

**Merchant
Services
Agreement**



MERCHANT SERVICES AGREEMENT

This *Merchant Services Agreement* is made and entered into as of the date set forth below, by and between Oriental Bank a bank organized and existing under the laws of the Commonwealth of Puerto Rico (the "Bank"). ("Bank"), and the undersigned Company, a company organized under the laws of the U.S. Virgin Islands, as identified below its signature hereunder ("Company"). The Bank and the Company are each sometimes referred to as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the Company desires to obtain from the Bank certain credit and debit card merchant processing services, as well as EBT processing services ("Services") and Bank is willing to provide such Services under the terms and conditions set forth in this Agreement.

NOW THEREFORE, subject to the requirements of applicable Card Association rules and in consideration of the mutual promises and covenants contained in this Merchant Services Agreement, Bank and the undersigned merchant ("Merchant") agree as follows:

A. DEFINITIONS

1. "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.

2. "Agreement" means these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.

3. "Application" means the Merchant Application attached hereto setting forth the Cards, Services, Merchant Discount Rate, Authorization Fees and Transaction Fees, among other details specific to the Merchant.

4. "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.

5. "Card" means (i) a valid credit card in the form issued under license from a Card Association; (ii) an ATH debit card issued by financial institutions participating in the ATH Network or (iii) any other valid credit or debit card accepted by Merchant by agreement with Bank.

6. "Card Association" means VISA U.S.A, Inc. Visa International, Inc., Mastercard International, Inc., debit networks or any other Cards issuers that provide Cards accepted by Merchant by agreement with Bank.

7. "Card Association Rules" means Card Association rules, bylaws, regulations, policies and guidelines.

8. "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.

9. "Card Not Present" (CNP) means that card information was not read or obtained at the point of sale.

10. Cardholder" means the person whose name is embossed upon the face of the Card, and therefore, is authorized to use the Card.

11. Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, EIN, driver's license or other identification number or credit or debit card number, or other bank account number.

12. "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plans operating regulations.

13. "Credit Voucher" means a document executed by a merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.

14. "EBT" means an Electronic Benefit Transfer system used to deliver certain government delivered benefits (EBT benefits) to EBT customers.

15. "EBT Operating Rules" means, as applicable, the U. S. Virgin Islands EBT Operating Rules or the Quest Operating Rules.

16. "Imprint" means ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.

17. "Mid or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant's standard card industry code and which may be charged fees as set forth in the Application.

18. "Processor" means Bank's transaction processing service provider for debit and credit card payments.

19. EBT Operating Rules" in addition to the Quest Operating Rules and any laws, rules, regulations, policies, procedures and guidelines of any governmental entity that are or may in the future become applicable to the acceptance of U.S. Virgin Islands EBT Cards and the provision of U.S. Virgin Islands EBT benefits, including without limitation, laws pertaining to delivery of services to EBT customers, means any applicable interface specifications, interface test scripts, testing policies, operating bulletins (as they may be amended from time to time), performance parameters, conditions or obligations of Merchant under any applicable third-party processor agreement, and other policies and procedures applicable to and concerning the U.S. Virgin Islands EBT system that are issued, enacted, adopted, promulgated, implemented or otherwise put into effect by any service provider that manages the issuance of EBT benefits on behalf of the Territory of the U.S. Virgin Islands (including any agency, department or instrumentality thereof).

20. "Quest Operating Rules" means the Quest Operating Rules issued by the National Automated Clearing House Association, as amended from time to time.

21. "Sales Draft" means the paper form, whether electronically or transaction receipt evidencing a sale Transaction.

22. "Transaction" means any sale of products or services (or credit, error, return and adjustment for such) from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Bank for collection.

23. "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

B. CARD ACCEPTANCE AND TRANSACTIONS

1. Honoring Cards. Merchant will honor all valid Cards when properly presented by a Cardholder in payment for goods or services, subject to applicable Card Association or network rules, bylaws, regulations, policies, and guidelines requiring Merchant to elect whether it will honor credit only, debit only, or both debit and credit Cards. Merchant's election is set forth in the Application and the stated election can only be changed if approved by Bank pursuant to a writing signed by Bank. Merchant may not, however, be prevented from offering discounts to customers for cash purchases to the extent that said practice is otherwise legal under applicable law. Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, internet or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction. For the avoidance of doubt, Merchant shall compare the signature on the Card to the signature on the Sales Draft as set forth in Section 6 hereunder. In the event that said signatures do not reasonably resemble each other Merchant must follow any applicable procedure under the corresponding Card Association Rules or required by the Bank, if any, or, in the absence of such applicable procedures, seek an alternative form of payment.

2. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Bank to debit all amounts Merchant owes Bank hereunder from the Operating Account at times deemed appropriate by Bank, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant shall assure that the Operating Account has sufficient available funds to timely honor any amounts payable to Bank hereunder. Without limiting the generality of the foregoing, in the event of lack of sufficient funds in the Operating Account to honor a payment owed to Bank, Merchant authorizes Bank to debit any amounts owed to Bank hereunder from any other deposit account of Merchant with Bank ("Other Deposit Accounts"). Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account and/or to the Other Deposit Accounts. Merchant may not close or change the Operating Account without the prior written approval from Bank, which may be withheld for any reason. Merchant will be solely liable for all fees and costs associated with the Operating Account and for all overdrafts.

3. Equipment. If Merchant uses equipment ("POS Terminals") to process Transactions, then Merchant shall obtain, install, and use only Bank-approved equipment and software programs provided to Merchant pursuant to a sale or lease based on a separate agreement with Bank or a third party acceptable to the Bank and that is certified with the Bank's Processor. Merchant may also use its own equipment as long as it is certified with the Bank's Processor. Merchant shall also comply with the following additional terms:

- The equipment shall be suitable for processing Transactions;
- The equipment must be certified by Bank's Processor

· Merchant shall provide, at Merchant's expense, suitable electric power, communication and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment;

- If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide/Manual/POS Terminal Operating Manual. Merchant will use and operate the equipment only in accordance with the equipment User's Guide/Manual/POS Terminal Operating Manual; and

□ Bank will have not liability to Merchant or any third party if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of Bank.

At no time will Bank's liability exceed the amount of fees collected or reasonably expected to be collected from Merchant for this delay period.

- Bank or its designated agent will provide technical support to Merchant.

The equipment will have default rules to route the Transactions through participants networks, but Merchant will control the final routing of all Transactions.

If, in connection with this Agreement and the Services to be provided hereunder Merchant uses equipment not supplied by Bank or a supplier recommended by Bank ("Other Equipment"), such Other Equipment must be certified with Bank's Processor at Merchant's expense and Merchant shall be solely responsible for ensuring that at all times while this Agreement is in effect, such equipment conforms to all specification required by Bank including, without limitation, specifications regarding its installation. Merchant will be fully responsible and liable for any failure or limited performance of such Other Equipment and for any breach of any Card Association Rules that arises from the Merchant's use of Other Equipment. Regardless of any Bank's acceptance of or non-objection to the use by Merchant of Other Equipment, Merchant shall comply with the terms of this Agreement including all applicable Card Association Rules and in no case will Bank be liable for any losses arising out of Merchant's use of Other Equipment and/or for any services provided by any third party in connection therewith. Without limiting the generality of the foregoing, Merchant shall assure that the Other Equipment is PCI compliant and certified as required under this Agreement. Merchant further acknowledges and agrees that, to the extent that it uses Other Equipment, certain support services otherwise contemplated under this Agreement may not be available or may be available on a limited basis.

4.Training. Merchant shall ensure its employees and representatives are trained: (i) in the use of the equipment and software required for processing Transactions; (ii) with respect to the Card Association Rules, including, without limitation, the data security standards, provisions related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI DSS"), Discover Information Security Compliance ("DISC"), MasterCard's Site Data Protection Program ("SDP"), and VISA's Customer Information Security Program ("CISP"), and Chargeback and dispute resolution rules, each as in effect and as may be amended, supplemented or replaced from time to time; and (iii) with respect to the responsibilities of Merchant under this Agreement.

5.Advertising. Merchant will prominently display the promotional materials provided by Bank in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to Bank's direction. Merchant may not use any of the Marks on any advertisement unless Merchant receives Bank's prior written approval, which may be withheld for any reason. Merchant acknowledges and agrees that: (i) the Card Associations and Bank own all of their respective trademarks and service marks and Merchant acquires no rights in the Marks; (ii) it will not contest the ownership of such Marks; (iii) it will not imply in any way or manner that it is a member of any Card Association; and (iv) Bank and each Card Association may immediately and upon prior written notice prohibit Merchant from performing any further activity relating to the use of the Marks. Merchant may not state or infer, directly or indirectly, that any other Card Association's materials should be destroyed, are invalid, or should be replaced. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to Bank upon termination thereof. Merchant may not use any promotional materials or Marks associated with the Card Associations in any way which suggests or implies that either endorses any goods or services other than Card payment services.

6. Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Bank for accepting Cards and will: (a) determine in good faith and to the best of Merchant's ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; and f) offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement.

7. Authorization. Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Banks designated authorization center, which shall authorize or decline the Transaction. Merchant agrees it shall be subject to an additional voice or audio response unit fee for this type of Authorization procedure. Merchant also agrees that, in the process of obtaining Authorization, the Bank or its designated authorization center may request information regarding the merchant and that the bank or its designated authorization center may not authorize any Transaction(s) if said process is not completed to the Bank's or its designated authorization center's satisfaction. Merchant also recognizes and agrees that Bank's designated authorization center may not operate on certain limited days such as January 1st, January 6th, Good Friday or December 25th. If the Transaction is authorized, Merchant will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is

given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Bank may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if Bank determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Bank has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Bank, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.

8.Retention and Retrieval of Cards. Merchant will use its best efforts to reasonably and in a peaceful manner recover and retain a Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the equipment; (ii) by the authorization center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant's obligations under this section does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank, and all Bank employees, officers, directors, agents, and representatives harmless from any claim arising from any injury to person or property or other breach thereof the peace in connection with the retention or recovery of a Card.

9.Multiple Transaction Records; Partial Consideration. Merchant may not prepare more than one Sales Draft for a single sale or for a single item. Merchant will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions (taxes, gasoline, parking and traffic fines, insurance premiums, hospice and food and beverages are acceptable Transactions). The Transactions under these circumstances must be completed within 90 days.

10.Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Bank to accept mail, internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Bank determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to merchant and all funds therefrom held as provided in Section D. Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO: for mail order, "TO" for telephone order or "PO" for preauthorized order, as appropriate for each approved PO, Merchant must reaffirm all annual billings at least once each year or upon request by Bank. Merchant shall not deliver goods or perform services covered by a PO after receiving notification the Cardholder that the preauthorization is canceled or from Bank that the Card covering the preauthorization is not to be honored. Merchant agrees its receipt of an Authorization will not relieve Merchant of liability for Chargeback on any Transaction for which Merchant did not obtain an Imprint or the Cardholder's signature.

11.Lodging and Vehicle Rental Transactions. Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. An additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

12>Returns and Adjustments; Credit Vouchers. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate and in compliance with any applicable legal or regulatory requirements. Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant will disclose, if applicable, to a

Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a full refund, will be given; (b) returned merchandise will only be exchanged for similar merchandise of comparable value; (c) only a credit toward purchases will be given; or (d) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given within 15 calendar days. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature and in compliance with any applicable legal or regulatory requirements. Any change in Merchant's return or cancellation policy must be submitted in writing to Bank not less than 14 days prior to the change. Bank may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which it has not been notified as required herein. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a Credit Voucher, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall immediately pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Paragraph. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction.

13.Cash Payments. Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.

14.Duplicate Transactions. Merchant may not deposit duplicate Transactions. Bank may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.

15.Deposit of Fraudulent Transactions. Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Bank may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to the Card Associations under the terms of this Agreement. Merchant's employees and agents' actions are chargeable to Merchant under this Agreement.

16.Collection of Pre-existing Debt. Merchant may not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

17.Data Security/Personal Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant, in good faith, has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Bank or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.

(a) **Safeguards.** Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or Bank in accordance with applicable federal and state laws, rules, regulations and guidance including, without limitation, those set forth in the Interagency Guidelines Establishing Information Security Standards (12 C.F.R. App. B to Part 364).

(b) **Compliance with Card Association rules.** Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Association bylaws, operating regulations and rules, including those provisions related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI DSS"), Discover Information Security Compliance ("DISC"), MasterCard's Site Data Protection Program ("SDP"), and VISA's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced. Failure to comply with such rules, regulations, bylaws, guidelines, and policies may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). Merchant will cause all of its employees, agents, and subcontractors agents to comply with PCI DSS, SDP, DISC and CISP requirements at all times. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card

numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software. **Merchant will report, in writing, any non-compliance and any violation of security or privacy obligations or a breach in data security resulting in the potential for unauthorized access to Cardholder personal information immediately to Bank. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at Bank's discretion, to Merchant's Transaction processing or business**

(c) **Annual Certification.** Merchant will provide an annual certification to Bank if requested by Bank (in a form acceptable to Bank) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Association requirements such as PCI, SDP and CISP. Merchant will provide the same annual certifications for Merchant's service providers, subcontractors and agents.

(d) **Information Use Limitations.** Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Bank's prior written consent, which such consent may be withheld for any reason. Merchant shall not use Cardholder Information or any other confidential or proprietary information for its own use or for any other purpose. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or applicable federal and state laws, rules, regulations and guidance and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Association rules, regulations or bylaws.

(e) **Response to Unauthorized Access.** Merchant will notify Bank within 24 hours after it knows, or has reason to know, of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Bank and the issuing bank(s) or the Card Associations to investigate the incident and provide assistance and cooperation to: (i) file suspicious activity reports (as applicable); (ii) notify their regulators (as applicable); and (iii) notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear the cost of notifying the affected Cardholder and of any investigation regarding such incident(s) including, among others, cost of any forensic or similar investigations required by Card Associations.

(f) **Miscellaneous.** Merchant may not make a claim against Bank or hold Bank liable for the acts or omissions of other merchants, service providers, Card Associations, financial institutions or others that do not have a written contractual relationship with Bank or over which Bank has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Paragraph 17 and each of its subparagraphs will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Association rules.

18.Merchant Change of Address. During the term of this Agreement and for twelve (12) months after it is terminated for any reason Merchant shall provide prior written notice to Bank if Merchant intends to operate its business from any location that is different, or in addition to, the Location Address or Corporate Address stated in the Application. **This Paragraph shall survive the termination of this Agreement.**

19.Merchant's Business. Merchant will notify Bank immediately if it intends to (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including, without limitation, a change that would require a reclassification of Merchant's business pursuant to the Card Association rules and regulations or the selling any products or services not related to its business as stated in the Application; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; or (f) changes its return policies or to another fulfillment house different from those identified in Application. Merchant will notify Bank promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for the Bank's exercise of all its rights and remedies provided by this Agreement. If any change listed above or in the Application occurs, Bank may immediately terminate this Agreement.

20.Merchant's Warranties. Merchant represents and covenants that: (a) all information contained in the Application or any other documents delivered to Bank in connection therewith is true, accurate, and complete and properly reflects Merchant's business, past and present financial condition and principal partners, owners or officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this

Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Bank's procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank; and (j) the completeness and accuracy of all data and information provided to Bank (including its processing vendor) for processing.

21. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction:

- Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment, except as expressly authorized by Section 452 of Title 12A of the Virgin Islands Code;
- Accept Cardholder payments for previous Card charges incurred at Merchant location;
- Request or use an account number of any purpose other than as payment for Merchant's goods or services;
- 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;
- Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
 - Establish a minimum or maximum dollar Transaction amount except as expressly authorized by Section 452 of Title 12A of the Virgin Islands Code, which currently allows for a \$10.00 minimum for credit card transactions;
 - Obtain multiple Authorizations for amounts less than the total sale amount;
 - Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
 - Extend credit for or defer the time of payment of the total cash price in any Transaction;
 - Honor a Card except in a Transaction where a total cash price is due and payable;
 - Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
 - Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Application to which this Agreement is related;
 - Enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system);
- Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (ii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;

- Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
 - Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or Card Issuer;
- Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- Disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
 - Disburse funds in the form of cash unless Merchant is participating in the Card Association cash back service;
- Accept a Card to collect or refinance an existing debt;
 - Issue a Transaction credit with respect to goods or services acquired in a cash transaction which are subsequently returned;
 - Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale without exception; or
 - Enter into a Transaction that represents collection of a dishonored check.

22. Prohibition of Furnishing Account Information. Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.

23. Customer Complaints. Merchant shall respond promptly to inquiries and claims from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice: (a) Cardholder's name; (b) Card account number; (c) the date and time the Cardholder asserted the claim or defense; (d) the nature of the claim or defense; and (e) the action that Merchant took in an attempt to resolve the dispute. Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

24. EBT Customer Complaints. Notwithstanding any provision herein to the contrary, U.S. Virgin Islands EBT cardholder claims filed against Merchant ("USVI EBT Claims") shall be answered by Merchant and processed in accordance with the Quest Operating Rules. Merchant agrees that if a USVI EBT Claim is filed and said claim will be resolved in compliance with the Quest Operating Rules governing Dispute Resolution as applicable to the particular category and amount of the claim in dispute.

C. PRESENTMENT, PAYMENT, CHARGEBACK

1. Acceptance. Bank will accept from Merchant all Sales Drafts deposited by Bank under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection thereof and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Association. Bank will only provisionally credit the value of collected Sales Drafts to Merchant's Operating Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.

2. Endorsement. By presenting Sales Drafts to Bank (including its processing vendor) for collection and payment, Merchant agrees that all of its rights, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures are hereby assigned and transferred to Bank and constitutes an endorsement thereof. If necessary, Bank may supply such endorsement on Merchant's behalf.

3. Reconciliation of Transactions. (a) Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled summary of the Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied or refused; (ii) all refunds processed on account of Cardholders during the time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this

Agreement; and (v) all applicable rates, fees and charges described on the Application; (b) At least once per month, Bank shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement. Bank shall not have any responsibility or liability for Transaction-related errors or omissions that are brought to its attention after the stated thirty-day period. (c) Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Card Issuer or Cardholder. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Card Issuer or Bank receives adequate supporting documentation from Merchant to authenticate the Transaction and mitigate a Chargeback.

4. Prohibited Payments. Bank may receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically authorized in writing by Bank, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Bank and promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.

5. Chargebacks. Merchant will accept for Chargeback any sale involving the following:

- The Cardholder disputes the validity of the sale according to prevailing Card Association rules;
- A Card Issuer or Bank determines that Merchant has in any way failed to comply with Card Association rules or Bank's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase;
- No specific prior Authorization for the Transaction was obtained from the authorization center;
- The Authorization approval number does not appear in the electronic transmittal that is maintained by Bank;
- The Transaction was submitted to Bank 30 days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
 - The Transaction was based on a preauthorization form and the Card on which the Authorization was based has been canceled;
 - The Card giving rise to the Transaction was canceled;
 - The Card expired prior to the date of the Transaction;
 - The date of the Transaction was prior to the validation date of the Card;
 - Bank or Card Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
 - The Cardholder makes a written complaint to Bank or Credit Issuer that the Cardholder did not make or authorize the Transaction;
 - A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
 - The Transaction was made at or by a merchant other than Merchant named in this Agreement;
 - The Transaction otherwise violates the terms of this Agreement or any other Card Association or Card Issuer bylaw, rule, regulation, policy or guideline;
 - A Transaction is charged back by an Issuer;
- Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

If any of the above events occurs, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to Merchant, and Merchant shall pay Bank the amount of the Transaction in addition to the current published fees for each Chargeback as listed on the Application. Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If a Merchant disagrees with Bank's decision to charge back a Transaction,

Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued. Without limiting the generality

of any other provision of this Agreement, if Bank takes legal action against a Merchant for any Chargebacks or any amounts due Bank, Merchant shall pay the costs and attorneys' fees incurred by Bank, whether suit is commenced or not. Bank may charge Merchant a monthly fee as determined by Bank for its administrative and other costs in the event Merchant has fifteen (15) or more Chargebacks over a period of one month during a minimum of one year, starting from the day following the month in which Merchant has exceeded the limit.

6. Merchant Reserve Account. Bank may require Merchant to fund a reserve account at Bank ("Merchant Reserve Account") for all future indebtedness of Merchant to Bank

that may arise out of or relate to the obligations of Merchant under this Agreement,

including, but not limited to, Chargebacks and fees. Specific examples include, but are not limited to: (a) Merchant engages in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) any equipment cancellation fees; (d) Merchant breaches this Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Association rule or applicable law; (e) Merchant's Application is in any way inaccurate or becomes inaccurate subsequent to Bank's approval of the application; (f) Merchant changes its type of business stated in the Application without Bank's prior written approval, which may be withheld for any reason; (g) fraud or Merchant processes an unauthorized charge, or other action that violates Bank's applicable risk management standards or is likely to cause a loss; (h) Merchant has Chargebacks exceeding 1.5% of the total number of transactions completed by Merchant in any 30 calendar day period or shorter time period based on Merchant's processing history; (i) excessive numbers of requests from consumers or issuing banks to retrieve documentation; (j) Merchant's financial stability is in question or Merchant ceases doing business; (k) Merchant terminates this Agreement or (l) any outstanding charges, losses or amounts for which Merchant is liable under this Agreement. Bank from time-to-time may monitor the Merchant Reserve Account to determine its adequacy and Bank may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account, the additional amounts of which shall be in Bank's sole discretion. Further, Bank may fund the Merchant Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The initial amount of the Merchant Reserve Account is provided for in the Application. The Merchant Reserve Account will be maintained for a minimum of 180 days after the later of the termination date of this Agreement or the date on which the last Chargeback is received or until such later time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchant's account with Bank is fully resolved. Upon expiration of this 180-day period, any balance remaining in the Merchant Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Merchant Reserve Account during this 180-day period. If, however, the Merchant Reserve Account is insufficient to cover Merchant's indebtedness to Bank, then Bank shall submit a written demand for payment to Merchant, which Merchant shall remit the entire payment within 3 business days.

This Paragraph 6, shall survive this Agreement's termination until Bank terminates the Merchant Reserve Account.

7. Fee Collection. Under no circumstances will Merchant remit any fees directly to Bank, or any third party working on behalf of Bank, unless the direct remittance is expressly authorized by this Agreement.

D. SPECIAL PROVISIONS REGARDING EBT TRANSACTIONS

1. Acceptance of EBT Benefits. The Bank offers electronic interfaces to EBT networks through third parties, for the processing, settlement, and switching of EBT transactions initiated through the use of a government issued EBT card ("EBT Card") at Merchant's POS Terminal for the provision of EBT benefits. If Merchant agrees to accept EBT Cards and engage in EBT transactions, the terms and conditions of this section shall apply, in addition to the terms and conditions of any required agreement of Merchant with the corresponding third party. Merchant agrees to accept EBT Cards and to provide EBT benefits to EBT customers through the use of a POS Terminal or other equipment that meets the standards of the EBT Operating Rules, applicable to such EBT benefits during your normal business hours, in a manner consistent with Merchant's normal business practices and in accordance with such EBT Operating Rules. Merchant will not accept any EBT Card for any purpose other than proving EBT benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to Merchant. In the event of any violation of this provision, Merchant will be obligated to reimburse the Government or the Bank for any EBT benefits unlawfully received by either Merchant or an EBT customer to the extent permitted by law.

2. Required licenses. Merchant agrees to secure and maintain at its own expense all

necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenant that you will not accept EBT Cards or provide EBT benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

3. Charges to Recipients. The Quest EBT Operating Rules require Bank to inform Merchant that as provided by the Quest Operating Rules, Merchant shall not charge USVI EBT cardholders any fee for providing benefits, doing a balance inquiry or otherwise utilizing the USVI EBT Card for whatever purpose.

4. Amendments. Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state polity, these terms and conditions are subject to reasonable amendment by the Bank, a state or its EBT service provider to address such conflict upon written notice to Merchant and such amendment shall become effective upon such notice.

5. Third Party Beneficiaries. These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state or territory (including any agency, department or instrumentality thereof), and any service provider that manages the issuance of EBT benefits on its behalf, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by Merchant under this Agreement, including without limitation, this Section.

E. TERMINATION AND EFFECT OF TERMINATION

1. Term. This Agreement will be effective once Bank accepts it and, unless otherwise terminated, will continue for one year with automatic one-year renewals thereafter until Merchant provides written notice of non-renewal given not less than 30 days prior the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants Bank a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by Bank and which proposal Merchant wishes to accept. Merchant shall promptly notify Bank, in writing, of any such proposal and if Merchant fails to provide such notice, Bank shall have the option to charge merchant for liquidated damages as defined in Paragraph 4 of this Section of this Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within 30 days from the date Bank received written notice from Merchant, Bank may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event Bank fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that Bank's failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect Bank's right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.

2. Termination.

(a) Without Cause. Bank may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant. Also, Bank may immediately terminate this Agreement if it becomes de-registered by a Card Association. (b) For Cause. Bank may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Bank reasonably determines that any of the following conditions exists:

- Merchant has violated any provision of this Agreement, including, without limitation Merchant's failure to remit monies to Bank;
- Merchant fails to provide financial statements suitable to Bank on request;
- There is a material adverse change in Merchant's financial condition;
- If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief;
 - Any information which Merchant provided to Bank, including Application information, was false, incomplete or misleading when received in Bank's sole discretion;
 - At any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions exceeding Card Association requirements or Chargebacks exceeds 1.5% of any monthly dollar amount of total transactions;
- An overdraft in the Operating Account exists for more than 3 days;
- Merchant or any of Merchant's principals, owners, officers, directors, agents, or employees has been involved in processing transactions arising from fraudulent, dishonest or otherwise unauthorized transactions
 - Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable law;
 - Merchant has failed to timely pay Bank any amount due;
 - Merchant has failed to promptly perform or discharge any obligation under its Operating Account or the

Reserve Account;

- Any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given;
- Merchant has defaulted on any agreement it has with Bank;
- Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service;
- Any Card Association rules are amended in any way so that the continued existence of this Agreement would cause Bank to be in breach of those rules;
 - Any guaranty or lien supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way;
 - If any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to Bank or any Card Association;
 - Termination is necessary to prevent loss to Bank or Card Issuers;
 - Merchant's type of business indicated on the Application or as conducted by Merchant could endanger Bank's safety or soundness;
 - Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with Bank and that relationship is terminated;
 - Merchant appears on any Card Association's security reporting;
- or
 - Bank's security for repayment becomes impaired.

(c) **Location Termination.** Bank may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

3. Effect of Bankruptcy. Any account or security held by Bank's will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transaction hereunder is a financial accommodation and if merchant become a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Bank will be excused from performance hereunder. Further, to the extent that Merchant becomes a debtor under any chapter of Title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.

4. Effect of Termination. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction. If this Agreement is terminated, regardless of cause, Bank may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. If Merchant is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by the Card Associations. **Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file and Merchant understands and agrees that Merchant cannot request Bank to remove Merchant from MATCH once Merchant has been reported.** Merchant waives and will hold harmless Bank from any claims that Merchant may raise as a result of Bank's MATCH file reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all Bank property, forms, or equipment. All obligations for Transactions prior to termination (including payment for Chargebacks and Bank's expenses relating to Chargebacks) survive termination. Bank is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Bank will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank. The parties agree that if this Agreement is terminated before completion of the initial term of this Agreement or before the expiration of any renewal term for any reason other than a material uncured breach by Bank, Merchant will pay Bank damages in an amount equal to \$25.00 per each Merchant location multiplied by the number of months remaining under this Agreement, or the maximum permitted by applicable law if less. Merchant acknowledges and agrees that the Early Termination Fee described herein is not a penalty but rather is a reasonable computation of the financial harm caused by the early termination of this Agreement by the Merchant based on Bank's implementation and administrative expenses incurred related to Merchant's processing. The obligations of Merchant under this Paragraph shall survive any termination or expiration of this Agreement.

F.

MISCELLANEOUS

1.Account Monitoring. Merchant acknowledges that Bank will monitor Merchant's processing activity, business condition, financial condition, and daily deposit activity to detect unacceptable trends and trends in Chargeback and negative Cardholder inquiries. Bank may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Bank will make good faith efforts to notify Merchant promptly following suspension. Bank is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

2.Indemnification. Merchant will defend, indemnify and hold Bank and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees (whether an attorney is an employee of Bank or Bank's affiliate or not), forensic investigation fees related to any investigation whether required by Card Associations or not, and costs ("Damages"), asserted against or incurred by Bank, either directly or indirectly, arising out of, relating to or resulting from: (a) Merchant's failure to comply with this Agreement including, without limitation, Merchant's failure to comply with Card Association Rules and procedures required by Bank; (b) any Sale paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that Bank may incur as a result of Merchant's breach of this Agreement; (c) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (d) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (e) the inaction or omission of Merchant; (f) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (g) any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service provided by Merchant; (h) the fraud or dishonesty of Merchant or Merchant's owners, principals, employees, agents, successors, or assigns; (i) any violation of applicable federal and state laws, rules, regulations and guidance and Card Association rules and Security Standards by Merchant; (j) the theft of or damage or destruction to any equipment or the failure to comply with the equipment's user guide or manual or applicable sale or lease agreement; and (k) all third party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Bank to the extent that Damages are caused by, related to or arises out of Bank's gross negligence or willful misconduct, or Bank's breach of this Agreement. Merchant will promptly reimburse Bank for any assessments, fines, fees or penalties imposed by the Card Associations in connection with this Agreement, including, without limitation, the data security provisions, and authorizes Bank to deduct any such sums directly from the Operating Account or from amounts to be cleared and settled with Merchant.

3.Records and Request for Copies. In addition to any records Merchant routinely furnishes to Bank under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least thirteen months after the date Merchant presents the Transaction to Bank. Immediately after Merchant receives the request by Bank, Merchant will provide to Bank either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Bank reasonably requests to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

4.Compliance with Law. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission, the Federal Communications Commission and, as applicable, the USVI Department of Licensing and Consumer Affairs, and the USVI Division of Banking Insurance and Financial Regulation. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.

5.Fees and Charges. For each Transaction, Bank may charge Merchant as follows: (a) Actual Card Association interchange and assessments; and/or; (b) An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal transaction ("Merchant Discount Rate"); (c) A specified amount per Transaction ("Transaction Fee"); and (d) A specified amount per Authorization ("Authorization Fee"). The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on the Application. The Merchant Discount Fees are based on sales, not net sales. Different Merchant Discount Rates apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on the Application. Merchant agrees that Bank will deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on the Application. Merchant also agrees

to pay Bank the amount of any fees, charges or penalties assessed against Bank or by any Card Association or Card Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay Bank for any other services provided to Merchant by Bank and for all other fees shown on the Application, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees. Bank may change fees, including adding fees for additional services utilized by Merchant, upon 30 days written notice to Merchant. Without limiting the generality of the foregoing, Bank may change fees based on the number of transactions processed and on the average monetary amount of Sales Drafts. Merchant shall pay Bank all fees specified on the Application, as amended by Bank from time-to-time. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank may set off any amounts due to Bank under this Agreement against any property or account of Merchant in the possession or control of Bank.

6.Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank is required to pay any taxes, interests, fines or penalties owed by Merchant, the amount paid shall become immediately due and payable by Merchant to Bank. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank shall be entitled to recover any of the taxes paid by it on behalf of Merchant from Merchant immediately after payment.

7.Security Interest. As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in all existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Bank for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with Bank or any institution other than Bank, including the Operating Account and the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Bank or any institution other than Bank, including the Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by Bank, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Bank's security interest in the Operating Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account and the Reserve Account without Merchant's signature where authorized by law. Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank. If Bank reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Bank (whether because this Agreement has been terminated or for any other reason), Bank may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable laws, including the Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Bank may require Merchant to furnish such other and different security as Bank deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Bank or financial institutions other than Bank, pending Bank's determination from time-to-time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's written consent before it grants a lien or security interest in that pledged collateral to any other person.

8.Modifications to Agreement. This Agreement is subject to amendment to conform to Card Association rules and to the Quest EBT Operating Rules, as amended from time-to-time. Also, Bank may amend this Agreement from time-to-time as follows: (a) Bank may amend or delete Cards or Services listed in the Application by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions. (b) Bank may change all rates, fees and charges set forth on the Application. Bank will provide written notice to Merchant of all such amendments. Bank may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is related. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared

on the Merchant Statement or was sent by mail, unless Merchant terminates this Agreement at which time the termination provisions of this Agreement shall be implemented. Amendments required as a result of changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision.

9.Warranty Disclaimer. MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SOFTWARE, SYSTEMS, AND EQUIPMENT UTILIZED IN CONNECTION WITH THIS AGREEMENT AND/OR THE SERVICES PROVIDED HEREUNDER AND BANK EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES. FURTHER MERCHANT ACKNOWLEDGES THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE, SYSTEMS, OR EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

10.Limitation of Liability. BANK SHALL NOT BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS

AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK PURSUANT TO THIS AGREEMENT. Merchant hereby expressly waives all claims against Bank for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Bank of the occurrence that gave rise to the alleged liability within 15 days after Merchant knew or should have known of the occurrence. In addition, Bank shall not be liable to Merchant or Merchant's customers or any other person for any of the following: (a) any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so; (b) any loss caused by a Transaction downgrade resulting from defective or faulty equipment (regardless if owned by Bank or Merchant); (c) the unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank or any other person for any reason; or (d) interruption or termination of any Services caused by any reason. If Bank is liable to Merchant for any reason, Bank's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges.

11.Limitation on Damages. In no case shall Merchant be entitled to recover damages from Bank that exceed the fees retained by Bank pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

12.Legal or Regulatory Proceeding. Merchant shall promptly notify Bank of any legal or regulatory proceeding or any threat of a legal or regulatory proceeding of which it becomes aware with respect to any matters that are the subject of this Agreement.

13.Waiver. Bank's failure to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.

14.Written Notices. Bank's written notices to Merchant required or permitted under this Agreement may be included in the Merchant Statement, or provided by email, hand-delivered, or sent via facsimile addressed as follows: (a) if to bank: Oriental Bank, P.O. Box 19515, San Juan, P.R. 00919-5115 Attention: Operations Department, Facsimile 787-993-4681; (b) If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.

15. Choice of Law, Jurisdiction; Contingent on the jurisdiction where transaction takes place, Puerto Rico law or the United States Virgin Islands govern this Agreement. Any claim or cause of action arising out of this Agreement against Bank must be initiated and maintained exclusively in the courts located in the jurisdiction where the Transaction took place.

16.Entire Agreement; Assignability. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Bank and Merchant.

This Agreement may not be assigned, directly or by operation of law, without Bank's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.

17.Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

18.Credit and Financial Inquiries; Additional Locations; Inspections. Bank may, at any time, perform reasonable procedural or financial reviews and inquiries of Merchant, unless circumstances require an immediate review, which Bank considers necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such reviews and inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers, reviews of Merchant's security policies, procedures and controls including, without limitation, certifications and/or results of examinations or other review procedures thereof. Merchant authorizes parties contacted by Bank to release the credit information requested by Bank, and Merchant agrees to provide Bank a separate authorization for release of credit information, if requested. Merchant will provide any financial statements, income tax and business tax returns and other financial information as Bank may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Without limiting the generality of the foregoing, Merchant shall provide to Bank its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement. Merchant shall provide all information requested by Bank to complete Bank's audit and Merchant warrants all information provided shall be true, complete and accurate. Merchant may accept Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's approval, which shall be in Bank's sole discretion. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Bank, at any time and from time-to-time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this Paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. Bank, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Association compliance. Merchant will make available its records maintained and produced under this Agreement and Merchant's facilities, upon notice during normal business hours, for examination so Bank may determine if Merchant maintains sufficient experienced personnel, facilities, and systems to perform Merchant's obligations under this Agreement and determine if Merchant will perform in a professional manner that does not discredit Bank or Card Associations. Nothing in this Paragraph may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Except for investigations undertaken in connection with Damages asserted against or incurred by Bank under Section E(3) hereunder which shall be borne by Merchant, each party will bear its expenses of any audit or examination.

19. Exclusivity. Merchant shall submit, on an annual basis, no less than 100% of Merchant's total Transactions to Bank unless Bank gives its prior written consent for Merchant to process a designated type of transaction with a third party ("Transaction Exception"). Merchant understands and agrees Bank's consent to a Transaction Exception shall not constitute Bank's consent for another type of transaction to be processed by a third party servicer. If Merchant fails to submit to Bank 100% of the total number of Transactions (excluding all Transaction Exceptions, if any) Merchant will pay Bank damages in an amount \$25.00 per each Merchant location multiplied by the number of months remaining under this Agreement ("Non-Exclusivity Fee"), or the maximum permitted by applicable law if less. Merchant acknowledges and agrees that the Non-Exclusivity Fee described herein is not a penalty but rather is a reasonable computation of the financial harm caused by Merchant's failure to submit all Transactions to Bank as required by this Agreement based on Bank's reliance upon Merchant's representation that all Transactions would be processed by Bank upon which Bank's fees and services are based. **The obligations of Merchant under this Paragraph shall survive any termination or expiration of this Agreement.**

20.Marketing of Non-Bankcard Services. From time-to-time, Bank may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. If such offers are made, Merchant may decline the offers or be deemed to have accepted the offers and be liable for payment therefor.

21.Force Majeure. The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood,

storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.

22. Confidentiality. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, and Card Issuers.

23. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.

24. Third Party Beneficiary. Any person or entity used by the Bank in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person any rights or remedies, and the parties do not intend for any persons to be third-party beneficiaries of this Agreement.

25. Conflicts. If any inconsistency exists between the terms of this Agreement and any Card Association rule, bylaw, regulation, policy, or guideline, such rule, bylaw, regulation, policy, or guideline will control.

G. E-SIGN CONSENT AGREEMENT

E-SIGN CONSENT AGREEMENT

1. Consent

By signing the Confirmation Page, Merchant consents and agrees that:

- a. The Bank can provide disclosures required by law and other information about Merchant's legal rights and duties electronically.
- b. Where required or requested, Merchant's electronic signature (via "click-through" or other method) on agreements and documents relating to the Services has the same effect as if you signed them in ink.
- c. The Bank can send all communications, billing statements, amendments to the Services, notices, and other disclosures or information regarding the Services or Merchant's use of the Services as defined in the Agreement (collectively defined as "Disclosures") to Merchant electronically (1) via e-mail, (2) by access to a website that we designate in an e-mail notice we send to Merchant at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- d. If Merchant wants a paper copy, you can print a copy of the Disclosure or download the information for your records.
- e. This consent applies to all future Disclosures sent to Merchant in connection with the Agreement, or your use of the Services as defined in the Agreement.

2. Legal Effect

By consenting, Merchant agrees that electronic Disclosures have the same meaning and effect as if the Bank provided paper Disclosures. When the Bank sends Merchant an email or other electronic notification alerting Merchant that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if the Bank provided a paper Disclosure to Merchant whether or not Merchant chooses to view or print or download the Disclosure.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have each duly executed and delivered this agreement as of this ____ day of _____, 20__.

ORIENTAL BANK

[_____]
Company Full Legal Name

A US Virgin Islands Corporation Partnership
| Limited Liability Corporation | DBA
Other _____

By: _____

By: _____

By: _____