthly		Online Reporting Service: <b>5.00</b> Monthly	
Monthly Minimum: Monthly		Monthly Minimum: <b>20.00</b> Monthly	
Annual Fee: Per Year		Annual Fee: <b>75.0</b> Per Year	
Debit (PIN-based) Transaction + Network Fees: Per Item		MO/TO/Internet Surcharge: <b>0.10</b> Per Item	
AVS Surcharge: Per Item		AVS Surcharge: <b>0.00</b> Per Item	
EBT Transaction Fee: Per Item		Batch Fee: <b>0.05</b> Per Batch	
EBT Statement Fee: Monthly		Chargeback Fee: <b>35.00</b> Per Item	
Batch Fee: Per Batch		ACH Reject Fee: <b>\$25</b> Per Item	
Chargeback Fee: Per Item		Retrieval Fee: <b>\$5</b> Per Item	
ACH Reject Fee: <b>\$25</b> Per Item		Voice Authorization Fee: <b>\$0.95</b> Per Call	
Retrieval Fee: <b>\$5</b> Per Item		Gateway Fee: Monthly	
Voice Authorization Fee: <b>\$0.95</b> Per Call		Gateway Transaction Fee: Per Item	
Terminal Protection Plan: Monthly		Other (please specify):	
Merchant Club: Monthly			
Other (please specify):			

**WARRANTY**

The primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

BARRY RYNEARSON

Name of Personal Guarantor (please print)

Name of Co-Personal Guarantor (please print)

BWR

Date: **03/12/08**

Date:

Signature (mm/dd/yyyy)

Signature (mm/dd/yyyy)

**AMERICAN EXPRESS**

By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express@Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Signature

BWR

Date: **03/12/08**

(mm/dd/yyyy)

**DISCOVER**

I agree to accept Discover® Network Cards. Discover Network will deliver a starter kit with my merchant services agreement and materials.

Signature

BWR

Date: **03/12/08**

(mm/dd/yyyy)

**FOR ALL CORPORATIONS - CORPORATE RESOLUTION**

The officer(s) identified in numbers 1 and/or 2 below represent that each have the right and authority to execute the Merchant Processing Agreement on behalf of the Merchant. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

I HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AS SET OUT ABOVE AND IN THE SUBSEQUENT MERCHANT PROCESSING AGREEMENT (COLLECTIVELY, "AGREEMENT"). AS INDICATED BY MY SIGNATURE BELOW, I ACCEPT THE OFFER AS OUTLINED IN THE AGREEMENT.

**Total Mobile Control, LLC**

Legal Name of Merchant Business

BWR  
#1 From Application - Signature

Accepted by Pivotal Payments, Inc.

#2 From Application - Signature

Accepted by Processor

Accepted by Bank of America, N.A., Charlotte, NC

## Merchant Processing Agreement

Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Pivotal Payments, Inc. ("PP"), Cynergy Data ("CD"), BA Merchant Services, LLC. ("BAMS") (CD and BA Merchant Services, LLC. are collectively referred to as Processor), and Bank of America, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Visa or MasterCard cards issued by a non-U.S. bank, a Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, embossed printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
3. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determines, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- ii. **Provisional Credit.** Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
  - iii. **Processing Limits.** Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks." You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. Credit.**
- i. **Credit Memoranda.** You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.
  - ii. **Revocation of Credit.** Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
  - ii. **Credit Refunds.** You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
  - iii. **Adjustments.** Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
  - iv. **Error Resolution.** You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO" You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. Partial Completion.**
- i. **Prior Consent.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
  - ii. **Acceptance.** If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. **Electronic Commerce.** You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have so indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. **Requirements.** For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. **Cardholder Information Security.** You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. **American Express, Discover, JCB and Diners Club Transaction.** Upon your request, Processor and Bank will provide authorization and/or data capture service, for Discover, JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express and Discover. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. **Cash Advances.** You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. **Prohibited Transactions.** You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction

or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished by a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Processor and with each Card Association in the event that Processor or any Card Association determines that there is a substantial risk of fraud arising from your access to the Card Association. You will take whatever actions Processor or Card Associations reasonably deem necessary in order to protect such Card Association, its members, and its Cardholders. Neither the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

J. **Debit Card Transactions.**

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by BAMS or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

K. **Debit Card Terminals.** Debit Card terminals, including hardware and software, must be certified for use by BAMS and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party

## 6. Designated Account.

A. **Establishment and Authority.** Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. **Deposit.** Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. **Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any claim against Processor or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. **Indemnity.** You will indemnify and hold PP, Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

E. **ACH Authorization.** You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## **7. Security Interests, Reserve Account, Recoupment and Set-Off.**

### **A. Security Interests.**

i. **Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to PP, Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to PP, Processor and Bank to secure your obligations under this Agreement upon PP, Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by PP, Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. **Perfection.** Upon request of PP, Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### **B. Reserve Account.**

i. **Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. **Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. **Assurance.** In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. **Recoupment and Set-Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. **Remedies Cumulative.** The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

### **8. Fees and Other Amounts Owed Bank.**

A. **Fees and Taxes.** You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. **Other Amounts Owed.** You will immediately pay PP, Processor and Bank any amount incurred by PP, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.



## 9. Application, Indemnification, Limitation of Liability.

Application. You represent and warrant to PP, Processor and Bank that all information in the Application is correct and complete. You must notify PP and Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by PP and Processor within 10 business days of the change. You will provide updated information to PP and Processor within a reasonable time upon request. You are liable to PP and Processor for all losses and expenses incurred by PP and Processor arising out of your failure to report changes to it. PP, Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, PP, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of PP, Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of PP's, Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither PP, Processor, Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **PP, Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither PP, Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, PP and Processor are the exclusive agents of Bank and Bank is at all times entirely responsible for, and in control of PP's and Processor's performance.

10. Representations and Warranties. You represent and warrant to PP, Processor and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. Rule compliance. You will comply with the Laws and Rules.

## 11. Audit and Financial Information.

A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. Processor will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

## B. Financial Information.

i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

## 12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorizee designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

## 13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by PP, Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and BAMS or CD will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

- ii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

#### D. Early Termination

- i. Merchant acknowledges and agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is terminated by Merchant prior to the expiration of the applicable Term of the Agreement, or for any reason other than for a material, uncured breach by Bank or Processor, Merchant agrees to pay Bank or Processor damages (the "Damages") determined by (a) computing the number of months remaining from the date of termination to the end of the then current Initial or Renewal Term; and (b) multiplying that number by the average monthly processing fees.
- ii. Merchant agrees that such Damages shall also be due PP or Bank or Processor if Merchant discontinues submitting card transactions during the Term for a period of ninety (90) consecutive days, and is not designated as a seasonal merchant or as otherwise agreed to by Bank or Processor.
- iii. Merchant acknowledges that the Damages are not a penalty but rather are a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws and Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, JCB, any other issuer of Cards, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Processing Handbook ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa and MasterCard trademarks must fully comply with the law. Your use of Visa, MasterCard or other cards' promotional materials will not indicate, directly or indirectly that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

- i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2 data after authorization.
- ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
- iii. Disclosure. You authorize PP, Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

- A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Processing Handbook, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.
- C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.
- D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
- E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.
- F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.
- G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.
- H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse PP, Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
- I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.
- J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.
- K. Independent Contractors. PP, Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.
- L. Employee Actions. You are responsible for your employees' actions while in your employment.
- M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13, C, 15, 16, B and 16.H will survive termination of this Agreement.
- N. Bank Contact. You may contact Bank at the following address:  
Bank of America, N.A.  
1231 Durrett Lane  
Louisville, KY 40285-0001





**Rolling Reserve Authorization**

THIS ROLLING RESERVE AUTHORIZATION AGREEMENT is entered into between Pivotal Payments, having a place of business at 6800 Jericho Turnpike, Suite 120 West, Syosset, NY 11791 ("Pivotal") and you the Merchant ("Merchant").

WHEREAS the Merchant has entered into a Merchant Processing Agreement with Bank of America for acceptance of credit card transactions;

AND WHEREAS PIVOTAL shall provide ancillary services to the Merchant Processing Agreement between Bank of America and Merchant;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**1. RESERVE ACCOUNT**

1.1 Established: Merchant expressly authorizes PIVOTAL, at any time and from time to time, to deduct from remittances or, upon request a deposit, to establish a reserve account to ensure PIVOTAL' recovery of any liabilities owed it or reasonably anticipated to be owed to it. The amount of the reserve account shall initially be as set at 10% of each transaction under the Merchant Processing Agreement. Following the seventh (7th) month of the term of this Agreement (and every month thereafter), the security deposits generated from the first (1st) month of operation (and every month thereafter) may be forwarded to Merchant. Depending on the level of risk, as determined solely by PIVOTAL, of transactions submitted by Merchant, PIVOTAL may, at its sole discretion, at any time and upon immediate notice to Merchant (i) increase the amount held in the reserve account; and/or (ii) retain the reserve account for an extended period of time.

1.2 No Interest: The reserve account shall not bear interest and Merchant shall not be entitled to payment of the funds in the reserve account until all of Merchant's obligations under this Agreement and any related agreements have been satisfied. Upon the termination of this Agreement or any related agreements for any reason whatsoever, PIVOTAL reserves the right to maintain in its possession in the reserve account any and all amounts then held by PIVOTAL, or its agents, until such time as all actual and potential returns, refunds, voids, chargebacks and other amounts owing under this Agreement and any related agreements have been settled to the full satisfaction of PIVOTAL.

1.3 Set-off: PIVOTAL shall have, and Merchant acknowledges that PIVOTAL shall have, the right to set off against or debit from Merchant's account and settlement amounts, any amount payable by PIVOTAL to Merchant under any provision of this Agreement or any related agreement, any amounts owed by Merchant to PIVOTAL, or any damages, chargebacks, fines or penalties PIVOTAL is responsible for as a result of Merchant's violation, breach, action or non-performance of its obligations or its customers. Merchant shall promptly reimburse PIVOTAL for any ACH returns, chargebacks or other losses, fees or penalties resulting from invalid transactions.

1.4 Merchant hereby authorizes PIVOTAL to ACH to Merchant's account monies due and payable to Merchant and to ACH funds due and payable to PIVOTAL in accordance with this Agreement.

Bank Name: GRAYSTONE BANK  
 Bank ABA Number: FOLLOW INSTRUCTIONS INCLUDED w/ APPLICATION  
 Bank Account Number: 1610015180  
 Account Name: COLOSUM

**2. INDEMNIFICATION**

2.1 Indemnification: Merchant shall defend, indemnify and hold harmless PIVOTAL against and in respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorney fees that PIVOTAL shall incur or suffer, that arise, result from, or relate to any breach of or failure by Merchant to perform any of its representations, warranties, covenants or obligations in this Agreement or any related agreement.

2.2 PIVOTAL only provides Services: MERCHANT UNDERSTANDS AND AGREES THAT PIVOTAL HAS NO DIRECT FINANCIAL INTEREST IN THE TRANSACTION SERVICES PROVIDED BY BANK OF AMERICA, AND IS PROVIDING A SERVICE TO MERCHANT ONLY. ALL RISK OF LOSS AND LIABILITY TO ANY PERSON OR ORGANIZATION ARISING OUT OF THE SERVICES FURNISHED HEREUNDER SHALL BE THAT OF MERCHANT.

3. Limitation on Liability. Damages: PIVOTAL' TOTAL LIABILITY TO MERCHANT WITH RESPECT TO ANY AND ALL ACTIONS UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNT REPRESENTED BY THE AGGREGATE OF THE RESERVE HELD BY PIVOTAL OVER THE MDST RECENT MONTH.

4. Limitation on Liability. Amount: PIVOTAL, ITS AFFILIATES, AGENTS AND LICENSORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS, LOSS OF USE DAMAGES OR LOSS OF DATA IN ANY WAY CONNECTED WITH OR ARISING OUT OF THE SERVICES PROVIDED BY PIVOTAL HEREUNDER.

5. TERM. This Agreement shall be effective commencing on the date executed by PIVOTAL and continue in effect coterminous with the Bank of America Merchant Processing Agreement with Merchant, however, upon termination of the Merchant Processing Agreement, this Agreement shall continue to be in effect for the run off period stipulated in Section 1.1 above.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS. Merchant hereby represents, warrants and covenants to PIVOTAL that Merchant shall maintain its information current with PIVOTAL and shall conduct its business affairs in accordance with the terms and conditions of the Merchant Processing Agreement, and in compliance with all applicable State, and Federal laws and regulations, as well as the operating rules governing credit card, debit card and check transactions.

**7. GENERAL**

7.1 Formation of Contract: This Agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and whose courts shall have exclusive jurisdiction. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

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

IN WITNESS WHEREOF, the parties have executed this Agreement.

<u>TOTAL MOBILE CONTROL DBA</u>	<u>COLOSUM</u>
(Merchant Name)	Pivotal Payments
<u>[Signature]</u>	_____
(Signature)	(Signature)
<u>BARRY RYNEARSON</u>	_____
(Name of Signatory)	(Name of Signatory)
<u>PRESIDENT / MANAGING MEMBER</u>	_____
(Title of Signatory)	(Title of Signatory)
<u>4-1-08</u>	_____
(Date)	(Date)

## Barry Rynearson

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**From:** Brittney Bond [brittney@primuspayment.com]  
**Sent:** Wednesday, March 26, 2008 6:21 PM  
**To:** 'Barry Rynearson'  
**Subject:** aRolling\_Reserve\_Authorization\_0206.pdf  
**Attachments:** aRolling\_Reserve\_Authorization\_0206.pdf

Hi Barry, Precision Niche has been conditionally approved at Pivotal:

Here are the conditions:

1. The merchant must have a functional website with its own shopping cart and with all policies in place. This site will be reviewed by UW to ensure that it meets bank requirements.
2. Please provide a 10% rolling reserve agreement. (attached)

Please let me know if you have any questions,

Thank you,

Brittney Bond  
Primus Payment Solutions, Inc.  
9841 Irvine Center Drive, Suite 130  
Irvine, CA 92618  
949.748.7360



Merchant #: \_\_\_\_\_

 New Location  Additional Location  Existing Location

Sales Code: \_\_\_\_\_

**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>TOTAL MOBILE CONTROL, LLC</b>			Name of Business (Doing Business As / Same as Signage): <b>PRECISION NICHE PRODUCTS</b>		
Corporate / Billing Address: <b>6059 ALLENTOWN BLVD, STE 311</b>			Location Address (Attach Additional Locations - No P.O. Box): <b>1414 N. CAMERON ST</b>		
City: <b>HARRISBURG</b>	State: <b>PA</b>	Zip: <b>17112</b>	City: <b>HARRISBURG</b>	State: <b>PA</b>	Zip: <b>17103</b>
Telephone #: <b>717-213-6899</b>	Federal Tax ID: <b>20-5878466</b>		Telephone #: <b>717-213-6899</b>	Fax #: <b>717-828-1002</b>	
Web Address: <b>HTTP://PREVIEW.AGEINVISIBLE.COM/REVISED-110507</b>			Email Address: <b>INDEX-@TML BWR@TOTALMOBILECONTROL.COM</b>		
Have you been placed on the 'CTMF' (Combined Terminated Merchant file)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Have you ever declared bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No		
How long in present business? Years: _____ Months: <b>1 YR</b>			Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>BARRY RYNEARSON</b>		

**OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)**

Title: <b>PRESIDENT</b>				Percent Ownership: <b>100 %</b>
Last Name: <b>RYNEARSON</b>	First Name: <b>BARRY</b>	Middle Initial: <b>W</b>	Date of Birth: (mm/dd/yyyy): <b>01/02/1968</b>	
Residence Address: <b>132 KESTREL CT</b>		City: <b>HUMMELSTOWN</b>	State: <b>PA</b>	Zip: <b>17036</b>
Residence Tel. No.: <b>717-566-4446 9536</b>	SS #: <b>145-52-4710</b>	Driver's Lic. #: <b>23 580 274</b>	State: <b>PA</b>	
Title:				Percent Ownership: %
Last Name:	First Name:	Middle Initial:	Date of Birth: (mm/dd/yyyy): / /	
Residence Address:		City:	State:	Zip:
Residence Tel. No.:	SS #:	Driver's Lic. #:	State:	

**BUSINESS PROFILE**

Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Not for Profit <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> PA or PC	SIC Code:
Type of Goods Sold: <b>SKIN CARE</b>	
Do you currently accept Visa/MasterCard? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Current Processor: _____	

**SALES PROFILE**

Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other	<b>Visa/MasterCard Sales Profile (be accurate):</b> Card Swipe: % Manual Key Entry with Imprint, Card Present: % Mail Order / Telephone Order: % Internet: <b>100 %</b> Total 100%
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Average C.C. Ticket Size: \$ <b>47.90</b>	Average C.C. Monthly Volume: \$ <b>50,000</b>	Total Sales/mth: \$ <b>50,000</b>
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Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

**TRADE / REFERENCES**

Name: <b>THE PLANET</b>	Contact: <b>SADON ELIZONDO</b>
Address: <b>HOUSTON TX</b>	Phone Number: <b>214-782-7898</b>
Name: <b>CONTACT COMPLIANCE CENTER</b>	Contact:
Address: <b>SANTA ROSA, CA 95404</b>	Phone Number: <b>866-362-5478</b>

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

A voided check from this account must be attached.	Bank Name: <b>GRAYSTONE BANK</b>	Telephone #: <b>717-724-4657</b>	Name on DDA Account: <b>PRECISION NICHE PRODUCTS</b>		
	Address: <b>112 MARKET ST</b>	City: <b>HARRISBURG</b>	State: <b>PA</b>	Zip: <b>17101</b>	
	Transit No. <b>031318907</b>	DDA No. <b>1610012278</b>			

**RATES**

Visa / MasterCard Standard Retail & High Risk Retail Rates				Mail / Phone / Internet / Touchtone Rates			
Merchant Chooses to Accept the Following:				Merchant Chooses to Accept the Following:			
Visa CKCD Discount Rate:	%	MC CKCD Discount Rate:	%	Visa CKCD Discount Rate:	<b>3.25 %</b>	MC CKCD Discount Rate:	<b>3.25 %</b>
Visa C.C. Discount Rate:	%	MasterCard C.C. Discount Rate:	%	Visa C.C. Discount Rate:	<b>3.25 %</b>	MasterCard C.C. Discount Rate:	<b>3.25 %</b>
VS/MC MID Qualified:(+)	%	VS/MC Non Qualified:(+)	%	VS/MC MID Qualified:(+)	<b>0.75 %</b>	VS/MC Non Qualified:(+)	<b>1.72 %</b>
AMEX Discount Rate:	%	Discover Discount Rate:	%	AMEX Discount Rate:	%	Discover Discount Rate:	%
<b>Fees:</b>				<b>Fees:</b>			
VS/MC Transaction Fee:		Per Item		VS/MC Transaction Fee:	<b>0.30</b>	Per Item	
Non-Bankcard Transaction Fee:		Per Item		Non-Bankcard Transaction Fee:	<b>0.30</b>	Per Item	
Statement Fee:		Monthly		Statement Fee:	<b>10.00</b>	Monthly	
Online Reporting Service:		Monthly		Online Reporting Service:	<b>5.00</b>	Monthly	
Monthly Minimum:		Monthly		Monthly Minimum:	<b>20.00</b>	Monthly	
Annual Fee:		Per Year		Annual Fee:	<b>75.0</b>	Per Year	
Debit (PIN-based) Transaction + Network Fees:		Per Item		MD/TO/Internet Surcharge:	<b>0.10</b>	Per Item	
AVS Surcharge:		Per Item		AVS Surcharge:	<b>0.00</b>	Per Item	
EBT Transaction Fee:		Per Item		Batch Fee:	<b>0.05</b>	Per Batch	
EBT Statement Fee:		Monthly		Chargeback Fee:	<b>35.00</b>	Per Item	
Batch Fee:		Per Batch		ACH Reject Fee:	<b>\$25</b>	Per Item	
Chargeback Fee:		Per Item		Retrieval Fee:	<b>\$5</b>	Per Item	
ACH Reject Fee:	<b>\$25</b>	Per Item		Voice Authorization Fee:	<b>\$0.95</b>	Per Call	
Retrieval Fee:	<b>\$5</b>	Per Item		Gateway Fee:		Monthly	
Voice Authorization Fee:	<b>\$0.95</b>	Per Call		Gateway Transaction Fee:		Per Item	
Terminal Protection Plan:		Monthly		Other (please specify):			
Merchant Club:		Monthly					
Other (please specify):							

**GUARANTY**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

Signature: <u><i>[Signature]</i></u> Name of Personal Guarantor (please print): <u>BARRY RYNEARSON</u> Date: <u>11.06.2007</u> (mm/dd/yyyy)	Signature: _____ Name of Co-Personal Guarantor (please print): _____ Date: _____ (mm/dd/yyyy)
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**AMERICAN EXPRESS**

By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Signature: *[Signature]* Date: 11.07.2007 (mm/dd/yyyy)

**DISCOVER**

I agree to accept Discover® Network Cards. Discover Network will deliver a starter kit with my merchant services agreement and materials.



Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (mm/dd/yyyy)

**FOR ALL CORPORATIONS - CORPORATE RESOLUTION**

The officer(s) identified in numbers 1 and/or 2 below represent that each have the right and authority to execute the Merchant Processing Agreement on behalf of the Merchant. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

I HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, AS SET OUT ABOVE AND IN THE SUBSEQUENT MERCHANT PROCESSING AGREEMENT (COLLECTIVELY, "AGREEMENT"). AS INDICATED BY MY SIGNATURE BELOW, I ACCEPT THE OFFER AS OUTLINED IN THE AGREEMENT.

#1 From Application - Signature <u><i>[Signature]</i></u>	#2 From Application - Signature _____
Accepted by Pivotal Payments, Inc. _____	Accepted by Bank of America, N.A., Charlotte, NC _____
Accepted by Processor _____	_____

Total Mobile Control LLC  
NAME DBA Precision Niche Products 1121  
ACCOUNT NO. 1010012278 60-1890/313  
DATE \_\_\_\_\_  
PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_  
VOID \_\_\_\_\_ DOLLARS  Security Features include watermark.  
 GRAYSTONE BANK  
Your life, your bank  
MEMO \_\_\_\_\_ MP  
⑆031318907⑆ 1121

TEMP CHECK

## Merchant Processing Agreement

Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Pivotal Payments, Inc. ("PP"), Cynergy Data ("CD"), BA Merchant Services, LLC. ("BAMS") (CD and BA Merchant Services, LLC. are collectively referred to as Processor), and Bank of America, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Visa or MasterCard cards issued by a non-U.S. bank, a Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
- G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- ii. **Provisional Credit.** Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
- iii. **Processing Limits.** Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. Credit.**
- i. **Credit Memoranda.** You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction.
- ii. **Revocation of Credit.** Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
- ii. **Credit Refunds.** You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
- iii. **Adjustments.** Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
- iv. **Error Resolution.** You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO" You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. Partial Completion.**
- i. **Prior Consent.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
- ii. **Acceptance.** If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, Discover, JCB and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Discover, JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express and Discover. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction

or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished by a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Processor and with each Card Association in the event that Processor or any Card Association determines that there is a substantial risk of fraud arising from your access to the Card Association. You will take whatever actions Processor or Card Associations reasonably deem necessary in order to protect such Card Association, its members, and its Cardholders. Neither the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

#### J. Debit Card Transactions.

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by BAMS or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by BAMS and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party

#### 6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.



- C. **Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any claim against Processor or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.
- D. **Indemnity.** You will indemnify and hold PP, Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.
- E. **ACH Authorization.** You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## **7. Security Interests, Reserve Account, Recoupment and Set-Off.**

### **A. Security Interests.**

- i. **Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to PP, Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to PP, Processor and Bank to secure your obligations under this Agreement upon PP, Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by PP, Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.
- ii. **Perfection.** Upon request of PP, Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### **B. Reserve Account.**

- i. **Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.
- ii. **Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

- iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.
- iv. **Assurance.** In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

- C. **Recoupment and Set-Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.
- D. **Remedies Cumulative.** The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

### **B. Fees and Other Amounts Owed Bank.**

- A. **Fees and Taxes.** You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.
- B. **Other Amounts Owed.** You will immediately pay PP, Processor and Bank any amount incurred by PP, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

## 9. Application, Indemnification, Limitation of Liability.

Application. You represent and warrant to PP, Processor and Bank that all information in the Application is correct and complete. You must notify PP and Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e. sole, proprietorship partnership, etc.), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by PP and Processor within 10 business days of the change. You will provide updated information to PP and Processor within a reasonable time upon request. You are liable to PP and Processor for all losses and expenses incurred by PP and Processor arising out of your failure to report changes to it. PP, Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, PP, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of PP, Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of PP's, Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither PP, Processor, Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **PP, Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither PP, Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, PP and Processor are the exclusive agents of Bank and Bank is at all times entirely responsible for, and in control of PP's and Processor's performance.

10. Representations and Warranties. You represent and warrant to PP, Processor and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. Rule compliance. You will comply with the Laws and Rules.

## 11. Audit and Financial Information.

A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

## B. Financial Information.

i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

## 12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorizee designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

## 13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by PP, Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and BAMS or CD will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

- ii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

#### D. Early Termination

- i. Merchant acknowledges and agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is terminated by Merchant prior to the expiration of the applicable Term of the Agreement, or for any reason other than for a material, uncured breach by Bank or Processor, Merchant agrees to pay Bank or Processor damages (the "Damages") determined by (a) computing the number of months remaining from the date of termination to the end of the then current Initial or Renewal Term; and (b) multiplying that number by the average monthly processing fees.
- ii. Merchant agrees that such Damages shall also be due PP or Bank or Processor if Merchant discontinues submitting card transactions during the Term for a period of ninety (90) consecutive days, and is not designated as a seasonal merchant or as otherwise agreed to by Bank or Processor.
- iii. Merchant acknowledges that the Damages are not a penalty but rather are a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws and Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, JCB, any other issuer of Cards, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Processing Handbook ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa and MasterCard trademarks must fully comply with the Rules. Your use of Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

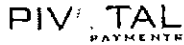
- i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2 data after authorization.
- ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
- iii. Disclosure. You authorize PP, Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

- A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Processing Handbook, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.
- C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.
- D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
- E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.
- F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.
- G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.
- H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse PP, Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by PP, Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
- I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.
- J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.
- K. Independent Contractors. PP, Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.
- L. Employee Actions. You are responsible for your employees' actions while in your employment.
- M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B and 16.H will survive termination of this Agreement.
- N. Bank Contact. You may contact Bank at the following address:  
Bank of America, N.A.  
1231 Durrett Lane  
Louisville, KY 40285-0001

EMAILED 12-5-07



### Rolling Reserve Authorization

THIS ROLLING RESERVE AUTHORIZATION AGREEMENT is entered into between Pivotal Payments, having a place of business at 6800 Jericho Turnpike, Suite 120 West, Syosset, NY 11791 ("Pivotal") and you the Merchant ("Merchant").

WHEREAS the Merchant has entered into a Merchant Processing Agreement with Bank of America for acceptance of credit card transactions;

AND WHEREAS PIVOTAL shall provide ancillary services to the Merchant Processing Agreement between Bank of America and Merchant;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

#### 1. RESERVE ACCOUNT

1.1 Established: Merchant expressly authorizes PIVOTAL, at any time and from time to time, to deduct from remittances or, upon request a deposit, to establish a reserve account to ensure PIVOTAL' recovery of any liabilities owed it or reasonably anticipated to be owed to it. The amount of the reserve account shall initially be as set at 10% of each transaction under the Merchant Processing Agreement. Following the seventh (7th) month of the term of this Agreement (and every month thereafter), the security deposits generated from the first (1st) month of operation (and every month thereafter) may be forwarded to Merchant. Depending on the level of risk, as determined solely by PIVOTAL, of transactions submitted by Merchant, PIVOTAL may, at its sole discretion, at any time and upon immediate notice to Merchant (i) Increase the amount held in the reserve account; and/or (ii) retain the reserve account for an extended period of time.

1.2 No Interest: The reserve account shall not bear interest and Merchant shall not be entitled to payment of the funds in the reserve account until all of Merchant's obligations under this Agreement and any related agreements have been satisfied. Upon the termination of this Agreement or any related agreements for any reason whatsoever, PIVOTAL reserves the right to maintain in its possession in the reserve account any and all amounts then held by PIVOTAL, or its agents, until such time as all actual and potential returns, refunds, voids, chargebacks and other amounts owing under this Agreement and any related agreements have been settled to the full satisfaction of PIVOTAL.

1.3 Set-off: PIVOTAL shall have, and Merchant acknowledges that PIVOTAL shall have, the right to set off against or debit from Merchant's account and settlement amounts, any amount payable by PIVOTAL to Merchant under any provision of this Agreement or any related agreement, any amounts owed by Merchant to PIVOTAL, or any damages, chargebacks, fines or penalties PIVOTAL is responsible for as a result of Merchant's violation, breach, action or non-performance of its obligations or its customers. Merchant shall promptly reimburse PIVOTAL for any ACH returns, chargebacks or other losses, fees or penalties resulting from invalid transactions.

1.4 Merchant hereby authorizes PIVOTAL to ACH to Merchant's account monies due and payable to Merchant and to ACH funds due and payable to PIVOTAL in accordance with this Agreement.

Bank Name: Graystone Bank

Bank ABA Number: Need to follow instructions included with applica

Bank Account Number: 1610012278

Account Name: Precision Niche Products

#### 2. INDEMNIFICATION

2.1 Indemnification: Merchant shall defend, indemnify and hold harmless PIVOTAL against and in respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorney fees that PIVOTAL shall incur or suffer, that arise, result from, or relate to any breach of or failure by Merchant to perform any of its representations, warranties, covenants or obligations in this Agreement or any related agreement.

2.2 PIVOTAL only provides Services: MERCHANT UNDERSTANDS AND AGREES THAT PIVOTAL HAS NO DIRECT FINANCIAL INTEREST IN THE TRANSACTION SERVICES PROVIDED BY BANK OF AMERICA, AND IS PROVIDING A SERVICE TO MERCHANT ONLY. ALL RISK OF LOSS AND LIABILITY TO ANY PERSON OR ORGANIZATION ARISING OUT OF THE SERVICES FURNISHED HEREUNDER SHALL BE THAT OF MERCHANT.

3. Limitation on Liability. Damages: PIVOTAL' TOTAL LIABILITY TO MERCHANT WITH RESPECT TO ANY AND ALL ACTIONS UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNT REPRESENTED BY THE AGGREGATE OF THE RESERVE HELD BY PIVOTAL OVER THE MOST RECENT MONTH.

4. Limitation on Liability. Amount: PIVOTAL, ITS AFFILIATES, AGENTS AND LICENSORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOST PROFITS, LOSS OF USE DAMAGES OR LOSS OF DATA IN ANY WAY CONNECTED WITH OR ARISING OUT OF THE SERVICES PROVIDED BY PIVOTAL HEREUNDER.

5. TERM. This Agreement shall be effective commencing on the date executed by PIVOTAL and continue in effect coterminous with the Bank of America Merchant Processing Agreement with Merchant, however, upon termination of the Merchant Processing Agreement, this Agreement shall continue to be in effect for the run off period stipulated in Section 1.1 above.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS. Merchant hereby represents, warrants and covenants to PIVOTAL that Merchant shall maintain its information current with PIVOTAL and shall conduct its business affairs in accordance with the terms and conditions of the Merchant Processing Agreement, and in compliance with all applicable State, and Federal laws and regulations, as well as the operating rules governing credit card, debit card and check transactions.

#### 7. GENERAL

7.1 Formation of Contract: This Agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and whose courts shall have exclusive jurisdiction. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

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

IN WITNESS WHEREOF, the parties have executed this Agreement.

Total Mobile Control dba Precision  
(Merchant Name)

Pivotal Payments

[Signature]  
(Signature)

[Signature]  
(Signature)

Barry Rynearson  
(Name of Signatory)

[Signature]  
(Name of Signatory)

Managing Member/President  
(Title of Signatory)

[Signature]  
(Title of Signatory)

12.5.07  
(Date)

[Signature]  
(Date)



**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>Natural Body Scape, LLC</b>			Name of Business (Doing Business As / Same as Signage): <b>BerrySLIM 8666743960-V</b>		
Corporate / Billing Address: <b>1152 Mae Street, PMB 226</b>			Location Address (Attach Additional Locations - No P.O. Box): <b>147 N. Cameron St.</b>		
City: <b>Hummelstown</b>	State: <b>PA</b>	Zip: <b>17036</b>	City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17101</b>
Telephone #: <b>866-674-3960</b>	Federal Tax ID: 2 6 3 8 0 7 6 6 7		Telephone #: <b>717-724-9362</b>	Fax #: <b>717-307-3365</b>	
Web Address: <b>http://preview.berryslimmd.com/corporate_site</b>			Email Address: <b>dhemmerich@naturalbodyscape.com</b>		
Have you been placed on the 'CMNF' (Consortium Merchant Negative File) or the CTMF (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Has merchant or any associated principal disclosed below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes Date: _____ <input checked="" type="checkbox"/> No		
How long in present business? Years _____ Months <b>1</b>			Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>D. Benjamin Hemmerich</b>		
Place of Legal Formation: <b>PA</b>			Country of Primary Business Operations: <b>USA</b>		

<b>OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)</b>					
Title: <b>President</b>			Percent Ownership: <b>100 %</b>		
Last Name: <b>Hemmerich</b>		First Name: <b>Daniel</b>		Middle Initial: <b>B</b>	
Residence Address: <b>309 Lafayette Drive</b>			City: <b>New Cumberland</b>		State: <b>PA</b> Zip: <b>17070</b>
Residence Tel. No.: <b>717-214-2684</b>	SS #: <b>176607364</b>	US Gov't issued ID#: <b>24734872</b>	Type of ID: <b>PA DL</b>	Country of citizenship if not US:	
		Expiration date: <b>12/14/2010</b>			
Title:			Percent Ownership: %		
Last Name:		First Name:		Middle Initial:	
Residence Address:			City:		State: Zip:
Residence Tel. No.:	SS #:	US Gov't issued ID#:	Type of ID:	Country of citizenship if not US:	
		Expiration date:			

<b>BUSINESS PROFILE</b>			<b>SALES PROFILE</b>		
Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Assoc/Estates/Trusts <input type="checkbox"/> Joint Venture <input type="checkbox"/> Government <input type="checkbox"/> Corporation (Privately Traded) <input type="checkbox"/> Corporation (Publicly Traded) <input type="checkbox"/> Medical or Legal Corp <input type="checkbox"/> Tax Exempt Org <input checked="" type="checkbox"/> Single Member LLC <input type="checkbox"/> Multi-Member LLC <input type="checkbox"/> Civic Assoc <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Political Org <input type="checkbox"/> Other: _____			Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other		Visa/Discover Network/MasterCard Sales Profile (be accurate):
Type of Goods Sold: _____	SIC Code: _____				Card Swipe: %
Do you currently accept Visa/Discover® Network/MasterCard? <input type="checkbox"/> Yes <input type="checkbox"/> No					Manual Key Entry with Imprint, Card Present: %
Name of Current Processor:					Mail Order / Telephone Order: %
Average C.C. Ticket Size: \$ <b>35.00</b>			Average C.C. Monthly Volume: \$ <b>50,000</b>		Internet: <b>100 %</b>
			Total Sales/mth: \$ <b>50,000</b>		Total 100%

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

<b>TRADE / BANK REFERENCES</b>	
Name: <b>Vitaquest International</b>	Contact: <b>Mark Stanisci</b>
Address: <b>8 Henderson Drive, West Caldwell NJ, 07006</b>	Phone Number: <b>973-575-9200</b>
Name:	Contact:
Address:	Phone Number:

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**  
Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

voided check from this account must be attached.	Bank Name: <b>Graystone Bank</b>		Telephone #: <b>717-724-4657</b>		Name on DDA Account: <b>BerrySLIM</b>	
	Address: <b>112 Market Street</b>			City: <b>harrisburg</b>		State: <b>PA</b> Zip: <b>17101</b>
	Transit No. 0 3 1 3 1 8 9 0 7	DDA No. 1 6 1 0 0 1 6 2 7 9				

RATES			
Visa/Discover Network/MasterCard Standard Retail & High Risk Retail Rates		Mail/Phone/Internet/Touchtone Rates	
Merchant Chooses to Accept the Following:		Merchant Chooses to Accept the Following:	
CKCD Discount Rate: %	MC CKCD Discount Rate: %	Visa CKCD Discount Rate: <b>2.70</b> %	MC CKCD Discount Rate: <b>2.70</b> %
Visa C.C. Discount Rate: %	MasterCard C.C. Discount Rate: %	Visa C.C. Discount Rate: <b>2.70</b> %	MasterCard C.C. Discount Rate: <b>2.70</b> %
VS/MC MID Qualified: (+) %	VS/MC Non Qualified: (+) %	VS/MC MID Qualified: (+) <b>.75</b> %	VS/MC Non Qualified: (+) <b>.77</b> %
Discover Network Discount Rate: %	AMEX Discount Rate: %	Discover Network Discount Rate: <b>2.44</b> %	AMEX Discount Rate: <b>3.50</b> %
Fees:		Fees:	
VS/MC Transaction Fee: Per Item		VS/MC Transaction Fee: <b>0.30</b> Per Item	
Non-Bankcard Transaction Fee: Per Item		Non-Bankcard Transaction Fee: <b>0.30</b> Per Item	
Statement Fee: Monthly		Statement Fee: <b>10.00</b> Monthly	
Online Reporting Service: Monthly		Online Reporting Service: <b>5.00</b> Monthly	
Monthly Minimum: Monthly		Monthly Minimum: <b>20.00</b> Monthly	
Debit (PIN-based) Transaction + Network Fees: Per Item		MO/TO/Internet Surcharge: <b>0.10</b> Per Item	
AVS Surcharge: Per Item		AVS Surcharge: <b>0.05</b> Per Item	
EBT Transaction Fee: Per Item		Batch Fee: Per Batch	
EBT Statement Fee: Monthly		AMEX Monthly Service Fee: <b>\$5.95</b> (only Ecomm/MOTO)	
Batch Fee: Per Batch		Gateway Fee:	
Terminal Protection Plan: Monthly		Other (please specify):	
Merchant Club: Monthly			
Other (please specify):			

**PCI\* AND PAYMENTS APPLICATION COMPLIANCE**

1. Do you store credit card numbers?  Yes  No  I Don't Know

2. Do you use a third party payment application that stores, transmits, or processes cardholder data?  Yes  No  
(Examples: Aloha version 6.1, Iparc version 2.4, etc.)

3. If yes, please provide name & version #: \_\_\_\_\_

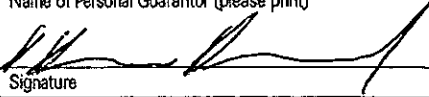
\* fee: \$10 per LP, per month (Ecomm and MOTO if applicable); \$6 per MID for Retail and MOTO if applicable per month.

NOTE: ONLY APPLICATIONS THAT COMPLY WITH ASSOCIATION SECURITY STANDARDS WILL BE PERMITTED.

A list of valid applications is available at: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)

**GUARANTY**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

<p>#1 <u>D. Benjamin Hemmerich</u> Name of Personal Guarantor (please print)</p> <p> Signature</p> <p>Date: <u>12/11/08</u> (mm/dd/yyyy)</p>	<p>#2 Name of Co-Personal Guarantor (please print)</p> <p>_____ Signature</p> <p>Date: _____ (mm/dd/yyyy)</p>
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**AMERICAN EXPRESS**

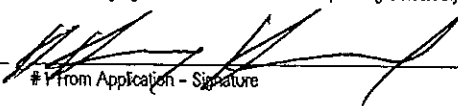
By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Check one:  Retail = \$0.10 Trans Fee + 0.30% CNP downgrade  Services, Wholesale & all other = \$0.15 Trans Fee

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (mm/dd/yyyy)

**FOR ALL BUSINESSES - BUSINESS RESOLUTION**

Each person signing below on behalf of the business designated on this Application ("Merchant") certifies that he/she: (i) has due authority to enter into this agreement and bind the Merchant; (ii) has completed, supplied and reviewed all information submitted along with this Application and agreed to the rates listed on this Application; and (iii) has received and read the attached Merchant Processing Agreement and Merchant Operating Guide before signing. Merchant agrees to be bound by the provisions stated within this Application, the Merchant Processing Agreement and the Merchant Operating Guide. Any unilateral change in the printed terms shall be null and void, unless approved in writing by an officer of the Bank and/or Processor.

<p><u>Natural Body Scope, LLC</u> Print Legal Name of Merchant Business</p> <p>_____ Accepted by Pivotal Payments, Inc. Date: _____ (mm/dd/yyyy)</p> <p>_____ Accepted by Processor Date: _____ (mm/dd/yyyy)</p>	<p>#1 From Application - Signature  Date: <u>12/11/08</u> (mm/dd/yyyy)</p> <p>#2 From Application - Signature _____ Date: _____ (mm/dd/yyyy)</p> <p>_____ Accepted by Harris Bank, N.A., Chicago, IL Date: _____ (mm/dd/yyyy)</p>
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## Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "You"), Cynergy Data, LLC and Pivotal Payments Inc. (collectively "Processor"), Pivotal Payments Inc. ("ISO") and Harris, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discover® Network, Visa U.S.A. Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank, and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you must promptly remit them to Processor and Bank.
- G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.



ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.

iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.

B. Chargebacks. You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25 % of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

#### D. Credit.

i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.

E. Reprocessing. Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

#### G. Debit Card Processing.

i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.

ii. Credit Refunds. You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.

ii. Adjustments. Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.

vi. Error Resolution. You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

#### 5. Other Types of Transactions.

A. Mail/Telephone Order. Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO" You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.

B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

#### D. Partial Completion.

i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.

ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions

processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions.

Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly

between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

J. Debit Card Transactions.

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by Processor or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by Processor and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party.

## 6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Asserted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

H Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

## 8. Fees and Other Amounts Owed Bank.

A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application and in the below paragraph. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. Other Fees. Where applicable, Merchant shall also pay the following fees: *SSL Authorization Surcharge*: \$0.03 per authorization request; *Voice/ARU Authorization*: \$0.95 per authorization request; *Annual Membership Fee*: \$99 per year per MID; *ACH Return*: \$25 per return; *Operator Assisted Voice Auth.*: \$2.95 per call; *AVS*: \$0.10 per request; *Wireless*: \$0.10 per authorization request; *I.P. Trx*: \$0.05 per authorization request; *Secure Gateway*: \$0.05 per authorization request; *Dispute Resolution Fee*: \$25; *Third Party Helpdesk Calls*: \$5.00 per call; *Unsupported Terminals*: \$20 per call. Upon 10 days written notice to Merchant, Bank may increase fees for any adverse change to Merchant's risk profile, as reasonably determined by Bank.

C. Other Amounts Owed. You will immediately pay ISO, Processor and Bank any amount incurred by ISO, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe ISO, Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and ISO or Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event ISO, Processor or Bank demand sums due or such ACH does not fully reimburse ISO, Processor and Bank for the amount owed, you will immediately pay ISO, Processor and Bank such amount.

## 9. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank or Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the

difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor nor Bank or their respective agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the, fault, or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

#### 10. Representations and Warranties.

You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. Rule compliance. You will comply with the Laws and Rules.

#### 11. Audit and Financial Information.

A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

B. Financial Information.

i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

#### 12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor and Bank receive data about the transaction.

b. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorize designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party

providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

#### 13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

iv. Early Termination. i. The Merchant agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is either terminated by Merchant prior to the expiration of the then-current term, or for any reason other than a material uncured breach by Bank or Processor, Merchant shall pay ISO damages (the "Damages") determined by: (a) computing the number of months remaining from the date of termination to the end of the Initial or Renewal Term, as applicable; and (b) multiplying that number by Merchant's average monthly processing fees. ii- Merchant agrees that such Damages shall also be due to ISO if Merchant discontinues submitting Card transactions during the Term for a period of ninety (90) consecutive days, unless Merchant has been designated a seasonal merchant or as otherwise agreed to by Bank or Processor. iii. Merchant acknowledges and agrees that the Damages are not a penalty but rather a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set

forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction is Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.

ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.

iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.

C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. Employee Actions. You are responsible for your employees' actions while in your employment.

M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.

N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris Bank, N.A.  
150 N. Martingale, Suite 900  
Schaumburg, Illinois 60173



Mail, Telephone Order, & Internet Merchant Addendum

IMPORTANT NOTICE: Visa and MasterCard have set a minimum standard requirement for accepting credit cards on the Internet. In order to avoid a significant delay in the settlement of your funds, please ensure that your website has the following seven (7) items completed prior to the commencement of your credit card processing:

- 1. Refund / Cancellation Policy
2. Privacy Policy
3. Terms & Conditions listed
4. Products & the Corresponding Pricing listed
5. 128-bit SSL page(s) where personal and credit card information is obtained (usually provided by shopping cart or gateway)
6. Telephone Customer Service contact number
7. Shipping & Handling method and shipping delivery time after the sale

URGENT!!!! You must contact your sales representative immediately upon completing the above 7 internet processing requirements!

Underwriting & Marketing Review: (Please answer the following questions as accurately as possible)
Submit sample(s) of product brochure, promotional materials, product catalogue, etc. How will product be advertised or promoted?

If advertising on Internet, list website address: www.PREVIEW.BERRYSLIMM.COM/CORPORATESITE

Preferred 23 character (or less) DBA identifier (appears on customers' billing statement)

B e r r y S L I M B G G 6 7 4 3 9 6 0 - V

973-575-9200

List name(s) and address(es) of vendor from which the product is purchased:

VITAQUEST INT'L, 8 HENDERSON DR, WEST CALDWELL NJ 07006 MARK STANISCI

List name(s) and address(es) of third party or fulfillment organizations, or parties aside from your staff who will assist or participate with the sales, marketing, processing of orders, or shipping of merchandise:

DASH INC 1660 SCAMERSON ST HBG PA DONITA DIEKMANN 717-234-3274

List geographical area(s) will the product be marketed and sold: U.S.

List carrier services that will deliver product: U.S. P.S.

What is your return or refund policy: SEE WEBSITE

How does the customer order the product: INTERNET

When you receive an authorization, how long before merchandise is shipped: NEXT DAY

Do you perform recurring monthly billing? Yes No If Yes, Monthly Quarterly Bi-annual Annual

Is your database collecting entire credit card numbers? Yes No If Yes, are you PCI compliant? Yes No

This amendment is made by and between Harris, N.A., Chicago, IL ('Bank'), and the undersigned 'MERCHANT' and subject to the approval of BANK.

WHEREAS: Bank is engaged in the general banking business including the purchase of Credit Card Transactions from merchants and provide certain services related to the processing of Credit Card Transactions to MERCHANT; and

WHEREAS: MERCHANT desires to honor at this business location(s) Card Numbers presented in connection with the Mail Order/Telephone Order sale of product/services to customers; and

WHEREAS: BANK and MERCHANT has entered into Harris, N.A., Chicago, IL ('Bank') VISA/MasterCard Processing Agreement ('Agreement').

NOW THEREFORE, in consideration of the representations, covenants, and promises made herein, the parties hereto agree to amend Agreement as follows:

- 1. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.
2. MERCHANT agrees that transactions will not be processed until products are shipped to Cardholder.
3. MERCHANT agrees to a charge of \$0.05 per AVS transaction(s) when applicable.
4. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of this agreement.

AGREED & ACCEPTED BY: DATE: 12/15/08

\* [Signature] OWNER / OFFICER Authorized Harris, N.A. Agent

Benjamin Hemmerich Print Name Print Name



**RESERVE AGREEMENT**

THIS ROLLING RESERVE AGREEMENT is entered into by and between \_\_\_\_\_ having a place of business at \_\_\_\_\_

("Merchant") and Pivotal Payments Inc. ("Pivotal").

WHEREAS as a condition for the provision of payment processing services under that certain Merchant Processing Agreement ("MPA"), Pivotal and Harris Bank require that Merchant also enter into this reserve agreement; and

WHEREAS Merchant wishes to receive such processing services;

NOW THEREFORE, Merchant and Pivotal agree as follows:

**1. RESERVE ACCOUNT**

1.1 Establishment. Merchant hereby agrees to initially deposit into a non-interest bearing account maintained by Pivotal (the "Reserve Account") an amount equal to \$\_\_\_\_\_.

1.2 Additional Deposits. Based upon Merchant's processing profile and/or anticipated risk of loss to Pivotal, Pivotal may require Merchant to deposit additional amounts into the Reserve Account, or to furnish other security.

1.3 Deposits and Deductions. Merchant hereby authorizes Pivotal to ACH to Merchant's account monies due and payable to Merchant, and to ACH funds due and payable to Pivotal in accordance with this agreement.

Bank Name: \_\_\_\_\_

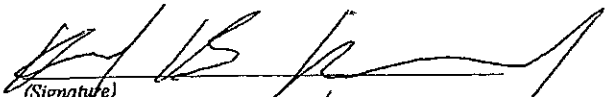
Bank ABA Number: \_\_\_\_\_

Bank Account No.: \_\_\_\_\_

Account Name: \_\_\_\_\_

1.4 Merchant hereby warrants to Pivotal that Merchant shall maintain its banking information current with Pivotal and shall conduct its business affairs in accordance with the terms and conditions of the MPA, and all applicable State and Federal laws and regulations, as well as all Card Association rules.

**MERCHANT**

  
(Signature)  
Daniel B. Kennrich, PRESIDENT  
(Name and Title of Signor)

1/13/2009  
(Date)

**2. TERM**

2.1 Term. This agreement shall be effective commencing on the date of execution and continue in effect for a period coterminous with the MPA, subject to Section 2.3 below.

2.2 Immediate Termination. Merchant's failure to pay any amount requested by Pivotal in accordance with this agreement will result in the immediate termination of Merchant's MPA without advance notice.

2.3 Survival. Pivotal may continue to hold or deposit funds in the Reserve Account after termination of the MPA, regardless of who terminates the MPA. Upon such termination, Pivotal may retain sufficient funds to satisfy any and all processing fees, chargebacks, damages, and any other fees, fines, charges and penalty amounts due the Card Association, third-party suppliers or Bank. Reserve Account funds will be held by Pivotal for a period of not less than 180 days from the date of the last card transaction processed under the MPA and a reasonable period thereafter during which cardholder disputes may remain valid under applicable Card Association rules. Pivotal will return the balance in the Reserve Account to Merchant after Pivotal reasonably determines that the risk of chargebacks and other fees, expenses, losses or liabilities has ended and after deducting all amounts that Merchant owes under this agreement, the MPA or any related agreement.

**3. GENERAL**

This agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction. If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the parties. In the event of a conflict between this agreement and the MPA, the latter shall prevail.

**PIVOTAL PAYMENTS INC.**

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name and Title of Signor)

\_\_\_\_\_  
(Date)

### Merchant Reserve Acknowledgment

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, Cynergy Data and its agents, including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

DBH  
Initials

A. A certified check made payable to Cynergy Data in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
Initials

B. Withholding \_\_\_\_\_% from each gross deposit.

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward to Cynergy Data funds to replenish the reserve account if any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 270 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

BERRY SLIM MD

Business Legal Name or D.B.A.

[Signature]  
Signature

D. BENJAMIN HEMMERICH  
Printed Name

Its: President / Owner (Circle One)

12-19-08  
Date



**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>Natural Body Scape, LLC</b>				Name of Business (Doing Business As / Same as Signage): <b>GreenTea8006249971-V</b>			
Corporate / Billing Address: <b>1152 Mae Street, PMB 226</b>				Location Address (Attach Additional Locations - No P.O. Box): <b>147 N. Cameron St.</b>			
City: <b>Hummelstown</b>		State: <b>PA</b>	Zip: <b>17036</b>	City: <b>Harrisburg</b>		State: <b>PA</b>	Zip: <b>17101</b>
Telephone #: <b>866-674-3960</b>		Federal Tax ID: <b>2 6 3 8 0 7 6 8 7</b>		Telephone #: <b>717-724-9362</b>		Fax #: <b>717-307-3365</b>	
Web Address: <b>http://preview.greenteafit.com/site/index.html</b>				email Address: <b>dhemmerich@naturalbodyscape.com</b>			
Have you been placed on the 'CMNF' (Consortium Merchant Negative File) or the CTMF (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Has merchant or any associated principal disclosed below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes Date: _____ <input checked="" type="checkbox"/> No			
How long in present business? Years _____ Months <b>1</b>				Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>D. Benjamin Hemmerich</b>			
Place of Legal Formation: <b>PA</b>				Country of Primary Business Operations: <b>USA</b>			

OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)							
Title: <b>President</b>						Percent Ownership: <b>100 %</b>	
Last Name: <b>Hemmerich</b>		First Name: <b>Daniel</b>		Middle Initial: <b>B</b>		Date of Birth: (mm/dd/yyyy): <b>12/13/1978</b>	
Residence Address: <b>309 Lafayette Drive</b>				City: <b>New Cumberland</b>		State: <b>PA</b>	Zip: <b>17070</b>
Residence Tel. No.: <b>717-214-2684</b>		SS #: <b>17660736</b>	US Gov't issued ID#: <b>24734872</b>		Type of ID: <b>PA DL</b>	Country of citizenship if not US:	
				Expiration date: <b>12/14/2010</b>			
Title:						Percent Ownership: _____ %	
Last Name:		First Name:		Middle Initial:		Date of Birth: (mm/dd/yyyy): / /	
Residence Address:				City:		State:	Zip:
Residence Tel. No.:		SS #:	US Gov't issued ID#:		Type of ID:	Country of citizenship if not US:	
				Expiration date:			

<b>BUSINESS PROFILE</b>				<b>SALES PROFILE</b>					
Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Assoc./Estates/Trusts <input type="checkbox"/> Joint Venture <input type="checkbox"/> Government <input type="checkbox"/> Corporation (Privately Traded) <input type="checkbox"/> Corporation (Publicly Traded) <input type="checkbox"/> Medical or Legal Corp <input type="checkbox"/> Tax Exempt Org <input checked="" type="checkbox"/> Single Member LLC <input type="checkbox"/> Multi-Member LLC <input type="checkbox"/> Civic Assoc <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Political Org <input type="checkbox"/> Other: _____				Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other		Visa/Discover Network/MasterCard Sales Profile (be accurate): Card Swipe: _____ % Manual Key Entry with Imprint, Card Present: _____ % Mail Order / Telephone Order: _____ % Internet: <b>100 %</b> Total 100%			
Type of Goods Sold: _____		SIC Code: _____							
Do you currently accept Visa/Discover® Network/MasterCard? <input type="checkbox"/> Yes <input type="checkbox"/> No									
Name of Current Processor:									
Average C.C. Ticket Size: \$ <b>35.00</b>		Average C.C. Monthly Volume: \$ <b>50,000</b>		Total Sales/mth: \$ <b>50,000</b>					

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

<b>TRADE / BANK REFERENCES</b>			
Name: <b>Vitaquest International</b>			Contact: <b>Mark Stanisci</b>
Address: <b>8 Henderson Drive, West Caldwell NJ, 07006</b>			Phone Number: <b>973-575-9200</b>
Name:			Contact:
Address:			Phone Number:

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**  
 Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

Voided check from this account must be attached.	Bank Name: <b>Graystone Bank</b>		Telephone #: <b>717-724-4657</b>		Name on DDA Account: <b>Green Tea FIT</b>															
	Address: <b>112 Market Street</b>			City: <b>harrisburg</b>		State: <b>PA</b>	Zip: <b>17101</b>													
	Transit No.	<b>0</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>8</b>	<b>9</b>	<b>0</b>	<b>7</b>	DDA No.	<b>1</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>8</b>

RATES			
Visa/Discover Network/MasterCard Standard Retail & High Risk Retail Rates		Mail/Phone/Internet/Touchtone Rates	
Merchant Chooses to Accept the Following:		Merchant Chooses to Accept the Following:	
... CKCD Discount Rate:	%	MC CKCD Discount Rate:	%
Visa C.C. Discount Rate:	%	MasterCard C.C. Discount Rate:	%
VS/MC MID Qualified: (+)	%	VS/MC Non Qualified: (+)	%
Discover Network Discount Rate:	%	AMEX Discount Rate:	%
Fees:		Fees:	
VS/MC Transaction Fee:	Per Item	VS/MC Transaction Fee:	0.30 Per Item
Non-Bankcard Transaction Fee:	Per Item	Non-Bankcard Transaction Fee:	0.30 Per Item
Statement Fee:	Monthly	Statement Fee:	10.00 Monthly
Online Reporting Service:	Monthly	Online Reporting Service:	5.00 Monthly
Monthly Minimum:	Monthly	Monthly Minimum:	20.00 Monthly
Debit (PIN-based) Transaction + Network Fees:	Per Item	MD/TO/Internet Surcharge:	0.10 Per Item
AVS Surcharge:	Per Item	AVS Surcharge:	0.05 Per Item
EBT Transaction Fee:	Per Item	Batch Fee:	Per Batch
EBT Statement Fee:	Monthly	AMEX Monthly Service Fee:	\$5.95 (only Ecomm/MOTO)
Batch Fee:	Per Batch	Gateway Fee:	
Terminal Protection Plan:	Monthly	Other (please specify):	
Merchant Club:	Monthly		
Other (please specify):			

**PCI\* AND PAYMENTS APPLICATION COMPLIANCE**

1. Do you store credit card numbers?  Yes  No  I Don't Know

2. Do you use a third party payment application that stores, transmits, or processes cardholder data?  Yes  No  
(Examples: Aloha version 6.1, iparc version 2.4, etc.)

3. If yes, please provide name & version #: \_\_\_\_\_

\*: \$10 per LP, per month (Ecomm and MOTO if applicable); \$5 per MID for Retail and MOTO if applicable per month.

NOTE: ONLY APPLICATIONS THAT COMPLY WITH ASSOCIATION SECURITY STANDARDS WILL BE PERMITTED.

A list of valid applications is available at: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)

**GUARANTY**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

#1 <u>D Benjamin Hemmerich</u> Name of Personal Guarantor (please print)	#2 _____ Name of Co-Personal Guarantor (please print)
 Signature	_____ Signature
Date: <u>12/15/08</u> (mm/dd/yyyy)	Date: _____ (mm/dd/yyyy)

**AMERICAN EXPRESS**

By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express®Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Check one:  Retail = \$0.10 Trans Fee + 0.30% CNP downgrade  Services, Wholesale & all other = \$0.15 Trans Fee

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (mm/dd/yyyy)

**FOR ALL BUSINESSES - BUSINESS RESOLUTION**

Each person signing below on behalf of the business designated on this Application ("Merchant") certifies that he/she: (i) has due authority to enter into this agreement and bind the Merchant; (ii) has completed, supplied and reviewed all information submitted along with this Application and agreed to the rates listed on this Application; and (iii) has received and read the attached Merchant Processing Agreement and Merchant Operating Guide before signing. Merchant agrees to be bound by the provisions stated within this Application, the Merchant Processing Agreement and the Merchant Operating Guide. Any unilateral change in the printed terms shall be null and void, unless approved in writing by an officer of the Bank and/or Processor.

<u>Natural Body Soap LLC</u> Print Legal Name of Merchant Business	_____ #1 From Application - Signature
Date: _____ (mm/dd/yyyy)	Date: <u>12/15/08</u> (mm/dd/yyyy)
Accepted by Pivotal Payments, Inc. Date: _____ (mm/dd/yyyy)	#2 From Application - Signature Date: _____ (mm/dd/yyyy)
Accepted by Processor Date: _____ (mm/dd/yyyy)	Accepted by Harris Bank, N.A., Chicago, IL Date: _____ (mm/dd/yyyy)

## Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Cynergy Data, LLC and Pivotal Payments Inc. (collectively "Processor"), Pivotal Payments Inc. ("ISO") and Harris, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discover® Network, Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards." Bank, and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Card Association, and/or a Debit Network, as applicable.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.

C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.

G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.

C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- ii. **Provisional Credit.** Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
- iii. **Processing Limits.** Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. **Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. **Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25 % of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. **Credit.**
- i. **Credit Memoranda.** You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.
- ii. **Revocation of Credit.** Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. **Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. **Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. **Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
- ii. **Credit Refunds.** You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
- iii. **Adjustments.** Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
- vi. **Error Resolution.** You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. **Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO" You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. **Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. **Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. **Partial Completion.**
- i. **Prior Consent.** You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
- ii. **Acceptance.** If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. **Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.
- F. **Electronic Commerce.** You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions

processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions.

Opinion is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

- i. **Requirements.** For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.
  - ii. **Cardholder Information Security.** You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.
- G. American Express, and Diners Club Transaction.** Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.
- H. Cash Advances.** You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.
- I. Prohibited Transactions.** You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly

between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

#### J. Debit Card Transactions.

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by Processor or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

**K. Debit Card Terminals.** Debit Card terminals, including hardware and software, must be certified for use by Processor and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party

#### 6. Designated Account.

- A. Establishment and Authority.** Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.
- B. Deposit.** Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.
- C. Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

4. Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

### B. Fees and Other Amounts Owed Bank.

A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application and in the below paragraph. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. Other Fees. Where applicable, Merchant shall also pay the following fees: SSL Authorization Surcharge: \$0.03 per authorization request; Voice/ARU Authorization: \$0.95 per authorization request; Annual Membership Fee: \$99 per year per MID; ACH Return: \$25 per return; Operator Assisted Voice Auth: \$2.95 per call; AVS: \$0.10 per request; Wireless: \$0.10 per authorization request; I.P. Trx: \$0.05 per authorization request; Secure Gateway: \$0.05 per authorization request; Dispute Resolution Fee: \$25; Third Party Helpdesk Calls: \$5.00 per call; Unsupported Terminals: \$20 per call. Upon 10 days written notice to Merchant, Bank may increase fees for any adverse change to Merchant's risk profile, as reasonably determined by Bank.

C. Other Amounts Owed. You will immediately pay ISO, Processor and Bank any amount incurred by ISO, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe ISO, Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and ISO or Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event ISO, Processor or Bank demand sums due or such ACH does not fully reimburse ISO, Processor and Bank for the amount owed, you will immediately pay ISO, Processor and Bank such amount.

### 8. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business)). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank or Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the



difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor nor Bank or their respective agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

## 10. Representations and Warranties.

You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

- A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.
- B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.
- C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.
- D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.
- E. Rule compliance. You will comply with the Laws and Rules.

## 11. Audit and Financial Information.

- A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.
- B. Financial Information.
  - i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.
  - ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

## 12. Third Parties.

- A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor and Bank receive data about the transaction.
- B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party

providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

## 13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

## C. Action upon Termination.

- i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.
- ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
- iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.
- iv. Early Termination. i. The Merchant agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is either terminated by Merchant prior to the expiration of the then-current term, or for any reason other than a material uncured breach by Bank or Processor, Merchant shall pay ISO damages (the "Damages") determined by: (a) computing the number of months remaining from the date of termination to the end of the Initial or Renewal Term, as applicable; and (b) multiplying that number by Merchant's average monthly processing fees. ii. Merchant agrees that such Damages shall also be due to ISO if Merchant discontinues submitting Card transactions during the Term for a period of ninety (90) consecutive days, unless Merchant has been designated a seasonal merchant or as otherwise agreed to by Bank or Processor. iii. Merchant acknowledges and agrees that the Damages are not a penalty but rather a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

## 14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set

forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.

ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.

iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.

C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. Employee Actions. You are responsible for your employees' actions while in your employment.

M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.

N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris Bank, N.A.  
150 N. Martingala, Suite 900  
Schaumburg, Illinois 60173





Mail, Telephone Order, & Internet Merchant Addendum

IMPORTANT NOTICE: Visa and MasterCard have set a minimum standard requirement for accepting credit cards on the Internet. In order to avoid a significant delay in the settlement of your funds, please ensure that your website has the following seven (7) items completed prior to the commencement of your credit card processing:

- 1. Refund / Cancellation Policy
2. Privacy Policy
3. Terms & Conditions listed
4. Products & the Corresponding Pricing listed
5. 128-bit SSL page(s) where personal and credit card information is obtained (usually provided by shopping cart or gateway)
6. Telephone Customer Service contact number
7. Shipping & Handling method and shipping delivery time after the sale

URGENT!!!! You must contact your sales representative immediately upon completing the above 7 internet processing requirements!

Underwriting & Marketing Review: (Please answer the following questions as accurately as possible)
Submit sample(s) of product brochure, promotional materials, product catalogue, etc. How will product be advertised or promoted?

If advertising on Internet, list website address: www.PREVIEW.GREENTEAFIT.COM/SITE/INDEX/HTML

Preferred 23 character (or less) DBA identifier (appears on customers' billing statement)

GreenTeaFIT8008249971-V

List name(s) and address(es) of vendor from which the product is purchased:
VITAQUEST INTERNATIONAL, 8 HENDERSON DRIVE, WEST CALDWELL NJ 07006 MARK STANISA, 973-575-9200

List name(s) and address(es) of third party or fulfillment organizations, or parties aside from your staff who will assist or participate with the sales, marketing, processing of orders, or shipping of merchandise:
DASHER INC 1660 S CAMERON ST H8G PA DONITA DIEKMANN 717-234-3274

List geographical area(s) will the product be marketed and sold: U.S.

List carrier services that will deliver product: U.S. P.S.

What is your return or refund policy: SEE WEBSITE

How does the customer order the product: INTERNET

When you receive an authorization, how long before merchandise is shipped: NEXT DAY

Do you perform recurring monthly billing? [X] Yes [ ] No If Yes, [ ] Monthly [ ] Quarterly [ ] Bi-annual [ ] Annual

Is your database collecting entire credit card numbers? [X] Yes [ ] No If Yes, are you PCI compliant? [X] Yes [ ] No

This amendment is made by and between Harris, N.A., Chicago, IL ('Bank'), and the undersigned 'MERCHANT' and subject to the approval of BANK.

WHEREAS: Bank is engaged in the general banking business including the purchase of Credit Card Transactions from merchants and provide certain services related to the processing of Credit Card Transactions to MERCHANT; and
WHEREAS: MERCHANT desires to honor at this business location(s) Card Numbers presented in connection with the Mail Order/Telephone Order sale of product/services to customers; and
WHEREAS: BANK and MERCHANT has entered into Harris, N.A., Chicago, IL ('Bank') VISA/MasterCard Processing Agreement ('Agreement').
NOW THEREFORE, in consideration of the representations, covenants, and promises made herein, the parties hereto agree to amend Agreement as follows:

- 1. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.
2. MERCHANT agrees that transactions will not be processed until products are shipped to Cardholder.
3. MERCHANT agrees to a charge of \$0.05 per AVS transaction(s) when applicable.
4. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of this agreement.

AGREED & ACCEPTED BY: [Signature] DATE: 12/15/08
OWNER / OFFICER Authorized Harris, N.A. Agent
Benjamin Hennrich Print Name Print Name

**RESERVE AGREEMENT**

THIS ROLLING RESERVE AGREEMENT is entered into by and between \_\_\_\_\_ having a place of business at \_\_\_\_\_

(“Merchant”) and Pivotal Payments Inc. (“Pivotal”).

WHEREAS as a condition for the provision of payment processing services under that certain Merchant Processing Agreement (“MPA”), Pivotal and Harris Bank require that Merchant also enter into this reserve agreement; and

WHEREAS Merchant wishes to receive such processing services;

NOW THEREFORE, Merchant and Pivotal agree as follows:

**1. RESERVE ACCOUNT**

1.1 Establishment. Merchant hereby agrees to initially deposit into a non-interest bearing account maintained by Pivotal (the “Reserve Account”) an amount equal to \$ \_\_\_\_\_.

1.2 Additional Deposits. Based upon Merchant's processing profile and/or anticipated risk of loss to Pivotal, Pivotal may require Merchant to deposit additional amounts into the Reserve Account, or to furnish other security.

1.3 Deposits and Deductions. Merchant hereby authorizes Pivotal to ACH to Merchant's account monies due and payable to Merchant, and to ACH funds due and payable to Pivotal in accordance with this agreement.

Bank Name: \_\_\_\_\_

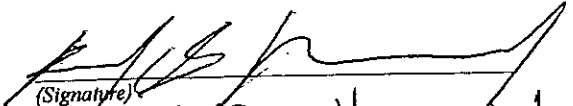
Bank ABA Number: \_\_\_\_\_

Bank Account No.: \_\_\_\_\_

Account Name: \_\_\_\_\_

1.4 Merchant hereby warrants to Pivotal that Merchant shall maintain its banking information current with Pivotal and shall conduct its business affairs in accordance with the terms and conditions of the MPA, and all applicable State and Federal laws and regulations, as well as all Card Association rules.

**MERCHANT**

  
(Signature)  
Daniel B. Vennick, PRESIDENT  
(Name and Title of Signor)  
1/13/2009  
(Date)

**2. TERM**

2.1 Term. This agreement shall be effective commencing on the date of execution and continue in effect for a period coterminous with the MPA, subject to Section 2.3 below.

2.2 Immediate Termination. Merchant's failure to pay any amount requested by Pivotal in accordance with this agreement will result in the immediate termination of Merchant's MPA without advance notice.

2.3 Survival. Pivotal may continue to hold or deposit funds in the Reserve Account after termination of the MPA, regardless of who terminates the MPA. Upon such termination, Pivotal may retain sufficient funds to satisfy any and all processing fees, chargebacks, damages, and any other fees, fines, charges and penalty amounts due the Card Association, third-party suppliers or Bank. Reserve Account funds will be held by Pivotal for a period of not less than 180 days from the date of the last card transaction processed under the MPA and a reasonable period thereafter during which cardholder disputes may remain valid under applicable Card Association rules. Pivotal will return the balance in the Reserve Account to Merchant after Pivotal reasonably determines that the risk of chargebacks and other fees, expenses, losses or liabilities has ended and after deducting all amounts that Merchant owes under this agreement, the MPA or any related agreement.

**3. GENERAL**

This agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction. If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the parties. In the event of a conflict between this agreement and the MPA, the latter shall prevail.

**PIVOTAL PAYMENTS INC.**

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name and Title of Signor)  
\_\_\_\_\_  
(Date)

### Merchant Reserve Acknowledgment

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, Cynergy Data and its agents, including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

DBH  
Initials

A. A certified check made payable to Cynergy Data in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
Initials

B. Withholding \_\_\_\_\_% from each gross deposit.

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward to Cynergy Data funds to replenish the reserve account if any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 270 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

GREENTEA FIT

Business Legal Name or D.B.A.

[Signature]

Signature

D. BENJAMIN HEMMERICH

Printed Name

Its: President / Owner (Circle One)

12.19.08

Date

**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>Buyers Advantage Solutions INC</b>				Name of Business (Doing Business As / Same as Signage): <b>IDSECURE8667960118</b>			
Corporate / Billing Address: <b>6301 Grayson Rd. #221</b>				Location Address (Attach Additional Locations - No P.O. Box): <b>2745 N. Front St</b>			
City: <b>Harrisburg</b>		State: <b>PA</b>	Zip: <b>17111</b>	City: <b>Harrisburg</b>		State: <b>PA</b>	Zip: <b>17110</b>
Telephone #: <b>866-796-0118</b>		Federal Tax ID: 2 6 4 0 2 6 8 3 0		Telephone #: <b>866-796-0118</b>		Fax #: <b>717-307-3462</b>	
Web Address: <b>www.idsecuresolutions.com</b>				email Address: <b>rschroeder@buyersadvantagesolutions.com</b>			
Have you been placed on the 'CMNF' (Consortium Merchant Negative File) or the CTMF (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Has merchant or any associated principal disclosed below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes Date: _____ <input checked="" type="checkbox"/> No			
How long in present business? Years <b>0</b> Months <b>1</b>				Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>Raymond Schroeder</b>			
Place of Legal Formation: <b>PA</b>				Country of Primary Business Operations: <b>USA</b>			

**OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)**

Title: <b>President</b>				Percent Ownership: <b>100 %</b>			
Last Name: <b>Schroeder</b>		First Name: <b>Raymond</b>		Middle Initial: <b>S</b>		Date of Birth: (mm/dd/yyyy): <b>05 / 24 / 1981</b>	
Residence Address: <b>605 Dellinger Rd</b>				City: <b>Mount Wolf</b>		State: <b>PA</b> Zip: <b>17347</b>	
Residence Tel. No.: <b>717-309-3245</b>		SS #: <b>164-62-2204</b>	US Gov't issued ID#: <b>25646645</b>		Type of ID: <b>PA DL</b>	Country of citizenship if not US: <b>USA</b>	
		Expiration date: <b>5/25/09</b>					
Title:				Percent Ownership: %			
Last Name:		First Name:		Middle Initial:		Date of Birth: (mm/dd/yyyy): / /	
Residence Address:				City:		State: Zip:	
Residence Tel. No.:		SS #:	US Gov't issued ID#:		Type of ID:	Country of citizenship if not US:	
		Expiration date:					

**BUSINESS PROFILE**

**SALES PROFILE**

Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Assoc./Estates/Trusts <input type="checkbox"/> Joint Venture <input type="checkbox"/> Government <input checked="" type="checkbox"/> Corporation (Privately Traded) <input type="checkbox"/> Corporation (Publicly Traded) <input type="checkbox"/> Medical or Legal Corp <input type="checkbox"/> Tax Exempt Org <input type="checkbox"/> Single Member LLC <input type="checkbox"/> Multi-Member LLC <input type="checkbox"/> Civic Assoc <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Political Org <input type="checkbox"/> Other: _____				Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other		Visa/Discover Network/MasterCard Sales Profile (be accurate): Card Swipe: % Manual Key Entry with Imprint, Card Present: % Mail Order / Telephone Order: % Internet: <b>100 %</b> Total 100%	
Type of Goods Sold: <b>Identity Theft</b>		SIC Code: <b>7395</b>					
Do you currently accept Visa/Discover Network/MasterCard? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
Name of Current Processor: <b>N/A</b>							
Average C.C. Ticket Size: \$ <b>15.00</b>		Average C.C. Monthly Volume: \$ <b>29.41</b>		Total Sales/mth: \$ <b>50,000</b>			

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

**TRADE / BANK REFERENCES**

Name: <b>Privacy Solutions, LLC</b>				Contact: <b>Kirby Lewis</b>			
Address: <b>4209 Lakeland Drive, Ste. 234 Flowood, MS 39232</b>				Phone Number: <b>877-886-3116</b>			
Name: <b>Graystone Bank</b>				Contact: <b>Lynn Wirrick</b>			
Address: <b>112 Market St. Harrisburg, PA 17101</b>				Phone Number: <b>717-724-4657</b>			

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

Bank Name: <b>Graystone Bank</b>				Telephone #: <b>717-724-4657</b>				Name on DDA Account: <b>IDSecureSolutions</b>												
Address: <b>6059 Allentown Blvd. Ste. 308</b>				City: <b>Hummelstown</b>				State: <b>PA</b>		Zip: <b>17036</b>										
Transit No.	0	3	1	3	1	8	9	0	7	DDA No.	1	6	1	0	0	2	0	0	9	9

A voided check from this account must be attached.



## Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Cynergy Data, LLC and Pivotal Payments Inc. (collectively "Processor"), Pivotal Payments Inc. ("ISO") and Harris, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discover® Network, Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
- G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
  - iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks." You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25 % of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. Credit.**
- i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction.
  - ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
  - ii. Credit Refunds. You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
  - iii. Adjustments. Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
  - iv. Error Resolution. You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MD." You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. Partial Completion.**
- i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
  - ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.
- F. Electronic Commerce.** You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions

processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Processor is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly

between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

#### J. Debit Card Transactions.

i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.

ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.

iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.

iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.

v. You will comply with any other requirements relating to PIN security as required by Processor or by any Debit Network.

vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.

vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.

viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.

ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by Processor and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party.

#### B. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Asserted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.



D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

ACH Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

## 8. Fees and Other Amounts Owed Bank.

A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application and in the below paragraph. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. Other Fees. Where applicable, Merchant shall also pay the following fees: *SSL Authorization Surcharge*: \$0.03 per authorization request; *Voice/ARU Authorization*: \$0.95 per authorization request; *Annual Membership Fee*: \$99 per year per MID; *ACH Return*: \$25 per return; *Operator Assisted Voice Auth.*: \$2.95 per call; *AVS*: \$0.10 per request; *Wireless*: \$0.10 per authorization request; *I.P. Trx*: \$0.05 per authorization request; *Secure Gateway*: \$0.05 per authorization request; *Dispute Resolution Fee*: \$25; *Third Party Helpdesk Calls*: \$5.00 per call; *Unsupported Terminals*: \$20 per call. Upon 10 days written notice to Merchant, Bank may increase fees for any adverse change to Merchant's risk profile, as reasonably determined by Bank.

C. Other Amounts Owed. You will immediately pay ISO, Processor and Bank any amount incurred by ISO, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe ISO, Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and ISO or Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event ISO, Processor or Bank demand sums due or such ACH does not fully reimburse ISO, Processor and Bank for the amount owed, you will immediately pay ISO, Processor and Bank such amount.

## 9. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank or Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the

difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor nor Bank or their respective agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

#### 10. Representations and Warranties.

You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

- A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.
- B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.
- C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.
- D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.
- E. Rule compliance. You will comply with the Laws and Rules.

#### 11. Audit and Financial Information.

- A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.
- B. Financial Information.
  - i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.
  - ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

#### 12. Third Parties.

- A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor Bank receive data about the transaction.
- B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party

providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

#### 13. Term and Termination

- A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.
- B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.
- C. Action upon Termination.

- i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.
- ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
- iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.
- iv. Early Termination. i. The Merchant agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is either terminated by Merchant prior to the expiration of the then-current term, or for any reason other than a material uncured breach by Bank or Processor, Merchant shall pay ISO damages (the "Damages") determined by: (a) computing the number of months remaining from the date of termination to the end of the Initial or Renewal Term, as applicable; and (b) multiplying that number by Merchant's average monthly processing fees. ii. Merchant agrees that such Damages shall also be due to ISO if Merchant discontinues submitting Card transactions during the Term for a period of ninety (90) consecutive days, unless Merchant has been designated a seasonal merchant or as otherwise agreed to by Bank or Processor. iii. Merchant acknowledges and agrees that the Damages are not a penalty but rather a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set

forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction as Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.

ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.

iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.

C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. Employee Actions. You are responsible for your employees' actions while in your employment.

M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.

N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris Bank, N.A.  
150 N. Martingale, Suite 900  
Schaumburg, Illinois 60173

### Mail, Telephone Order, & Internet Merchant Addendum

**IMPORTANT NOTICE:** Visa and MasterCard have set a minimum standard requirement for accepting credit cards on the Internet. In order to avoid a significant delay in the settlement of your funds, please ensure that your website has the following seven (7) items completed prior to the commencement of your credit card processing:

1. Refund / Cancellation Policy
2. Privacy Policy
3. Terms & Conditions listed
4. Products & the Corresponding Pricing listed
5. 128-bit SSL page(s) where personal and credit card information is obtained (usually provided by shopping cart or gateway)
6. Telephone Customer Service contact number
7. Shipping & Handling method and shipping delivery time after the sale

**URGENT!!!!** You must contact your sales representative immediately upon completing the above 7 internet processing requirements!

**Underwriting & Marketing Review: (Please answer the following questions as accurately as possible)**

Submit sample(s) of product brochure, promotional materials, product catalogue, etc. How will product be advertised or promoted?

See attached sub website

If advertising on Internet, list website address: www.idsecure.com

Preferred 23 character (or less) DBA identifier (appears on customers' billing statement)

I	D	S	E	C	U	R	E	8	6	6	7	9	6	0	1	1	8						
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	--	--	--	--	--	--

List name(s) and address(es) of vendor from which the product is purchased:

Privacy Solutions, LLC 4209 Lakeland Drive, Ste. 234 Fallowood, MS 39232

List name(s) and address(es) of third party or fulfillment organizations, or parties aside from your staff who will assist or participate with the sales, marketing, processing of orders, or shipping of merchandise:

See above vendor

List geographical area(s) will the product be marketed and sold: USA

List carrier services that will deliver product: USPS

What is your return or refund policy: See website

How does the customer order the product: online

When you receive an authorization, how long before merchandise is shipped: 1-3 days

Do you perform recurring monthly billing?  Yes  No If Yes,  Monthly  Quarterly  Bi-annual  Annual

Is your database collecting entire credit card numbers?  Yes  No If Yes, are you PCI compliant?  Yes  No

This amendment is made by and between Harris, N.A., Chicago, IL ('Bank'), and the undersigned "MERCHANT" and subject to the approval of BANK.

**WHEREAS:** Bank is engaged in the general banking business including the purchase of Credit Card Transactions from merchants and provide certain services related to the processing of Credit Card Transactions to MERCHANT; and

**WHEREAS:** MERCHANT desires to honor at this business location(s) Card Numbers presented in connection with the Mail Order/Telephone Order sale of product/services to customers; and

**WHEREAS:** BANK and MERCHANT has entered into Harris, N.A., Chicago, IL ('Bank') VISA/MasterCard Processing Agreement ('Agreement').

**NOW THEREFORE,** in consideration of the representations, covenants, and promises made herein, the parties hereto agree to amend Agreement as follows:

1. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.
2. MERCHANT agrees that transactions will not be processed until products are shipped to Cardholder.
3. MERCHANT agrees to a charge of \$0.05 per AVS transaction(s) when applicable.
4. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of this agreement.

AGREED & ACCEPTED BY:

DATE: 3/11/09

Raymond S. Schroeder  
OWNER / OFFICER

Authorized Harris, N.A. Agent

Raymond S. Schroeder  
Print Name

Print Name

**ROLLING RESERVE AGREEMENT**

THIS ROLLING RESERVE AGREEMENT is entered into by and between BUYERS ADVANTAGE SOLUTIONS INC, having a place of business at 2745 N FRONT ST, HARRISBURG, PA 17110

("Merchant") and Harris Bank N.A. ("Bank").

WHEREAS as a condition for the provision of payment processing services under the Merchant Processing Agreement ("MPA"), Pivotal Payments Inc. and Bank require that Merchant enter into this reserve agreement; and

WHEREAS Merchant wishes to receive such processing services;

NOW THEREFORE, Merchant and Bank agree as follows:

**1. RESERVE ACCOUNT**

1.1 Establishment. Merchant hereby agrees to deposit into a non-interest bearing account maintained by Bank or Pivotal Payments (the "Reserve Account") an amount equal to 10 percent (10.0 %) of each transaction processed under the MPA. Following the 7<sup>th</sup> month of initial funding of the Reserve Account (and every month thereafter) the 10.0 % in deposits generated from the 1<sup>st</sup> month (and every month thereafter) may be released to Merchant, if Merchant's risk profile so warrants, as determined by Bank.

1.2 Additional Deposits. Based upon Merchant's processing history and/or anticipated risk of loss to Bank, Bank may require Merchant to deposit additional amounts into the Reserve Account, or to furnish other security.

1.3 Deposits and Deductions. Merchant hereby authorizes Bank to ACH to Merchant's account monies due and payable to Merchant, and to ACH funds due and payable to Bank in accordance with this agreement.

Bank Name: Graystone Bank

Bank ABA Number: 031318907

Bank Account No.: 1610020099

Account Name: IDSecureSolutions

1.4 Merchant hereby warrants to Bank that Merchant shall maintain its banking information current with Bank and shall conduct its business affairs in accordance with the terms and conditions of the MPA, and all applicable State, and Federal laws

**MERCHANT**

Raymond S. Schroeder  
(Signature)

Raymond S. Schroeder, President  
(Name and Title of Signor)

6/30/09  
(Date)

and regulations, as well as all operating rules governing credit card transactions.

**2. TERM**

2.1 Term. This agreement shall be effective commencing on the date of execution and continue in effect for a period coterminous with the MPA, subject to Section 2.3 below.

2.2 Immediate Termination. Merchant's failure to pay any amount requested by Bank in accordance with this agreement will result in the immediate termination of Merchant's MPA without advance notice.

2.3 Survival. Bank may continue to hold or deposit funds in the Reserve Account after termination of the MPA, regardless of who terminates the MPA. Upon such termination, Bank may retain sufficient funds to satisfy any and all processing fees, chargebacks, damages, and any and all additional fees, fines, penalty amounts and charges due the Card Association, third-party suppliers or Bank. Reserve Account funds will be held by Bank for a period of not less than 180 days from the date of the last card transaction processed under the MPA and a reasonable period thereafter during which cardholder disputes may remain valid under applicable Card Association rules. Bank will return the balance in the Reserve Account to Merchant after Bank reasonably determines that the risk of chargebacks and other fees, expenses, losses or liabilities has ended and after deducting all amounts that Merchant owes under this agreement, the MPA or any related agreement.

**3. GENERAL**

This agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction. If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the parties. In the event of a conflict between this agreement and the MPA, the latter shall prevail.

\*\*\*

**HARRIS BANK, N.A.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Signor)

\_\_\_\_\_  
(Date)

**BUSINESS INFORMATION**

Name of Ownership Entity (Legal Name): <b>Buyers Advantage Solutions INC</b>			Name of Business (Doing Business As / Same as Signage): <b>MYFATSAVE8668512501</b>		
Corporate / Billing Address: <b>6301 Grayson Rd. #221</b>			Location Address (Attach Additional Locations - No P.O. Box): <b>2745 N. Front St</b>		
City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17111</b>	City: <b>Harrisburg</b>	State: <b>PA</b>	Zip: <b>17110</b>
Telephone #: <b>866-851-2501</b>	Federal Tax ID: 2 6 4 0 2 6 8 3 0		Telephone #: <b>866-851-2501</b>	Fax #: <b>717-307-3462</b>	
Web Address: <b>http://preview.myfatsavings.com/site/index.html</b>			email Address: <b>rschroeder@buyersadvantagesolutions.com</b>		
Have you been placed on the 'CMNF (Consortium Merchant Negative File) or the CTMF (Combined Terminated Merchant File)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Has merchant or any associated principal disclosed below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes Date: _____ <input checked="" type="checkbox"/> No		
How long in present business? Years <b>0</b> Months <b>1</b>			Must Choose One Mailing Address: <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address Attention: <b>Ray Schroeder</b>		
Place of Legal Formation: <b>PA</b>			Country of Primary Business Operations: <b>USA</b>		

**OWNERS OR OFFICERS (Ownership must be equal to or greater than 50%)**

Title: <b>President</b>			Percent Ownership: <b>100 %</b>		
Last Name: <b>Schroeder</b>	First Name: <b>Raymond</b>	Middle Initial: <b>S</b>	Date of Birth: (mm/dd/yyyy): <b>05 / 24 / 1981</b>		
Residence Address: <b>605 Dellinger Rd</b>			City: <b>Mount Wolf</b>	State: <b>PA</b>	Zip: <b>17347</b>
Residence Tel. No.: <b>717-309-3245</b>	SS #: <b>164-62-2204</b>	US Gov't issued ID#: <b>25646645</b>	Type of ID: <b>PA DL</b>	Country of citizenship if not US: <b>USA</b>	
Expiration date: <b>5/25/09</b>					
Title:			Percent Ownership: %		
Last Name:			Date of Birth: (mm/dd/yyyy): / /		
First Name:			Middle Initial:		
Residence Address:			State:		
City:			Zip:		
Residence Tel. No.:			Country of citizenship if not US:		
SS #:			Type of ID:		
US Gov't issued ID#:			Expiration date:		

<b>BUSINESS PROFILE</b>		<b>SALES PROFILE</b>	
Type of Ownership: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Assoc/Estates/Trusts <input type="checkbox"/> Joint Venture <input type="checkbox"/> Government <input checked="" type="checkbox"/> Corporation (Privately Traded) <input type="checkbox"/> Corporation (Publicly Traded) <input type="checkbox"/> Medical or Legal Corp <input type="checkbox"/> Tax Exempt Org <input type="checkbox"/> Single Member LLC <input type="checkbox"/> Multi-Member LLC <input type="checkbox"/> Civic Assoc <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Political Org <input type="checkbox"/> Other: _____		Merchant Type: <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Service <input type="checkbox"/> MO/TO <input checked="" type="checkbox"/> Internet <input type="checkbox"/> Home Based <input type="checkbox"/> Other	
Type of Goods Sold: <b>Product Discount Club</b>	SIC Code:	Visa/Discover Network/MasterCard Sales Profile (be accurate): Card Swipe: % Manual Key Entry with Imprint, Card Present: % Mail Order / Telephone Order: % Internet: <b>100 %</b> Total 100%	
Do you currently accept Visa/Discover® Network/MasterCard? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Name of Current Processor: <b>N/A</b>	Average C.C. Ticket Size: \$ <b>15.00</b> Average C.C. Monthly Volume: \$ <b>29.41</b> Total Sales/mth: \$ <b>50,000</b>	

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement funds.

**TRADE / BANK REFERENCES**

Name: <b>Consumer Benefit Services, Inc.</b>	Contact: <b>David Carlson</b>
Address: <b>1620 Bond Street Naperville, IL 60563</b>	Phone Number: <b>706-369-5562</b>
Name: <b>Graystone Bank</b>	Contact: <b>Lynn Wirrick</b>
Address: <b>112 Market St. Harrisburg, PA 17101</b>	Phone Number: <b>717-724-4657</b>

**ELECTRONIC DEBIT / CREDIT AUTHORIZATION**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entities in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation. INVESTIGATIVE/CONSUMER REPORT: an investigative or consumer report may be made in connection with application. Merchant authorizes Bank or any of its agents to investigate the references provided or any other statements or data obtained from Merchant, from any of the undersigned individual credit or financial institution. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

A voided check from this account must be attached.	Bank Name: <b>Graystone Bank</b>	Telephone #: <b>717-724-4657</b>	Name on DDA Account: <b>MyFatSavings</b>		
	Address: <b>6059 Allentown Blvd. Ste. 308</b>		City: <b>Hummelstown</b>	State: <b>PA</b>	Zip: <b>17036</b>
	Transit No. 0 3 1 3 1 8 9 0 7	DDA No. 1 6 1 0 0 2 0 0 8 1			

RATES			
Visa/Discover Network/MasterCard Standard Retail & High Risk Retail Rates		Mail/Phone/Internet/Touchtone Rates	
Merchant Chooses to Accept the Following:		Merchant Chooses to Accept the Following:	
Visa CKCD Discount Rate:	%	MC CKCD Discount Rate:	%
Visa C.C. Discount Rate:	%	MasterCard C.C. Discount Rate:	%
VS/MC MID Qualified: (+)	%	VS/MC Non Qualified: (+)	%
Discover Network Discount Rate:	%	AMEX Discount Rate:	%
Fees:		Fees:	
VS/MC Transaction Fee:	Per Item	VS/MC Transaction Fee:	0.30 Per Item
Non-Bankcard Transaction Fee:	Per Item	Non-Bankcard Transaction Fee:	0.30 Per Item
Statement Fee:	Monthly	Statement Fee:	9.95 Monthly
Online Reporting Service:	Monthly	Online Reporting Service:	5.00 Monthly
Monthly Minimum:	Monthly	Monthly Minimum:	20.00 Monthly
Debit (PIN-based) Transaction + Network Fees:	Per Item	MO/TO/Internet Surcharge:	0.05 Per Item
AVS Surcharge:	Per Item	AVS Surcharge:	0.05 Per Item
EBT Transaction Fee:	Per Item	Batch Fee:	0.00 Per Batch
EBT Statement Fee:	Monthly	AMEX Monthly Service Fee:	\$5.95 (only Ecomm/MOTO)
Batch Fee:	Per Batch	Gateway Fee:	
Terminal Protection Plan:	Monthly	Other (please specify):	
Merchant Club:	Monthly		
Other (please specify):			

**PCI\* AND PAYMENTS APPLICATION COMPLIANCE**

1. Do you store credit card numbers?  Yes  No  I Don't Know

2. Do you use a third party payment application that stores, transmits, or processes cardholder data?  Yes  No  
(Examples: Aloha version 6.1, Iparc version 2.4, etc.)

3. If yes, please provide name & version #: Verifi

if fee: \$10 per LP, per month (Ecomm and MOTO if applicable); \$6 per MID for Retail and MOTO if applicable per month.

NOTE: ONLY APPLICATIONS THAT COMPLY WITH ASSOCIATION SECURITY STANDARDS WILL BE PERMITTED.

A list of valid applications is available at: [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)

**GUARANTY**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guaranty the continuing full and faithful performance and payment by Merchant of each of its/their duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understands that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

<p>#1 <u>Raymond S. Schroeder</u></p> <p>Name of Personal Guarantor (please print)</p> <p><u>Raymond S. Schroeder</u> Date: <u>3/16/09</u></p> <p>Signature (mm/dd/yyyy)</p>	<p>#2</p> <p>Name of Co-Personal Guarantor (please print)</p> <p>Signature Date: (mm/dd/yyyy)</p>
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**AMERICAN EXPRESS**

By signing below, I represent that the information I have provided on this application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a welcome letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the said Terms and Conditions.

Check one:  Retail = \$0.10 Trans Fee + 0.30% CNP downgrade  Services, Wholesale & all other = \$0.15 Trans Fee

Signature \_\_\_\_\_ Date: \_\_\_\_\_ (mm/dd/yyyy)

**FOR ALL BUSINESSES - BUSINESS RESOLUTION**

Each person signing below on behalf of the business designated on this Application ("Merchant") certifies that he/she: (i) has due authority to enter into this agreement and bind the Merchant; (ii) has completed, supplied and reviewed all information submitted along with this Application and agreed to the rates listed on this Application; and (iii) has received and read the attached Merchant Processing Agreement and Merchant Operating Guide before signing. Merchant agrees to be bound by the provisions stated within this Application, the Merchant Processing Agreement and the Merchant Operating Guide. Any unilateral change in the printed terms shall be null and void, unless approved in writing by an officer of the Bank and/or Processor.

<p><u>Buyer's Advantage Solutions, Inc. dba My Fat Savings</u></p> <p>Print Legal Name of Merchant Business</p> <p>Date: _____</p> <p>Accepted by Pivotal Payments, Inc. (mm/dd/yyyy)</p> <p>Date: _____</p> <p>Accepted by Processor (mm/dd/yyyy)</p>	<p><u>Raymond S. Schroeder</u> Date: <u>3/16/09</u></p> <p>#1 From Application - Signature (mm/dd/yyyy)</p> <p>#2 From Application - Signature (mm/dd/yyyy)</p> <p>Accepted by Harris Bank, N.A., Chicago, IL (mm/dd/yyyy)</p>
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**ROLLING RESERVE AGREEMENT**

THIS ROLLING RESERVE AGREEMENT is entered into by and between Buyers Advantage Solutions INC, having a place of business at 2745 N. Front St., Harrisburg, PA, 17110

(“Merchant”) and Harris Bank N.A. (“Bank”).

WHEREAS as a condition for the provision of payment processing services under the Merchant Processing Agreement (“MPA”), Pivotal Payments Inc. and Bank require that Merchant enter into this reserve agreement; and

WHEREAS Merchant wishes to receive such processing services;

NOW THEREFORE, Merchant and Bank agree as follows:

**1. RESERVE ACCOUNT**

1.1 Establishment. Merchant hereby agrees to deposit into a non-interest bearing account maintained by Bank or Pivotal Payments (the “Reserve Account”) an amount equal to 20 percent (20.0 %) of each transaction processed under the MPA. Following the 7<sup>th</sup> month of initial funding of the Reserve Account (and every month thereafter) the 20.0 % in deposits generated from the 1<sup>st</sup> month (and every month thereafter) may be released to Merchant, if Merchant’s risk profile so warrants, as determined by Bank.

1.2 Additional Deposits. Based upon Merchant's processing history and/or anticipated risk of loss to Bank, Bank may require Merchant to deposit additional amounts into the Reserve Account, or to furnish other security.

1.3 Deposits and Deductions. Merchant hereby authorizes Bank to ACH to Merchant’s account monies due and payable to Merchant, and to ACH funds due and payable to Bank in accordance with this agreement.

Bank Name: Graystone Bank

Bank ABA Number: 031318907

Bank Account No.: 1610020081

Account Name: MyFatSavings

1.4 Merchant hereby warrants to Bank that Merchant shall maintain its banking information current with Bank and shall conduct its business affairs in accordance with the terms and conditions of the MPA, and all applicable State, and Federal laws

**MERCHANT**

Raymond S. Schouder  
(Signature)

Raymond S. Schouder, President  
(Name and Title of Signor)

4/16/09  
(Date)

and regulations, as well as all operating rules governing credit card transactions.

**2. TERM**

2.1 Term. This agreement shall be effective commencing on the date of execution and continue in effect for a period coterminous with the MPA, subject to Section 2.3 below.

2.2 Immediate Termination. Merchant’s failure to pay any amount requested by Bank in accordance with this agreement will result in the immediate termination of Merchant’s MPA without advance notice.

2.3 Survival. Bank may continue to hold or deposit funds in the Reserve Account after termination of the MPA, regardless of who terminates the MPA. Upon such termination, Bank may retain sufficient funds to satisfy any and all processing fees, chargebacks, damages, and any and all additional fees, fines, penalty amounts and charges due the Card Association, third-party suppliers or Bank. Reserve Account funds will be held by Bank for a period of not less than 180 days from the date of the last card transaction processed under the MPA and a reasonable period thereafter during which cardholder disputes may remain valid under applicable Card Association rules. Bank will return the balance in the Reserve Account to Merchant after Bank reasonably determines that the risk of chargebacks and other fees, expenses, losses or liabilities has ended and after deducting all amounts that Merchant owes under this agreement, the MPA or any related agreement.

**3. GENERAL**

This agreement constitutes the entire valid and legally binding agreement between the parties pertaining to the matter herein and supersedes all prior agreements, representations and understandings of the parties. This agreement shall be governed by and construed exclusively in accordance with the laws of the State of New York whose courts shall have exclusive jurisdiction. If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the parties. In the event of a conflict between this agreement and the MPA, the latter shall prevail.

\* \* \*

**HARRIS BANK, N.A.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title of Signor)

\_\_\_\_\_  
(Date)



## Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A, below, between the business indicated on the Merchant Application ("Merchant" or "you"), Cynergy Data, LLC and Pivotal Payments Inc. (collectively "Processor"), Pivotal Payments Inc. ("ISO") and Harris, N.A. ("Bank").

### Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discover<sup>®</sup> Network, Visa U.S.A. Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank, and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

### Terms and Conditions

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.
- B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.
- C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.
- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
- G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

#### 2. Authorization.

- A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

#### 3. Presentation of Sales Drafts.

- A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.
- B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

#### 4. Deposit of Sales Drafts and Funds Due Merchant.

##### A. Deposit of Funds.

- I. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

- ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.
  - iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.
- B. Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.
- C. Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. Credit.**
- i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction.
  - ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.
- F. Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.
- G. Debit Card Processing.**
- i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.
  - ii. Credit Refunds. You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
  - iii. Adjustments. Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
  - iv. Error Resolution. You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.
- 5. Other Types of Transactions.**
- A. Mail/Telephone Order.** Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".
- C. Multiple Sales Drafts.** You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.
- D. Partial Completion.**
- i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
  - ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.
- E. Future Delivery.** You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.
- F. Electronic Commerce.** You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions

processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly

between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

#### J. Debit Card Transactions.

- i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
- ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
- iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
- iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
- v. You will comply with any other requirements relating to PIN security as required by Processor or by any Debit Network.
- vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
- vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
- viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
- ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by Processor and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party.

#### 6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Asserted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

**ACH Authorization.** You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

- i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon:
  - (i) all funds at any time in the Designated Account, regardless of the source of such funds;
  - (ii) all funds at any time in the Reserve Account, regardless of the source of such funds;
  - (iii) present and future Sales Draft; and
  - (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets").You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.
- ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

- i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.
- ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.
- iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account.
- iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from:

- (i) any amounts they would otherwise be obligated to deposit into the Designated Account;
- (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and
- (iii) any funds in the Designated Account or Reserve Account.

You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

## 8. Fees and Other Amounts Owed Bank.

- A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application and in the below paragraph. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.
- B. Other Fees. Where applicable, Merchant shall also pay the following fees: *SSL Authorization Surcharge*: \$0.03 per authorization request; *Voice/ARU Authorization*: \$0.95 per authorization request; *Annual Membership Fee*: \$99 per year per MID; *ACH Return*: \$25 per return; *Operator Assisted Voice Auth*: \$2.95 per call; *AVS*: \$0.10 per request; *Wireless*: \$0.10 per authorization request; *I.P. Trx*: \$0.05 per authorization request; *Secure Gateway*: \$0.05 per authorization request; *Dispute Resolution Fee*: \$25; *Third Party Helpdesk Calls*: \$5.00 per call; *Unsupported Terminals*: \$20 per call. Upon 10 days written notice to Merchant, Bank may increase fees for any adverse change to Merchant's risk profile, as reasonably determined by Bank.
- C. Other Amounts Owed. You will immediately pay ISO, Processor and Bank any amount incurred by ISO, Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe ISO, Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and ISO or Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event ISD, Processor or Bank demand sums due or such ACH does not fully reimburse ISO, Processor and Bank for the amount owed, you will immediately pay ISO, Processor and Bank such amount.

## 9. Application, Indemnification, Limitation of Liability.

- A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank or Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.
- B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.
- C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the

difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor nor Bank or their respective agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

#### 10. Representations and Warranties.

You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

- A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.
- B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.
- C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.
- D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. Rule compliance. You will comply with the Laws and Rules.

#### 11. Audit and Financial Information.

A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

B. Financial Information.

- i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.
- ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

#### 12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor and Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorize designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party

providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

#### 13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

C. Action upon Termination.

- i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.
- ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
- iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.
- iv. Early Termination. i. The Merchant agrees that in addition to all other remedies available to Bank and Processor under this Agreement, or as otherwise available at law or equity, if this Agreement is either terminated by Merchant prior to the expiration of the then-current term, or for any reason other than a material uncured breach by Bank or Processor, Merchant shall pay ISO damages (the "Damages") determined by: (a) computing the number of months remaining from the date of termination to the end of the Initial or Renewal Term, as applicable; and (b) multiplying that number by Merchant's average monthly processing fees. ii. Merchant agrees that such Damages shall also be due to ISO if Merchant discontinues submitting Card transactions during the Term for a period of ninety (90) consecutive days, unless Merchant has been designated a seasonal merchant or as otherwise agreed to by Bank or Processor. iii. Merchant acknowledges and agrees that the Damages are not a penalty but rather a reasonable computation of the financial harm caused by the termination of this Agreement by Merchant.

#### 14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set



forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction under this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

#### B. Confidentiality.

- i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.
  - ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
  - iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.
- C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

- A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.
- C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.
- D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not effect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. Employee Actions. You are responsible for your employees' actions while in your employment.

M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.

N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris Bank, N.A.  
150 N. Martingale, Suite 900  
Schaumburg, Illinois 60173



Mail, Telephone Order, & Internet Merchant Addendum

IMPORTANT NOTICE: Visa and MasterCard have set a minimum standard requirement for accepting credit cards on the Internet. In order to avoid a significant delay in the settlement of your funds, please ensure that your website has the following seven (7) items completed prior to the commencement of your credit card processing:

- 1. Refund / Cancellation Policy
2. Privacy Policy
3. Terms & Conditions listed
4. Products & the Corresponding Pricing listed
5. 128-bit SSL page(s) where personal and credit card information is obtained (usually provided by shopping cart or gateway)
6. Telephone Customer Service contact number
7. Shipping & Handling method and shipping delivery time after the sale

URGENT!!!! You must contact your sales representative immediately upon completing the above 7 internet processing requirements!

Submit sample(s) of product brochure, promotional materials, product catalogue, etc. How will product be advertised or promoted?

See website

If advertising on Internet, list website address: www.myfat savings.com

Preferred 23 character (or less) DBA identifier (appears on customers' billing statement)

MYFATSAVE8668512501

List name(s) and address(es) of vendor from which the product is purchased:

Consumer Benefit Solutions, Inc. 1620 Bond Street Naperville, IL 60563

List name(s) and address(es) of third party or fulfillment organizations, or parties aside from your staff who will assist or participate with the sales, marketing, processing of orders, or shipping of merchandise:

See Vendor Above

List geographical area(s) will the product be marketed and sold: USA

List carrier services that will deliver product: USPS

What is your return or refund policy: See website and printouts

How does the customer order the product: online

When you receive an authorization, how long before merchandise is shipped: 1-3 days

Do you perform recurring monthly billing? [X] Yes [ ] No If Yes, [X] Monthly [ ] Quarterly [ ] Bi-annual [ ] Annual

Is your database collecting entire credit card numbers? [X] Yes [ ] No If Yes, are you PCI compliant? [X] Yes [ ] No

This amendment is made by and between Harris, N.A., Chicago, IL ('Bank'), and the undersigned 'MERCHANT' and subject to the approval of BANK.

WHEREAS: Bank is engaged in the general banking business including the purchase of Credit Card Transactions from merchants and provide certain services related to the processing of Credit Card Transactions to MERCHANT; and

WHEREAS: MERCHANT desires to honor at this business location(s) Card Numbers presented in connection with the Mail Order/Telephone Order sale of product/services to customers; and

WHEREAS: BANK and MERCHANT has entered into Harris, N.A., Chicago, IL ('Bank') VISA/MasterCard Processing Agreement ('Agreement').

NOW THEREFORE, in consideration of the representations, covenants, and promises made herein, the parties hereto agree to amend Agreement as follows:

- 1. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer.
2. MERCHANT agrees that transactions will not be processed until products are shipped to Cardholder.
3. MERCHANT agrees to a charge of \$0.05 per AVS transaction(s) when applicable.
4. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of this agreement.

AGREED & ACCEPTED BY:

DATE: 3/16/09

Raymond S. Schroeder
OWNER / OFFICER

Authorized Harris, N.A. Agent

Raymond S. Schroeder
Print Name

Print Name

# Exhibit “B”



**ASSET PURCHASE AGREEMENT**

**dated as of August 26, 2009**

**among**

**CYNERGY HOLDINGS, LLC**

**CYNERGY DATA, LLC**

**and**

**CYNERGY PROSPERITY PLUS, LLC**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is dated August 26, 2009, among Cynergy Holdings, LLC, a Delaware limited liability company (the "Purchaser"), Cynergy Data, LLC, a Delaware limited liability company ("Cynergy Data") and Cynergy Prosperity Plus, LLC, a Delaware limited liability company ("Cynergy Prosperity," and together with Cynergy Data, the "Seller").

WHEREAS, the Seller is engaged in the business of payment processing and related merchant services (the "Business");

WHEREAS, Seller will file a voluntary petition for relief (the "Bankruptcy Case") under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on September 1, 2009;

WHEREAS, the Purchaser desires to purchase certain assets of the Seller and to assume certain liabilities of the Seller, and the Seller desires to sell such assets to the Purchaser and to assign such liabilities to the Purchaser, all on the terms and conditions set forth in this Agreement and in accordance with sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the Transferred Assets will be sold pursuant to an order of the Bankruptcy Court approving such sale under section 363 of the Bankruptcy Code, and such sale will include the assumption by the Seller and concurrent assignment to the Purchaser of the Assumed Contracts under section 365 of the Bankruptcy Code and the terms and conditions of this Agreement;

WHEREAS, the Seller desires to sell the Transferred Assets and to assign the Assumed Contracts and Assumed Liabilities to further its reorganization efforts and to enable it to consummate a plan of reorganization in the Bankruptcy Case; and

WHEREAS, on the date hereof the Purchaser shall deposit the Deposit with the Escrow Agent, in accordance with the terms of the Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

1.1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth below:

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified Person.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement substantially in the form of Exhibit B hereto to be executed by the Purchaser and the Seller on the Closing Date.

“Assignments of Intangible Property” means the Assignments of Intangible Property substantially in the form of Exhibit C hereto to be executed by the Seller on the Closing Date.

“Bill of Sale” means Bills of Sale substantially in the form of Exhibit A hereto to be executed by the Seller on the Closing Date.

“BIN Sponsor Contract” means that certain BIN Sponsor Agreement between Cynergy Data and Harris N.A. dated as of November 1, 2008, as amended from time to time.

“Break-Up Fee” means \$1,620,000.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks located in New York are authorized or obligated to close.

“Claim” means a suit, claim, action, proceeding, inquiry, investigation, litigation, demand, charge, complaint, grievance, arbitration, indictment, information, or grand jury subpoena.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” means all information regarding a party's business or affairs, including business concepts, processes, methods, trade secrets, systems, know-how, devices, formulas, software including source codes, personally identifying information of any kind, product specifications, marketing methods, prices, customer lists, supplier lists, methods of operation or other information, whether in oral, written or electronic form, that is not generally known to the public and that is either: (i) of a nature such that a reasonable person would know that it is confidential; or (ii) disclosed under circumstances such that a reasonable person would know it is confidential.

“Confidentiality Agreement” means the Confidentiality Agreement, dated July 14, 2009, between the Purchaser and Seller.

“Contract” means any written or oral agreement, arrangement, understanding, purchase order, promissory note, lease or instrument or other contractual or similar arrangement or commitment, to which Seller is a party.

“Disclosure Schedules” means Disclosure Schedules to this Agreement.

“Employee Benefit Plans” means each employee pension benefit plan as defined in Section 3(2) of ERISA, employee welfare benefits plan as defined in Section 3(1) of ERISA, and each deferred compensation, stock option, stock purchase, bonus, medical, welfare, disability, severance or termination pay, insurance or incentive plan, and each other employee benefit plan, program, agreement or arrangement, (whether funded or unfunded, written or oral, qualified or nonqualified), sponsored, maintained or contributed to or required to be contributed to by the Seller or by any trade or business, whether or not incorporated, that together with the Seller would be deemed a “single employer” within the meaning of Section 4001 of ERISA (a “Company ERISA Affiliate”), for the benefit of any employee, terminated employee, leased employee or former leased employee, director, officer, shareholder or independent contractor of the Seller or any Company ERISA Affiliate.

“Encumbrances” means all Liens, Claims, conditional sales agreements, rights of first refusal or options.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means JPMorgan Chase Bank, National Association.

“Escrow Agreement” means the escrow agreement dated as of the date hereof among the Purchaser, the Seller and the Escrow Agent, substantially in the form of Exhibit F hereto.

“Excluded Records” means originals of all (i) stock records books and stock certificates, (ii) all tax and financial accounting records of the Seller, (iii) all minute books of the Seller; provided, however, that Purchaser shall be entitled to copies thereof, and (iv) all files, records and similar information related to the Excluded Assets.

“Expense Reimbursement” means the actual documented out-of-pocket expenses incurred in connection with the transactions contemplated hereby, not to exceed \$648,000.

“Governmental Body” means a domestic or foreign national, federal, state, provincial, or local governmental, regulatory or administrative authority, department, agency, commission, court, tribunal, arbitral body or self-regulated entity.

“Harris Bank” means, collectively, Harris, N.A. and Moneris Solutions, Inc.

“Insider” means any executive officer, director, governing body member, majority equity holder, partner in a partnership or Affiliate, as applicable, of Seller or any predecessor or Affiliate of Seller or any individual related by marriage or adoption to any such individual.

“Intellectual Property” means any and all (i) trade names, trademarks and service marks, domain names, trade dress and similar rights and goodwill appurtenant



thereto, and applications to register any of the foregoing; (ii) patents and patent applications; (iii) copyrights (whether registered or unregistered) and applications for registration; and (iv) confidential and proprietary information, including software, trade secrets, inventions, ideas and know-how.

“IRS” means the United States Internal Revenue Service.

“Law” means any federal, state or local statute, law, rule, regulation, order or other requirement of any Governmental Body.

“Liabilities” means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), Claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, choate or inchoate, matured or unmatured, or otherwise. Without limiting the foregoing, the term “Liabilities” includes and refers to all liabilities and obligations for or with respect to Taxes, including liabilities for Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of any applicable Law), as a transferee or successor, by contract, or otherwise.

“Lien” means any security interest, mortgage, pledge, lien, encumbrance, charge or claim (as defined in section 101(5) of the Bankruptcy Code).

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the Business, taken as a whole, or the Transferred Assets, taken as a whole, except any such effect resulting from (i) general changes or developments in the industry in which the Business operates which do not impact the Business disproportionately, (ii) changes in global or national political conditions (including the outbreak of war or acts of terrorism) or in general economic conditions or in national or global financial markets, in each instance which do not impact the Business disproportionately, (iii) any actions required under this Agreement to obtain any approval or authorization of the Bankruptcy Court or under any applicable Law, (iv) changes in any applicable Law or applicable accounting regulations or principles or interpretations thereof, (v) the announcement or pendency of this Agreement and the transactions contemplated hereby, (vi) any action taken by the Seller which is required in connection with this Agreement, (vii) any actions taken by or (or omitted to be taken) at the written request of the Purchaser, or (viii) the Bankruptcy Case.

“Permitted Encumbrance” means: (i) Liens for Taxes and assessments not yet payable; (ii) inchoate mechanics’ Liens for work in progress arising in the ordinary course and not past due and payable or the payment of which is being contested in good faith by appropriate proceedings; (iii) materialmen’s, mechanics’, carriers’, workmen’s and repairmen’s Liens arising in the ordinary course and not past due and payable or the payment of which is being contested in good faith by appropriate proceedings; (iv) Liens that will be released at or prior to the Closing; (v) Liens on the Restricted Cash in favor of Harris Bank and First Data as provided for under the Bin Sponsor Contract and related

merchant agreements; (vi) Liens on any equity interests included in the Transferred Assets all of which are set forth in the Disclosure Schedules; and (vii) (A) easements, rights-of-way, servitudes, permits, licenses, surface leases, ground leases to utilities, municipal agreements, railway siding agreements and other rights, all as reflected in the official records of the jurisdictions where any real property is located, (B) conditions, covenants or other restrictions reflected in the official records of the jurisdictions where any real property is located, and (C) easements for streets, alleys, highways, telephone lines, gas pipelines, power lines, railways and other easements and rights-of-way on, over or in respect of any real property, all as reflected in the official records of the jurisdictions where any real property is located; in each case with respect to clauses (i) through (vii) above, individually or in the aggregate, that do not or would not reasonably be expected to materially and adversely affect the current use or value of the property subject thereto or the operations of the Seller as it is currently conducted.

“Person” means any individual, corporation, partnership, limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Representative” means, with respect to a particular Person, any director, officer, manager, partner, shareholder, member, employee, agent, consultant, advisor, lender or prospective lender, co-investor or potential co-investor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Restricted Cash” means funds held in connection with a Contract that will be assumed by the Seller and assigned to the Purchaser, on deposit, which are utilized to offset liabilities, losses, fines, penalties and/or uncured contractual obligations, including but not limited to, as related to merchants, independent sales organizations, executive partners, or other contractual relationships.

“Rolling Reserve” means the reserve by Cynergy Data (or any of its independent sales organization or other representatives) and a merchant, either pursuant to a reserve acknowledgement executed in accordance with Section 7B of the form of “Merchant Processing Agreement” or otherwise documented, established, required or accounted for (by Seller, a Merchant, Harris N.A., or otherwise) in connection with the relationship with such merchant.

“Seller's Deposits” means, collectively, all of the Seller's security, vendor, utility and other similar deposits related to the Transferred Assets.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller's Knowledge” means the actual knowledge of Marcelo Paladini, Charles Moore and Andres Ordonez without any duty of investigation. For the avoidance of doubt, neither Charles Moore individually nor CM&D Management Services LLC and its Affiliates shall have any incremental liability as a result of Charles Moore being part of the knowledge group.

“Subordinated Debt Loan Agreements” means the loan agreement with respect to the Junior Indebtedness (as such term is defined in Exhibit G), the related subordination and intercreditor agreements and any other agreements contemplated by Exhibit G.

“Tax” or “Taxes” means all taxes, charges, fees, imposts, levies or other assessments, including, without limitations, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, transfer gains, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, real or personal property, and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any taxing authority (federal, state, local or foreign) and shall include any transferee liability in respect of Taxes.

“Tax Returns” means all returns, declarations, reports, forms, estimates, information returns and statements required to be filed in respect of any Taxes or to be supplied to a taxing authority in connection with any Taxes.

“Third Party” means any Person other than the Seller, the Purchaser or any of their respective Affiliates.

The following capitalized terms are defined in the following Sections of this Agreement:

<u>Definition</u>	<u>Location</u>
<b>Agreement</b> .....	<b>Preamble</b>
<b>Antitrust Division</b> .....	<b>7.6(c)</b>
<b>Antitrust Laws</b> .....	<b>7.6(d)</b>
<b>Assumed Contracts</b> .....	<b>2.1(a)</b>
<b>Assumed Liabilities</b> .....	<b>2.3</b>
<b>Bankruptcy Case(s)</b> .....	<b>Recitals</b>
<b>Bankruptcy Code</b> .....	<b>Recitals</b>
<b>Bankruptcy Court</b> .....	<b>Recitals</b>
<b>Bidding Procedures</b> .....	<b>6.1</b>
<b>Bidding Procedures Order</b> .....	<b>6.1</b>
<b>Books and Records</b> .....	<b>2.1(f)</b>
<b>Business</b> .....	<b>Recitals</b>
<b>Closing</b> .....	<b>10.1</b>
<b>Closing Date</b> .....	<b>10.1</b>
<b>Commitment Letters</b> .....	<b>5.4</b>
<b>Competing Bid</b> .....	<b>6.7</b>
<b>Cure Costs</b> .....	<b>2.1(a)</b>
<b>Cynergy Data</b> .....	<b>Preamble</b>
<b>Cynergy Prosperity</b> .....	<b>Preamble</b>
<b>Debt Term Sheet</b> .....	<b>5.4</b>
<b>Deposit</b> .....	<b>3.1(a)</b>

<b>Equity Commitment Letter</b> .....	<b>5.4</b>
<b>Excluded Assets</b> .....	<b>2.2</b>
<b>Excluded Contracts</b> .....	<b>2.2(d)</b>
<b>Excluded Liabilities</b> .....	<b>2.4</b>
<b>FTC</b> .....	<b>7.6(c)</b>
<b>HSR Act</b> .....	<b>4.2.(c)</b>
<b>Leased Real Property</b> .....	<b>4.6(b)</b>
<b>Material Contract</b> .....	<b>4.5(a)</b>
<b>Ordonez Indebtedness</b> .....	<b>2.1(i)(ii)</b>
<b>Permits</b> .....	<b>4.4</b>
<b>Prepaid and Accrued Expenses</b> .....	<b>3.2</b>
<b>Purchase Price</b> .....	<b>3.1</b>
<b>Purchaser</b> .....	<b>Preamble</b>
<b>Purchaser's Certificate</b> .....	<b>9.1</b>
<b>Rehired Employee</b> .....	<b>7.13(a)</b>
<b>Requested Party</b> .....	<b>7.8(b)(ii)</b>
<b>Requesting Party</b> .....	<b>7.8(b)(ii)</b>
<b>Sale Approval Order</b> .....	<b>6.1</b>
<b>Seller</b> .....	<b>Preamble</b>
<b>Seller's Certificate</b> .....	<b>8.1</b>
<b>Subordinated Debt Consideration</b> .....	<b>3.1(b)</b>
<b>Subordinated Debt Consideration Value</b> .....	<b>3.1(b)</b>
<b>Termination Date</b> .....	<b>11.1(b)</b>
<b>Transferred Assets</b> .....	<b>2.1</b>
<b>Transferred Claims</b> .....	<b>2.1(j)</b>
<b>Transferred Equity</b> .....	<b>2.1(k)</b>
<b>Transferred IP</b> .....	<b>2.1(c)</b>
<b>Transferred Permits</b> .....	<b>2.1(e)</b>
<b>Transferred Real Property</b> .....	<b>2.1(b)</b>

1.2. Rules of Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Any reference in this Agreement to “dollars” or “\$” shall mean U.S. dollars.

(b) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(e) The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(f) Unless the context otherwise clearly indicates, in this Agreement "includes" and "including" are not limiting.

## ARTICLE II PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

2.1. Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Seller shall sell, assign, transfer, convey and deliver (or cause to be sold, assigned, transferred, conveyed and delivered) to the Purchaser, and the Purchaser shall purchase, assume and accept from the Seller, free and clear of all Liens and Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in and to all of the Seller's properties, assets and rights, other than the Excluded Assets (such rights, title and interests in and to such assets, properties and rights being collectively referred to herein as the "Transferred Assets"), in accordance with, and with all of the protections afforded by, sections 363 and 365 of the Bankruptcy Code:

(a) all Contracts, including, without limitation, the Seller's 401(k) plan and any merchant agreements, whether active, inactive or cancelled (the "Assumed Contracts"); provided, however, the Purchaser acknowledges that it shall be obligated to pay any and all pre- or post-petition date costs and expenses (not to exceed the dollar amount set forth in Section 8.7) when they become due and payable as provided herein and as required by the Sale Approval Order to be paid to cure any and all monetary defaults as of the Closing under all Assumed Contracts for which necessary consents and/or Bankruptcy Court approval to transfer have been received (the "Cure Costs") as a component of the consideration for the purchase of the Transferred Assets;

(b) all real property, leaseholds and other interests in real property, together in each case with the Seller's right, title and interest in and to all structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances relating to the foregoing (the "Transferred Real Property");

(c) all Intellectual Property used by the Seller in the Business, including, but not limited to, that listed on or described in Schedule 4.7(a), to the extent assignable or otherwise transferable (the "Transferred IP");

(d) all furniture, furnishings, machinery, equipment and supplies and similar tangible personal property used by the Seller in the Business;

(e) all Permits used by Seller in the Business, to the extent assignable (the “Transferred Permits”);

(f) all books of account, general, financial, accounting and personnel records, files, invoices, customers’ and suppliers’ lists, other distribution lists, billing records, sales and promotional literature, manuals and customer and supplier correspondence owned by the Seller relating to the Business (the “Books and Records”);

(g) all of Seller's bank accounts and Restricted Cash;

(h) all of Seller’s Deposits;

(i) all notes receivable and other indebtedness owed to Seller from (i) independent sales organizations, (ii) Andres Ordonez (“Ordonez Indebtedness”) and (iii) Cynergy Prosperity;

(j) any rights and Claims (including claims under chapter 5 of the Bankruptcy Code) of Seller (i) relating to the Assumed Contracts; (ii) set forth on Schedule 4.8; (iii) against counter parties to an Assumed Contract if such counter party is a merchant, independent sales organization or Harris Bank; and (iv) relating to the Ordonez Indebtedness (collectively, the “Transferred Claims”); and

(k) all investments, equity interests and other security owned or held by the Seller, to the extent transferable (the “Transferred Equity”).

2.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of the Seller, shall be retained by the Seller and are not being sold or assigned to the Purchaser hereunder (all of the following are referred to collectively as the “Excluded Assets”):

(a) all of Seller's cash other than Restricted Cash;

(b) all of the Seller’s bank accounts with any negative cash balances;

(c) all of the assets of the Seller listed or described in Schedule 2.2(c);

(d) all Contracts listed or described in Schedule 2.2(d) (the “Excluded Contracts”);

(e) all notes receivable set forth in Schedule 2.2(e), and all revenue or other amounts earned by the Seller or due from an independent sales organization or a merchant pursuant to merchant agreements in each case that arose or arise out of the operation of the Business prior to the Closing (including any revenues under such merchant agreements not accrued at Closing but that arise out of the operation of the Business prior to the Closing), together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto payable by an independent sales organization or a merchant;

(f) all rights of the Seller under this Agreement and any other Contract entered into in connection with the transactions contemplated hereby;

(g) any interest or right to any refund of Taxes relating to the Business, the Transferred Assets or the Assumed Liabilities for, or applicable to, any taxable period (or portion thereof) ending on or prior to the Closing Date (which, for the avoidance of doubt, shall not include refunds paid or due to any entity the equity of which is included in the Transferred Assets);

(h) all security deposits related to an Excluded Asset;

(i) all Excluded Records;

(j) any rights or Claims of Seller with respect to the residual amount of the Rolling Reserve as and when it becomes available for distribution;

(k) any rights or Claims against any current or former equity holder (other than Andres Ordonez) and any Persons in which they hold a material or controlling equity interest, including SignaPay, Ltd.;

(l) any Claims of Seller that are not Transferred Claims;

(m) any rights or Claims of Seller against those Persons that are subject of Transferred Claims, to the extent arising out of either (i) counterclaims, setoffs, recoupment or other similar defensive rights (but in no event seeking affirmative recoveries), (ii) objections by such Persons to Seller's assertion of appropriate Cure Costs or (iii) or relating to the Excluded Assets provided for in Section 2.2(e); provided that nothing in this Section 2.2(m) shall be interpreted to expand the definition of Assumed Liabilities;

(n) all of the assets relating to any Employee Benefit Plan sponsored, maintained or contributed to by the Seller (other than the Seller's 401K plan contract, which plan itself shall be a Transferred Asset);

(o) all investments and equity interests owned by the Seller listed on or described in Schedule 2.2(o); and

(p) other than as provided in Section 2.1(j)(iv) and subject to Section 7.17, any Claims of Seller against Andres Ordonez.

2.3. Assumed Liabilities. At the Closing, the Purchaser shall assume and in due course pay, discharge, perform or otherwise fully satisfy only the following Liabilities of the Seller arising out of, relating to or otherwise in respect of the Business or the Transferred Assets (the "Assumed Liabilities"):

(a) all Liabilities accruing, arising out of or relating to the conduct or operation of the Business or the ownership, use, operation or maintenance of the Transferred Assets, in any case solely to the extent arising, accruing and relating to periods after the Closing Date and not including other Liabilities with respect to Excluded Assets (but expressly including

any charge-back and Liabilities under the BIN Sponsor Contract arising or accruing in connection with or relating to any activity or transaction prior to the Closing);

(b) fifty-percent of all transfer taxes applicable to the transfer of the Transferred Assets pursuant to this Agreement;

(c) all Liabilities of the Seller under the Assumed Contracts, solely to the extent arising, relating to and to be performed on or after, and in respect of periods following, the Closing Date; and

(d) all Cure Costs as provided herein.

2.4. Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, the parties expressly acknowledge and agree that the Purchaser shall not assume or be liable or responsible for any Liability of the Seller, other than the Assumed Liabilities, except as required by applicable Law (such Liabilities being collectively referred to herein as the “Excluded Liabilities”). Nothing herein shall limit any claims or defenses the Purchaser may have against any party other than the Seller. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against the Purchaser or the Seller as compared to the rights and remedies which such third party would have had against the Seller absent the Bankruptcy Case had the Purchaser not assumed such Assumed Liabilities.

2.5. Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of the Seller contained herein), the Seller shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Contract and to have cured all defaults thereunder if, and to the extent that, pursuant to the Sale Approval Order the Seller is authorized and directed to assume and assign Assumed Contracts to the Purchaser pursuant to section 365 of the Bankruptcy Code.

2.6. Assignment and Assumption of the Assumed Contracts. Without limiting Sections 2.1(a) and 2.3(c):

(a) as of the Closing, the Seller shall assume pursuant to Section 365(a) of the Bankruptcy Code and concurrently assign to the Purchaser pursuant to Sections 363(b), (f) and (m) and Section 365(f) of the Bankruptcy Code each of the Assumed Contracts that are assumed pursuant to the Sale Approval Order; and

(b) as of the Closing the Purchaser shall assume and thereafter in due course pay, discharge, perform and fully satisfy, all further obligations under such Assumed Contracts pursuant to section 365 of the Bankruptcy Code from and after the Closing, and shall pay the Cure Costs as provided herein so that all applicable Assumed Contracts may be assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code, in each case, in a manner consistent with the Sale Approval Order.



ARTICLE III  
PURCHASE PRICE

3.1. Purchase Price. Subject to the terms and conditions hereof, in full consideration for the sale and purchase of the Transferred Assets, at the Closing, the Purchaser shall assume the Assumed Liabilities and shall pay to the Seller \$81,000,000 less the aggregate amount of Cure Costs (the "Purchase Price") consisting of and payable as follows:

(a) the earnest money deposit in the amount of \$8,000,000 (the "Deposit") to be paid by the Purchaser upon the execution of this Agreement, which Deposit shall be deposited into escrow pursuant to the Escrow Agreement and paid to the Seller at Closing;

(b) Junior Indebtedness of Purchaser on the terms provided for in Exhibit G ("Subordinated Debt Consideration"), with a face value of \$14,000,000 ("Subordinated Debt Consideration Value"); and

(c) the amount by which the Purchase Price exceeds the sum of the Subordinated Debt Consideration Value and the Deposit in immediately available funds to be paid by the Purchaser at Closing.

The Purchase Price shall be allocated in accordance with Schedule 10.4.

3.2. Prorations; Prepaid Expenses. Prepaid rentals, security deposits, prepaid utility charges, real property taxes, personal property taxes, similar assessments and other prepaid expenses and accruals payable in respect of any of the Transferred Assets or Assumed Liabilities (the "Prepaid and Accrued Expenses"), applicable to periods both prior to and after Closing, shall be prorated as of the Closing Date. The estimated net amounts of such prorations shall be subtracted from the cash portion of the Purchase Price if the Purchaser is entitled to a credit therefor, or added to the Purchase Price if the Seller is entitled to a credit therefor. The Purchaser and the Seller shall use their reasonable efforts to calculate all prorations and the Prepaid and Accrued Expenses at or prior to the Closing and, at or about the Closing, the Purchaser and the Seller shall take readings or other measurements of gas, water, electricity and other utilities. Absent manifest error, such readings and measurements shall be binding, conclusive and used for purposes of the apportionment provided herein. In the event that such proration cannot be agreed to by the Purchaser and the Seller, a final determination of such proration shall be referred to any independent public accounting firm designated jointly by the Purchaser and the Seller, whose determination shall be binding upon the parties.

3.3. Subordinated Debt Consideration. Except as otherwise exempt under the Bankruptcy Code, following the Closing, Seller agrees that any Subordinated Debt Consideration received by the Seller will only be distributed or transferred (i) pursuant to a valid exemption from registration (or pursuant to a registration statement), and (ii) only upon Purchaser's receipt of such documents, materials and information (or copies thereof) as the Purchaser may reasonably request to ensure Purchaser's compliance with any applicable state and federal securities laws.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF SELLER

Except listed in the Disclosure Schedules to this Agreement delivered by the Seller, which shall specify the Section to which each exception or disclosure relates and shall be deemed to qualify the representations and warranties contained in such Section as well as all other representations and warranties in this Article IV to which the applicability of such exception or disclosure is reasonably apparent on its face, the Seller represents and warrants to the Purchaser that the statements contained in this Article IV are true and correct as of the date hereof.

4.1. Due Organization and Authority. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary limited liability power and authority to own, lease and operate the Transferred Assets and to carry on the Business as it is now being conducted. Subject to the entry of the Sale Approval Order, (a) the Seller has all requisite limited liability power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby and (b) the execution and delivery by the Seller of this Agreement, the performance by the Seller of its respective obligations hereunder and the consummation by the Seller of the transactions contemplated hereby have been duly authorized by all requisite limited liability action on the part of the Seller. This Agreement has been duly executed and delivered by the Seller, and, upon entry of the Sale Approval Order (assuming the due authorization, execution and delivery hereof by the Purchaser and satisfaction of all conditions to the Closing), this Agreement will constitute the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law). Seller has previously made available to the Purchaser true, accurate and complete copies of the certificate of incorporation and bylaws, or comparable instruments, as in effect on the date hereof. Except as set forth on Schedule 4.1, the Seller does not own, directly or indirectly, any capital stock of, or equity ownership or voting interest in, any other Person.

4.2. No Conflicts. Subject to the entry of the Sale Approval Order, the execution and delivery by the Seller of this Agreement, the consummation of the transactions contemplated hereby, and the performance by the Seller of this Agreement in accordance with its terms will not:

(a) violate the governing documents or operating agreement of the Seller or result in the creation of any Lien upon the Transferred Assets that is not cured, remedied or otherwise accounted for pursuant to the Sale Approval Order, other than a Permitted Encumbrance;

(b) violate any Law to which the Seller, the Business or any of the Transferred Assets are bound or subject; or

(c) violate, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, give any Third Party the right to modify, terminate or accelerate any obligation under, or require any consent, authorization, approval or any other action of any Person (including Governmental Bodies) pursuant to, any Law, Assumed Contract or Transferred Permit, except (i) to the extent that any such violation, breach or default is cured, remedied or otherwise accounted for pursuant to the Sale Approval Order, (ii) for consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, and (iii) for any such violation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”);

provided, however, that each of the cases set forth in clauses (b) and (c) above is subject to exceptions that (A) would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or to prevent or materially delay the consummation by the Seller of the transactions contemplated by this Agreement or (B) that arise as a result of any facts or circumstances relating to the Purchaser or any of its Affiliates.

4.3. Compliance with Laws. The Business is being conducted in compliance with all applicable Laws, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the Seller’s Knowledge, no claims are pending against (and no written notice has been received by) the Seller alleging the failure to comply in any material respects with any applicable Law.

4.4. Permits. There are no material licenses, franchises, permits, variances, exemptions, orders, approvals and authorizations of Governmental Bodies, including any applications therefor, that are used by Seller or have been issued to Seller for use in the conduct of the Business as currently conducted (collectively, the “Permits”).

4.5. Contracts.

(a) For purposes of this Section 4.5, the term “Material Contract” shall mean any Contract to which Seller is a party, whether written or oral, that is a

(i) Contract relating to the licensing of Transferred IP by Seller to a Third Party;

(ii) Contract related to or arising in connection with the Transferred Equity which contains any material restrictions on Seller;

(iii) Contract or series of related Contracts involving the receipt or payment of \$300,000;

(iv) BIN Sponsor Contract, Contract related to a processor or similar Contract;

(v) material Contract entered into outside of the ordinary course of business;

(vi) Contract with any executive partner;

(vii) Contract with any material vendor;

(viii) Contract with any merchant that is in the top fifty (50) merchants by revenue for the previous twelve (12) months; and

(ix) Contract with any independent sales organization that is in the top fifty (50) independent sales organizations by revenue for the previous twelve (12) months.

(b) Each Material Contract is valid, binding and in full force and effect (except to the extent cured or remedied pursuant to the Sale Approval Order) upon Seller and, to the Seller's Knowledge, upon the counterparties thereto. Neither the Seller nor, to the Seller's Knowledge, any other party is in material breach of, or material default under, any Material Contract (except to the extent that any such breach or default is cured or remedied pursuant to the Sale Approval Order). Immediately after the Closing, each Assumed Contract will enable the Purchaser to continue to transact business with the counterparties thereto pursuant to the terms of such Contract. Seller has not assigned any material rights under any Assumed Contract and all right, title and interest in and to each Assumed Contract is vested exclusively in Seller and, to Seller's Knowledge, other Persons who are signatories thereto (except for collateral assignments of rights therein to secured lenders which shall be extinguished at Closing).

#### 4.6. Real Property.

(a) The Seller does not own and has never owned any parcels of real property.

(b) Schedule 4.6(b) lists the street address of each parcel of real property leased, subleased or occupied by the Seller and used in connection with the Business (the "Leased Real Property"). True, correct and complete copies of the leases for the Leased Real Property have been delivered by Seller to the Purchaser. Upon the entry of the Sale Approval Order, at the Closing, the Seller shall have a valid leasehold estate in all the Leased Real Property, which shall be transferred to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

(c) To the Seller's Knowledge, the Seller has not received, during the two (2) year period prior to the date of this Agreement, any written notice alleging that the operation and use of the buildings and other improvements constituting the Transferred Real Property violates, in any material respect, any zoning, subdivision, building or other similar Law or recorded plot or any certificate of occupancy issued with respect to the Transferred Real Property.

(d) To the Seller's Knowledge, there are no defects in the buildings, improvements, structures or fixtures located on or at the Transferred Real Property which would reasonably be expected to materially impair the conduct of the Business.

#### 4.7. Intellectual Property.

(a) Schedule 4.7(a) attached hereto sets forth a complete and correct list of all of the following that are owned by Seller and constitute Transferred IP:

(i) all registered Intellectual Property and all applications for registerable Intellectual Property; and

(ii) material unregistered trademarks, unregistered service marks, trade names, corporate names and Internet domain names.

(b) The Transferred IP constitutes all Intellectual Property used by Seller in the conduct of the Business. To the Seller's Knowledge, Seller owns and possesses all right, title and interest in and to all of the Intellectual Property. To the Seller's Knowledge, the Transferred IP is not subject to any Encumbrances, other than Permitted Encumbrances or Encumbrances that will be removed at or prior to Closing.

(c) To the Seller's Knowledge, Seller is not infringing, misappropriating or otherwise conflicting with, in any material way, the Intellectual Property of any Third Party. To the Seller's Knowledge, Seller has not received any written notice regarding any infringement or misappropriation of any Intellectual Property of any Third Party during the last two (2) years.

(d) To the Seller's Knowledge, no Third Party has infringed, misappropriated, diluted or otherwise conflicted with any of the Transferred IP during the last two (2) years in any material way. To the Seller's Knowledge: (i) all of the registered Transferred IP is valid and enforceable; and (ii) no claim by any Third Party contesting the validity, enforceability, use or ownership of any registered Transferred IP has been made in writing during the last two (2) years or is currently outstanding.

4.8. Litigation. Except as set forth on Schedule 4.8, the Bankruptcy Case and any and all actions, adversary proceedings and litigation arising therefrom or related thereto, there are no Claims pending or, to the Seller's Knowledge, threatened against the Seller with respect to the Business before any Governmental Body that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or prevent or materially delay the consummation by the Seller of the transactions contemplated by this Agreement.

4.9. Title to Assets.

(a) Upon the entry of the Sale Approval Order, at the Closing, the Seller shall have good and marketable title to, or a valid and enforceable right by Contract to use, the Transferred Assets, which shall be transferred to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

(b) Seller owns or has a valid right to use pursuant to Contract all buildings, machinery, equipment, and other tangible assets necessary for the conduct of the Business in the ordinary course. The Transferred Assets constitute all of the assets, agreements, licenses and properties (other than the Excluded Assets) that are used in or otherwise necessary for the conduct of the Business. Seller has not assigned any material right, title or interest in or to any Transferred Asset, except for collateral assignments of rights therein to secured lenders, which shall be extinguished at Closing.

4.10. Taxes. Except for matters that would not have a Material Adverse Effect, (i) to the Seller's Knowledge, Seller has timely filed all Tax Returns required to be filed with the appropriate Tax authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Seller); (ii) all Taxes, to the Seller's Knowledge, required to be paid by Seller, have been paid; and (iii) the Purchaser will not be responsible or liable for any Taxes of the Seller or required to have been withheld and paid by the Seller to any Governmental Body.

4.11. Labor and Employment. To Seller's Knowledge, no employee of Seller is represented by a labor union. Seller is not a party to or bound by any labor or collective bargaining agreement. To the Seller's Knowledge, no labor organization or group of employees has made any official written demand for certification and, to the Seller's Knowledge, no labor union is seeking to organize any employees of the Seller. There are no (i) unfair labor practice charges, grievances or complaints pending or, to the Seller's Knowledge, threatened by or on behalf of any employee or group of employees of the Seller, except in each case as would not have a Material Adverse Effect, or (ii) strikes, work stoppages, work slowdowns or lockouts pending or, to the Seller's Knowledge, threats thereof against or involving the Seller.

4.12. Brokers. Except for the fees payable by the Seller to Stifel, Nicolaus & Company, Incorporated and Peter J. Solomon Securities Company, LLC, and any other fees for which Purchaser will have no Liability, the Seller has not paid or agreed to pay, or received any Claim with respect to, any brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated hereby.

4.13. Investment. The Seller understands and acknowledges that (i) the Subordinated Debt Consideration is being issued without registration under the Securities Act in a private placement that is exempt from the registration provisions of the Securities Act and (ii) the availability of certain of such exemptions depends in part on, and the Purchaser will rely upon the accuracy and truthfulness of, its representations set forth herein. On the date hereof and on the Closing Date, Seller is and will be an Accredited Investor. Seller has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risk of the prospective investment in the Subordinated Debt Consideration and has so evaluated the merits and risks of such investment to its satisfaction. Upon the confirmation by the Bankruptcy Court, and consummation, of a chapter 11 plan of the Seller to be filed by the Seller and confirmed by the Bankruptcy Court, Seller shall distribute the Subordinated Debt Consideration only to those creditors of the Seller (i) who satisfy the requirements set forth in Section 3.3 at the time of the distribution or (ii) as required by the Bankruptcy Court. Seller acknowledges that it has been afforded (i) the opportunity to ask such questions of and to receive answers from representatives of the Purchaser concerning the terms and conditions of the issuance of the Subordinated Debt Consideration, the operations of the Purchaser and the merits and risks of investing in the Subordinated Debt Consideration; (ii) access to information about the Purchaser and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information which the Purchaser possesses, or can acquire without unreasonable effort or expense, that is necessary to make an informed investment decision with respect to its investment. Seller understands and acknowledges that all offers and sales of the Subordinated

Debt Consideration shall be made only pursuant to an available exemption from the registration requirements of the Securities Act or pursuant to registration under the Securities Act.

4.14. Financial Statements and Related Matters. Seller has delivered copies of the unaudited consolidated balance sheets and related consolidated income statements, for the Business as of and for the five month period ending May 31, 2009. These financial statements were derived from the Books and Records.

4.15. Employee Benefit Plans. The electronic data room maintained by Seller contains a list of all Employee Benefit Plans. The Seller does not participate currently and has never participated in and is not required currently and has never been required to contribute to or otherwise participate in any "multi employer plan," as defined in Sections 3(37)(A) and 4001(a)(3) of ERISA and Section 414(f) of the Code or any "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code, any "defined benefit plan" as defined in Section 3(35) of ERISA nor any pension plan subject to the funding standards of Section 302 of ERISA.

4.16. Affiliated Transactions. Except as set forth on Schedule 4.16, to the Seller's Knowledge, no Insider has any interest in the Transferred Assets or is a party to any Contract used in or related to the Business. To the Seller's Knowledge, no Insider has (i) any economic interest in any Person which has engaged or does currently engage in competition with Seller or (ii) any economic interest in any Person that purchases from or sells or furnishes to Seller any services or products.

4.17. Insurance. Schedule 4.17 attached hereto lists all policies of insurance currently in effect owned, held or insuring the Transferred Assets, including the type and amount of coverage and the expiration dates of the policies. Except as set forth on Schedule 4.17 attached hereto, current premiums and any other obligation under such insurance have been paid and all such policies are valid and enforceable and in full force and effect on the date hereof and no Seller is in material default with respect to its obligations under any such insurance policies.

4.18. Absence of Certain Developments. Except as set forth on Schedule 4.18 attached hereto, and except as expressly contemplated by this Agreement, since May 31, 2009:

(a) To the Seller's Knowledge, Seller has not suffered any chargeback, damage or destruction in excess of \$500,000 to any Transferred Assets, whether or not covered by insurance;

(b) Seller has not, exclusively with respect to the Business, sold, leased, assigned or transferred (including, without limitation, transfers to stockholders, holders of ownership interests or any Insider) a material portion of its tangible assets, except for sales of inventory which, prior to the commencement of the Bankruptcy Case, were conducted in the ordinary course of business;

(c) Seller has not sold, assigned, licensed or transferred (including transfers to stockholders or any Insider) any Transferred IP owned by, issued to or licensed to it or disclosed any material confidential information with respect to the Business (other than



pursuant to agreements requiring the receiving party to maintain the confidentiality of and preserving all its rights in such confidential information); and

(d) Seller has not committed to do any of the foregoing.

4.19. Disclaimer. The representations and warranties made by the Seller in this Article IV are the exclusive representations and warranties made by the Seller. The Seller hereby disclaims any other express or implied representations and warranties. The Seller does not make, and hereby disclaims, any representations or warranties regarding pro-forma financial information, financial projections or other forward-looking statements of the Business. Except as expressly set forth in this Agreement and the Disclosure Schedules, the Seller is selling the Transferred Assets hereunder on an “as is, where is, with all faults” basis and the Seller makes no representations or express or implied warranties as to the Business, the Transferred Assets or the Assumed Liabilities, including as to their physical condition, usability, merchantability, profitability or fitness for any purpose.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser represents and warrants to Seller on the date hereof as follows:

5.1. Due Organization and Authority. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Purchaser has all requisite power and authority to enter into this Agreement, carry out its obligations hereunder and consummate the transactions contemplated hereby. The execution and delivery by the Purchaser of this Agreement, the performance by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and, assuming the due authorization, execution and delivery hereof by the Seller, this Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors rights generally or by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

5.2. No Conflicts. The execution and delivery by the Purchaser of this Agreement, the consummation of the transactions contemplated hereby, and the performance by the Purchaser of this Agreement in accordance with its terms will not:

(a) violate the certificate of incorporation or by-laws (or comparable instruments) of the Purchaser; or

(b) violate any Law to which the Purchaser or its assets are bound or subject to, except for any such violation under the HSR Act;



provided, however, that the case set forth in clause (b) above is subject to exceptions that (i) would not reasonably be expected to have, either individually or in the aggregate, a material and adverse effect on the Purchaser or to prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement or (ii) that arise as a result of any facts or circumstances relating to the Seller or any of its Affiliates.

5.3. Litigation. There are no Claims pending or, to the knowledge of the Purchaser, threatened against the Purchaser before any Governmental Body that would prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement.

5.4. Financing. Purchaser has delivered to Seller, prior to the date hereof, a true, correct and complete copy of a (i) term sheet from one or more of Seller's senior secured lenders (together, the "Debt Term Sheet") and (ii) equity commitment letter from ComVest Investment Partners III, L.P. (the "Equity Commitment Letter," and together with the Debt Term Sheet, the "Commitment Letters"). The Commitment Letters provide terms and commitments, as applicable, by the financial institutions or the fund, as applicable, issuing such letters to distribute to Purchaser immediately available funds in an amount, sufficient to consummate the transactions contemplated hereby, including payment of the Purchase Price, related fees and expenses and assumption of the Assumed Liabilities. Purchaser has no reason to believe that such available cash under the Equity Commitment Letter will not be available. Such Commitment Letters are in full force and effect on the date hereof. Subject to the foregoing, the Purchaser is (or, upon the Closing, will be) capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to each of the Assumed Contracts.

5.5. Adequate Assurances Regarding Executory Contracts. Purchaser is and will be capable of satisfying the conditions in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts.

5.6. Brokers. The Purchaser has not paid or agreed to pay, or received any Claim with respect to, any brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated hereby.

5.7. Capitalization. As of the Closing, the Purchaser shall have issued and outstanding only the equity securities set forth on Exhibit G. All of the equity securities set forth on Exhibit G, at the time of issuance, will be validly issued, fully paid and nonassessable.

5.8. 'As Is' Transaction. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER SELLER NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE BUSINESS OR THE TRANSFERRED ASSETS (INCLUDING THE VALUE, CONDITION OR USE OF THE TRANSFERRED ASSETS) OR OTHERWISE WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO THE PURCHASER, WHETHER ON BEHALF OF THE SELLER OR ITS AFFILIATES, INCLUDING AS TO (A) MERCHANTABILITY OR FITNESS FOR ANY

PARTICULAR USE OR PURPOSE, (B) THE OPERATION OF THE BUSINESS AFTER THE CLOSING IN ANY MANNER OR (C) THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE TRANSFERRED ASSETS BY THE PURCHASER AFTER CLOSING. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE TRANSFERRED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE TRANSFERRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE TRANSFERRED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE. EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN, PURCHASER WILL ACCEPT THE PROPERTY AT THE CLOSING "AS IS", "WHERE IS", AND "WITH ALL FAULTS".

ARTICLE VI  
BANKRUPTCY COURT MATTERS

6.1. Bankruptcy Court Matters. On September 1, 2009, the Seller shall file (or shall have filed) a motion or motions with the Bankruptcy Court seeking entry of (x) an order of the Bankruptcy Court regarding the transactions contemplated by this Agreement, establishing notice and service requirements to creditors and parties in interest with respect thereto, approving the Break-Up Fee and Expense Reimbursement, and approving the bidding procedures (the "Bidding Procedures" and such order (which shall be substantially in the form of Exhibit D hereto, with such changes thereto as the parties shall mutually approve, being referred to herein as the "Bidding Procedures Order") and (y) an order of the Bankruptcy Court approving the sale of the Transferred Assets and the Cure Costs pursuant to this Agreement substantially in the form of Exhibit E hereto (with such changes thereto as the Seller and the Purchaser shall mutually approve) (the "Sale Approval Order"). Seller shall give prompt notice to Purchaser of (i) any written notice or other written communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated hereby is not likely to be obtained prior to Closing, and (ii) any written objection or proceeding that challenges such transactions or the entry of the Sale Approval Order. Seller shall file the Bid Procedures Motion on September 1, 2009 and shall use its best efforts to cause a hearing on the Bid Procedures Motion within 10 days thereof.

6.2. Bidding Procedures. The Bidding Procedures Order shall be substantially in the form (with such changes thereto as the Purchaser shall approve) of Exhibit D hereto, and shall, among other matters:

- (i) approve the Break-Up Fee;
- (ii) approve the Bidding Procedures;
- (iii) schedule a hearing to consider entry of the Sale Approval Order and provide that notice of such hearing be given to all of the Seller's creditors, interest holders of record, the IRS, all state/local taxing authorities in jurisdictions where the Seller has or may have

any tax liability, and potential other purchasers identified by the Seller and otherwise in accordance with Bankruptcy Rule 2002; and

(iv) approve the form of this Agreement.

6.3. Sale Approval Order. The Sale Approval Order shall be substantially in the form of Exhibit E hereto (with such changes thereto as the Seller and the Purchaser shall mutually approve, which approval shall not be unreasonably withheld, conditioned or delayed). The Purchaser agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining the Sale Approval Order, including, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by the Purchaser under this Agreement and demonstrating that the Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. The Purchaser shall not, without the prior written consent of the Seller, file, join in or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets hereunder.

6.4. Appeal. In the event the entry of the Bidding Procedures Order or the Sale Approval Order shall be appealed, the Seller and the Purchaser shall use their respective reasonable efforts to defend such appeal. Notwithstanding anything to the contrary set forth herein, nothing herein shall negate or limit the requirement of a finding that the Purchaser is entitled to 363(m) protections.

6.5. Assumed Contracts The Seller and the Purchaser shall use commercially reasonable efforts to obtain an order of the Bankruptcy Court authorizing the Seller to assume the Assumed Contracts and assign to Purchaser all Assumed Contracts and the Purchaser shall be exclusively responsible for any and all obligations of the Seller under all such Assumed Contracts, including, without limitation, the Cure Costs of all monetary defaults with respect to all such Assumed Contracts, all in accordance with and to the extent provided in this Agreement and the Sale Approval Order. No later than eight (8) Business Days after the date hereof, Seller shall deliver to Purchaser a true and complete list of all Contracts to which it is a party, all of which shall be made available to Purchaser on or prior to such date. Purchaser shall first designate those Contracts it seeks to have Seller assume and assign ten (10) days prior to the auction date established by the Bankruptcy Court. At any time and from time to time before the Closing, the Purchaser may, by written notice to Seller, elect to exclude from the transactions contemplated hereby any one or more of the Contracts or Permits that would otherwise be Transferred Assets, in which case it shall immediately and for all purposes herein be deemed an Excluded Asset. There shall be no adjustment to the amount payable by the Purchaser hereunder as a result of the Purchaser’s election to exclude any one or more of the Contracts or Permits pursuant to this Section 6.5 (it being understood that the Purchaser shall not be required to make any payments for Cure Costs or any other amount for any Excluded Contract). Notwithstanding any provision in this Agreement to the contrary, the Purchaser shall not be required to purchase, acquire or assume any Assumed Contract or Permit (or any Liabilities thereunder) a true and complete copy of which has not been provided by the Seller to Purchaser and any such Contract shall be an Excluded Contract. Notwithstanding any provision in this Agreement to the contrary, from and after the date hereof through the Closing Date, the Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of law) to reject,

repudiate, terminate or disclaim any Assumed Contract without the prior written consent of the Purchaser, such consent not to be unreasonably withheld.

6.6. Cure. The Purchaser shall, at or prior to the Closing and in accordance with the Sale Approval Order and the terms of this Agreement, cure any and all defaults under the Assumed Contracts, which defaults are required to be cured under the Bankruptcy Code, so that such Assumed Contracts may be assumed by the Seller and assigned to the Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code. The Purchaser shall be responsible for all Cure Costs required herein to be paid in connection with the assignment to the Purchaser of all Assumed Contracts and such cure payments shall not result in corresponding reductions in the amount payable by the Purchaser hereunder. To the extent necessary to obtain authorization therefore or otherwise as required by the Bankruptcy Court, the Purchaser shall promptly upon request provide evidence to the non-debtor party to the Assumed Contracts of Purchaser's financial condition in order to satisfy the requirement under section 365 to provide adequate assurance of future performance of each of the Assumed Contracts. The Seller, prior to the Closing, shall use commercially reasonable efforts, including the filing and prosecution of any and all appropriate proceedings in the Bankruptcy Court, to establish the amount of the Cure Costs, if any, for each Assumed Contract.

6.7. Competing Bids. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the transaction contemplated by this Agreement is consummated, the Seller is permitted to cause its Representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to the Purchaser and its Affiliates, agents and Representatives) in connection with any sale or other disposition of the Transferred Assets. In addition, the Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Transferred Assets and perform any and all other acts related thereto that are required under the Bankruptcy Code or other applicable Law, including, supplying information relating to the Business and the assets of the Seller to prospective purchasers. The parties agree that the Seller shall be entitled to consider and enter into one or more transactions in connection with a Competing Bid consistent with their fiduciary obligations as debtors in possession in the Bankruptcy Case. Seller and Purchaser acknowledge that this Agreement is the culmination of an extensive process undertaken by Seller to identify and negotiate a transaction with a bidder who was prepared to pay the highest or best purchase price for the assets of Seller while assuming or otherwise satisfying certain liabilities, among other material considerations, in order to maximize value and certainty for Seller's constituents. The overbid provisions and related bid protections are designed to facilitate a full and fair process designed to maximize the value of the Transferred Assets for the benefit of Seller's stakeholders.

## ARTICLE VII COVENANTS

7.1. Operation of the Business.

(a) Subject to any restrictions and obligations imposed by the Bankruptcy Court and as otherwise contemplated by this Agreement, the Seller will not engage in any practice, take any action or enter into any transaction outside the ordinary course of business between the date hereof and the Closing Date. In particular, between the date hereof and the Closing Date, without the prior written consent of the Purchaser, not to be unreasonably withheld, the Seller shall not, in respect of the Transferred Assets or the operation of the Business:

(i) incur any material Liability (other than connection with the performance of Assumed Contracts) that would be or would increase an Assumed Liability as of or subsequent to the Closing;

(ii) lease, license, surrender, relinquish, convey, assign, transfer, sell or otherwise dispose of any material portion of the Transferred Assets or any interest therein, other than dispositions in the ordinary course of business;

(iii) abandon any material rights under any of the Material Contracts, terminate, amend, modify or supplement the material terms of any Material Contract, or fail to honor or perform a material portion of the Material Contracts (including, without limitation, failing to timely pay any residuals); subject to Encumbrances (other than Permitted Encumbrances) any of the Transferred Assets, except as would not result in any Liability that would be or would increase an Assumed Liability as of or subsequent to the Closing or as would be remedied by the Sale Approval Order;

(iv) enter into any employment, severance or similar Contract with any officer, director or employee of Seller unless the Purchaser has provided prior written notice that it does not intend to offer employment to such employee; provided Seller may provide bonuses to officers, directors or employees for the purpose of retaining such individuals between the date hereof and the Closing Date;

(v) other than in accordance with the terms of this Agreement, terminate any officer, director or employee if such termination would constitute an "employment loss" under the WARN Act or any similar state law;

(vi) make or rescind any material Tax election or take any material Tax position (unless required by law) or file any Tax Return or change its fiscal year or financial or Tax accounting methods, policies or practice, except in each case as would not reasonably be expected to materially affect the Purchaser;

(vii) institute, settle or agree to settle any litigation, action or proceeding before any court or Governmental Authority with any counterparty to an Assumed Contract, unless each such settlement involves an amount less than \$25,000 and in the aggregate all such settlement in the aggregate involve an amount less than \$100,000;

(viii) modify, rescind or terminate a material Permit relating to the Transferred Assets;

(ix) dispose of or fail to keep in effect any material rights in, to, or for the use of any of the Transferred IP, except for rights which expire or terminate in accordance with their terms; or

(x) enter into any Contract to do any of the foregoing.

(b) Notwithstanding anything in this Agreement to the contrary, this Section 7.1 shall not prevent the Seller from rejecting Contracts that are not Assumed Contracts. Neither Purchaser nor any of its Affiliates shall be liable for any claims arising from the rejection of such Contracts by Seller.

(c) Seller shall give prompt notice to Purchaser of (i) any written notice of any material violation of Law applicable to any Seller and (ii) the commencement, to Seller's Knowledge, of any investigation or review by any Governmental Body with respect to the Business.

7.2. Confidentiality. Until the Closing Date, the Purchaser shall hold in confidence, and shall cause its respective Affiliates and Representatives to hold in confidence, all Confidential Information obtained by any of them from the Seller or its Affiliates or Representatives relating to such party or the transactions contemplated hereby. Notwithstanding the foregoing, the Purchaser may disclose such Confidential Information: (a) to the extent that such disclosure was previously authorized in writing by the Seller; (b) to any Governmental Body, with valid and competent jurisdiction thereof, if the Purchaser is directed to disclose (or reasonably believes that it is appropriate in furtherance of the transactions contemplated hereby) such Confidential Information to and by such Governmental Body, provided that the Purchaser shall provide written notice of such disclosure to the Seller; (c) to the Purchaser's Affiliates and Representatives who have a need to know such information solely for purposes of assisting in regard to this Agreement and the transactions contemplated hereby, and who are advised of the confidentiality obligations hereunder; (d) to the extent that disclosure is required under any applicable Law. Except as otherwise set forth herein, the Purchaser shall not disclose or make use of, and the Purchaser shall cause its respective Affiliates and Representatives not to disclose or make use of, Confidential Information without the prior written consent of Seller. In the event that this Agreement is terminated, Purchaser shall, and shall cause its respective Affiliates and Representatives to, promptly return to the Seller or destroy all documents (including all copies thereof) containing Confidential Information Seller or its Affiliates or Representatives; provided, however, that copies thereof may be retained (and would remain subject to the terms hereof) to the extent they reside on hard drives or are otherwise required by contract or law to be retained. The obligations contained in this Section 7.2 are in addition to and independent of the obligations contained in the Confidentiality Agreement.

7.3. Expenses. Except as otherwise specifically provided herein, the Purchaser and the Seller shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of their Representatives. For the avoidance of doubt, as between the Purchaser and the Seller, the Seller shall bear all of the costs of administration of any Bankruptcy Case.



7.4. Public Announcements. No party to this Agreement shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without prior written approval of the other party, which approval shall not be unreasonably withheld, conditioned or delayed, unless such disclosure is required by applicable Law. The parties shall cooperate, using commercially reasonable efforts, as to the timing and contents of any such announcement, including any such announcement required by applicable Law.

7.5. Access to Information. From the date hereof until the Closing, upon reasonable notice, the Seller shall (i) afford the Representatives of the Purchaser reasonable access, during normal business hours, to the offices, plants, warehouses, properties, books and records of the Seller relating to the Business, and (ii) furnish to the Representatives of the Purchaser such additional financial and operating data and other information regarding the operations of the Business as the Purchaser may from time to time reasonably request; provided that the Purchaser shall be bound by and shall comply with the terms of the Confidentiality Agreement and this Agreement with respect to the Purchaser's ability to use or disclose any such information. The Seller shall facilitate the Purchaser's contact and communication with the key employees and personnel of the Seller, suppliers, vendors and distributors of the Business, all as requested upon reasonable notice by the Purchaser to the Seller and during normal business hours after the date hereof. The Seller shall facilitate the Purchaser's contact and communication with the customers, independent sales organizations, and merchants of the Business; provided that (x) Purchaser shall give Seller 24 hours' notice prior to meeting with any such customer, independent sales organization, or merchant; (y) Purchaser shall afford the Seller opportunity to be included in any contact or communication with such customer, independent sales organization, or merchant (including allowing Seller the opportunity to attend any in-person meeting, participate by phone in any telephonic meeting, and be copied on all emails); and (z) any such communication or contact shall be designed to maintain the value of the Business. The Seller shall direct its employees and personnel to cooperate with the Purchaser in connection with the foregoing. The Seller will use commercially reasonable efforts for thirty (30) days after the Sale Approval Order is entered, to reject any Contracts related to any merchants, independent sales organizations or customers as directed by Purchaser. Seller and Purchaser agree that they will enter into and continue good faith discussions concerning the Business, including, but not limited to, personnel policies and procedures, and other operational matters relating to the Business.

7.6. Regulatory and Other Authorizations; Consents.

(a) Each of the parties hereto shall use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary under any Law or otherwise to consummate and make effective the transactions contemplated by this Agreement, (ii) obtain any consents, Permits, waivers, approvals, authorizations or orders required to be obtained or made in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and (iii) make all filings and give any notice, and thereafter make any other submissions either required or reasonably deemed appropriate by each of the parties, with respect to this Agreement and the transactions contemplated hereby required under any Law

(including promptly making all necessary filings, and thereafter making any other required submissions, with respect to this Agreement required under the HSR Act).

(b) The parties hereto shall work closely and cooperatively and consult with each other in connection with the making of all such filings and notices, including by providing copies of all such documents to the non-filing party and its advisors a reasonable period of time prior to filing or the giving of notice. The Purchaser shall pay, or reimburse the Seller, for all filing fees and other charges arising out of actions taken under this Section 7.6 (including the fees relating to the filing under the HSR Act by both parties).

(c) If necessary, Purchaser and Seller shall (a) make or cause to be made all filings required of each of them or any of their respective subsidiaries or Affiliates under the HSR Act or other Antitrust Laws with respect to the transactions contemplated hereby as promptly as practicable but in no event later than five (5) Business Days after the date hereof, (b) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents, or other materials received by each of them or any of their respective subsidiaries from Federal Trade Commission (the “FTC”), the Antitrust Division of the United States Department of Justice (the “Antitrust Division”) or any other Governmental Body in respect of such filings or such transactions, and (c) cooperate with each other in connection with any such filing (including, to the extent permitted by applicable Law, providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other Governmental Body under any Antitrust Laws with respect to any such filing or any such transaction. Each such party shall use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable Law in connection with the transactions contemplated by this Agreement. Each such party shall promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto shall independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate. Subject to applicable Law, the parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. The Seller and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 7.6 as “outside counsel only.” Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (the Seller or the Purchaser, as the case may be).

(d) Each of the Purchaser and Seller shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the transactions contemplated by this Agreement under the HSR Act, the



Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the “Antitrust Laws”). In connection therewith, if any legal proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement is in violation of any Antitrust Law, each of the Purchaser and the Seller shall cooperate and use its commercially reasonable efforts to contest and resist any such legal proceeding, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, or restricts consummation of the transactions contemplated by this Agreement, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless, by mutual agreement, the Purchaser and the Seller decide that litigation is not in their respective best interests. Each of the Purchaser and the Seller shall use commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement. In connection with and without limiting the foregoing, each of the Purchaser and the Seller agrees to use commercially reasonable efforts to take promptly any and all steps necessary to avoid or eliminate each and every impediment under any Antitrust Laws that may be asserted by any Federal, state, local and non-United States antitrust or competition authority, so as to enable the parties to close the transactions contemplated by this Agreement as expeditiously as possible, including committing to or effecting, by consent decree, hold separate orders, trust or otherwise the sale or disposition of such of its assets or businesses as are required to be divested in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding, that would otherwise have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement.

7.7. Further Action. Each of the parties hereto shall execute such documents and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby; provided that the Seller shall not be obligated to incur or be liable for any expense, cost or obligation in connection therewith. From time to time after the Closing, the Seller shall, at the Purchaser's expense, prepare all documents and take all actions reasonably necessary to further the sale and assignment of the Transferred IP to the Purchaser hereunder. At the Closing, the Seller shall turn over actual possession and control of all of the Transferred Assets to the Purchaser by taking such action that may be reasonably requested by the Purchaser to effect such transfer of possession and control. To the extent that any Contract or Permit to be transferred to the Purchaser pursuant to the terms hereof is not capable of being transferred to the Purchaser (after giving effect to the Sale Approval Order) without the consent of a third Person, or if such transfer or attempted transfer would constitute a breach thereof, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a transfer or an attempted transfer thereof prior to the time at which all consents necessary for such transfer will have been obtained unless an order of the Bankruptcy Court effects such transfer without consent. At the time of Closing, and subject to the approval of the Bankruptcy Court pursuant to the Sale Approval Order or such other order of the Bankruptcy Court and/or the consent of the applicable counterparties to the extent necessary to effect the assignment in any case, the Seller shall

assume (to the extent required) and then assign to the Purchaser and the Purchaser shall assume from the Seller all the Assumed Contracts. If a consent of any Person which is required in order to assign any Transferred Assets is not obtained prior to the Closing, or if an attempted assignment would be ineffective or would adversely affect the ability of Seller to convey its interest in question to the Purchaser, the Seller will cooperate with the Purchaser in good faith and in a commercially reasonable manner in any lawful arrangement reasonably requested by Purchaser to provide that the Purchaser shall receive the interests of Seller in the benefits of such Transferred Asset. If any consent is not obtained before the Closing and the Closing is nevertheless consummated, Seller agrees to continue to cooperate with the Purchaser in good faith and in a commercially reasonable manner to obtain all such consents as have not been obtained prior to such date. To the extent that any insurance policies owned or controlled by Seller covers any loss, Liability, claim, damage or expense resulting from, arising out of, based on or relating to occurrences prior to the Closing with respect to the Business and permits claims to be made thereunder with respect to such losses, Liabilities, claims, damages or expenses after the Closing, the Seller shall use commercially reasonable efforts to obtain an insurance certificate naming the Purchaser as an additional insured thereunder. The Seller grants to the Purchaser access to the Seller's administrative contact for the Seller's domain names and agrees to make such person available to the Purchaser and its representatives and agents to effectuate the transfer to the Purchaser of the domain names which constitute a Transferred Asset hereunder. From and after the Closing, (i) Seller shall promptly forward to Purchaser any and all payments received by Seller from customers or any other Persons, which constitute part of the Transferred Assets and (ii) Purchaser shall promptly forward to Seller any and all payments received by Purchaser from customers or any other Persons, which constitute part of the Excluded Assets.

7.8. Books and Records.

(a) If, in order to properly prepare documents required to be filed with Governmental Bodies or its financial statements, it is necessary that either party hereto or any successors thereto be furnished with additional information relating to the Business, the Transferred Assets or the Assumed Liabilities, and such information is in the possession of the other party hereto or any successor thereto or any of their respective Affiliates, such party agrees to use commercially reasonable efforts to furnish or cause to be furnished such information to such other party, at the reasonable cost and expense of the party being furnished such information.

(b) For a period of six years after the Closing Date (or such longer period as may be required by any Governmental Body or ongoing Claim):

(i) The Purchaser shall not dispose of or destroy any of the Books and Records. If the Purchaser wishes to dispose of or destroy such Books and Records after that time, or if the Seller wishes at any time to destroy any business records and files of the Business held by it, the party proposing such disposition or destruction shall first give 30 days' prior written notice to the other party, and such other party shall have the right, at its option and expense, upon prior written notice to the notifying party within such 30 day period, to take possession of the records and files within 15 days after the date of

such notice. The Purchaser shall bear the costs associated with preserving these Books and Records.

(ii) Each party (the “Requested Party”) shall allow the other party (the “Requesting Party”) and any of its Representatives reasonable access to all employees and files of the Requested Party relating to the Business for the period preceding the Closing Date which are reasonably required by the Requesting Party in anticipation of, or preparation for, any existing or future legal proceeding involving the requesting party or any of its Affiliates or tax return preparation, during regular business hours and upon reasonable notice at the Requested Party’s principal place of business or at any location where such records are stored, and the Requesting Party shall have the right, at its own expense, to make copies of any such records and files; provided that any such access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of the Requested Party’s business or operations and shall be subject to reasonable confidentiality limitations.

#### 7.9. Tax Matters.

(a) Sales, Use and Other Transfer Taxes. The Purchaser shall provide the Seller with resale exemption certificates as is appropriate. Seller and Purchaser shall each be responsible for fifty-percent of all of the excise, sales, value added, use, registration, stamp, franchise, transfer and similar Taxes incurred in connection with the transactions contemplated by this Agreement and which are not otherwise exempt pursuant to the applicable sections of the Bankruptcy Code. The parties hereto agree to cooperate in the filing of all necessary documentation and all Tax Returns with respect to all such Taxes, including any available pre-sale filing procedure.

(b) Cooperation. The parties hereto shall cooperate with each other and with each other's respective Representatives, including accounting firms and legal counsel, in connection with the preparation or audit of any Tax Return(s) and any Tax claim or litigation in respect of the Transferred Assets and the Assumed Liabilities that include whole or partial taxable periods, activities, operations or events on or prior to the Closing Date, which cooperation shall include making available employees, if any, for the purpose of providing testimony and advice, or original documents, or either of them.

(c) Bulk Sales Law. The Purchaser hereby waives compliance by the Seller with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Transferred Assets to the Purchaser.

7.10. Notification of Certain Matters. Until the Closing, each party hereto shall promptly notify the other party in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably expected to result in any of the conditions set forth in Article VIII or IX of this Agreement becoming incapable of being satisfied.

7.11. Required Notices. Seller shall give prompt notice to the Purchaser, of the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which would be reasonably likely to cause any condition precedent herein not to be satisfied on or prior to the Closing. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section shall not (x) be deemed to amend or supplement any of the Disclosure Schedules contemplated hereby, (y) be deemed to cure any breach of any representation, warranty covenant or agreement or to satisfy any condition or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice. Nothing in this Agreement, including this Section 7.11, shall imply that the Seller is making any representation or warranty as of any date other than the date of this Agreement and the Closing Date.

7.12. Use of Name. From and after the Closing, the Seller agrees not to use any trademarks or trade names included within the Transferred Assets or any names reasonably similar thereto after the Closing Date in connection with any business related to, competitive with, or an outgrowth of, the business conducted by the Seller on the date of this Agreement. The Purchaser agrees to grant a license for a period not to exceed fifteen (15) days to the Seller upon terms reasonably satisfactory to the Purchaser to use the "Cynergy" or "Prosperity Plus" name solely in connection with the Bankruptcy Case, and the winding down of the Business. No later than fifteen (15) days following the Closing, Seller shall, and shall cause each of its Affiliates to, file amendments with the appropriate Governmental Bodies changing its corporate name, "doing business as" name, trade name, and any other similar corporate identifier to one that does not contain the name of any of the Transferred IP, the names "Cynergy," "Property Plus" or any similar or confusing name.

7.13. Employment.

(a) As of the Closing, Purchaser shall in its discretion offer employment to the employees of the Seller who remain employed immediately prior to the Closing whom Purchaser desires to hire to commence immediately following the Closing. The employees who become employees of the Purchaser are referred to collectively herein as the "Rehired Employees". The Purchaser shall make offers of employment to each existing employee of the Seller with the exception of no more than twenty-five employees.

(b) The employment of the Rehired Employees by the Purchaser shall be on such terms of employment as Purchaser may determine, including, salaries and wages, health, welfare and other benefits, which may be different than prior to the Closing. The Purchaser may, but shall not be required to, (i) credit the Rehired Employees with their service with the Seller for purposes of seniority, eligibility and vesting under the Purchaser benefit plans and programs, (ii) credit the Rehired Employees with their accrued but unused vacation with the Seller and (iii) credit the Rehired Employees with accrued but unused sick days.

7.14. Assumed Liabilities. Subsequent to the Closing, upon the terms and subject to the conditions hereof and the Sale Approval Order, the Purchaser agrees to pay perform and discharge the Assumed Liabilities as they become due, including, without limitation, the discharge and performance when due of each and every obligation of the Seller to be satisfied or performed on or after the Closing Date, under the Assumed Contracts.

7.15. Non-Competition; Non-Solicitation.

(a) As an inducement for the Purchaser to enter into this Agreement and in consideration for the consideration to be paid under this Agreement to the Seller, Seller agrees that from and after the Closing until the date that is the five (5) year anniversary of the Closing Date, within the United States of America or anywhere else in the world in which the Purchaser operates or has customers, Seller will not, directly or indirectly, engage or invest in, own, manage, operate, finance, control or participate in the ownership, management, operation, financing, or control of, be associated with, or in any manner connected with, or render services or advice to any business that designs, distributes, sources, markets, sells or provides products or services similar to the products or services manufactured, designed, distributed, sourced, marketed, sold or provided by the Business currently or as of the Closing Date or attempt to induce any customer, supplier, licensee or business relation of the Purchaser or the Business to cease doing business with the Purchaser or the Business.

(b) For a period of five (5) years from and after the Closing: (a) Seller will not, directly or indirectly, (i) hire any employee of the Purchaser or any of its Affiliates, or (ii) in any way interfere with the relationship between the Purchaser or any of its Affiliates and any employees thereof.

(c) The parties hereto acknowledge that Section 7.15 applies only to the Seller and not to any other Person (including any current or former equity holder, officer, director or employee of Seller); provided this acknowledgement does not affect any separate agreement of such Persons, if any, or diminish any other right that Purchaser may have against such Person.

7.16. Purchaser Financing. Prior to the Closing, Purchaser shall (i) use its commercially reasonable efforts to obtain financing necessary to complete the transactions contemplated hereby pursuant to the Commitment Letters in accordance with the terms set forth therein or pursuant to alternate financing arrangements in no lesser aggregate principal amount and otherwise on substantially comparable terms or terms no less favorable to Purchaser in any material respect (including the absence of any additional material closing conditions) and (ii) furnish promptly to Seller such information, and copies of all documents, concerning or relating to Purchaser's funding for, or Purchaser's ability to consummate, the transactions contemplated by this Agreement as Seller reasonably may request from time to time in order to keep Seller reasonably informed of the status of Purchaser's arrangement of such financing. Notwithstanding the foregoing, (x) Purchaser shall immediately notify Seller upon the termination or material modification of the Debt Term Sheet provided to Seller and (y) Purchaser shall not agree to any amendment to a Commitment Letter to amend any material term (including amounts thereunder and the Closing conditions therein) without the prior written consent of Seller which shall not be unreasonably withheld or delayed.

7.17. Covenant Not to Sue. From and after the Closing, the Seller shall not sue or otherwise bring or initiate a Claim, and shall not permit any current lender or Person financed by a current lender to bring or initiate a derivative Claim on behalf of the Seller, in each case against Andres Ordonez with respect to the Excluded Asset provided for in Section 2.2(p); provided, however, the foregoing covenant shall be of no further force and effect and shall

otherwise not apply to Seller or the lenders referenced herein in the event of a breach by Andres Ordonez under the agreement between Andres Ordonez and the Seller and as set forth as Exhibit H.

ARTICLE VIII  
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by the Purchaser:

8.1. Representations and Warranties; Covenants. The representations and warranties of the Seller contained in this Agreement that are limited or qualified by “Material Adverse Effect” shall be true and correct both as of the date of this Agreement and as of the Closing, other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such date. All other representations and warranties of the Seller contained in this Agreement shall be true and correct both as of the date of this Agreement and as of the Closing, other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such date, in all material respects, taken as a whole (without giving effect to any limitation or qualification as to “materiality” (including the term “material”) set forth therein), except where such failure to be true and correct has been or will be cured, remedied or otherwise accounted for pursuant to the Sale Approval Order. The covenants and agreements contained in this Agreement to be complied with by the Seller at or before the Closing shall have been complied with in all material respects. The Purchaser shall have received a certificate of the Seller (the “Seller’s Certificate”) to such effect signed by a duly authorized officer thereof, and certifying (a) copies of resolutions of the board of managers (or equivalent governing body) of Seller authorizing and approving the execution and delivery of this Agreement and the transactions contemplated hereby and the performance by Seller of its obligations hereunder and thereunder, certified by an officer of Seller, and (b) copies of the certificate of formation (or equivalent governance documents) of Seller.

8.2. No Order. No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of (a) making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions or (b) causing such transactions to be rescinded following the Closing (in each instance, unless satisfied or resolved or preempted by the Sale Approval Order). All terminations or expirations of waiting periods imposed by any Governmental Body necessary for the transaction contemplated by this Agreement, if any, shall have occurred.

8.3. Bankruptcy Condition. The Sale Approval Order shall have been entered by the Bankruptcy Court. If the Sale Approval Order shall have been appealed from, the Purchaser agrees to consummate the transaction notwithstanding the pendency of such appeal, provided that no stay thereof shall be in effect. The Bankruptcy Case shall not have been dismissed or converted to a proceeding under chapter 7 of the Bankruptcy Code and no trustee or



examiner shall have been appointed. The Bankruptcy Court shall have authorized the assumption and assignment of the Assumed Contracts and the Assumed Contracts shall have been actually assumed and assigned to Purchaser such that the Assumed Contracts will be in full force and effect from and after the Closing. The Sale Approval Order shall have become a Final Order and the Cure Costs having been finally fixed.

8.4. Closing Documents. The Seller shall have delivered to the Purchaser on the Closing Date the documents required to be delivered pursuant to Section 10.2.

8.5. Debt Term Sheet. Purchaser shall have received the funds in the amount of \$32,000,000 as contemplated by, and in accordance with, the Debt Term Sheet.

8.6. No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect.

8.7. Cure Costs. The Purchaser shall have received written confirmation sufficient to establish that the aggregate Cure Costs do not exceed \$67,000,000.

#### ARTICLE IX CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions, any one or more of which (to the extent permitted by applicable Law) may be waived by the Seller:

9.1. Representations and Warranties; Covenants. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct both as of the date of this Agreement and as of the Closing, other than such representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to “materiality” (including the terms “material” and “material adverse effect”) set forth therein) would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement. The covenants and agreements contained in this Agreement to be complied with by the Purchaser at or before the Closing shall have been complied with in all material respects. The Seller shall have received a certificate of the Purchaser (the “Purchaser’s Certificate”) to such effect signed by a duly authorized officer thereof.

9.2. No Order. No Governmental Body shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions and which is not satisfied or resolved or preempted by the Sale Approval Order. All terminations or expirations of waiting periods imposed by any Governmental Body necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

9.3. Bankruptcy Condition. The Sale Approval Order shall have been entered by the Bankruptcy Court. The Bankruptcy Case shall not have been dismissed or converted to a proceeding under chapter 7 of the Bankruptcy Code and no trustee or examiner shall have been appointed. The Bankruptcy Court shall have authorized the assumption and assignment of the Assumed Contracts and the Assumed Contracts shall have been actually assumed and assigned to Purchaser such that the Assumed Contracts will be in full force and effect from and after the Closing with non debtor parties being barred and enjoined from asserting against Purchaser, among other things, defaults, breaches or claims of pecuniary losses existing as of the Closing or by reason of the Closing. The Sale Approval Order shall have become a Final Order.

9.4. Payment. The Purchaser shall have paid the Purchase Price in accordance with Section 3.1 hereof and shall have paid the fees and expenses of the Escrow Agent pursuant to the Escrow Agreement and shall have delivered joint written instructions to pay the Deposit to the Seller.

9.5. Closing Documents. The Purchaser shall have delivered to the Seller on the Closing Date the documents and payments required to be delivered by it pursuant to Section 10.3.

## ARTICLE X CLOSING

10.1. Closing. Subject to the terms and conditions of this Agreement and the Sale Approval Order, the sale and purchase of the Transferred Assets and the assignment and assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the “Closing”) to be held at the offices of Nixon Peabody LLP, 437 Madison Avenue, New York, NY 10022 at 10:00 A.M., New York time, on the third (3rd) Business Day following the satisfaction or waiver of all conditions to the obligations of the parties set forth in Article VIII and IX (other than those conditions which by their nature can only be satisfied at the Closing), or at such other place or at such other time or on such other date as the Seller and the Purchaser may mutually agree upon in writing (the day on which the Closing takes place being the “Closing Date”).

10.2. Deliveries by the Seller. At the Closing, unless otherwise waived in writing by the Purchaser, the Seller shall deliver or cause to be delivered to the Purchaser:

(a) a duly executed Bill of Sale substantially in the form of Exhibit A hereto;

(b) a duly executed counterpart to the Assignment and Assumption Agreement substantially in the form of Exhibit B hereto;

(c) duly executed Assignments of Intangible Property substantially in the form of Exhibit C hereto;

(d) the duly executed Subordinated Debt Loan Agreements implementing the terms of the Junior Indebtedness as set forth on Exhibit G;



- (e) a duly executed Seller's Certificate pursuant to Section 8.1;
- (f) a receipt for the payment of the Purchase Price;
- (g) a certified copy of the Sale Approval Order, as entered by the Bankruptcy Court;
- (h) a certification pursuant to Treasury Regulations Section 1.1445-2(b)(2)(iv)(B) that the Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate or disregarded entity; and
- (i) such other customary documents and instruments of transfer, assumptions and filings as may be reasonably required to be delivered by Seller to consummate the transactions contemplated hereby or otherwise give effect to this Agreement.

10.3. Deliveries by Purchaser. At the Closing, unless otherwise waived in writing by the Seller, the Purchaser shall deliver or cause to be delivered to the Seller:

- (a) an amount equal to the Purchase Price by (i) wire transfer of immediately available funds to account (or accounts) and (ii) the delivery of promissory notes representing the Subordinated Debt Consideration issued in the name of the Seller, in each case as designated by the Seller at least two (2) Business Days prior to the Closing Date;
- (b) a duly executed counterpart to the Assignment and Assumption Agreement substantially in the form of Exhibit B hereto;
- (c) the duly executed Subordinated Debt Loan Agreements reasonably acceptable to Seller implementing the terms of the Junior Indebtedness as set forth on Exhibit G;
- (d) a duly executed Purchaser's Certificate pursuant to Section 9.1; and
- (e) such other customary documents and instruments of transfer, assumptions and filings as may be reasonably required to be delivered by Purchaser to consummate the transactions contemplated hereby or otherwise give effect to this Agreement.

10.4. Allocation of Proceeds. The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for federal income tax purposes) shall be allocated among the Assets in accordance with the allocation set forth on Schedule 10.4 to be agreed upon by the Purchaser and the Seller and attached hereto on or before the Closing Date. The parties agree to file (or cause to be filed) (i) all required federal Forms 8594, Asset Acquisition Statement under Section 1060, and (ii) all other Tax Returns (including amended Tax Returns and claims for refund) in a manner consistent with such allocation of the Purchase Price described herein. The parties agree to refrain from taking any position that is inconsistent with such allocation, and to use their commercially reasonable efforts to sustain such allocation in any subsequent Tax audit or Tax dispute.

ARTICLE XI  
TERMINATION; TERMINATION PAYMENT

11.1. Termination Prior to Closing. Notwithstanding anything herein to the contrary, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned, at any time prior to the Closing, upon notice by the terminating party to the other party:

- (a) by the mutual written consent of the Seller and the Purchaser;
- (b) by either the Seller or the Purchaser if the Closing shall not have occurred prior to the date sixty (60) days following the date hereof if the delay is not related to the filings made under the HSR Act, otherwise one hundred fifty (150) days following the date hereof (the "Termination Date"); provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such date;
  - (c) (i) by the Seller, if the Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Article IX, (B) has not been cured within ten (10) Business Days following delivery of written notice of such breach or failure to perform, and (C) has not been waived by the Seller; or (ii) by the Purchaser, if the Seller breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (X) would give rise to the failure of a condition set forth in Article VIII, (Y) has not been cured within ten (10) Business Days following delivery of written notice of such breach or failure to perform, and (Z) has not been waived by the Purchaser;
  - (d) (i) by the Seller, if any of the conditions set forth in Article IX shall have become incapable of fulfillment prior to the Termination Date, or (ii) by the Purchaser, if any of the conditions set forth in Article VIII shall have become incapable of fulfillment prior to the Termination Date; provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(d) shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the cause of the failure of such condition to be satisfied on or prior to the Termination Date;
  - (e) by either the Seller or the Purchaser, if the Bankruptcy Court approves a sale, transfer or other disposition by the Seller of all or substantially all of the Transferred Assets of the Seller relating to the Business or all or a substantial part of any of the Transferred Assets in connection with a Competing Bid;
  - (f) by either the Seller or the Purchaser, if Seller shall announce any plan of reorganization or liquidation other than a plan that contemplates a sale of all or substantially all of the assets of the Business to Purchaser, or if Seller shall withdraw or seek to withdraw its motion seeking approval of the transactions contemplated hereby;

(g) by either the Seller or the Purchaser, if the Case is converted from a case under Chapter 11 of the Bankruptcy Code to a case under chapter 7 of the Bankruptcy Code without the prior written consent of Purchaser; or

(h) by the Purchaser, if the Bidding Procedures Order (A) shall not have been entered by the Bankruptcy Court on or prior to the twentieth (20<sup>th</sup>) day after the date hereof or (B) shall fail to be in full force and effect after entry or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of Purchaser; or, by the Purchaser, if this Agreement shall not have been approved by the Bankruptcy Court on or prior to the forty-fifth (45<sup>th</sup>) day after the date hereof.

#### 11.2. Effect of Termination; Remedies.

(a) In the event of termination of this Agreement pursuant to Section 11.1, this Agreement shall have no effect and no party hereto shall have any liability to the other parties hereto or their respective Affiliates, directors, officers, employees, Representatives or shareholders, except for the obligations of the parties to this Agreement contained in this Section 11.2, Section 7.4, Article XII and the Confidentiality Agreement, and except that nothing in this Agreement will relieve any party from liability for fraud or any intentional breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such termination, and provided that nothing in this Agreement shall prevent Seller from seeking specific performance of the Agreement and/or the Equity Commitment Letter.

(b) If this Agreement is terminated pursuant to Section 11.1(a) or Section 11.1(d)(i) (subject to Section 11.2(d), for any reason other than the condition set forth in Section 9.3 being incapable of fulfillment prior to the Termination Date), then, within two Business Days after such termination, the Deposit, together with any interest accrued thereon, shall be returned to Purchaser in accordance with the terms of the Escrow Agreement.

(c) If this Agreement is terminated pursuant to Section 11.1(b), Section 11.1(d)(i) (to the extent that such termination results from the condition set forth in Section 9.3 being incapable of fulfillment prior to the Termination Date), Section 11.1(d)(ii), Section 11.1(g), or Section 11.1(h), then, within two (2) Business Days after such termination (i) the Deposit, together with any interest accrued thereon, shall be returned to Purchaser in accordance with the terms of the Escrow Agreement and (ii) Seller shall pay to Purchaser the Expense Reimbursement; provided, however, if this Agreement is terminated pursuant to Section 11.1(g) and following such termination a subsequent transaction is consummated in which Seller sells or disposes of a majority of its assets for value, Seller shall pay to Purchaser an amount equal to the Break-Up Fee, simultaneously with the consummation thereof.

(d) If this Agreement is terminated pursuant to Section 11.1(c)(i), then, within two (2) Business Days after such termination, the Deposit, together with any interest accrued thereon, shall be delivered to Seller in accordance with the terms of the Escrow Agreement.

(e) If this Agreement is terminated pursuant to Section 11.1(c)(ii) then, within two (2) Business Days after such termination after such termination, (i) the Deposit, together with any interest accrued thereon, shall be returned to Purchaser in accordance with the terms of the Escrow Agreement and (ii) Seller shall pay to Purchaser the Break-Up Fee and the Expense Reimbursement.

(f) If this Agreement is terminated pursuant to Section 11.1(e) or Section 11.1(f) then: (i) upon the earlier of (A) sixty (60) days after such termination or (B) the consummation of any such sale, transfer, disposition, plan or liquidation, Seller shall pay to Purchaser the Break-Up Fee and the Expense Reimbursement; and (ii) within two (2) Business Days of such termination, the Deposit, together with any interest accrued thereon, shall be returned to Purchaser in accordance with the terms of the Escrow Agreement.

(g) The parties agree that the Purchaser would be substantially damaged in any event requiring the payment of the Break-Up Fee, that the precise amount of such damage would be impossible or difficult to determine, and that the amount of the Break-Up Fee represents a reasonable estimate of such damages. Any payment of the Break-Up Fee would constitute liquidated damages and not a penalty. The provisions herein as to the payment of the Break-Up Fee and the Expense Reimbursement were material inducements to the Purchaser entering into this Agreement. Any payments of the Breakup Fee or Expense Reimbursement under this Section 11.2 shall be made by Seller by wire transfer of immediately available funds to an account designated in writing by Purchaser.

11.3. Exclusive Remedy. The Purchaser's sole and exclusive remedies for any claim arising out of or in connection with this Agreement shall be termination and payment as set forth in this Article XI absent fraud or intentional breach.

11.4. Survival After Termination. Notwithstanding anything in this Agreement to the contrary, the provisions of Sections 7.2, this Article XI and Article XII shall survive any termination of this Agreement.

## ARTICLE XII MISCELLANEOUS

12.1. Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by all of the parties to this Agreement.

12.2. Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by facsimile or other wire transmission (with answer back confirmation of such transmission), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

If to the Seller, addressed as follows:

Cynergy Data, LLC  
30-30 47<sup>th</sup> Avenue, 9<sup>th</sup> Floor  
Long Island City, NY 11101  
Attn: Stephen A. Aschettino

Fax: (917) 386-2561

with a copy to:  
Nixon Peabody LLP  
437 Madison Avenue  
New York, New York 10022  
Attn: Michael P. Murphy  
Bradley C. Vaiana  
Fax: (866) 261-9822

If to the Purchaser, addressed as follows:

The ComVest Group  
CityPlace Tower  
525 Okeechobee Blvd., Suite 1050  
West Palm Beach, Florida 33401  
Attn: Daniel Nenadovic

Fax: (561) 727-2100

with a copy to:

Akerman Senterfitt  
One Southeast Third Avenue  
Suite 2500  
Miami, Florida 33131  
Attn: Carl D. Roston  
Martin G. Burkett

Fax: (305) 349-4762

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

12.3. Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

12.4. Counterparts and Execution. This Agreement may be executed in two (2) or more counterparts (delivery of which may be by facsimile or via email as a portable document format (.pdf)), each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one (1) of such counterparts.

12.5. Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Schedules hereto are for convenience only and shall not be deemed part of this Agreement.

12.6. Applicable Law and Jurisdiction.

(a) This Agreement and all Claims with respect thereto shall be governed by and construed in accordance with the federal bankruptcy law, to the extent applicable, and, where state law is implicated, the laws of the State of New York without regard to any conflict of laws rules thereof that might indicate the application of the laws of any other jurisdiction.

(b) The Purchaser and the Seller irrevocably and unconditionally consent to submit to the jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating hereto except in the Bankruptcy Court).

(c) Any and all service of process and any other notice in any such Claim shall be effective against any party if given personally or by registered or certified mail, return receipt requested, or by any other means of mail that requires a signed receipt, postage prepaid, mailed to such party as herein provided. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

12.7. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.8. Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); except (a) that the Purchaser may assign any of its rights (but not its obligations) hereunder to any Affiliate or wholly owned subsidiary, (b) the Purchaser may grant a security interest in its rights and interests hereunder to its lenders, (c) the rights and interests hereunder may be assigned to a trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code, (d) this Agreement may be assigned to any entity appointed as successor to the Seller pursuant to a confirmed chapter 11 plan and (e) as otherwise provided in this Agreement.

12.9. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon third parties any rights, remedies or Claims.

12.10. Termination of Representations, Warranties and Covenants. All representations and warranties made by the Seller and the Purchaser in this Agreement shall terminate on the Closing Date upon the purchase of the Transferred Assets by the Purchaser and the Seller shall have no liability after the Closing Date for any breach of any representation or warranty. All covenants and agreements shall lapse at, and be of no further force and effect following, the Closing unless otherwise specified by their terms.

12.11. Entire Understanding. This Agreement, the Exhibits and the Schedules hereto and the Confidentiality Agreement (which shall remain in full force and effect) and the Commitment Letters set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and the Schedules hereto supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other person any rights or remedies hereunder. There have been no representations or statements, oral or written, that have been relied on by any party hereto, except those expressly set forth in this Agreement, the Exhibits and the Schedules.

12.12. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

12.13. Specific Performance. The Seller and Purchaser acknowledge and agree that the other parties would be damaged irreparably in the event any of the provisions of this Agreement or the Confidentiality Agreement are not performed in accordance with its specific terms or are otherwise breached. Accordingly, each of the Seller and Purchaser agrees that the other party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement or the Confidentiality Agreement and to enforce specifically this Agreement or the Confidentiality Agreement and the terms and provisions hereof in any action instituted in any court in the United States or in any state having jurisdiction over the parties and the matter in addition to any other remedy to which they may be entitled pursuant hereto.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Parties have caused this Asset Purchase Agreement to be duly executed, as of the date first above written.

**PURCHASER**

**CYNERGY HOLDINGS, LLC**

By.   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

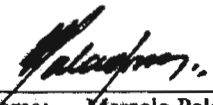
*[Additional Signature Page Follows]*

*Signature Page 10 Asset Purchase Agreement*



**SELLER**

**CYNERGY DATA, LLC**

By:   
Name: Marcelo Paladini  
Title: Chief Executive Officer

**CYNERGY PROSPERITY PLUS, LLC**

By: Cynergy Data, LLC, its managing member

By:   
Name: Marcelo Paladini  
Title: Chief Executive Officer

**Schedule 2.2(c)**

**Excluded Assets**

- (1) Promissory Note, dated November 15, 2007 by Marcelo Paladini in favor of Cynergy Data, LLC.
- (2) Promissory Note, dated November 15, 2007 by Gustavo Ceballos in favor of Cynergy Data, LLC.

## **Schedule 2.2(d)**

### **Excluded Contracts**

- (1) Promissory Note, dated November 15, 2007 by Marcelo Paladini in favor of Cynergy Data, LLC.
- (2) Promissory Note, dated November 15, 2007 by Gustavo Ceballos in favor of Cynergy Data, LLC.
- (3) Letter Agreement, dated as of the date hereof by and between Andres Ordonez and Cynergy Data, LLC.
- (4) Any contract or obligation of any kind in connection with or related to Transworks, LLC and any ownership interest in Transworks, LLC and obligation of the Seller to Transworks, LLC.
- (5) Lease Agreement 45 West 36st Street Realty company December 12, 2003 for 6th Floor of 45 West 36th St., NY, NY and any contract or service associated with this exclusion.
- (6) Plantation Carlisle LLC Lease March 26, 2009 Lease for 8751 West Broward Boulevard, Plantation, FL and any contract or service in connection with or related to this exclusion.
- (7) Any contract or lease of any kind in connection with or related to the properties located at:
  - 1133 S. University Drive, Suite 203, Ft Lauderdale, FL 10255
  - W. Higgins Road, Suite 500, Rosemont IL
  - 1819 Main Street, Sarasota, FL
- (8) Any Employment Contracts
- (9) Any Corporate Insurance Contracts including but not limited to commercial property, commercial liability, directors and officers, errors and omissions, workers comp, employment practices liability, automobiles (whether personal or corporate).
- (10) Any Employee Benefit Plan Contract(s) including but not limited to medical, dental, life, std, ltd. Notwithstanding the foregoing 401K plan shall be assumed.
- (11) Any contract related to an obligation to an officer (GL# 20060) totaling \$1,202,124.35 as of May 31, 2009.
- (12) Any contract with the following:
  - DOLPHIN CAPITAL CORP.
  - ACCRUAL FOR 2008 AUDIT FEES.
  - ACCRUAL FOR FLORIDA RENT- RETENTION OFFICE
  - ACCURINT
  - ALLIED TRAINING SOLUTIONS
  - AMERICAN EXPRESS
  - AMERICAN EXPRESS
  - B. R. FRIES & ASSOCIATES
  - BARGER & WOLEN LLP

CARRUOLO, RALPH  
CARTRIDGE WORLD - ASTORIA  
COHEN & PERFETTO LLP  
COLLEGE POINT BOARD OF TRADE, INC  
CREST OFFICE PRODUCTS INC.  
CROSS AND GUARD INC  
DAVIES OFFICE REFURBISHING INC  
DIRECTV  
FTI CONSULTING, INC  
GENESYS CONFERENCING  
HTI ASSOCIATES LLC  
INDIANA DEPARTMENT OF REVENUE  
INTEREST RATE SWAP FEES CONTRACTS  
ISTA NORTH AMERICA  
J.H. COHN LLP  
JAFFE RAITT HEUER & WEISS  
KESSLER CREATIVE  
MERCEDES BENZ CREDIT CORP.  
NEW YORK SERVICE GROUP INC  
NIXON PEABODY LLP  
SOURCE MEDIA  
STAPLES  
STATE OF CONNECTICUT DEPARTMENT OF LABOR  
STATE OF NEW JERSEY-LABOR & WORKFORCE DEPT  
SUNNY'S LIMOUSINE SERVICE INC  
THOMSON COMPUMARK  
TIFFANY CARTING CORP.  
TRAVELERS - ST. PAUL TRAVELERS  
ULINE  
BOND HOLDING CORP  
WALDNER'S BUSINESS ENVIRONMENTS, INC.

**Schedule 2.2(e)**

**Excluded Notes Receivable**

- (1) Promissory Note, dated November 15, 2007 by Marcelo Paladini in favor of Cynergy Data, LLC.
- (2) Promissory Note, dated November 15, 2007 by Gustavo Ceballos in favor of Cynergy Data, LLC.

**Schedule 2.2(o)**

**Excluded Investments**

<b>S. No.</b>	<b>Name of the Entity</b>	<b>Ownership</b>
1.	Cynergy Prosperity Plus, LLC	100%
2.	Transworks, LLC	17%
3.	i-POS Systems, LLC	5.45%

## **Schedule 4.1**

### **Investments**

<b>S. No.</b>	<b>Name of the Entity</b>	<b>Ownership</b>
1.	Cynergy Prosperity Plus, LLC	100%
2.	Affiniscap Merchant Solutions LLC	47.5%
3.	Merchant Cash and Capital, LLC	31.5% <sup>1</sup>
4.	Certified Equity Commerce, L.P.	20%
5.	UTransact, LLC	20%
6.	AmericaOne, LLC	20%
7.	Transworks, LLC	17%
8.	Mosaic Interactive, LLC	1%
9.	i-POS Systems, LLC	5.45%

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<sup>1</sup> Cynergy Data received a notice, dated August 19, 2009, from Merchant Cash and Capital, LLC asking Cynergy Data whether it wishes to participate in a new subordinated credit facility. Failure to participate could potentially result in the dilution of Cynergy Data's equity interest.

**Schedule 4.6(b)**

**Leased Real Property**

<b>S. No.</b>	<b>Lessor</b>	<b>Street Address</b>
1.	LIC Crown Leasehold Owner LLC	30-00 47 <sup>th</sup> Avenue, Long Island City, Queens, NY 11101
2.	45 W. 36 <sup>th</sup> St. Realty Co.	45 West 36 <sup>th</sup> Street, New York, NY 10018
3.	Plantation Carlisle, LLC	8751 West Broward Boulevard, Plantation, FL 33324



**Schedule 4.7(a)**

**Intellectual Property**

**Marks:**

<b>Mark</b>	<b>Reg*. or Filing Date</b>	<b>Reg. or Serial No.</b>	<b>Classes</b>	<b>Owner</b>
CYNERGY DATA	*December 23, 2003	2797089	036	Cynergy Data, LLC
CYNERGY DATA, with design	*March 16, 2004	2822474	036	Cynergy Data, LLC
CYNERGY DATA YOUR LAST ACQUIRER	*June 8, 2004	2850502	036	Cynergy Data, LLC
Design [Teardrops]	*July 12, 2005	2966052	036	Cynergy Data, LLC
VIMAS	*January 10, 2006	3038842	042	Cynergy Data, LLC
CYNERGY PROSPERITY PLUS	*March 10, 2009	3588181	036	Cynergy Prosperity Plus, LLC
LUCY	*May 26, 2009	3625346	036	Cynergy Data, LLC
LET US CONNECT YOU	*March 10, 2009	3585497	036	Cynergy Data, LLC
LUCY GATEWAY	*June 2, 2009	3629546	036	Cynergy Data, LLC
CYNERGY HUB	July 11, 2008	77/519732	009	Cynergy Data, LLC

**Copyrights:**

<b>Title of Work</b>	<b>Reg. Date</b>	<b>Reg. No.</b>	<b>Nature of Work</b>	<b>Owner</b>
VIMAS Internet Website	12/12/2003	TXu001148583	Internet website	CPS Group, Inc.
VIMAS Cynergy Data: The next necessity	07/26/2004	TXu001189268	VIMAS Internet website	CPS Group, Inc.
VIMAS pro Cynergy Data: The next necessity	07/26/2004	TXu001189267	VIMAS ep Internet website	CPS Group, Inc.
VIMAS pro ep Cynergy Data: The next necessity	07/26/2004	TXu001189269	VIMAS pro Internet website	CPS Group, Inc.

**Domain Names:**

CYNERGYDATA.COM  
CONNEXUSPLUS.COM  
CONNEXUSPLUS.NET  
CONNEXXPLUS.COM  
CONNEXXPLUS.NET  
CYNERGYDATA.NET  
CYNERGYDATAONLINE.COM  
CYNERGYDATAONLINE.NET  
CYNERGYDIRECT.COM  
CYNERGYDIRECT.NET  
CYNERGYSTORE.COM  
CYNERGYSTORE.NET  
LETUSCONNECTYOU.NET  
LUCYCYNERGYGATEWAY.COM  
LUCYCYNERGYGATEWAY.NET  
LUCYGATEWAY.COM  
LUCYGATEWAY.NET

MERCHANTINFOCARE.COM  
MERCHANTSERVICESFORDIMWITS.COM  
MYBACKOFFICETOOLS.COM  
MYBACKOFFICETOOLS.NET  
NORESPONSEREQUIRED.COM  
ONLINEACCMANAGER.COM  
ONLINEACCMANAGER.NET  
VIMASEP.COM  
VIMASPRO.COM  
VIMASTRACKIT.COM  
VIMASTRACKIT.NET

*Proprietary Software*

VIMAS  
VIMAS PLUS  
VIMAS PRO  
TRACK IT  
CYNERGY INTRANET SITE  
CYRIS  
CYNERGY STORE  
VIMAS CRM

## **Schedule 4.8**

### **Litigation**

- (1) In June, 2009, Tribul Merchant Services, LLC, Second Source Funding, LLC and Sam Chanin filed suit in state court in New York, New York against Cynergy Data, LLC, Cynergy Data's wholly owned subsidiary, Cynergy Prosperity Plus, LLC and three individuals. Plaintiffs' lawsuit was filed after Cynergy Prosperity Plus, LLC commenced foreclosure proceedings with regard to an \$8,000,000.00 loan to Second Source Funding, LLC that was in default. Plaintiffs' complaint seeks a judgment declaring that such default did not occur, seeks an accounting of fees and costs charged by Defendants to Plaintiffs and contains allegations of tortious interference with contractual relations. The Complaint seeks in excess of \$10,000,000.00 in compensatory damages.
- (2) In March, 2009, Kassap Family Limited Partnership and several related parties commenced a lawsuit against Cynergy Data and various other defendants in state court in Baltimore, Maryland. Plaintiffs allege that Cynergy Data purchased a portfolio of merchants and a corresponding commission income stream that were subject to a security interest held by Plaintiffs. Those merchants are alleged to have served as a portion of the collateral for a loan that Plaintiffs made to Shimgil Holding ("Shimgil"), one of Cynergy Data's Independent Sales Organizations. The Complaint thus seeks a judgment declaring that the Plaintiffs have a first-priority security interest in the merchant commission income and that Cynergy Data must surrender proceeds generated from the income stream until such time as the Plaintiffs loans to Shimgil are paid in full. Cynergy Data has denied all allegations and contends that there was no evidence of a perfected security interest at the time Cynergy Data purchased the merchant portfolio at issue. The Plaintiffs' loans to Shimgil total \$2,150,000.00.
- (3) On August 13, 2009, Cynergy Data received a Summons and Complaint from one Merchant Processing Services Corp. ("MPS"), one of its Independent Sales Organizations ("ISO"), referable to an action commenced in state court in New York, New York. MPS alleges, *inter alia*, breach of its ISO Conduit Processing Agreement with Cynergy Data, dated September 27, 2007, and breach of a Settlement and Modification Agreement, dated June 24, 2009, and seeks damages amounting to \$340,481.18. Although a final determination has not yet been made, it is anticipated that Cynergy Data will, in its answer to the Complaint, assert a counterclaim in the amount of approximately \$1,550,000 by virtue of MPS's alleged failure to perform pursuant to a Residual Purchase Agreement entered into between the parties on October 15, 2008.

## **Schedule 4.16**

### **Affiliated Transactions**

- (1) Promissory Note, dated November 15, 2007 by Marcelo Paladini in favor of Cynergy Data, LLC.
- (2) Promissory Note, dated November 15, 2007 by Andres Ordonez in favor of Cynergy Data, LLC.
- (3) Promissory Note, dated November 15, 2007 by Gustavo Ceballos in favor of Cynergy Data, LLC.
- (4) Operating Agreement of Transwork, LLC, dated April 2008 by and among i-POS Systems, LLC, Cynergy Data, LLC and ITM (Information and Technology Management) Holding Limited.
- (5) Agreements with i-POS Systems, LLC and Cynergy Data Group Inc.
- (6) Marcelo Paladini, Andres Ordonez and Gustavo Ceballos own equity interests in i-POS Systems, LLC.
- (7) The holder of a majority equity interests in Cynergy Data Group, Inc. is a brother-in-law of Marcelo Paladini, and married to an employee of Cynergy Data.

**Schedule 4.17**

**Insurance**

Please see the annexed report.

## **Schedule 4.18**

### **Absence of Certain Developments**

- (1) Unit Purchase Agreement, dated June 12, 2009 by and between Cynergy Data, LLC and RS2 Software p.l.c.
- (2) Unit Purchase Agreement, dated June 12, 2009 by and between i-POS Systems, LLC and RS2 Software p.l.c.
- (3) On July 24, 2009 Cynergy Data, LLC and Cynergy Prosperity Plus, LLC entered into a forbearance agreement with Marcelo Paladini, Comerica Bank, as co-lead arranger and agent for itself, Harris, N.A. and other lenders identified therein, with respect to the matters set forth therein.

**Schedule 10.4**

**Allocation of Proceeds**



# Exhibit “C”

**SETTLEMENT TERM SHEET**  
**SUMMARY OF PROPOSED TERMS AND CONDITIONS**  
**JUNE 2, 2010**

This summary of the principal terms and conditions (“Summary”) of a proposed settlement has been prepared exclusively for consideration by those parties listed as Settling Parties below (each a “Settling Party” and, collectively, the “Settling Parties”). The proposed settlement described in this Summary does not constitute a binding offer or agreement by any Settling Party or any of their respective affiliates or subsidiaries, and the obligations of any of these parties shall be only those obligations set forth in the definitive agreement approved, executed and delivered by the Settling Parties (the “Settlement Agreement”) except that each Settling Party agrees that (i) it will negotiate in good faith to consummate the Settlement Agreement and all other documents contemplated thereby, and (ii) each Settling Party will seek approval of the Settlement Agreement by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

Reference is made to that certain stipulation by and among the Settling Parties dated December 18, 2009 and so ordered by the Bankruptcy Court on December 21, 2009 and any subsequent stipulations and orders of the Bankruptcy Court related thereto (the “Stipulation”) and to that certain Escrow Agreement dated October 26, 2009, between Cynergy Data, LLC (now known as CD Liquidating Co., LLC) and Wilmington Trust Company as Escrow Agent (the “Existing Escrow Agreement”).

Reference is also made to (1) the Objection of the Term B Parties and Second Lien Parties to Debtors’ Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Cure Amounts, (2) the Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts and (3) the Response of Cynergy Holdings LLC to (i) Objection of Term B Parties and Second Lien Parties to Debtors’ Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Cure Amounts and (ii) Debtors’ Motion for an Order Pursuant to Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, Among Other Things, (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims and Encumbrances; (b) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c) Granting Related Relief as Requested (each an “Objection” and, collectively, the “Objections”).

## Summary of Settlement Terms

Settling Parties:

### **Harris/Moneris**

Harris N.A. and Moneris Solutions, Inc., in its capacity and as agent for Harris N.A. or their successors or assigns as BIN Sponsor to Purchaser (collectively, “Moneris”)

### **Term B Parties and Second Lien Parties** (collectively, “Term B Parties”)

Dymas Funding Company LLC, individually and as agent for the Term B Lenders and as agent for the Second Lien Lenders (“Dymas”)

Ableco Finance LLC, as Term B Lender and as Second Lien Lender

A3 Funding LLC, as Term B Lender and as Second Lien Lender

Garrison Credit Investments I LLC, as Term B Lender

### **Term A Parties**

Comerica Bank, as a Term A Lender and as agent for the Term A Lenders

Wells Fargo Capital Finance, LLC, formerly known as Wells Fargo Foothill, LLC, as a Term A Lender

Comerica Bank, as lender to Cynergy Liquidation Co. Plus, LLC, f/k/a Cynergy Prosperity Plus, LLC and as agent

### **Debtors**

CD Liquidation Co., LLC, f/k/a Cynergy Data, LLC

Cynergy Data Holdings, Inc.

CD Liquidation Co. Plus, LLC, f/k/a Cynergy  
Prosperity Plus, LLC

**Purchaser**

Cynergy Holdings, LLC and Cynergy Data, LLC or each of their successors and assigns as ISO under the BIN Sponsor Agreement (collectively "Purchaser")

Settling Parties shall include the successors and assigns of each of the foregoing entities.

Closing Date: No later than July 29, 2010 (the "Closing Date"); unless otherwise agreed to by the parties.

Settlement Escrowed Funds: Upon the earliest of the following: the date on which an order of the Bankruptcy Court is issued (x) confirming the Debtors' plan of reorganization, if this settlement is incorporated into the plan or (y) approving the Settlement Agreement; the Escrowed Funds, as such term is defined in the Existing Escrow Agreement in the amount of \$20,004,327.49 less amounts released from the Escrowed Funds prior to such date pursuant to the Stipulation (the "Settlement Escrowed Funds") shall be deposited into a segregated, interest bearing (no risk), escrow account (the "Settlement Escrow Account") with an unrelated, third party, escrow agent acceptable to each of the Settling Parties (Wilmington Trust Company, being deemed an acceptable escrow agent) subject to an escrow agreement in form and substance acceptable to the Settling Parties (the "Settlement Escrow Agreement"). The foregoing amount includes rolling reserve releases which were included in accounts payable of the Debtor but not paid prepetition in the amount of \$302,011.82. Until the time set forth in the foregoing sentence, the Settlement Escrowed Funds shall remain in the current Escrow Account as defined in and pursuant to the Existing Escrow Agreement for distribution under the existing Stipulation. The Settlement Escrowed Funds shall be held in the Settlement Escrow Account to be disbursed in accordance with the Indemnification Coverage provisions herein and as cash collateral ("Cash Collateral") for (a) the secured claims of the Term A Parties, and the Term B Parties for obligations outstanding under the prepetition and postpetition financing facilities (to be defined in the Settlement Agreement) in the amounts set forth on a schedule attached to the Settlement Agreement

which schedule shall be updated on and as of the Determination Date (as defined below), respectively, including for any potential revived secured claim on account of payment by the Term A Parties or Term B Parties under the guaranty of the Indemnifying Parties' obligations (described below), and (collectively, the "Term A Parties Claims") and collectively, the "Term B Parties Claims") (b) the secured claims of Moneris for the Indemnification set forth herein.

Prior to and including November 3, 2014 (the "Determination Date"), the only distributions that may be made from the Settlement Escrow Account are (a) are monthly disbursements from net accrued interest (net of expenses under the Settlement Escrow Agreement) earned on the Settlement Escrowed Funds in the Settlement Escrow Account to Comerica Bank, as Agent for the Term A Lenders, for application to the indebtedness of Debtors to the Term A Parties until paid in full, and then to Dymas Funding Company LLC, as Agent for the Term B Parties for application to the indebtedness of Debtors to the Term B Parties until paid in full ("Interest Payments"), and (b) on account of Indemnification Payments to Moneris as set forth herein. Interest Payments and Indemnification Payments continue after the Determination Date as set forth below.

After the Determination Date, the only distributions that may be made from the Settlement Escrow Account are to Moneris, the Term A Parties or the Term B Parties as provided below. After the Determination Date, the Term A Parties, Term B Parties, Purchaser and Moneris will determine the expected present value of the remaining Cure Amount under a methodology acceptable to the parties and distribution of the remaining Settlement Escrowed Funds, as acceptable to such parties. Until such time as agreement is reached and definitive documentation acceptable to Moneris, Purchaser, the Term A Parties (unless paid in full), and the Term B Parties is fully executed with respect to the transaction in the foregoing sentence, the Indemnification survives and Indemnification Payments and Interest Payments shall continue to be made from the Settlement Escrow Account. So long as the Indemnification survives, no other entity besides Moneris, the Term A Parties, the Term B Parties and Purchaser to the extent of Purchaser's subrogation rights set forth herein, will have an interest in the Settlement Escrow Account and

the Settlement Escrow Account will not be disposed of or encumbered other than as set forth herein.

The Settlement Escrow Agent's fees and expenses shall be provided for and paid first from the assets of the Debtor's estate other than the Settlement Escrowed Funds in the Settlement Escrow Account pursuant to the confirmed plan, and any shortfall shall be paid from accrued interest earned on the funds in the Settlement Escrow Account. In no event shall the principal amount of the Settlement Escrowed Funds in the Settlement Escrow Account be used to pay fees and expenses of the Settlement Escrow Agent.

Indemnified Parties:

Indemnification of each of Moneris Solutions, Inc. and Harris N.A. and each of their respective parents, subsidiaries, affiliates and their respective shareholders, partners (both general and limited), members, officers, directors, employees and agents and each other person, if any, controlling each of them or any of their affiliates (each being an "Indemnified Party" and collectively, the "Indemnified Parties").

Indemnifying Parties:

Debtors, on a limited recourse basis (recourse limited to and capped at the principal amount of the Settlement Escrowed Funds) ("Indemnifying Party"). If the Term A Parties elect after the Determination Date, and subject to definitive agreement executed by Moneris, the Term A Parties, the Term B Parties, and Purchaser, to apply all or a portion of the Settlement Escrowed Funds to their Term A Parties Claims or Term B Parties Claims, as applicable, as permitted under that definitive agreement, then the obligations of the Indemnifying Parties under the Settlement Agreement will be severally guaranteed by the Term A Parties allocated as determined by the Term A Parties, and the amount of such guaranty shall be capped at the principal amount of the Settlement Escrowed Funds (excluding the amount of the Interest Payments received by the Term A Parties) applied by the Term A Parties to the Term A Parties Claims. If at the time of such election or any given time thereafter, either (i) Wells Fargo Capital Finance, LLC is no longer a subsidiary of an FDIC insured National Association providing banking services or Comerica Bank is no longer an FDIC insured Texas banking corporation or (ii) the rating by any of S&P, Moodys or Fitch of the senior debt of any Term A Party (or

its parent as applicable) is no longer investment grade, then such Term A Party may not apply any of the Settlement Escrowed Funds (other than Interest Payments as provided above) to its Term A Party Claims unless such Term A Party posts collateral, a letter of credit in favor of Moneris or some other form of security agreeable to Moneris, in its sole discretion. The Term B Parties may not apply any portion of the Settlement Escrowed Funds unless and until the Term B Parties post collateral, a letter of credit in favor of Moneris or some other form of security agreeable to Moneris, in its sole discretion. Following payment in full of the Term A Parties Claims, the Term B Parties may substitute and replace the Term A Parties as Guarantors under an assumption agreement reasonably acceptable to the Term A Parties, Term B Parties, Purchaser and the Indemnified Parties (“Assumption Transaction”), including both (a) a release of the Term A Parties, and (b) an assumption by the Term B Parties of all of the obligations of the Term A Parties in the Settlement Agreement, including indemnification of the Indemnified Parties for amounts applied by the Term A Parties to each of their Term A Parties Claims from the Settlement Escrowed Funds. If following payment in full of the Term A Parties Claims, the Term B Parties do not timely enter into an Assumption Transaction, all of the remaining Settlement Escrowed Funds shall be released to Moneris and held in accordance with the Bin Sponsor Agreement and each applicable Merchant Agreement. The Term A Parties, allocated as determined by the agreement of the Term A Parties, will severally, and after an Assumption Transaction, the Term B Parties will as determined by agreement of the Term B Parties, severally, guarantee in favor of Moneris the Indemnification Payments capped at the principal amount of the Settlement Escrow Account applied, respectively, by the Term A Parties or the Term B Parties to their respective Term A Parties Claims or Term B Parties Claims. Any payments by a Term A Party (or Term B Party as the case may be) under its guaranty of payment shall revive the secured claim against the Debtors of the paying Term A Party (or Term B Party as the case may be) to the extent of such payments.

Notwithstanding anything to the contrary (and without expanding any obligation of any Term A Party or Term B Party set forth above), in no event shall any Term A Party or Term B Party have any monetary or indemnity obligations to make any payments under its guaranty to

Moneris or a merchant (i) until such party elects after the Determination Date to apply the Settlement Escrowed funds to its respective Term A Parties Claims or Term B Parties Claims or (ii) in excess of the Settlement Escrowed Funds (exclusive of Interest Payments) that are applied in satisfaction of the Term A Parties Claims of such Term A Party or Term B Parties Claims of the Term B Party less payments previously made under the guaranty, and with respect to a particular merchant, in excess of the Settlement Escrowed Funds designated for such merchant's account; provided that nothing herein, including the cap and limitations on recourse with respect to Indemnification Payments set forth herein, limits the rights and remedies of Moneris at law or in equity for breach of the Settlement Agreement.

Indemnification Coverage:

Where (1) the applicable merchant has been identified as having an unfunded rolling reserve in an amount per merchant as set forth on an agreed to Schedule to the Settlement Agreement which amount has been escrowed in the Existing Escrow Account minus (i) any distributions made on account of that merchant pursuant to the Stipulation and (ii) any prior Indemnification Payments made pursuant to the Settlement Agreement the difference of which represents all or part of the amount sought as an Indemnification Payment for that merchant, irrespective of any ISO level reserves, sub-ISO level reserves, QM reserves or any other reserves from the merchant to fund those losses pursuant to any agreement related to the BIN Sponsor Agreement, (2) the applicable merchant (i) has processed transactions resulting in settlement proceeds which are insufficient to cover such Merchant Loss (defined below) (to the extent of such insufficiency); (ii) was no longer processing transactions with the Debtors and/or is not currently processing transactions with the Purchaser, (iii) has closed merchant accounts with the Debtors and/or the Purchaser or (iv) has requested a return of, or Purchaser or Moneris consistent with their ordinary course of business have determined to return, part or all of such merchant's reserves in accordance with and as provided by the terms of the applicable merchant processing agreement, and (3) the requested payment is of the type of payment for a Merchant Loss (as defined herein) that would be sought to be recovered from a reserve account if such account was funded by the Debtors as of the Petition Date, the Indemnifying Parties shall provide



indemnification (the “Indemnification”) to the Indemnified Parties for such merchant for all proceedings, actions, claims, suits, liabilities, losses, costs or expenses of any kind (including, but not limited to fees and expenses of legal counsel) attributed to a merchant, including all chargebacks, claims, fees, fines, returns, uncollected amounts due from such merchant, fraudulent practices of such merchant, attorneys fees incurred for collection, or requests for repayment of reserves (each a “Merchant Loss”).

If the Indemnified Parties fail to take timely action to seek an Indemnification Payment (action within 7 Business Days of receipt by Moneris of a certification by Purchaser of a Merchant Loss would be considered timely), then Purchaser may send written notice to Moneris identifying such failure consistent with the terms of the Settlement Agreement and providing details of any Merchant Loss certified by an officer of Purchaser and if Moneris fails to take action within 7 Business Days of such notice, then to the extent such Merchant Losses otherwise would have been indemnified by the Indemnifying Parties, Purchaser shall be subrogated to the rights of the Indemnified Parties with respect to such Merchant Loss.

#### Timing of Indemnification Payment

Moneris will give notice to (a) the Settlement Escrow Agent, (b) Purchaser, (c) Comerica, as agent for Term A Parties, or, after an Assumption Transaction, Dymas, as agent for the Term B Parties, and (d) one individual designee of Comerica or, after an Assumption Transaction, of Dymas, on any Business Day (a “Payment Date”), on which Moneris wishes to collect a payment pursuant to the Indemnification (an “Indemnification Payment”). If on any such Payment Date, the Settlement Escrow Agent receives not later than 11:30 a.m. (Chicago, Illinois time) a written notice from Moneris, specifying (i) that an Indemnification Payment is to be made on such Payment Date, (ii) the principal amount of such Indemnification Payment and (iii) to the knowledge of Moneris, all of the applicable conditions to such Indemnification Payment have been satisfied, the Settlement Escrow Agent will transfer from the Settlement Escrow Account or, if for any reason funds are insufficient in the Settlement Escrow Account, the Term A Parties or Term B Parties, as applicable, will transfer by, not later than 3:30 p.m. (Chicago, Illinois time), on such Payment Date to Moneris’ demand deposit account, in immediately available funds, an amount equal to such

Indemnification Payment. In the event that such notice is received by Settlement Escrow Agent later than 11:30 a.m. (Chicago, Illinois time), such Indemnification Payment will be made on the next succeeding Business Day by no later than 3:30 p.m. (Chicago, Illinois time). Within 35 Business Days after the applicable Payment Date occurs, Comerica (or the Term B Parties' Agent if applicable after an Assumption Transaction), may provide notice of a request for return and recovery from Moneris of all or part of any such Indemnification Payment made on the Payment Date only because such payment was paid in error and was not otherwise due and owing to Moneris or a merchant. The Settlement Agreement will provide for a dispute mechanism if such a notice is delivered.

Security Provisions:

The obligations of Indemnifying Parties to indemnify the Indemnified Parties shall be secured by a perfected first priority security interest in the Settlement Escrow Account, including execution of a Demand Account Control Agreement, reasonably satisfactory to Moneris.

Litigation:

Hearing dates and other scheduling dates set forth in the Stipulation remain until Bankruptcy Court approval of the Settlement Agreement  
Withdrawal of all Objections upon approval of Settlement Agreement

Consents:

Purchaser  
  
Creditors Committee  
  
Bankruptcy Court Approval  
  
Must bind any trustee - chapter 7 or 11.

Releases:

Full release of any and all claims against Moneris arising on or before the date of the Bankruptcy Court order approving the Settlement Agreement and related in any way to the Settlement Escrowed Funds, Bin Sponsor Agreement or the Debtors, by the Debtors, Term A Parties, Term B Parties, Garrison Credit Opportunities Holdings, L.P. and Committee, except with respect to: (i) claims as set forth in the Settlement Agreement, (ii) claims for breach under the Settlement Agreement and (iii) claims for disgorgement by Moneris under the Order dated December 21, 2009 (Docket No. 498) by the Bankruptcy Court in Debtors' bankruptcy cases regarding, among other things,

releases of escrowed funds, provided, however, that claims on account of such potential disgorgement obligations shall be included in the claims released if none of Debtors, Term A Parties, Term B Parties, or the Committee provide to Moneris, within 35 Business Days after the date upon which the Bankruptcy Court enters an order approving the Settlement Agreement, a notice of request for return and recovery of all or part of any payments received under the Order. Release by Purchaser of claims against Moneris, but solely to the extent relating to the Indemnification Payments received and used by Moneris to cover a Merchant Loss and not otherwise disgorged.

For the avoidance of doubt, the Settlement Agreement does not release claims as between the Debtors and Purchaser.

Full release of any and all claims arising on or before the date of the Bankruptcy Court order approving the Settlement Agreement by Moneris of the Debtors, Term A Parties, Term B Parties, Garrison Credit Opportunities Holdings, L.P. and Committee related to the Settlement Escrowed Funds, Bin Sponsor Agreement or the Debtors except (i) claims as set forth in the Settlement Agreement, and (ii) claims for breach under the Settlement Agreement. For the avoidance of doubt, the Settlement Agreement does not release claims by Moneris against Purchaser for liabilities of the Debtors which were assumed by Purchaser, or adversely affect, in any way any rights, claims and interests of the Purchaser under the Sale Order, provided further that nothing in this sentence or in the other provisions of the Settlement Agreement shall provide the Purchaser with rights or remedies which are more expansive than those that are currently held by the Purchaser under the Sale Order except to the extent that such rights or remedies are expressly provided for in the other provisions of the Settlement Agreement.

#### Legal Fees and Costs

Immediately upon Bankruptcy Court approval of the Settlement Agreement, reimbursement from the Debtors' estate as part of the cure of the assumption of the Bin Sponsor Agreement of any and all attorney fees, expenses and disbursements incurred by Moneris in connection with Debtors' bankruptcy cases after October 26, 2009 through approval of the Settlement Agreement by a final, nonappealable order issued by the Bankruptcy Court; which amount shall not be deducted from the Settlement Escrowed Funds.

Permanent Injunction:

Permanent injunction issued by the Bankruptcy Court of all parties in interest in the Bankruptcy Cases against pursuit of claims (i) released under the Settlement Agreement or (ii) related to reserves identified in the Bankruptcy Cases as part of the Settlement Escrowed Funds, except such injunction shall exclude and not apply to (x) payments provided for under the Settlement Agreement or requests made by a merchant for return of a merchant reserve pursuant to and in accordance with the terms of the applicable merchant processing agreement by and among the merchant, the Debtors and Moneris and the Bankruptcy Court order approving the Settlement Agreement which portion of a reserve was not previously paid (and not otherwise disgorged) to Moneris and/or Purchaser as an Indemnification Payment and (y) except as specifically released herein by the Purchaser, any and all claims, rights and interests of Purchaser arising under the Sale Order.

Merchants:

For clarification, prior to and after a Determination Date, merchants seeking return payment, in part or in full, of a reserve which was designated as a Rolling Reserve and deposited into the Cure Reserve as defined in the Sale Order, may contact a representative at Purchaser requesting such return in accordance with the applicable merchant processing agreement. Payment of any such reserve to a merchant is subject to the terms and conditions of the applicable merchant processing agreement by and among the merchant, the Debtors, Purchaser, as assignee and Moneris.

Bankruptcy Court Approval:

Except as otherwise provided for, the Settlement Agreement is subject to the approval of the Bankruptcy Court pursuant to a final and non-appealable order therefrom.

Undersigned parties consent and agree to use best efforts to obtain all court orders necessary to effectuate the transactions contemplated in Settlement Agreement.

As soon as practicable, and in any event within 5 days after the Settlement Agreement is executed, the Debtors will file a motion in the Bankruptcy Court seeking approval thereof.

If the Bankruptcy Court denies the Debtors' motion seeking approval of the Settlement Agreement, the Settlement Agreement shall terminate. In the event of a termination

pursuant to the preceding sentence, none of the terms and statements of the Settlement Agreement, nor any part of this Summary or any correspondence between or statements of the Settling Parties related to the negotiation, drafting or approval of this Summary or the Settlement Agreement shall be argued or deemed to be an admission against such party's interest in any litigation between the Settling Parties.

Representations and Warranties:

Customary for this type of transaction, including, the Settling Parties shall each represent and warrant that: (a) each such entity has full power and authority to enter into and execute the Settlement Agreement and to carry out the obligations and covenants created thereby; (b) the execution and delivery of the Settlement Agreement and the performance of the obligations and covenants created thereunder have been duly authorized by all necessary corporate action on the part of each such party, and no shareholder or other approval is necessary in order to bind each such party thereto; and (c) the execution and delivery of the Settlement Agreement and the performance of the obligations and covenants created thereby are in the best interest of each such party and will not result in any conflict with or breach or violation of, or default under, the certificate of incorporation or by-laws of such party. Representation by Garrison Credit Investments I LLC that Garrison Credit Opportunities Holdings, L.P. was never and is not a Term B Lender or Second Lien Lender and has no claim against or interest in the Debtors.

Representation by Debtors that, except as set forth on the Disclosure Schedules to the Settlement Agreement which Disclosure Schedules shall include a listing of all unfunded merchant reserves per merchant with a description of any outstanding issues or disputes associated therewith, to their knowledge and as of October 26, 2009, there are no monies owing by the Debtors related to or arising out of unfunded merchant reserves.

Covenants

Settlement Escrow Account documents to provide for certifications made by the Settlement Escrow Agent to each Settling Party on the 5th Business Day of each month as to the holdings and transactions with respect to the Settlement Escrowed Funds for the prior months end, including interest received during such month and the type and source of such interest and disbursements of interest. Investments by Settlement Escrow Agent must be acceptable to each of

Moneris, each Term A Party and after an Assumption Transaction, Dymas Funding Company LLC.

Conditions Precedent: Customary and appropriate for transactions of this type, including, without limitation, (i) execution and delivery of satisfactory definitive documentation customary for such transactions, (ii) bankruptcy court approval, (iii) obtaining necessary third party approvals (if any), (iv) prompt delivery to Moneris of drafts of the Settlement Escrow Agreement, Settlement Agreement, and pleadings to approve the Settlement Agreement; and (v) withdrawal with prejudice of objections by Garrison Credit Opportunities Holdings, L.P.

Events of Default: Events of default customary and appropriate for a transaction of this kind and nature, including breach of any material obligation under the Settlement Agreement or Stipulation; certain bankruptcy or insolvency events.

Remedies for Default: Customary and appropriate for a transaction of this kind and nature, including payment of legal fees and expenses for prevailing, non-breaching parties by breaching parties.

Acknowledgments: Each of the Settling Parties acknowledges and agrees (a) that the Settlement Agreement, only to the extent it pertains to each Settling Party, and the transactions and documents contemplated thereby, only to the extent it pertains to each Settling Party, are fair and reasonable and are not unconscionable or the result of any fraud, duress, coercion, pressure or undue influence exercised by any party upon the others or by any person or persons; (b) that it has had the opportunity to obtain independent legal advice from counsel of its own selection with respect to the Settlement Agreement and the transactions and documents contemplated thereby and its respective rights and obligations thereunder; and (c) that it understands its respective rights and obligations thereunder and the relevant facts.

Each of the Settling Parties acknowledge that the Settlement Agreement is entered into solely because of desire on the part of all concerned to bring to a close, and to foreclose, mutually vexatious litigation and shall never be treated as, or claimed to be, an admission of liability, fault, wrongdoing, injury or damages, all of which are, and remain, disputed.

Settlement Agreement Jointly Drafted. The Settling Parties acknowledge that they jointly contributed to the drafting of the Settlement Agreement. In the event of ambiguity, no rule of contract interpretation or rule of contract construction based on an allegation that one party to the Settlement Agreement drafted the Settlement Agreement shall be applied to construe the Settlement Agreement for or against any party.

Challenges:

Any action relating to the Settlement Agreement shall be brought in the Bankruptcy Court unless and until the bankruptcy cases are closed by order of the Bankruptcy Court, after which such actions may be brought in the federal or state courts of New York and the Settling Parties consent to the personal jurisdiction of such court for such an action and to the venue of such court.

Business Day:

A day, other than a (i) Saturday, (ii) Sunday, or (iii) a day on which the banks in Illinois are not open for business.

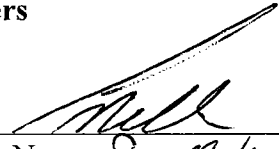
Governing Law:

The Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York, without regard to its choice of law provisions.

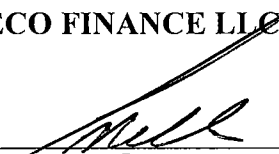
*[Signature pages follow.]*

Accepted and agreed to this 2nd day of June, 2010.


**DYMAS FUNDING COMPANY LLC  
individually and as agent for the Term B  
Lenders and as agent for the Second Lien  
Lenders**

By:   
Name *Eric Miller*  
Title: *Managing Director*

**ABLECO FINANCE LLC**

By:   
Name *Eric Miller*  
Title: *Senior Vice President*

**A3 FUNDING LP**

By:   
Name *Eric Miller*  
Title: *Vice President*

**GARRISON CREDIT INVESTMENTS I LLC**

By: \_\_\_\_\_  
Name  
Title:



Accepted and agreed to this 2nd day of June, 2010.

**DYMAS FUNDING COMPANY LLC**  
individually and as agent for the Term B  
Lenders and as agent for the Second Lien  
Lenders

By: \_\_\_\_\_  
Name  
Title:

**ABLECO FINANCE LLC**

By: \_\_\_\_\_  
Name  
Title:

**A3 FUNDING LP**

By: \_\_\_\_\_  
Name  
Title:

**GARRISON CREDIT INVESTMENTS I LLC**

By:  \_\_\_\_\_  
Name **JULIAN WELDON**  
Title: **SECRETARY**

**MONERIS SOLUTIONS, INC.**

By: \_\_\_\_\_

Name

Title:

*FERN GLOWINSKY*  
*SECRETARY*

**CD LIQUIDATION CO., LLC**

By: \_\_\_\_\_

Name

Title:

**CYNERGY DATA HOLDINGS, INC.**

By: \_\_\_\_\_

Name

Title:

**CD LIQUIDATION CO. PLUS, LLC**

By: \_\_\_\_\_

Name

Title:

**MONERIS SOLUTIONS, INC.**

By: \_\_\_\_\_  
Name  
Title:

**CD LIQUIDATION CO., LLC**

By: Charles M. Moore  
Name Charles M. Moore  
Title: Chief Restructuring Officer


**CYNERGY DATA HOLDINGS, INC.**

By: Charles M. Moore  
Name Charles M. Moore  
Title: Chief Restructuring Officer


**CD LIQUIDATION CO. PLUS, LLC**

By: Charles M. Moore  
Name Charles M. Moore  
Title: Chief Restructuring Officer

**CYNERGY HOLDINGS, LLC**

By:   
Name: Raman A. Mehta  
Title: CEO

**CYNERGY DATA, LLC**

By:   
Name: Raman A. Mehta  
Title: CEO

**COMERICA BANK**

By: \_\_\_\_\_  
Name  
Title:

**WELLS FARGO CAPITAL FINANCE, LLC  
f/k/a WELLS FARGO FOOTHILL, LLC**

By: \_\_\_\_\_  
Name  
Title:

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF CD LIQUIDATION CO.  
PLUS, LLC, et al.**

By: \_\_\_\_\_  
Name  
Title:


**CYNERGY HOLDINGS, LLC**

By: \_\_\_\_\_  
Name  
Title:

**CYNERGY DATA, LLC**

By: \_\_\_\_\_  
Name  
Title:

**COMERICA BANK**

By:   
Name *Vladimir R. Slapak*  
Title: *Vice President*

**WELLS FARGO CAPITAL FINANCE, LLC  
f/k/a WELLS FARGO FOOTHILL, LLC**

By: \_\_\_\_\_  
Name  
Title:

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF CD LIQUIDATION CO.  
PLUS, LLC, *et al.***

By: \_\_\_\_\_  
Name  
Title:

**CYNERGY HOLDINGS, LLC**

By: \_\_\_\_\_

Name

Title:

**CYNERGY DATA, LLC**

By: \_\_\_\_\_

Name

Title:

---

**COMERICA BANK**

By: \_\_\_\_\_

Name

Title:

**WELLS FARGO CAPITAL FINANCE, LLC  
f/k/a WELLS FARGO FOOTHILL, LLC**

By:  \_\_\_\_\_

Name

JOHN T. LEONARD

Title:

MANAGING DIRECTOR

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF CD LIQUIDATION CO.  
PLUS, LLC, et al.**

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By: \_\_\_\_\_

Name

Title:

# Exhibit “D”

**Exhibit B**

MID

**Closing Date 26-Oct-09**

3899000000000002	CYNERGY DATA TEST	\$	664.21
38990000000003036	SOMALAB	\$	11,858.55
38990000000003473	MAGAZINES 1 888 877 8655	\$	4,195.43
38990000000011203	BOSTROM INDUSTRIES	\$	1,943.03
38990000000020410	DORSIA	\$	1,833.78
38990000000032399	CNA 18004639954	\$	63,756.66
38990000000032407	DISCOUNT CLUB 8888778655	\$	715.36
38990000000032423	THEREADERSCHOICECOM	\$	73,768.30
38990000000035905	ANTI-AGING PLUS	\$	1,522.53
38990000000040012	ULTIMATE LIVING INTERIOR	\$	102.23
38990000000041242	MARKETING CONSULTANTS	\$	203,831.98
38990000000046985	LA BROCHE	\$	505.00
38990000000048395	L N CONSULTING	\$	5,842.27
38990000000049898	FPJ	\$	71.37
38990000000050730	MAGAZINES 1 888 877 8655	\$	6,355.33
38990000000051209	BILL WENDEL FLOORS	\$	686.12
38990000000055812	RPM CAR	\$	415.94
38990000000056554	MYPETFAT COM	\$	1,500.00
38990000000057503	XTREME TEXTURIZING ACADEMY	\$	3.53
38990000000058048	METRO DIVERSIFIED INVESTMENTS	\$	2,348.80
38990000000058584	DOLLY DEMITRO	\$	260.85
38990000000060499	MY IMPORT INC	\$	360.46
38990000000060747	WWW.SWITCHPHASE.NET	\$	157.26
38990000000061299	PERIODICALS	\$	49,833.55
38990000000063857	ZENIT	\$	5,434.20
38990000000064384	AFRICAN ART DEALERS	\$	819.45
38990000000065274	10 D SOLUTIONS	\$	22.98
38990000000065514	TEMPORAL DELIGHTS	\$	1.59
38990000000067023	WHY NOT	\$	4.60
38990000000067353	CARB CRACKERS USA	\$	211.38
38990000000068682	ENCHANTE	\$	850.52
38990000000069086	KEMP CHIROPRACTIC CENTER	\$	1,286.28
38990000000071983	NATIONAL SECURITY CENTER	\$	202.10
38990000000072544	LBA 800 258 6587	\$	25,001.25
38990000000073484	NEAR TOWN AND ASSOCIATES	\$	1,872.30
38990000000073914	TECHNOTOUCH	\$	562.00
38990000000075125	CLARK TAYLOR AND ASSOCIATES	\$	21.59
38990000000075141	ANCHOR DOOR	\$	2,943.06
38990000000075836	MASTER HP JEWELERS	\$	381.72
38990000000078525	FEA LIMOUSINES	\$	307.10
38990000000078681	UNITED BENEFITS ALLIANCE	\$	286.09



389900000079705	VITALCARE RX MEDSTAR USA	\$	10.00
389900000080687	TWICE TRADING	\$	630.72
389900000081081	CPLTRXCARD 8002530438	\$	27.59
389900000081990	SEÑOR TEQUILA CANTINA GRILL	\$	1,579.37
389900000083871	VICTORIAS GARDEN	\$	4,625.08
389900000084747	AEROPRESS	\$	11.00
389900000085223	SHOES 4 KIDS	\$	3,259.53
389900000085249	SHOES 4 KIDS	\$	2,212.33
389900000085264	NORTHWEST RUNNING BOARDS	\$	1,709.46
389900000085504	FUEGO CUBANO	\$	393.79
389900000086676	GOOD SAMARITAN MOVERS	\$	1,523.61
389900000086908	MILLIONAIRE WEB CLUB	\$	6,856.20
389900000086924	THE TIRE SHOPPE	\$	1,854.59
389900000087013	CLEAR CREDIT.COM	\$	16,676.20
389900000087195	KENDALL BODY 2000	\$	591.74
389900000087591	NOVATECK NETWORKS	\$	79.25
389900000087617	ADVANCED FABRICATIONS	\$	166.68
389900000088904	EXCLUSIVE AUTO SOUND AND SECURITY	\$	160.66
389900000088987	CARNAGE PAINT BALL SUPPLY	\$	146.48
389900000089555	HEART START	\$	2,427.74
389900000090173	RIVE GAUCHE NIGHTCLUB	\$	2,203.30
389900000091593	COMPUTERS FOR PEOPLE	\$	0.20
389900000094464	COMPUTER IMAGING SUPPLY	\$	10,990.02
389900000095578	DENT CRAFT FFQ LLC	\$	6,505.63
389900000098986	CAR BANK AUTOCENTER	\$	2,005.40
3899000000100071	NEXTWERK	\$	730.75
3899000000107530	INTERNATIONAL MAGAZINE SERVICE OF NO	\$	36,794.38
3899000000112845	NY RES	\$	10,000.00
3899000000113264	FUELZONE	\$	1,163.43
3899000000117901	AMERICAS CHOICE READERS SERVICE	\$	93,262.47
3899000000118024	AMERICAN NATIONAL COUNSELING SERVICES	\$	8.80
3899000000119006	OLOFIN COM	\$	196.63
3899000000122919	UNEMPLOYMENT BENEFIT SERVICES	\$	17,363.52
3899000000123636	ROLLOVER NOW	\$	1.40
3899000000123784	CONTORMAR	\$	289.00
3899000000128908	THE SPORTSMAN GENERAL STORE	\$	376.21
3899000000135275	NORTH AMERICAN CENTER	\$	11,374.35
3899000000135317	ROYAL PRESTIGE D CLASS	\$	35.00
3899000000137354	FONE 4 CHEAP COM	\$	5,126.94
3899000000137370	ECLIPSE PRODUCTS	\$	307.00
3899000000137701	AVILA STONE	\$	578.32
3899000000140176	LA PASSERELLA SHOES	\$	20.61
3899000000153294	TOP SAVINGS	\$	62,996.85
3899000000154730	DERLAIN SKIN CARE PLUS	\$	158.00
3899000000169712	SOFTWARE BY PCSAFE	\$	95,258.26

3899000000172864	CHINA STOCK REPORTS	\$	27.48
3899000000176246	MAGAZINES 8004914778	\$	37.37
3899000000179711	MAX COMPUSA	\$	1,589.39
3899000000182061	MAGAZINES 8004914778	\$	3,341.46
3899000000182327	SPRAY VITAMINS	\$	101,271.45
3899000000184265	US ONLINE AMERICA GROUP	\$	400,134.69
3899000000187177	KDR ENTERPRISES LLC	\$	218.83
3899000000188415	MP PRODUCTS DIRECT	\$	6,686.68
3899000000190643	D N P	\$	1,136.50
3899000000190767	BUYING SERVICE	\$	2,318.35
3899000000196111	ULTRACARD 8008590237	\$	39.96
3899000000198315	OPTIMAL HEALTH FOR LIFE	\$	320.79
3899000000198976	HUNTINGFLIXS COM	\$	13,873.39
3899000000201010	F AND A CONCEPTS	\$	6,757.13
3899000000202653	PRECIOUS METTLES	\$	32.53
3899000000209005	SHOPPERSTIME LLC	\$	158.55
3899000000217917	NEW ERA SOLUTIONS	\$	150.00
3899000000218923	PRINTWEST CORPORATION	\$	1,078.96
3899000000219335	SOFTWAREDINER COM	\$	40,955.88
3899000000220689	IMAGE LIMOUSINE TRANSPORTATION	\$	310.00
3899000000220879	HABITAT PROMO LLC	\$	2,123.88
3899000000221539	MAGAZINE 8663231278	\$	38,733.29
3899000000222412	KIDS JUKE BOX	\$	-
3899000000222560	NATIONAL LAMPOON TOURS INC	\$	9,371.90
3899000000224491	SIBA ITALIA SHOES	\$	77.60
3899000000226827	ACE DION PAINTING	\$	339.60
3899000000230332	CAREER SUCCESS	\$	761.06
3899000000234292	STRUCTURAD	\$	917.72
3899000000237345	HPN 866 931 3483	\$	656.07
3899000000247104	WWW.THEBESTARTPRINTS.COM	\$	1,289.83
3899000000249431	MOSAIC PERFORMANCE CONSULTING	\$	8.85
3899000000253458	GALAXY COMMUNICATIONS GROUP	\$	292.64
3899000000253920	DIAMOND PRIDE CABINETRY	\$	242.00
3899000000262111	ANDREA MILLER FOUNDATION	\$	73.00
3899000000262145	MCCAMIES TRASH REMOVAL	\$	4.50
3899000000262723	AUTOMOTIVE WARRANTY SOLUTIONS	\$	7,383.68
3899000000267433	LASER AD GROUP	\$	2,740.58
3899000000268514	MED CAREER LAB	\$	4,704.10
3899000000269595	CELERES 8663432091	\$	2,731.29
3899000000274090	TEJAS JEWELRY	\$	4.21
3899000000277358	BODY EXTREME COM	\$	18,952.70
3899000000281996	ADULT MOVIES 2 GO	\$	286.05
3899000000299873	QPM SOLUTIONS	\$	12.50
3899000000304095	THREAD PIT INC	\$	5,000.00
3899000000308062	LOUIS FERRE	\$	3,638.30

3899000000309045	FIFTH AWAKE	\$	1,964.14
3899000000313005	VP GALLERY	\$	8,000.00
3899000000321263	MYBARGAINLINK8662951658	\$	10,392.72
3899000000327757	JIZZLETECH 7187912207	\$	84,446.05
3899000000329506	PRIZE BOX COFFEE	\$	2,767.15
3899000000329845	CIMAJ	\$	51.15
3899000000331239	SNEAKER PALACE	\$	261.15
3899000000334001	AUTOSUPPORT 8004624804	\$	0.20
3899000000347102	BACK TO THE CARIBBEAN	\$	39,521.50
3899000000348316	PROACTIVE STUDIOS INC	\$	92.70
3899000000354355	OBZEET RESTAURANT AND BAR	\$	727.96
3899000000354363	OBZEET FURNISHINGS	\$	252.42
3899000000355329	SKILLBANC COM INC	\$	560.00
3899000000356236	WESTERN PROPERTY TRUST	\$	58.50
3899000000363067	LH FUNCTIONAL FITNESS	\$	82.88
3899000000372043	DREAMVIDEO866 735 4117	\$	860.70
3899000000376028	VACATION SERVICES OF AMERICA	\$	16,436.53
3899000000384360	WEATHERLYS CLOCK WORKS	\$	538.68
3899000000393981	EIS USA	\$	31,194.99
3899000000402261	EXCLUSIVE TOYS AUTO RENTAL	\$	4,991.25
3899000000402410	LETHIA OWENS INTERNATIONAL	\$	1,123.24
3899000000403616	INNOVATIVE APARTMENTS	\$	424.38
3899000000406064	ARRECIFES ADVERTISING	\$	3,164.45
3899000000408052	SOLE	\$	127.00
3899000000428902	REMMARKETING GROUP LLC	\$	1,560.43
3899000000430247	ALL NIGHT LONG	\$	6,626.50
3899000000432938	SUBJEX CORPORATION	\$	1,411.11
3899000000437986	REAL ESTATE SUCCESS TRAINING	\$	53,550.86
3899000000438000	INTERNET SUCCESS TRAINING	\$	61,096.67
3899000000440949	ONE STOP BOB	\$	8.49
3899000000448215	QUALITY TRAINING COMPANY	\$	39.51
3899000000448637	HOODIAXR COM	\$	1,447.06
3899000000456937	NU WAY DEVELOPMENT	\$	1,637.83
3899000000459220	SLIM BODY LIFESTYLE	\$	0.10
3899000000460954	CELEBRITY ONE SERVICES	\$	38,482.47
3899000000461366	MVPSUCCESSSYSTEMS.COM	\$	5,264.69
3899000000478121	GLOBAL LINK	\$	735.46
3899000000479103	ART 4 GIVING	\$	1.50
3899000000480788	FIRSTDIBZ8882051611	\$	26,094.00
3899000000483832	YOONEW	\$	25,919.58
3899000000485720	ARGENTINA FLAT	\$	18,033.76
3899000000486348	GLOBUS VANLINES INC	\$	3,834.45
3899000000487387	POWER QUEUE INC	\$	39.80
3899000000492973	OLDGUYSRULE	\$	5,138.85
3899000000497493	LWW LIPPINCOTT	\$	111,596.11

3899000000499374	ADERES	\$	249.23
3899000000500239	THUGFASHION COM	\$	20,007.18
3899000000506178	CRC OF FORT LAUDERDALE	\$	14,345.87
3899000000507804	BUZZ BOOSTER	\$	31.07
3899000000513166	ROBE WORKS INCORPORATED	\$	8,237.72
3899000000513489	FAMILY AND FRIENDS FINANCIAL	\$	26.48
3899000000518223	INS USA	\$	8,200.40
3899000000519502	LIVELEANTODAY COM	\$	1,742.59
3899000000519536	HCI TRUST LLC	\$	4,551.38
3899000000521052	PRICEGO	\$	41,400.34
3899000000525285	2002 AD	\$	303.94
3899000000527125	WINDOW FASHIONS BY DESIGN	\$	4,393.66
3899000000527174	ASCENTIAL BIOSCIENCE LLC	\$	28,312.09
3899000000528032	VOXOX	\$	101.68
3899000000529857	HORIZON CARD SVCS	\$	500.81
3899000000530574	TELCENTRIS INC	\$	5,565.15
3899000000532919	E LEARNING AMERICAN ACADEMY INC	\$	6.01
3899000000533701	EPM EMPOWERNET MKTS US INC	\$	89.53
3899000000539815	FAMILY HEALTHCARE	\$	0.41
3899000000539898	DCT DISCOUNT CLUB	\$	0.40
3899000000541795	COTTON COUNTY MERCANTILE	\$	929.68
3899000000542108	PATIO HAUS	\$	264.77
3899000000543486	MICHAELS LIGHT TOYS	\$	75.85
3899000000544500	PDM INTERNATIONAL INC	\$	72,841.16
3899000000544526	PDM INET YLW PGS	\$	24.85
3899000000544575	JEWELRY COLLECTION	\$	8,225.30
3899000000545440	TAYLORS RV AND AUTO REPAIR	\$	875.01
3899000000548832	ALL DREAM VENTURES	\$	6,147.70
3899000000549350	NATURA PAUSE LLC	\$	10.35
3899000000553139	WORLD VENTURES	\$	260,000.00
3899000000553352	SDFORME COM 877 7832339	\$	18,015.66
3899000000553451	HEALTHCARE SAVINGS	\$	23,606.17
3899000000553527	SMART SHOPPER	\$	72,484.04
3899000000557411	TRAVEL DEAL 8884405778	\$	55,110.64
3899000000567188	SUMMER VACATIONS SERVICES INC	\$	11,131.63
3899000000567444	WIN WIN EDUCATIONAL SERVICES	\$	2,475.46
3899000000567469	AUTOMATED MARKETING SYSTEMS LLC	\$	666.33
3899000000568798	P AND A SERVICES INC	\$	25.00
3899000000571529	CSRASHOPPER COM	\$	0.60
3899000000578037	JCS FASHION	\$	20,078.91
3899000000579068	CASA VIEJO	\$	569.21
3899000000580579	EMAGRECE 8002508995	\$	81.60
3899000000580595	ON SYSTEM	\$	276.65
3899000000584829	DISCOUNT SAVINGS CLUB	\$	123,268.15
3899000000584894	UNITED VACATION RESERVATIONS LLC	\$	18,326.55

3899000000584902	HEALTHY LIVING 8002952135	\$	44,600.66
3899000000585461	GLOBAL STAR SERVICES INC	\$	39.00
3899000000586568	SD ENTERPRISES LLC	\$	50,612.43
3899000000586618	TI ENTERPRISES LLC	\$	63,844.85
3899000000586634	AI ENTERPRISES	\$	54,376.47
3899000000586667	HI ENTERPRISES LLC	\$	11,465.65
3899000000588390	NEXT LEVEL MARKETING INC	\$	64,458.36
3899000000590263	FIVE STAR MANAGEMENT GROUP	\$	16,263.00
3899000000590800	SIGNAL RITE	\$	1,253.41
3899000000595619	EZ RENT A VAN	\$	12,353.42
3899000000602035	ADVANCED SYSTEMS TELECOM LLC	\$	1,252.58
3899000000604833	TIMESHARE TRAVELER	\$	150.05
3899000000604916	FIRST PEOPLE ASSISTANTS CORPORATION	\$	199.50
3899000000605533	CONDO TRUST LA	\$	4,318.82
3899000000605954	LOFTON PUBLISHING LLC	\$	635.15
3899000000610566	KHARL GLOBAL	\$	3,810.27
3899000000614386	ST MARTIN ONLINE	\$	1,054.50
3899000000615987	SHOPHOMETOWNSAVER COM	\$	0.90
3899000000616258	ROBERT RENICK CUSTOM WOODWORK	\$	250.20
3899000000617066	DR FANG ULTIMATE CHEAT SHEET	\$	3,027.10
3899000000618197	BUYERS CLUB 8662517975	\$	15,155.39
3899000000618213	PREFERRED SUPER SAVERS	\$	47,657.95
3899000000618874	TERRIF TRAV 800 741 9124	\$	28,539.65
3899000000629764	VOYAGE ET CIE INC	\$	177.30
3899000000637940	DISCOUNT USA	\$	74,814.20
3899000000638187	CHRIS FOODMART	\$	244.55
3899000000638625	HANDI HOPE 6024244394	\$	2,068.77
3899000000642130	LOAN TILL PAYDAY LLC	\$	7.50
3899000000642957	SAVERS 866 780 2502	\$	6.13
3899000000643096	IX WEB HOSTING	\$	113,008.50
3899000000643302	NATIONAL UROLOGICAL GROUP INC	\$	27,663.27
3899000000643906	WEB HOSTING SERVICES	\$	25,000.00
3899000000644763	HORIZON CARD SERVICES	\$	500.90
3899000000647055	BDI	\$	68,025.80
3899000000653558	IMPERIAL MOVERS INC	\$	5,973.65
3899000000653756	POWERSTAR CORPORATION	\$	2,847.07
3899000000654507	BRAKE KING AUTOMOTIVE	\$	1,793.99
3899000000657674	SAN JOSE UNLIMITED KIRBY	\$	1,741.68
3899000000658573	TRAVEL PARTNERS USA LLC	\$	19,657.46
3899000000659019	FLORIDA PROMOTIONAL INC	\$	6,215.73
3899000000673143	ELATIONSHIP ENTERPRISES LLC	\$	2,517.02
3899000000673408	REISHIGO USA INCORPORATED	\$	1,690.82
3899000000677375	KEY BUSINESS STRATEGIES INC	\$	0.10
3899000000681575	RECOLL LLC	\$	1,801.25
3899000000685030	GLOBAL ONE TOUCH, LLC	\$	945.12

3899000000686657	CINERGY HEALTH INC	\$	150,090.36
3899000000690915	GOOD TIMES TRAVEL 877 236 5786	\$	9,775.10
3899000000695229	TRAVEL SERVICES	\$	16,862.21
3899000000696037	KEYDISCOUNTSAVINGS COM	\$	8,554.86
3899000000696565	BDS	\$	40,694.33
3899000000697027	TOP SAFETY SYSTEMS	\$	17.90
3899000000697555	RUGSUSACOM	\$	73,496.85
3899000000697753	WHEELERS TRUCK REPAIRS	\$	12,009.02
3899000000699783	MC CONSULTING ASSOCIATES INC	\$	3,286.25
3899000000700185	LEGACY RESORT MANAGEMENT INC	\$	56.30
3899000000701076	FAMILY READERS CLUB INC	\$	18,909.39
3899000000702322	TIM CURTIS COMPANY	\$	1,029.89
3899000000704872	INTERCONTINENTAL CARGO	\$	361.99
3899000000709129	TRILOGY ESSENTIALS INTERNATIONAL INC	\$	50,903.72
3899000000710382	SURESIGHT LLC	\$	326.45
3899000000711018	SHINING STAR CAFE	\$	364.62
3899000000714103	BACK TO THE CARIBBEAN US	\$	19,509.43
3899000000718765	EXECUTIVE MARKETING INC	\$	1,250.00
3899000000721520	SUGARDADDIES	\$	927.62
3899000000722122	HYANNIS AUTO SALES 2	\$	728.60
3899000000723971	APIDRINE COM	\$	62.06
3899000000724631	RECOL ENTERPRISES	\$	1,260.59
3899000000726446	PALM TREE TRAVEL	\$	12,706.97
3899000000727345	ACR	\$	1,117.38
3899000000729499	I FORTUITY	\$	267,459.49
3899000000733277	HOLIDAY PLANNERS	\$	3,542.15
3899000000736601	COLLECTIBLES	\$	300.00
3899000000738862	TGU GRANTS 8773265657	\$	2,316.32
3899000000739936	G AND J PROMOTIONS INC	\$	200.00
3899000000744407	LAWRENCE GARDENS	\$	4,998.02
3899000000746287	NBTB INC	\$	11,327.00
3899000000750610	EXTERIORSCAPES OF TEXAS	\$	425.36
3899000000755239	VISIONARY OPTICIANS INC	\$	883.85
3899000000757441	AMSAV 888 7110032*V	\$	1,896.23
3899000000757458	PH CRD 888 7110031*V	\$	9,379.07
3899000000757466	LEGAL 888 5620977*V	\$	1,163.88
3899000000761211	8668078845 CREDITALERTCOM	\$	9,884.34
3899000000764066	ONE TRAVEL NETWORK LLC	\$	2,626.40
3899000000772663	THE FITNESS CLUB	\$	525.87
3899000000778116	THE FOREX WIRE 866 4719473	\$	1,500.00
3899000000781276	PDM INTERNATIONAL NUMBER 2	\$	39,259.50
3899000000784080	AMC SALES AND MARKETING	\$	254.00
3899000000788941	VCOMM	\$	133,230.59
3899000000789709	CREDTLINE	\$	66,358.42
3899000000791010	ANGOLO IMPORT INC	\$	902.82

3899000000792422	PREMIER 8005958570	\$	57,866.38
3899000000801132	ROMANCE BY CHOICE	\$	38.00
3899000000801652	GLOBAL RESORTS NETWORK LLC	\$	109,985.47
3899000000802809	NATION WIDE HOME WARRANTY	\$	427,752.51
3899000000806677	MVP CONSULTING	\$	8,660.68
3899000000808012	877 318 3838 GRCYCPNS	\$	221.19
3899000000808046	877 246 1440 CLBRTYMKR	\$	10.77
3899000000809473	ALPINE MEAT SHOP LLC	\$	1,154.45
3899000000811388	PROBST AND PROBST	\$	1,139.60
3899000000816569	CARD STERLING COM	\$	2,105.18
3899000000818383	IVRYWHITE866 4415236	\$	118,059.58
3899000000818821	DEBT SAFE	\$	44,967.39
3899000000819191	47THSTREETCLOSEOUTSCOM	\$	84,142.75
3899000000819829	BEE JEWELS INC	\$	36,520.43
3899000000822070	ANYTIME FITNESS CENTER	\$	0.03
3899000000826808	ENTERTAINMENT SOLUTIONS	\$	786.00
3899000000827442	VIMA CONTRACTORS	\$	313.00
3899000000829810	PRO LINK	\$	10,000.00
3899000000829836	HEALTHCARE SAVINGS PLAN 2	\$	10,967.68
3899000000830214	HEALTHY LIVING 8002952135	\$	9,782.47
3899000000830222	DISCOUNT SAVINGS CLUB 2	\$	35,247.49
3899000000830230	SMART SHOPPER SAVINGS 2	\$	40,487.61
3899000000830503	FUSION TECHNOLOGIES LLC	\$	17.15
3899000000833275	CLASSIC SOFABED CORP	\$	1,484.54
3899000000835346	888 503 0042 MIRHYDT	\$	1,995.15
3899000000836922	WEBSITE DEVELOPMENT SERVICES LLC	\$	21,181.86
3899000000840635	ELITE PDM 8669043983	\$	10,000.00
3899000000843035	1 PLAN HOST.COM	\$	3,961.91
3899000000845303	FONET GLOBAL	\$	48,825.01
3899000000847333	TURN THREE TACK	\$	285.38
3899000000848430	CREDIT USA INC	\$	69,627.89
3899000000848752	PDM INTL 3	\$	38,378.41
3899000000851186	FALCONS SATELLITE	\$	1,371.74
3899000000853281	GOTIMEGOLF 800 802 3248	\$	-
3899000000869352	TRAVEL TO GO	\$	85,464.61
3899000000869600	SEARCH CASH SYSTEMS	\$	507.69
3899000000874089	KEY VOIP LD	\$	13,791.20
3899000000874105	KEYHEALTHSAVINGS COM	\$	11,382.66
3899000000875839	INTERNET SPEEDWAY 2	\$	2,950.83
3899000000875912	INTERNET SPEEDWAY 1	\$	13,040.56
3899000000881779	PDM INTL 8773545485	\$	23,285.10
3899000000882074	O BRIEN HEATING	\$	27.15
3899000000882108	METROPOLITAN DESIGN	\$	13,153.87
3899000000885093	ACCOUNT PORTFOLIO MANAGEMENT LLC	\$	130,129.26
3899000000885507	WEB ORDER	\$	12,211.95

3899000000885846	PDM INTL 4	\$	39,215.96
3899000000894350	8667802513 IDENTITYSAVE	\$	0.21
3899000000897023	CONSUMER GUIDE INC	\$	7,541.66
3899000000897296	LEX AND TERRY ONLINE	\$	34,950.14
3899000000902211	NMS	\$	140.62
3899000000904795	INTERNET YELLOW PAGES COM	\$	24,277.55
3899000000916583	A 1 MOVING AND STORAGE	\$	602.59
3899000000917813	TAX COMPLIANCE CENTER	\$	55,237.73
3899000000928596	ITALPROMOTIONS	\$	13,886.72
3899000000928968	KIRBY CO	\$	11,338.63
3899000000932028	CITYWIDE HOUSE CLEANING	\$	363.11
3899000000938462	NEW BEGINNING FINANCIAL	\$	18,195.00
3899000000945657	X TENDED XL	\$	5.38
3899000000949279	PINNACLE	\$	1,664.49
3899000000950640	TIMESHARE MARKETING	\$	2,943.90
3899000000953461	ONLINE MUSIC	\$	130,416.50
3899000000956001	PDM INTL 5	\$	67,936.05
3899000000959872	BACK TO THE CARIBBEAN	\$	41,419.60
3899000000963445	FUN TIME NOW COM	\$	16,889.00
3899000000964187	UZEL INTERNATIONAL CORP	\$	17.50
3899000000964591	BARR SECURITY AND CAFE PREPAY	\$	40,864.12
3899000000970788	QUALITAS ASSISTANCE	\$	4,374.86
3899000000972438	CINERGY HEALTH AND LIFE INC	\$	151,155.50
3899000000975159	DIRECT FINANCIAL	\$	980.00
3899000000976546	RSD TRADING LLC	\$	1,069.70
3899000000977098	CREDITLINE	\$	81,207.79
3899000000981645	ANGOLO IMPORT INC	\$	4,905.90
3899000000982783	AGEINVIS866 204 1323 V	\$	66,150.87
3899000000982866	FALCO K9 ACADEMY	\$	70.68
3899000000985570	AVALON AUTO PARTS INC	\$	482.64
3899000000987345	DUNDEE FLOOR COVERING	\$	18,862.79
3899000000988467	KABBALAH JEANS INC	\$	3,022.18
3899000000989093	LAWNCHAIRMILLIONAIRE COM	\$	5,693.57
3899000001006269	VCOMM	\$	162,077.49
3899000001007622	FON PILOT	\$	389.75
3899000001007937	RUSSIAANTVONLINE COM	\$	9,537.75
3899000001013604	CALLED MAGAZINE	\$	1,861.18
3899000001013703	NEXT LEVEL MARKETING INC	\$	7,818.19
3899000001017159	WARDA FASHION HOUSE INC	\$	4,433.34
3899000001018272	ELEGANT AFFORDABLE JEWELRY	\$	1,301.06
3899000001020278	AMERICAN FINANCIAL SERVICES INC	\$	116.10
3899000001021144	ITS INC	\$	3,969.51
3899000001025491	BIMINI ISLAND AIR	\$	41,995.71
3899000001026226	RAIDER PUBLISHING INTERNATIONAL	\$	3,027.50
3899000001032059	FINEDNET88833366540	\$	10,494.17



3899000001034584	AMERICA FINANCIAL LEADERSHIP	\$	253.40
3899000001040383	MIGHTYS CAFE AND GRILL	\$	2,589.96
3899000001043387	PRICE SMARTER.COM	\$	132.85
3899000001043577	TOTAL CLEANSE	\$	9,229.98
3899000001045192	QUALITY AD SERVICES	\$	434.45
3899000001047321	T CLEANSE	\$	100,612.00
3899000001047479	DENNIS M GAC	\$	3,423.30
3899000001049830	DOMAINPRO888 3050932	\$	16,740.62
3899000001050127	DOMAINPRS888 3050933	\$	16,467.13
3899000001050176	DOMAINPRC888 3068845	\$	15,824.96
3899000001050184	DOMAINPRE888 3068846	\$	16,354.29
3899000001050218	DOMIANURL888 3068847	\$	20,418.03
3899000001052669	PERIODICALS 8883009415	\$	23,313.04
3899000001053709	PREMIUM LINES LLC	\$	2,816.88
3899000001055241	I FORTUITY LLC	\$	1,626.90
3899000001055993	DYNAMIC SOLUTIONS AND SYSTEMS	\$	14,712.18
3899000001057437	LAIS LLC	\$	1,227.20
3899000001058724	NITIN CHHODA PT	\$	885.60
3899000001063419	EAGLES FLIGHT AUTO SALES	\$	121.19
3899000001065901	TRAVEL EXCLUSIVE	\$	18,447.40
3899000001067436	TRAVEL PARTNERS USA INC	\$	1,049.08
3899000001069309	VCOMM INC	\$	16,869.12
3899000001069689	ORNARE MIAMI DESIGN	\$	2,132.22
3899000001072667	VACATION CLUBS	\$	39,742.62
3899000001072683	VACATION CLUBS	\$	52,421.86
3899000001072691	VACATION CLUBS	\$	397,923.66
3899000001077856	CONSUMER NATIONAL	\$	19,738.71
3899000001079613	NATIONAL BEDS LLC	\$	1,391.25
3899000001081429	PSM*RevPhonDetctve com	\$	4,348.13
3899000001085677	CASTLEGATE	\$	2,860.97
3899000001085735	UMISLIM 877 362 3981	\$	156,283.45
3899000001086576	TRAVEL SOLUTIONS 1 LLC	\$	347.75
3899000001091253	888 642 0071 MLNONL	\$	7,820.81
3899000001091295	888 642 0159 MEMBRL	\$	6,510.96
3899000001091352	888 642 0276 DISCLG	\$	10,117.40
3899000001091683	888 642 0016 LEGNET	\$	12,853.37
3899000001091725	888 642 0054 MEMLEG	\$	6,001.58
3899000001091998	GO FISH PROMOTIONS	\$	528.75
3899000001092160	BEST VALUE LOCATOR	\$	3,695.85
3899000001092186	KALINYANG PINOY	\$	3,939.22
3899000001093556	NET TRAV AND PLATINUM ONE DESTIONS INC	\$	45,096.67
3899000001098704	GMP 800 710 2564	\$	108,387.91
3899000001099116	BUSINESSFUND 8004101682	\$	233,732.91
3899000001099132	GRANTCREATOR 8005462919	\$	1,788.44
3899000001099140	QUICKGRANTPRO8663707270	\$	319,347.33

3899000001099165	WWWMYGRANTSITENET 8774951145	\$	1,149,601.41
3899000001099173	EASYGRANTSUC 8005462919	\$	112,122.31
3899000001107885	PSYSTAR	\$	230.42
3899000001111952	WHERE AND WHEN VACATIONS	\$	18,774.95
3899000001118247	TRAVEL DESTINATIONS	\$	111,060.40
3899000001119260	FUSION LABS	\$	4,756.55
3899000001121225	BETTER BILLING SOLUTIONS	\$	4,618.04
3899000001123494	TOTAL CLEANSE	\$	34,256.13
3899000001123668	SUNSHINE PROMOTIONS LLC	\$	188,054.79
3899000001125648	THE LIBIMAX COMPANY LLC	\$	3,499.59
3899000001128329	THETIMESHARESPACE COM	\$	28,535.39
3899000001129707	DP WARRANTY 8666465957	\$	2,176.78
3899000001129863	FUSION LABS 2	\$	2,657.27
3899000001129897	FUSION LABS 3	\$	3,192.97
3899000001129921	FUSION LABS 4	\$	3,939.99
3899000001129947	FUSION LABS 5	\$	1,788.33
3899000001130002	ENVISION MAGAZINES	\$	19,526.08
3899000001130028	VACATION NETWORK INC	\$	76,945.23
3899000001131455	FINTECH SERVICES INC	\$	19,441.37
3899000001135647	8662478971BELLABRITE	\$	29,029.24
3899000001139193	MINELEMT 866 514 8949 V	\$	49,731.06
3899000001143732	QUALITY CONTROL SERVICES GROUP INC	\$	605.91
3899000001143823	ONL SVC 18008140312 V	\$	8,222.67
3899000001147238	GOOD TIMES TRAVEL 877 236 5786	\$	87,648.97
3899000001147709	HOME 911	\$	9,317.63
3899000001149283	HEALTH COFFEE USA INC	\$	4,837.22
3899000001150489	REWARDS PRINTING	\$	7,289.10
3899000001150976	WELLNESS WATCHERS MD 1	\$	3,239.93
3899000001153715	888 573 6126 GRANTC	\$	44,238.29
3899000001154309	WELLNESS WATCHERS MD 2	\$	3,372.88
3899000001155009	888 573 6167 GRNTCN	\$	41,747.93
3899000001155033	888 573 6168 GRNTSR	\$	41,201.52
3899000001155074	888 573 6171 ONLGRA	\$	41,456.74
3899000001155108	888 573 6172 GRANTS	\$	1,954.93
3899000001155868	SUPER SAVINGS TODAY	\$	2,764.81
3899000001155918	ORANGWOOD LONG DISTANCE	\$	6,955.96
3899000001157104	THE LEARNING ANNEX	\$	2,898.20
3899000001162328	TEAM TURF	\$	332.84
3899000001163573	CREDICARE 911	\$	3,519.03
3899000001164043	EDAPTE MARKETING SOLUTIONS	\$	2,193.52
3899000001165180	FLORIDA PERIODICALS LLC	\$	454.33
3899000001165198	CHINESE DIET TEA	\$	1,000.00
3899000001166329	KND RECOVERY SERVICES	\$	0.10
3899000001167210	KAFG TV	\$	743.50
3899000001172624	ARTISTIQUE DIVERSIFIED	\$	8,790.95

3899000001172699	GLOBAL MARKET EXPOSURE	\$	17,115.44
3899000001173002	TREASURE COAST READERS 8666089254	\$	51,427.36
3899000001174380	MCR EQUITY GROUP	\$	57,984.66
3899000001175361	ROYAL PALMS TRAVEL INC	\$	99,365.95
3899000001175510	WORLD TRAVEL CONCEPT INC	\$	1,716.80
3899000001175643	DELAVAN LAKE YACHT CLUB INC	\$	394.88
3899000001176138	VITALCHOICES INTERNATIONAL LLC	\$	5,007.93
3899000001176252	BRIAN CHAMBERS MOVING	\$	70.00
3899000001177664	WELDMART ONLINE	\$	-
3899000001177672	TOTAL CLEANSE	\$	26,306.88
3899000001179546	DK EXPORTS INC	\$	689.74
3899000001179553	DESTINY VACATIONS	\$	63,651.25
3899000001181096	IWEBCONTACTS COM	\$	1.26
3899000001183035	CHOICEHOMEWARRANTYCOM	\$	13,563.53
3899000001183837	NA31COM 8004189320	\$	344,660.82
3899000001184553	1ST SAVE 8666914944	\$	4,170.43
3899000001184561	DINNER SAVE 8666914944	\$	5,250.95
3899000001184587	LD SAVE 8666914944	\$	17,014.31
3899000001184744	WWW 501C3CDCOM 8004862129	\$	6,093.78
3899000001184884	CONTRAX SYSTEMS LLC	\$	117.61
3899000001184959	ANCHOR HOUSE FINANCIAL	\$	60,542.30
3899000001186251	LASER SAFETY SYSTEMS	\$	6,782.96
3899000001188240	PACIFIC GUARD WARRANTY	\$	6,174.83
3899000001190055	JUSTIN MILLER ATHLETIC SERVICES	\$	370.74
3899000001193497	CHRISTIAN LIVING MINISTRY	\$	134.93
3899000001195088	ROLLRIGHTNOW COM	\$	575.50
3899000001195781	STUDIO 7 DIGITAL MEDIA	\$	977.91
3899000001196508	LIR ENTERPRISES INC	\$	33,512.75
3899000001196920	MAGAZINES 8666820803	\$	9,943.88
3899000001199551	DK EXPORTS INC	\$	3.00
3899000001199700	WWW WEBSAVECLUB COM	\$	31,724.41
3899000001200441	ABUNAI DIVERS	\$	4,979.58
3899000001202678	VINTAGE ROOF TILE	\$	7,524.46
3899000001203486	TO THE LIMIT MOTORSPORTZ	\$	219.06
3899000001205887	8669678511FINANCIALSRV	\$	49,199.50
3899000001206794	UNIVERSAL TOURS	\$	38,205.44
3899000001215985	WARRANTY SERVICES	\$	20,234.48
3899000001216736	IMAGE INCENTIVES LLC 2	\$	20,369.30
3899000001217445	CLS LIMO	\$	666.38
3899000001218187	ALPHA GROUP ADVISORS	\$	15,994.50
3899000001218203	ALLIED AMERICAN WARRANTY	\$	34,900.06
3899000001218682	8666071071 MY DEBT CURE	\$	57,320.80
3899000001219904	FULL CIRCLE NY	\$	67.30
3899000001220530	ALPHA GROUP ADVISORS	\$	13,424.50
3899000001221009	PREMIUM RESORT SUITES LLC	\$	17,208.01

3899000001221207	IGNITE MATCHMAKING SERVICE	\$	130.00
3899000001225885	8666071070 MONEY MASTERY	\$	57,173.01
3899000001227105	PHENTERMINENY.COM	\$	10,068.05
3899000001227147	J2 INCORPORATED	\$	9,666.70
3899000001227394	ACTION MOTORSPORTS	\$	6,957.61
3899000001230331	VALUE PLUS MEMBERSHIP	\$	1,711.74
3899000001230380	AUTO STAR MEMBERSHIP	\$	1,199.84
3899000001230620	IBIZNETWORK NET	\$	257.56
3899000001231073	AFL FINANCIAL SERVICES	\$	50,016.30
3899000001232196	1866 760 1071 IWB CLUB PI	\$	11,798.99
3899000001233285	EXTENDED DEALER WARRANTY SERVICES CORP	\$	8,521.47
3899000001236445	ANCHOR HOME SEARCH	\$	58,030.74
3899000001237898	LATINO BEDDING AND FURNITURE	\$	1,228.05
3899000001238672	CREATIVE VACATION SOLUTIONS	\$	31,513.80
3899000001240900	REMAR POSTGRADUATE SCHOOL	\$	156.79
3899000001241213	PSM*FreePhoneTrcer com	\$	30,738.90
3899000001241221	PSM*EmailFinderCC com	\$	31,974.84
3899000001243383	ARTIS FURNITURE CO	\$	42,959.56
3899000001244399	ID VANGUARD	\$	30,358.44
3899000001245271	J2 INCORPORATED 2	\$	1,022.47
3899000001246147	BENEFITS MARKETING ALLIANCE	\$	85.99
3899000001246154	BENEFITS MARKETING ALLIANCE	\$	4,626.13
3899000001247731	CONNECT GROUP SERVICES	\$	83,244.75
3899000001251311	SUPER FOODS	\$	3,264.02
3899000001251410	FIRMA SOLUTIONS INC	\$	641.00
3899000001252640	8017055325 REPROMOTER	\$	62,748.48
3899000001253770	SUPER FOODS	\$	755.71
3899000001257227	THE ITIE LLC	\$	113.27
3899000001257839	SELECT DIRECT INC	\$	1.00
3899000001257847	SUPER FOODS	\$	2,611.75
3899000001257987	DINNERDISCOUNTSTODAY COM	\$	8,096.27
3899000001258001	MYDISCOUNTCLUBSITE COM	\$	12,196.31
3899000001258043	DINNERDISCOUNTSNOW COM	\$	6,160.88
3899000001258548	WWWCHOICETRAVELPASSCOM	\$	13,384.19
3899000001258589	WWWCHOICETRAVELCARDCOM	\$	17,891.55
3899000001258597	IVAL GROUP	\$	7,145.07
3899000001259504	MICHE BAG MILWAUKEE LLC	\$	5,077.17
3899000001260213	ZIG ZAG	\$	2,672.18
3899000001261823	SUPER FOODS	\$	1,635.04
3899000001263670	SOVAN INC	\$	184.62
3899000001264488	J2 INCORPORATED 3	\$	3.44
3899000001264504	ACAI SUPREME	\$	30,080.61
3899000001266301	XSCOLLECTION COM8882465188	\$	44,252.62
3899000001266376	TAC EVOLUTION	\$	70,410.51
3899000001266582	SUPER FOODS	\$	1,750.95

3899000001269131	8017055325 REPROMOTER	\$	45,927.37
3899000001269149	8017055325 REPROMOTER	\$	45,856.75
3899000001269164	8017055325 REPROMOTER	\$	45,791.70
3899000001269180	8017055325 REPROMOTER	\$	45,897.88
3899000001269198	8017055325 REPROMOTER	\$	47,912.81
3899000001269206	8017055325 REPROMOTER	\$	45,789.23
3899000001272283	THE FLYING DOG	\$	3,881.73
3899000001272358	BELLACLEAR	\$	13,654.52
3899000001272416	DIESEL DECALS	\$	149.76
3899000001273018	THE ULTIMATE FACIAL	\$	22,014.67
3899000001273778	HOUSTON ASSOCIATES REALTY	\$	2,218.70
3899000001275252	SUPER SAVINGS TODAY	\$	27,080.57
3899000001275393	ORANGWOOD LONG DISTANCE	\$	28,772.26
3899000001275526	ID VANGUARD	\$	70,326.13
3899000001275591	ID VANGUARD	\$	13,871.38
3899000001277241	DTECH EVOLUTION	\$	51,899.35
3899000001285210	HEALTH OPTIONS	\$	130,331.76
3899000001286846	M BLAZIN TATTOO AND PIERCING	\$	1,143.50
3899000001286861	DIMITRIS WHOLESAL	\$	1,616.70
3899000001289220	REEL POINT LLC	\$	264.34
3899000001294667	SIMPLE WEALTH	\$	-
3899000001294923	COLUMN RECOVERY GROUP LLC	\$	1,545.29
3899000001302247	SUN TRAVEL CLUB VACATIONS	\$	278.60
3899000001303740	ONLY WAY 2 GO TRAVEL	\$	61,137.95
3899000001304128	GIFTS OF THE ANDES	\$	2,086.04
3899000001304326	PARAMOUNT	\$	49,909.63
3899000001306206	PARAMOUNT 2	\$	10,066.38
3899000001306727	SD4ME I	\$	1,719.73
3899000001307410	MAGAZINES006*NRP	\$	6,197.41
3899000001308970	SD4ME II	\$	1,673.71
3899000001309390	UNIVERSAL BIZ SERVICE	\$	160.24
3899000001309465	SD4ME III	\$	597.50
3899000001309572	SD4ME IV	\$	1,294.51
3899000001311438	8886746805 DIRECT INVEST	\$	59,723.81
3899000001311479	8886746805 DIRECT INVEST	\$	55,872.10
3899000001311826	BERRYSLIM 866 674 3960	\$	25,203.03
3899000001312204	ALPHA GROUP ADVISORS 1	\$	32,035.80
3899000001312238	ALPHA GROUP ADVISORS 2	\$	31,448.70
3899000001312303	ULTRAACAIBERRY 8009713352	\$	128,008.91
3899000001312626	HORIZON CARD SERVICES	\$	2,168.96
3899000001313228	SECURE SERVICES CORP	\$	498.50
3899000001313251	GREENTEA 800 624 9971	\$	25,573.73
3899000001313491	MBA UNIVERSAL	\$	10,906.90
3899000001313814	BIGDADDYSPY 8774675311	\$	48,023.56
3899000001318748	MINELEMT 866 751 8352	\$	25,252.15

3899000001320603	ELINK FINANCIAL MARKETING SOLUTIONS	\$	25,037.66
3899000001320611	ELINK FINANCIAL MARKETING SOLUTIONS LLC	\$	830.17
3899000001320652	ELINK FINANCIAL MARKETING SOLUTIONS LLC	\$	4,854.67
3899000001321635	VACATION NETWORK INC	\$	35,628.35
3899000001321650	VACATION NETWORK INC	\$	51,630.56
3899000001321668	VACATION NETWORK INC	\$	86,760.20
3899000001321692	VACATION NETWORK INC	\$	39,033.60
3899000001321700	ED HARDY ENERGY SHOTS	\$	150.15
3899000001321742	VACATION NETWORK INC	\$	21,059.15
3899000001321759	MY CALORIE BALANCE COACH	\$	1,063.10
3899000001323185	SHAREE ENGLISH	\$	1,104.85
3899000001326667	H AND K MARKETING LLC	\$	6,177.75
3899000001327301	PROPHONEZCOM	\$	1,733.14
3899000001327327	UNIVERSAL BUSINESS	\$	1,940.09
3899000001327798	8666372098 WEBPRO	\$	6,617.29
3899000001328119	8665969061 PPMPORTAL	\$	7,273.39
3899000001328135	8665970350 INETPLUS	\$	6,115.98
3899000001328275	8665970352 BESTWEBCLUB	\$	6,589.90
3899000001328374	8665970351 BIZCONNECT	\$	5,596.96
3899000001329406	877 290 9136 MYSRC5H	\$	14,201.07
3899000001330602	PHONESTEALTH COM	\$	48,132.80
3899000001330784	WHITETEETHONLINE COM	\$	3,269.95
3899000001331089	877 295 0039 MYEZCSH	\$	29,604.13
3899000001331170	877 295 0052 FSTCASH	\$	27,865.79
3899000001331188	877 295 0057 QSCHCSH	\$	22,589.76
3899000001331717	CLARICOL 888 292 0793	\$	341.15
3899000001331741	DCPS FINANCIAL	\$	47,765.85
3899000001332269	VISIBLE NET	\$	55,569.85
3899000001332459	877 295 0058 HOMEBIZ	\$	31,630.85
3899000001332467	METABOLYSIN	\$	1,764.52
3899000001337185	SMART MODIFICATION	\$	10,795.71
3899000001338266	HEALTH E CHOICE	\$	5,636.34
3899000001339215	MAGAZINES007*NRP	\$	6,464.84
3899000001339249	MAGAZINES008*NRP	\$	5,898.02
3899000001340254	SWISS WRIST INC	\$	18,082.47
3899000001341948	M2	\$	293.08
3899000001342888	DJM*LIFESTYLEFIT.COM	\$	900,764.37
3899000001343340	PARADISE TRAVEL GROUP LLC 2	\$	60,106.66
3899000001344140	8012246545 SUBMIT SOLUTIONS	\$	35,734.36
3899000001345147	ILOVEPETS 8009313085	\$	11,134.50
3899000001347341	LK LLC	\$	1,916.90
3899000001347895	REAL TALK NETWORK	\$	88,565.46
3899000001349461	DJM*COSTNSAVE.COM	\$	130.11
3899000001350790	GOLFDEALZNET	\$	254.23
3899000001351418	THE TECHNICAL EDGE	\$	10,998.85

3899000001352424	MOUNTAINSCAPE VACATIONS INC	\$	744.70
3899000001352861	SLIMSPLASH800 476 0698	\$	20,055.19
3899000001354651	READERS SOURCE LLC	\$	8,025.57
3899000001354701	PROMO READERS SERVICE	\$	7,217.99
3899000001354792	ID PRO ALERT 800 810 0597	\$	28,062.06
3899000001354875	EWEB FINANCIAL	\$	22,067.10
3899000001355328	UNIVERSAL TOURS II	\$	23,306.08
3899000001356250	WORLD WLDE MOBILE INC	\$	22,463.22
3899000001357811	WWW FEDGRANTUSA COM	\$	810,003.00
3899000001359395	NATIONWIDE BOOKS AND PUBLICATIONS INC	\$	5,009.16
3899000001360310	8012246545 SUBMIT SOLUTIONS	\$	26,031.25
3899000001362761	8778491119 FORECLOSURE	\$	26.45
3899000001363694	LIFETIME VACATIONS	\$	550.84
3899000001363983	877 479 9817 GOOGLECD	\$	75,272.59
3899000001364288	LADIVAS CREATIONS LLC	\$	3.90
3899000001366291	5TH AVE DIGITAL	\$	9,073.36
3899000001366549	MYDOLLARSH 8009313082	\$	1,181.96
3899000001366564	SURPLUSALER8009313094	\$	661.91
3899000001366572	AUCTIONMEN 8009313092	\$	5,258.60
3899000001366580	IKIDSPLACE 8009313085	\$	2,153.30
3899000001366606	SMARTFINANC8009313091	\$	364.02
3899000001366630	BIDFUEL 8009313083	\$	3,071.99
3899000001366671	BLGTOOLKIT 8008907947	\$	3,245.06
3899000001367281	BE	\$	10,597.78
3899000001367299	BE	\$	314.77
3899000001367331	BE	\$	3,912.60
3899000001368255	866 575 5080 ELITE1	\$	20,433.09
3899000001368263	866 576 0716 MYCLUB	\$	21,822.91
3899000001368834	866 576 1039 WEBBEN	\$	22,024.24
3899000001368867	866 575 4758 BENFIT	\$	36,235.43
3899000001369360	ROADSIDE ASSURANCE	\$	12,273.17
3899000001369428	BENEFIT ADVANTAGE	\$	12,146.65
3899000001370160	ID SENTINEL ALERT	\$	5,379.05
3899000001371341	800 789 4740 DISCOUNT SAVINGS UBA	\$	1,260.36
3899000001371457	IDSECURE 866 796 0118	\$	6,139.45
3899000001372000	AMERICAN STANDARD FINANCE COM	\$	34,402.20
3899000001372141	AMERICAN STANDARD ONLINE COM	\$	38,371.80
3899000001373149	CLEAN MY NEST	\$	0.10
3899000001374527	TRAVEL ESCAPES	\$	3,729.39
3899000001374667	HGH ACAIBERRY COM	\$	35,000.00
3899000001374709	BENEFIT ADVANTAGE	\$	11,860.45
3899000001374733	ID SENTINEL	\$	4,792.48
3899000001374949	ALL INCLUSIVE EXCURSIONS	\$	185,546.29
3899000001376100	ROADSIDE ASSURANCE	\$	10,120.49
3899000001376126	REWARDS VACATION	\$	7,272.98

3899000001376134	REWARDS VACATION	\$	5,940.63
3899000001378171	M2 II	\$	1,527.75
3899000001379302	SUPREME MARKET SOLUTIONS LLC	\$	1,330.95
3899000001381357	MYFATSAVE 866 851 2501	\$	4,858.76
3899000001382108	MAGICACAI COM	\$	0.40
3899000001383403	NATIONWIDE MARKETING	\$	5,278.95
3899000001384534	866 595 4955 GRNT CT	\$	3,576.75
3899000001384559	866 595 6761 GRT CON	\$	3,500.93
3899000001384583	NEED FOR DIGITAL	\$	726.65
3899000001384674	866 596 9059 EABNET	\$	28,393.73
3899000001385879	EXACTACAI 8666707383	\$	5,038.00
3899000001386091	DESTINATIONS ULTIMATE TRAVEL CLUB	\$	121,927.00
3899000001386901	CHRISAL CLEANER	\$	0.20
3899000001389269	866 595 9981 GRTCONN	\$	247.02
3899000001390689	NEED FOR DIGITAL	\$	46,631.18
3899000001391216	TIMESHARE LIQUIDATORS LLC	\$	20,791.10
3899000001391570	AMBROSEAISMAXCOM	\$	616.23
3899000001391745	888 801 5190HOLIDAY 4 U LLC	\$	42,766.73
3899000001393238	CAL NUTRSCIENCES INC	\$	307,885.84
3899000001395415	NATURALTRISLIM8008593869	\$	867.15
3899000001395530	MEGATRISLIM DIET 8008593869	\$	225.93
3899000001397510	800 652 0098 ACAITHIN1	\$	1,206.96
3899000001397593	866 865 0899 HALLURE	\$	29.26
3899000001398518	800 652 0098 ACAITHIN2	\$	1,056.27
3899000001399383	800 652 0098 ACAITHIN3	\$	1,174.07
3899000001399417	800 652 0098 ACAITHIN4	\$	1,038.49
3899000001400256	SECURE LONG DISTANCE COM	\$	21,172.01
3899000001400702	GRAND VACATION CLUB II	\$	13,284.70
3899000001402468	ALL INCLUSIVE EXCURSIONS	\$	129,612.50
3899000001403318	866 864 1516 ACAIBRN	\$	23.51
3899000001403334	866 864 1517 WEBACAI	\$	54.92
3899000001403995	TC UNLIMITED	\$	33.10
3899000001404399	8663492166 HEALTH9 US	\$	58.83
3899000001404738	866 577 5718 MYALURE	\$	20.79
3899000001404753	866 577 6750 INETFIT	\$	28.97
3899000001405842	US1PHOTOCOM	\$	137,740.35
3899000001406220	866 577 7045 IHEALTH	\$	14.98
3899000001406931	800 652 0098 ACAITHIN	\$	960.99
3899000001407756	WWWGETFITNSLIMCOM	\$	47,646.26
3899000001412871	FULLSPEED FUNDING LLC	\$	12,058.96
3899000001413036	FANTASTICTOX	\$	413.34
3899000001417748	877 611 9783 GLUCTHNMD	\$	1,729.37
3899000001417755	877 611 9786 GLCOTHNMD	\$	1,641.83
3899000001418233	KARDIA LIFE FITNESS	\$	3,618.93
3899000001419231	WWW SIMPLECLEANS COM	\$	28,607.56



3899000001419777	FIRST SOURCE MARKETING IMG	\$	72,196.76
3899000001420015	CUSTOM COUNTERTOPS	\$	285.69
3899000001421302	B AND T WHOLESALE	\$	120.00
3899000001423431	AMERICAN EQUITY MANAGEMENT	\$	3,067.75
3899000001423530	BELLANUE BEAUTY	\$	906.98
3899000001423555	DVD ENTERTAINING	\$	23,123.72
3899000001424033	TERRA NOVA	\$	64.50
3899000001425055	SPYMASTERTOOLS COM	\$	21,193.52
3899000001426319	EATOUT 8883344315	\$	3,879.68
3899000001426343	DINEATADISC 8883329083	\$	3,124.25
3899000001426525	INET 888 596 8884	\$	21,160.15
3899000001426855	NYMODERNFASHION COM	\$	431.92
3899000001427374	THE BEACH CLUB LODGING	\$	250,000.00
3899000001429263	WWW.CLOSEOUTISLAND.COM	\$	3,206.64
3899000001429537	WORLDWIDE MARKETING SOLUTIONS	\$	65,926.67
3899000001429750	US READERS	\$	28,283.43
3899000001432184	877 851 2334 ACAI3STCK	\$	538.04
3899000001432218	877 851 2332 ACAITRIPL	\$	721.77
3899000001434248	US READERS INC	\$	26,283.52
3899000001436086	866 864 1519 VITANET	\$	13.41
3899000001436151	866 864 9021 NETACAI	\$	111.24
3899000001438066	DESIGNS BY ROXIE	\$	69.51
3899000001438264	866 246 0776 TRIPLACAI	\$	732.81
3899000001439197	866 864 9750 ACAITTL	\$	24.55
3899000001440534	REZVADVANCE LLC	\$	3,929.80
3899000001441094	8669898945MAXACAIBURN	\$	103,105.80
3899000001441276	RPLDSAVE8662475671	\$	3,837.92
3899000001441326	IGOTAGUY COM	\$	62.00
3899000001443876	866 682 0803 1STFINANCIAL	\$	121.03
3899000001444965	BUZZHEALTH 8662063211	\$	275.60
3899000001445087	PRIDE WORKS CONSTRUCTION	\$	0.40
3899000001446713	WWW.NULASESKINSOLUTIONSCOM	\$	1.90
3899000001446788	866 762 0945 ABSOLUTE GREEN TEA LLC	\$	2.67
3899000001447968	MAGSENTRTMNT8778014103	\$	23,099.72
3899000001448198	ACCESSORY DEN	\$	2,796.71
3899000001448305	I KITCHEN AXIOM	\$	8,471.02
3899000001448701	TENIBAC DISTRIBUTING	\$	6,737.53
3899000001449402	CONSOLIDATED LAW CENTER LLC	\$	2,394.50
3899000001449451	CLICKSELLGO 8003534581	\$	11,085.06
3899000001449469	CLICKSELLGO 8003534581	\$	12,141.49
3899000001449477	CLICKSELLGO 8003534581	\$	16,251.36
3899000001449485	CLICKSELLGO 8003534581	\$	12,299.56
3899000001449519	CLICKSELLGO 8003534581	\$	11,989.07
3899000001449527	CLICKSELLGO 8003534581	\$	11,975.94
3899000001449535	CLICKSELLGO 8003534581	\$	10,661.55

3899000001450665	POSTCARD PROFITS	\$	1,903.57
3899000001452547	MAGAZINEENT8664696925	\$	15,126.63
3899000001452703	ACAI RECHARGE	\$	167.75
3899000001452935	BELLANUE BEAUTY	\$	267.52
3899000001452984	COLONXR	\$	5,963.00
3899000001453016	BUYZYRIXOL COM	\$	5.00
3899000001453206	LJR PAINTING	\$	734.90
3899000001453222	BRICK HOUSE FIREWORKS	\$	0.20
3899000001453560	MAGAZINE4ENT8663185124	\$	3,852.82
3899000001453685	COLON CLEANSE	\$	674.16
3899000001454311	WWWNULASE SKINSOLUTIONSCOM	\$	94.78
3899000001454741	PLATINUM CORPORATE CREDIT	\$	3,079.10
3899000001455565	1 CALL LEGAL MD 866 318 5011	\$	14,722.06
3899000001456126	8666707386 GREENTEA	\$	1,046.97
3899000001456134	8666707383 EXACTACAI	\$	2,506.07
3899000001456142	8667286203 EXACTDETOX	\$	2,800.27
3899000001456167	8666707407 RESVERATROL	\$	643.24
3899000001456886	MAG4ENTRTMNT8663185013	\$	1,321.18
3899000001457199	8775666629 WIRED INVESTORS	\$	5,094.30
3899000001457207	8775666629 WIRED INVESTORS	\$	5,293.67
3899000001457223	8775666629 WIRED INVESTORS	\$	5,124.30
3899000001458692	001SHOPPERSCLUB	\$	12,503.31
3899000001459807	EASY WHITE 8663799441	\$	2,926.73
3899000001460797	1 HOME SAVERS	\$	4,353.38
3899000001461746	VBENLGALMD8662231766	\$	32,419.30
3899000001463254	HOMEPLUSID 8663185121	\$	6,083.92
3899000001464039	YOUR PAYDAY HOUSE	\$	2,764.29
3899000001464153	ALHAJ TRADING CONNECTIONS LLC	\$	50.00
3899000001464229	SEARCH SECRETS 4 YOU	\$	2,679.55
3899000001464260	SEARCH SECRETS 4 YOU 2	\$	2,622.15
3899000001464278	BUYERPROTECT8774723388	\$	5,511.16
3899000001464286	SEARCH SECRETS 4 YOU 3	\$	2,677.23
3899000001464302	SEARCH SECRETS 4 YOU 4	\$	2,586.76
3899000001464310	SEARCH SECRETS 4 YOU 5	\$	2,569.69
3899000001464351	DRUG TEST SOLUTIONS LLC	\$	1,350.34
3899000001464674	MAGENTRTMNT8663185012	\$	475.66
3899000001465424	TOBIANO CORPORATE CREDIT	\$	49.90
3899000001465630	015MAGAZINES8777150382	\$	732.91
3899000001465952	KLYMIT	\$	462.07
3899000001467255	CLICKSELLGO 8003534581	\$	4,010.19
3899000001467289	YOUR PAYDAY HOUSE1	\$	2,481.62
3899000001467297	YOUR PAYDAY HOUSE2	\$	2,507.15
3899000001467305	YOUR PAYDAY HOUSE 3	\$	2,525.64
3899000001467412	YOUR PAYDAY HOUSE 4	\$	2,554.72
3899000001469764	NATRA CURE	\$	830.12

3899000001469798	NATRA CLEAN	\$	550.42
3899000001470572	IDPROTECTBUY8774723388	\$	1,530.76
3899000001472362	BLS NATION	\$	10,185.17
3899000001472818	MAGSATHOME8664697897	\$	60.78
3899000001473527	PUBLISHERS GUIDE	\$	0.10
3899000001473659	888 736 3595 PUBLISHING HOUSE LLC	\$	27.92
3899000001473683	KANSAS CALL CENTER	\$	35.09
3899000001474830	ONE SAVE MY HOME	\$	575.00
3899000001475043	SOFTWAREPROS 8004695065	\$	54.80
3899000001475118	EXCLUSIVE GETAWAYS	\$	10,317.80
3899000001476264	ALL INCLUSIVE EXCURSIONS	\$	39,539.26
3899000001478765	IDHMPROTECT8663185008	\$	157.91
3899000001480134	HOUSE OF PUBLISHING XCHANGE	\$	4,359.84
3899000001480530	AAA COLLISION CORP	\$	472.80
3899000001480696	TAQUERIA JANITZIO	\$	237.69
3899000001481322	2 BRANSON COM	\$	5,459.15
3899000001483062	WHITE TEA TRISLIM	\$	217.77
3899000001483070	GRANT PRO	\$	124.51
3899000001483211	PRIVACY PROTECTION SERVICES NET	\$	3,261.59
3899000001483773	RESEARCH INNOVATION AND ROI	\$	9.90
3899000001489432	GOOG FAST CASH	\$	1,723.52
3899000001490083	AMERICAN LEGAL DEFENSE GROUP LLC	\$	52.00
3899000001490794	HOMEBRIDGE SECURITY	\$	2.00
3899000001490851	866 233 7344DEBT2WEALTH	\$	2,299.14
3899000001492071	GOOG FAST CASH	\$	587.65
3899000001492139	GOOG FAST CASH	\$	594.65
3899000001492154	GOOG FAST CASH	\$	606.65
3899000001492188	GOOG FAST CASH	\$	621.11
3899000001495512	REDUCE FAT 866 527 7119	\$	22.62
3899270300076154	CARMEL PAINT AND DECORATING CENTER	\$	395.53
3899271300002463	ANDRES JEWELRY REPAIR	\$	257.63
3899271300038905	PEARTREE TOURS	\$	2,164.20
3899271300042014	FURNITURE EXPRESS	\$	3,610.20
3899271300050173	TREASURED COLLECTIBLES	\$	352.50
		\$	<u>19,703,418.64</u>

**Account Payable**

389900000917813	TAX COMPLIANCE CENTER	\$	15,000.00
3899000001135647	8662478971BELLABRITE	\$	20,000.00
3899000000840635	ELITE PDM 8669043983	\$	19,890.46
3899000001286630	LIVE ENTERTAINMENT	\$	1,517.73
3899000000586568	SD ENTERPRISES LLC	\$	83,155.06
3899000000586618	TI ENTERPRISES LLC	\$	62,071.75
3899000000848646	ULTRA RELIEF LLC	\$	40,067.66
3899000000874022	Promo Readers Services Inc.	\$	60,309.15
			<hr/>
		\$	302,011.81
<b>Total</b>		\$	<u><u>20,005,430.45</u></u>

# Exhibit “E”

# BERG HILL GREENLEAF & RUSCITTI LLP

ATTORNEYS & COUNSELORS AT LAW

1712 Pearl Street • Boulder, Colorado 80302

Tel: 303.402.1600 • Fax: 303.402.1601

bhgrlaw.com

Giovanni M. Ruscitti  
Partner

Email: gmr@bhgrlaw.com

April 22, 2011

## Via E-Mail and Federal Express

Danette G. Smith  
ISO Compliance Manager  
Cynergy Data, LLC  
30-30 47<sup>th</sup> Avenue, 9<sup>th</sup> Floor  
Long Island City, NY 1101

Re: *Eden Cosmetics, LLC, Total Mobile Control, LLC, Natural Body Scapes, LLC, and Buyers Advantage Solutions, Inc.*  
Breach of Merchant Agreements

Dear Ms. Smith:

Our firm acts as outside counsel to Eden Cosmetics, LLC, Total Mobile Control, LLC, Natural Body Scapes, LLC, and Buyers Advantage Solutions, Inc. (collectively, the "**Merchants**"). As you know, Cynergy Data, LLC ("**Old Cynergy**") previously entered into numerous Merchant Processing Agreements (the "**Merchant Agreements**") with the Merchants, which were thereafter assigned to Cynergy Holdings, LLC n/k/a Cynergy Data, LLC ("**New Cynergy**") pursuant to Old Cynergy's ongoing bankruptcy proceedings (the "**Cynergy Bankruptcy**"). New Cynergy is in breach of the Merchant Agreements through its failure to release funds owed to each Merchant in accordance with the terms and conditions stated therein. To that end, it is our understanding that the Merchants are collectively owed \$197,656.90 together with fees and costs totaling \$9,868.00, which amount New Cynergy is wrongfully withholding. If this amount is not paid to the Merchants on or before April 27, 2011, the Merchants have authorized me to prepare the appropriate motion and seek relief from the United States Bankruptcy Court, District of Delaware.

Specifically, the Merchants and Old Cynergy entered into seven Merchant Agreements between 2007- 2009. *See* Merchant Agreements, attached hereto as **Exhibit A**. The Merchant Agreements are as follows:

- On November 7, 2007, Old Cynergy entered into a Merchant Agreement with Total Mobile Control, LLC d/b/a Precision Niche Products and established MID: 3899000000982783 for processing services related to its tradename, Age Invisible.
- On April 1, 2008, Old Cynergy entered into a Merchant Agreement with Total Mobile Control, LLC d/b/a Precision Niche Products and established MID: 3899000001081031 for processing services related to its tradename ColoSlim.

- On May 15, 2008, Old Cynergy entered into a Merchant Agreement with Eden Cosmetics, LLC and established MID: 3899000001139193 for processing services related to its tradename, Mineral Elements.<sup>1</sup>
- On December 11, 2008, Old Cynergy entered into a Merchant Agreement with Natural Body Scapes, LLC d/b/a BerrySLIM 86666743960V and established MID: 3899000001311826 for processing services related to its tradename, BerrySlim.
- On December 15, 2008, Old Cynergy entered into a Merchant Agreement with Natural Body Scapes, LLC d/b/a GreenTea8006249971-V and established MID: 3899000001313251 for processing services related to its tradename, GreenTea.
- On March 11, 2009, Old Cynergy entered into a Merchant Agreement with Buyers Advantage Solutions, Inc. d/b/a IDSECURE8667960118 and established MID: 3899000001371457 for processing services related to its tradename, ID Secure.
- On March 16, 2009, Old Cynergy entered into a Merchant Agreement with Buyers Advantage Solutions, Inc. d/b/a MYFATSAVE8668512501 and established MID: 3899000001381357 for processing services related to its tradename, My Fat Savings.

Under each of the Merchant Agreements, Old Cynergy agreed to hold aside a percentage of every transaction processed (the “Reserve Funds”) for temporary placement in each Merchant’s designated reserve account (the “Rolling Reserves”). In connection therewith, Section 7(B) of each Merchant Agreement provided that Old Cynergy’s withholding of the Reserve Funds was limited to 270 days after termination of the Merchant Agreement or the final transmission of a sales draft, whichever occurred last. Upon the expiration of this 270 day period, Old Cynergy was contractually obligated to release the full amount of the Reserve Funds and remit payment to the respective Merchant.

As you know, Old Cynergy and New Cynergy (collectively, the “Cynergy Parties”) entered into an Asset Purchase Agreement (“APA”) on August 26, 2009, whereby New Cynergy agreed to assume the Merchant Agreements and all obligations stated therein. *See* APA at p. 8-11. On September 1, 2009, Old Cynergy and its affiliates filed their chapter 11 petition and moved the court for an order approving the APA. *See* Sale Motion (Docket No. 13). On October 9, 2009, the court entered its Sale Order, approving the asset sale as contemplated in the APA, and required that the Cynergy Parties establish a cure escrow comprised of the outstanding funds held by Old Cynergy in connection with each merchant’s active rolling reserve account. *See* Sale Order (Docket No. 258). On October 26, 2009, the Cynergy Parties closed on the asset sale and established the cure escrow as contemplated in the Sale Order. Accordingly, the Merchants’ Rolling Reserves, which were withheld by Old Cynergy pursuant to the Merchant Agreements, were included in the cure escrow.

On August 10, 2010, Old Cynergy and its affiliates filed their Settlement Motion in the Cynergy Bankruptcy, which provided that “merchants seeking return payment...of a reserve

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<sup>1</sup> Eden Cosmetics, LLC requested the release of its Reserve Funds withheld pursuant to MID: 3899000001139193 in two separate letters dated January 24, 2011 and March 25, 2011. Both letters were ignored by New Cynergy.

which was designated as a [rolling] reserve and deposited into the [cure escrow]... may contact a representative with [New Cynergy] requesting such return in accordance with the applicable merchant agreement." See Settlement Motion at p. 10 (Docket No. 870). In the event that New Cynergy refused to comply with such request, a merchant "may proceed in accordance with its contractual rights under an assumed merchant processing agreement to obtain payment of funds remaining in the [cure escrow]." *Id.* On September 13, 2010, the court issued its Settlement Order, granting the Settlement Motion and incorporating the procedures specified therein. See Settlement Order at p. 3. (Docket No. 935).

After acquiring the assets, New Cynergy unilaterally terminated each of the Merchant Agreements by January 10, 2010, and has since refused to return any of the Merchants' Reserve Funds. This continued withholding is in violation of the Merchant Agreements' 270 day contractual limitation, as over 460 days have passed since New Cynergy's unilateral termination of the last Merchant Agreement. Additionally, more than 325 days have passed since the final chargeback posted to a Merchant account, which was received on May 31, 2010.

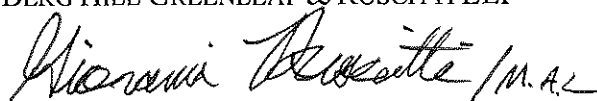
As of the date of this letter, New Cynergy is wrongfully withholding \$197,656.90 of the Merchants' collective Reserve Funds in violation of the Merchant Agreements. A breakdown of the specific amount owed to each Merchant is attached hereto as **Exhibit B**. This continued withholding amounts to a breach of New Cynergy's assumed obligations under each Merchant Agreement, a breach of the fiduciary duties owed by New Cynergy to each Merchant, and a conversion of each Merchant's Reserve Funds. In any action required for the recovery of such amounts due, the Merchants will seek an additional \$197,656.90 in punitive damages, plus their costs and attorneys fees.

Notwithstanding the foregoing, the Merchants are willing to resolve this dispute for prompt payment of \$207,524.90, which consists of \$197,656.90 in withheld Reserve Funds plus the Merchants' fees and costs of \$9,868.00.

If you are in agreement with this proposal, please remit a certified check to my office at the address above, payable to each Merchant as follows: \$52,198.06 payable to Eden Cosmetics, LLC (including \$2,467.00 in fees and costs); \$53,243.76 payable to Natural Body Scapes, LLC (including \$2,467.00 in fees and costs); and \$13,465.21 payable to Buyers Advantage Solutions, Inc. (including \$2,467.00 in fees and costs). If we have not heard from you before April 27, 2011, we will have no alternative but to prepare the appropriate motion and seek relief from the United States Bankruptcy Court, District of Delaware.

Sincerely,

BERG HILL GREENLEAF & RUSCITTI LLP

A handwritten signature in black ink, appearing to read "Giovanni Ruscitti / M.A.L.", written over a horizontal line.

Giovanni M. Ruscitti



# Exhibit “F”

**Merchant Rolling Reserve Breakdown**

<b>Merchant:</b>	<b>Tradename:</b>	<b>MID:</b>	<b>Amount Owed:</b>
<b>Eden Cosmetics, LLC</b>	<b>Mineral Elements</b>	3899000001139193	\$49,731.06
<b>Total Mobile Control, LLC</b>	<b>ColoSlim</b>	3899000001081031	\$20,000.00
<b>Total Mobile Control, LLC</b>	<b>Age Invisible</b>	3899000000982783	\$66,150.87
<b>Natural Body Scapes, LLC</b>	<b>Berry Slim</b>	3899000001311826	\$25,203.03
<b>Natural Body Scapes, LLC</b>	<b>Green Tea</b>	3899000001313251	\$25,573.73
<b>Buyers Advantage Solutions, Inc.</b>	<b>My Fat Savings</b>	3899000001381357	\$4,858.76
<b>Buyers Advantage Solutions, Inc.</b>	<b>ID Secure</b>	3899000001371457	\$6,139.45
		<b>Total:</b>	<b>\$197,656.90</b>

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	) Chapter 11
	)
CD LIQUIDATION CO., LLC, f/k/a	) Case No. 09-13038(KG)
CYNERGY DATA, LLC, <i>et al.</i> ,	)
	) Jointly Administered
Debtors,	) Ref. Docket Nos. 258, 935
	) & _____
	)

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**ORDER**

AND NOW, this \_\_\_\_ of \_\_\_\_\_, 2011, upon consideration of the Merchants' *MOTION REQUESTING AN ORDER COMPELLING COMPLIANCE WITH THE SALE ORDER (DOCKET NO. 258) AND THE SETTLEMENT ORDER (DOCKET NO. 935)* (the "Motion"), and any response thereto; it is hereby:

ORDERED that the Motion is GRANTED; and further

ORDERED that New Cýnergy is required to disburse \$197,656.90 to the Merchants.

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The Honorable Kevin Gross  
United States Bankruptcy Judge