



This Merchant Processing Agreement ("Agreement") is entered into as of the date signed by PMT ("Effective Date"), by and among the business entity indicated on the Merchant Application ("Merchant" or "you"), PMT Services, Inc., a Tennessee corporation ("PMT") and Imperial Bank, a national banking association ("Member"). Merchant desires to accept credit cards validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International Incorporated ("MasterCard") ("Cards"). PMT and Member desire to provide credit card processing services to Merchant. Therefore, Merchant, PMT and Member agree as follows:

#### 1. Honoring Cards.

- A. Without Discrimination. You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued.
- 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; or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. Unless permitted under the Laws and Rules (defined below), you will 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.
- 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 Member (or its 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. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, consistent with the Laws and the Rules. This paragraph does not prohibit you from offering a discount 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 or any other customer in any Card transaction unless Member or PMT refuses to accept the Sales Draft (as defined in Section 3) or revokes its prior acceptance of the Sales Draft (after receipt of 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 such payments, you promptly will remit them to Member.
- G. Disputes With Cardholders. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither PMT nor Member bears any responsibility for such transactions.
- H. Employee Actions. You are responsible for your employees' actions while in your employ.
- I. Authorization.
- A. Required on all Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction. You will follow any instructions received during such 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. Transactions will be deemed invalid on Cards that are expired, whether or not an Authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request.
- B. Effect. Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.
- C. Unreadable Magnetic Stripes. If you authorize and present Card transactions electronically and 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 Member and PMT for processing.
- I. Presentment of Sales Drafts.

## Merchant Processing Agreement

IMPNOVAMPA991101

- A. Forms. You will use a sales draft or other form approved by Member and PMT ("Sales Draft") to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (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. The requirements for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid mail/telephone order or electronic commerce Card transaction which fully complies with the requirements set forth in this Agreement.
- 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: (i) the Cardholder's name; (ii) account number; (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 that issued the Card as it appears on the face of the Card.
- D. Delivery and Retention of Sales Drafts. You will deliver a complete and legible 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 may require).
- E. Electronic Transmission. If you utilize 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. If you provide your own electronic terminal or similar device, such terminals must meet PMT'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 PMT or its agent in the form PMT from time to time specifies, or as required under the Laws or Rules. If Member or PMT requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 3 business days following the request.
- I. Deposit of Sales Drafts.
- A. 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, Member will deposit to the Merchant Account (defined in Section 6 below) all 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 acknowledge that your obligation to PMT and Member for all amounts owed under this Agreement arise out of the same transaction as Member's obligation to deposit funds to the Merchant Account.
- ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Member or PMT be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Member and PMT. All Sales Drafts and deposits are subject to audit and final checking by Member and PMT, and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments in accordance with the Rules, whether or not a transaction is charged back by the Card issuer. Member 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 Member's sole discretion.
- iii. Processing Limits. PMT may impose a cap on the dollar amount of Sales Drafts that it will process for you, as indicated on the Merchant Application ("Application") as your annual volume, or as established by PMT. This limit may be changed by PMT from time to time, upon notice to you. If such notice is given orally, it will be confirmed in writing. If you exceed the established limit, PMT may suspend processing Sales Drafts, and either return all Sales Drafts evidencing funds over the cap to you or hold those deposits in a separate account.
- A. Chargebacks. You are fully liable to PMT and Member for all transactions returned to PMT or Member for whatever reason, otherwise known as "chargebacks". You will pay PMT and Member on demand the value of all chargebacks. You agree to accept for chargeback and will be liable to Member and PMT in the amount of any sale for which the cardholder disputes the validity of the sale. You authorize PMT and Member to offset from incoming transactions and to debit the Merchant Account, the Reserve Account, or any other account held at Member or at another financial institution the amount of all chargebacks. You will fully cooperate with PMT and Member in complying with the Rules

regarding chargebacks. Guarantors are personally liable for all chargebacks.

- B. Excessive Activity. Your presentation to PMT 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, and for any one of Merchant's terminal identification numbers or merchant identification numbers, chargebacks and/or retrieval requests in excess of one percent (1%) of the average monthly dollar amount of your Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, Member and PMT to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges or creation or maintenance of a reserve account in accordance with this Agreement.
- C. Credits.
- i. Credit Memoranda. You will issue a credit memorandum, instead of making a cash advance, a disbursement or a refund on any Card transaction. Member will debit the Merchant Account for the total face amount of each credit memorandum submitted to PMT. You will not submit a credit relating to any Sales Draft not originally submitted to PMT, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide PMT with 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. Member or PMT may refuse to accept any Sales Draft or revoke its 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 all terms and conditions of this Agreement, the Laws and the Rules; (b) the Cardholder disputes his liability to Member for any reason, including but not limited 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 Member or PMT, as appropriate, any amount previously credited to you for a Sales Draft not accepted by Member or PMT or, where accepted, is subsequently revoked.
- A. Reprocessing. Notwithstanding any authorization or request from the Cardholder or customer, you will not reenter or reprocess any Card transaction which has been charged back.
- B. Fraud and Factoring. 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 deposit Sales Drafts evidencing Sales that were solicited by telemarketers. **Perpetrators of fraudulent transactions will be referred to law enforcement officials.** You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. You agree that PMT may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. PMT and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.
- I. Other Types of Transactions.
- A. Mail Order. You may not solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") without PMT's or Member's prior written authorization. Mail/telephone orders completed without prior written consent of PMT or Member will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws and the Rules. You may be required to use an address verification service ("AVS") on mail/telephone transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this agreement or validate a fraudulent transaction. You will 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 of the Sales Draft the following applicable words or letters: telephone order or "TO"; or mail order or "MO".
- B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's 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 PMT or Member, 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 sales 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. Deposits.
- 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 PMT or Member. 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 to be 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 upon making a deposit with a Card and a second Sales Draft upon 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.
- A. Future Delivery. You will not present any Sales Draft or other memorandum to Member or PMT for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Member's or PMT's prior written authorization. If Member has previously given such consent, you represent and warrant to Member and PMT 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.
- B. Electronic Commerce and ACH Transactions.
- i. Electronic Commerce. You must get PMT's and Member's consent to process electronic commerce ("EC") transactions, and you may process such transactions only if the transactions have been encrypted by a third party vendor acceptable to PMT and Member. If you submit EC transactions without PMT's and Member's consent, PMT may immediately terminate this Agreement. 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 PMT's 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. All communication costs related to EC transactions will be your responsibility. You understand that PMT will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Member into a depository institution of the United States in U.S. currency.
- ii. 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 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, and f) delivery policy. 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.
- iii. ACH Transactions. You may request PMT to convert your electronic commerce transactions into a format that can be processed by an automated clearing house ("ACH Transactions"). If PMT agrees to provide that service to you, PMT and Member will forward such transactions to the relevant automated clearing house for processing. You will follow the procedures established by PMT and the automated clearing house for ACH Transactions, which procedures are incorporated into this Agreement. You authorize PMT and Member to initiate ACH debits, credits and adjustments to the Merchant Account. Confirmation from PMT or Member of a credit or debit ACH Transaction does not constitute a warranty that you will be paid for the transaction. All relevant terms of this Agreement apply to ACH Transactions.
- A. American Express, Discover, and Diner's Transactions. Upon your request, PMT will provide access to authorization and/or data capture services for Discover, Diner's and American Express transactions. You must enter into a separate merchant agreement with NOVUS Services, Inc., Citicorp Diners Club, or American Express. Neither PMT nor Member are responsible for funding such transactions. Further, PMT will notify you that Discover, Diner's, American Express or other cards ("Additional Cards") may be accepted by you. If you do not decline this offer in writing, PMT will forward certain information, including but not limited to your Merchant Account number, to the Additional Card issuer. The terms of this Agreement will apply to Additional Card transactions. PMT will notify you in writing of the fees applicable to Additional Card transactions. Your acceptance of Additional Cards and transmission of Additional Card transactions to PMT will constitute your agreement to the terms of this Agreement with regard to Additional Cards.
- B. Non-Bankcard Services. From time to time, PMT may offer you certain additional products and services which may or may not be related to the processing of Card transactions. You will indicate your desire to PMT to decline such offers or be deemed to have accepted the offers and be liable to pay PMT and Member for the services provided.
- I. Merchant Account.
- A. Establishment and Authority. You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member), one or more commercial checking account(s) to facilitate payment for Card transactions (collectively, the "Merchant Account"). You will maintain sufficient funds in the Merchant Account to accommodate all transactions, including but not limited to fees, fines and chargebacks, contemplated by this Agreement. You irrevocably authorize PMT and Member to debit the Merchant Account for chargebacks in accordance with the Rules, and for fees and any other penalties or payments under this Agreement. You also authorize PMT or Member's vendors or agents to debit the Merchant Account for any fees due such vendor or agent under this Agreement. You must obtain prior written consent from Member and PMT to change the Merchant Account. If you do not get that consent, PMT or Member may immediately terminate the Agreement and may take other actions necessary to protect them within their discretion.
- B. Merchant Account. If the Merchant Account is maintained with Member, Member will deposit all funds evidenced by Sales Drafts to it subject to Section 4 of this Agreement. PMT and Member have the right to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Drafts. You authorize Member or PMT to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry. If the Merchant Account is maintained at a depository institution approved by Member, Member will make deposits to the Merchant Account pursuant to this Agreement and the ACH Authorization (defined below). You authorize and appoint Member to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, Member, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Member and PMT and subject to all chargebacks, returns, fees and fines.
- C. Asserted Errors. You must promptly examine all statements relating to the Merchant Account, and immediately notify PMT 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 PMT within 30 days after you received the periodic statement containing the asserted error. You may not make any claim against Member or PMT for any loss or expense relating to any asserted error for 60 days immediately following PMT's receipt of your written notice. During that 60 day period, PMT will be entitled to investigate the asserted error, and you will not incur any cost or expense in connection with the asserted error without notifying PMT.
- D. Indemnity. You will indemnify and hold PMT and Member harmless for any action they take against the Merchant Account or Reserve Account pursuant to this Section. You will also indemnify and hold harmless the institution at which you maintain your Merchant Account for acting in accordance with any instruction from us regarding the Merchant Account. This section will survive termination of this Agreement.
- E. ACH Authorization. You authorize Member, PMT, or their vendors or agents, to initiate debit/credit entries to the Merchant Account, the Reserve Account or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement and the Authorization Agreement Regarding Automatic Funds Transfer (ACH Credits/Debits) provided by PMT (the "ACH Authorization"). The ACH Authorization will remain in effect after termination of this Agreement, and until PMT has received written notice terminating this authorization and all your obligations to PMT and Member have been paid in full. In the event you change the Merchant Account, you will notify PMT, and this authorization will apply to the new account.
- I. Security Interests, Reserve Account, Recoupment and Set-Off.
- A. Security Interests.
- i. Security Agreement. This Agreement will constitute a security agreement under the Uniform Commercial Code. You grant to Member and PMT a security interest in and lien upon: (a) all funds at any time in the Merchant Account, regardless of the source of such funds, (b) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds, (c) present and future Sales Drafts, and (d) any amount 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 security to PMT and Member upon request to secure your obligations under this Agreement. 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 Merchant, PMT and/or Member including, but not limited to, your obligation to pay any amounts due and owing to Member or PMT. This security interest may be exercised by PMT and Member without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.
- ii. Perfection. Upon request of Member or PMT, 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. With respect to such security interests and liens, Member and PMT will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Member and PMT 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 Member and PMT are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by PMT or Member. You authorize PMT and appoint PMT your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.
- A. Reserve Account.
- i. Establishment. For the purpose of providing a deposit and a source of funds to pay Member and PMT for any and all amounts owed by you, you shall deposit into an account maintained by Member (or other approved depository institution) initially or at any time in the future as requested in good faith by Member or PMT, sums sufficient to satisfy your current and/or future obligations as determined by Member or PMT. Funds, if any, in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (a) this Agreement has been terminated; and (b) Merchant has paid in full all amounts owing or that could ever be owed under this Agreement, including, without limitation, all outstanding/uncollected amounts and potential chargebacks. Member shall have sole control of the Reserve Account. Member may, at any time, require that the amount on deposit in the Reserve Account be increased. In no event shall you be entitled to a return of any sums remaining in the Reserve Account before 270 days following the effective date of termination of this Agreement.
- ii. Funding. Member and PMT have the right to debit the Merchant Account to establish or maintain funds in the Reserve Account. Member or PMT may deposit into the Reserve Account funds they would otherwise be obligated to pay you, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if they determine such action is reasonably necessary to protect their interests. You understand and agree that if you are required to establish a Reserve Account you have an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect Member and PMT against losses resulting from transactions initiated by you.
- iii. Authorizations. Member or PMT 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 Member or PMT. Also, PMT or Member may debit the Reserve Account to exercise their rights under this Agreement to collect any amounts due to Member or PMT including, without limitation, rights of set-off and recoupment.
- A. Recoupment and Set Off. Member and PMT have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts PMT or Member may owe you under this Agreement or any other agreement. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to PMT, you must create or maintain the Reserve Account as required by PMT, and PMT will have the right to offset against the Reserve Account for any and all obligations which you may owe to PMT and Member, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.
- B. Remedies Cumulative. The rights conferred upon Member and PMT in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member and PMT under this Agreement, at law or in equity. Rather, each and every right of Member and PMT at law or in equity will be cumulative and concurrent and in addition to every other right.
- I. Fees and Other Amounts Owed.
- A. Fees. You will pay Member and PMT fees for services, forms or equipment in accordance with the Schedule of Fees which is incorporated into this Agreement by reference. Such fees will be calculated and debited from the Merchant 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 under this Agreement. In addition, you will pay PMT at its standard rates for research. PMT may adjust the fees in accordance with Section 16.K below.
- B. Other Amounts Owed. You will immediately pay PMT or Member any amount incurred by PMT or Member 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 Merchant Account, Reserve Account, or any other account you have at Member or at any other financial institution for any amount you owe PMT or Member 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 PMT or Member, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse PMT or Member for the amount owed, you will immediately pay PMT or Member such amount.
- C. **Taxes.** You are also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.
- I. **Application, Indemnification, Limitation of Liability.**
- A. **Application.** You represent and warrant to Member and PMT that all information in the Application is correct and complete. You must notify PMT 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, electronic commerce, or in person at your place of business). The notice must be received by PMT within 10 business days of the change. You will provide updated information to PMT within a reasonable time upon request. You are liable to Member and PMT for all losses and expenses incurred by Member or PMT arising out of your failure to report changes to us. PMT may immediately terminate this Agreement upon notification by you of a change to the information in the Application.
- B. **Indemnification.** You will be liable for, hold harmless, and will indemnify PMT, Member and their employees, officers, directors and agents against all claims by third parties arising out of this Agreement and for all attorneys' fees and other costs and expenses paid or incurred by Member and PMT in the enforcement of the Agreement, including but not limited to those resulting from any transaction processed under this Agreement or any breach by you of this Agreement and those related to any bankruptcy proceeding.
- C. **Limitation of Liability.** Any liability of PMT or Member under this Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed in the aggregate the difference between (i) the amount of fees PMT received from you during the month in which the transaction out of which the liability arose accrued, and (ii) assessments, chargebacks, and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of PMT and Member's liability will not exceed the lowest amount determined in accord with the previous sentence for any one month involved. In no event will PMT, Member or their agents, officers, directors or employees be liable for indirect, special, or consequential damages.
- D. **Performance.** PMT and Member will perform all services in accordance with this Agreement. PMT makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **PMT disclaims all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the other parties 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.
- I. **Representations and Warranties.**
- 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 PMT 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 PMT.
- B. **Corporate Power.** Merchant and the persons signing this Agreement have the power to execute and perform this Agreement and Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Merchant which may be required by PMT now or in the future. Further, Merchant, by its signature below or upon its first transmission of Sales Drafts, acknowledges that it has received and understands the Merchant Operating Guide provided by PMT. If Merchant has not signed below, you agree that Merchant's first transmission of Sales Drafts to PMT constitutes Merchant's acceptance of this Agreement. Further, you represent and warrant that this Agreement will not violate any law, or conflict with any other agreement to which you are subject.
- C. **No Litigation.** 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 been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, unless you have disclosed this to PMT.
- 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 and does not involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with PMT.
- E. **Rule Compliance.** You will comply with the Laws and Rules.
- I. **Audit and Information.**
- A. **Audit.** You authorize PMT and Member to audit your records to confirm compliance with this Agreement. You will obtain, and will submit a copy of, an audit of your business when requested by PMT or Member.
- B. **Information.**
- i. **Authorizations.** You authorize PMT and Member to make, from time to time, any business and personal credit and other 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 them.
- ii. **Documents.** You will provide PMT and Member financial statements and other financial information as requested from time to time. You will furnish within 120 days after the end of each fiscal year to PMT and Member a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.
- A. **Personal Guarantee.** As a primary inducement to Member and PMT to enter into this Agreement, the Guarantor(s) indicated on the Application, by signing the Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Member and PMT pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands further that Member and PMT may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by Member and PMT or Merchant. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Member or PMT. Guarantor(s) understand that the inducement to Member and PMT 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.
- I. **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. PMT has no responsibility for any transaction until that point in time PMT receives data about the transaction.
- B. **Use of Terminals Provided by Others.** You will notify PMT immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than PMT 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 Member via a data processing system or network similar to NOVA; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member nor PMT 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.
- I. **Term and Termination.**
- A. **Term.** The Agreement will remain in effect for a period of 3 years following the Effective Date ("Initial Term") and will renew for successive 2 year terms ("Renewal Term") unless terminated as set forth below.
- B. **Termination.** This Agreement may be terminated by any party effective at the end of the Initial or any Renewal Term by providing written notice of an intent not to renew prior to the expiration of the then current term. Additionally: i) this Agreement may be terminated at any time by Member or PMT with or without cause, and without prior notice and ii) this Agreement may be terminated by you in the event of a material breach of the terms of this Agreement by Member or PMT, provided you give Member and PMT written notice of any alleged breach and such breach remains uncorrected for a period of thirty (30) days following receipt of written notice by the breaching party. PMT's and Member's rights of termination under this Agreement are cumulative. A specific right of termination shall not limit any other right of PMT or Member to terminate this Agreement expressed elsewhere. Notice of termination may be given orally or in writing, but if given orally shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice.
- C. **Action upon Termination.**
- i. **Terminated Merchant File.** You acknowledge that Member and/or PMT 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. You will waive and hold harmless PMT and Member for all claims and liabilities you may raise as a result of such reporting.
- ii. **Accounts.** All your obligations regarding accepted Sales Drafts will survive termination. Collected Sales Drafts will be placed in the Reserve Account until you pay all amounts you owe PMT or Member or amounts for which you are liable under this Agreement. You must maintain in the Merchant 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. Any balance remaining after chargeback rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize Member to debit those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Merchant Account and Reserve Account is not adequate, you will pay Member and PMT the amount you owe them 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 PMT and immediately pay PMT any amounts you owe it for equipment costs.
- iv. **Early Termination.** If you terminate this Agreement before the end of the Initial Term, you will immediately pay PMT, as liquidated damages, an early termination fee equal to \$295 if terminated in the first 12 months of this Agreement, and \$195 if terminated in the 13th through 24th months of this Agreement in addition to all other amounts you owe. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination.
- I. **Compliance With Laws And Rules.**
- You agree to comply with all rules and operating regulations issued from time to time by MasterCard and Visa and any policies and procedures provided by Member or PMT, including those set forth in the Merchant Operating Guide ("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 affecting acceptance of the cards, processing of card transactions, and the transactions contemplated by this Agreement. You will assist Member and PMT in complying in a complete and timely manner with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Member and PMT all such instruments they may from time to time reasonably deem necessary.
2. **Use of Trademarks and Confidentiality.**
- A. **Use of Trademarks.** You will prominently display the promotional materials provided by PMT in your place of business. Your use of Visa and MasterCard marks will fully comply with the Rules. Your right to use the Visa and MasterCard mark will terminate upon termination of this Agreement. 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.
- 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, 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 in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (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 PMT (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. You authorize Member or PMT to disclose your name and address to any third party who requests or otherwise has a reason to know such information.
- A. **Return to PMT.** 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 PMT and will be immediately returned to PMT upon termination of this Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by PMT, arising out of any failure to return or destroy such materials following termination.

- B. **Passwords.** If you receive a password from PMT to access PMT's database, you will: i) keep the password confidential; ii) not allow any other entity or person to use the password or gain access to PMT's database; iii) be liable for all action taken by any user of the password; and iv) promptly notify PMT if you believe the confidentiality of PMT's database or your information has been compromised by use of the password.
- I. **General Provisions.**
- A. **Entire Agreement.** This Agreement, including the Schedule of Fees, the completed Application, the Merchant Operating Guide, the Rules and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 16.K. below, all of which are incorporated into this Agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are merged in and superseded by this Agreement.
- B. **Governing Law.** This Agreement will be governed by the laws of the State of Georgia. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Georgia and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of Georgia.
- 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 credit card or debit card processing services similar to those provided by PMT and Member as contemplated by this Agreement without PMT's written consent.
- D. **Construction.** 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. 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.
- E. **Assignability.** This Agreement may be assigned by Member or PMT, but may not be assigned by Merchant directly or by

- operation of law, without the prior written consent of Member and PMT. If you nevertheless assign this Agreement without PMT's consent, the Agreement will be binding on the assignee. **If you sell your business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners.**
- F. **Arbitration.** All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, will be submitted to and decided by arbitration held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association. The arbitrator will have the authority to award any remedy or relief that a court in Georgia could order or grant, including without limitation specific performance, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process. The parties agree that anything communicated, exchanged, said, done or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential.
- G. **Notices.** Any written notice under this Agreement will be deemed given upon the earlier of: (i) actual receipt or (ii) five days after being deposited in the United States mail, and addressed, if to PMT, to: 7300 Chapman Highway, Knoxville, TN 37920, and if to the other parties: to the last address shown on the records of the sender.
- H. **Bankruptcy.** You will immediately notify Member and PMT of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Member and PMT 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, and failure to do so will be cause for immediate termination or any other action available to PMT under applicable Rules or Law. You acknowledge that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

- I. **Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Member and PMT for all attorneys' fees and other costs and expenses paid or incurred by Member and PMT in the enforcement of this Agreement, or in collecting any amounts due from Merchant to Member or PMT or resulting from any breach by Merchant of this Agreement.
- J. **Customer Contact.** You authorize Member and PMT to contact your customers or their card issuing bank if they determine that such contact is necessary to find out information about any Card transaction between you and the customer.
- K. **Amendments.** Member and PMT may propose amendments or additions to this Agreement. Member or PMT will inform you of a proposed change in a periodic statement or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Member and PMT after 30 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement will be effective upon notice to you, unless a later effective date is provided. Further, PMT is entitled to pass through to you any fee increases imposed by Visa, MasterCard, or telecommunication vendors without giving you the right to terminate this Agreement.
- L. **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 PMT or Member 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 PMT and Member.
- M. **Independent Contractors.** PMT, Member and Merchant will be deemed independent contractors and none will be considered agent, joint venturer or partner of the other except as provided in Section 6.0 and 7.A (ii).
- N. **Survival.** All provisions of this Agreement that by their context are intended to survive termination of this Agreement including, but not limited to, Sections 4.A, 4.B, 4.C, 6, 7, 8, 9, 11.C, 13.C, 15, 16.B, and 16.I, will survive termination of this Agreement

**Merchant**

\_\_\_\_\_  
Signature of Owner/Officer/General Partner/LLC Manager or Member

\_\_\_\_\_  
Printed Name                      Title                      Date

\_\_\_\_\_  
Signature of Owner/Officer/General Partner/LLC Manager or Member

\_\_\_\_\_  
Printed Name                      Title                      Date

\_\_\_\_\_  
Signature of Owner/Officer/General Partner/LLC Manager or Member

\_\_\_\_\_  
Printed Name                      Title                      Date

\_\_\_\_\_  
Signature of Owner/Officer/General Partner/LLC Manager or Member

\_\_\_\_\_  
Printed Name                      Title                      Date

**Personal Guarantee**

The person(s) signing below unconditionally and irrevocably personally guarantee the full and faithful performance and payment by Merchant of all of its duties and obligations under the Merchant Agreement during the term of the Agreement and after termination, in accordance with Section 11.C of the Agreement.

Name _____	Signature _____	Date ____/____/____
Name _____	Signature _____	Date ____/____/____
Name _____	Signature _____	Date ____/____/____
Name _____	Signature _____	Date ____/____/____

**FOR OFFICE USE ONLY:**

**PMT Services, Inc.**

**Imperial Bank**

_____ Signature	_____ Title	_____ Date	_____ Signature	_____ Title	_____ Date
--------------------	----------------	---------------	--------------------	----------------	---------------

**Corporate Resolution**

I certify that I hold the office indicated below of Merchant and am the keeper of the records of that company, organized and existing under the laws of the state indicated below and that the following is a correct copy of certain resolutions adopted at a meeting of the board of directors/general partnership/manager or members of a limited liability company [circle one] in accordance with the by-laws of the company held on the \_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_ (year):

1. Resolved, that any one of the following officers of the company is authorized to:
  - A) execute on behalf of this company a Merchant Processing Agreement with PMT Services, Inc. ("PMT"), Imperial Bank, and any supplemental agreements amending that agreement;
  - B) execute any document requested from time to time by PMT to be executed by this company in furtherance of the Merchant Processing Agreement;
  - C) perform all acts which PMT may deem necessary to carry out the intent of the Merchant Processing Agreement and these Resolutions.
2. Resolved, that the Merchant Processing Agreement is ratified and approved;
3. Resolved, that PMT and Imperial Bank are authorized to rely upon this Corporate Resolution until advised in writing by a like certification of any changes and are authorized to rely on such changed certification.

_____ Name (Print)	_____ Title	_____ Signature
-----------------------	----------------	--------------------


Secretary/Officer/Non-Member Manager (LLC)/Member (LLC)/General Partner/Owner  
[circle one]

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_ State in which Merchant is organized: \_\_\_\_\_