

**FINANCE MEMORANDUM**  
**#09-25**

DATE: December 10, 2009

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: Bill Simmons, City Manager *WAS*  
Shawn Cordsen, Finance Director *SC*

SUBJECT: Springbrook Utility Billing Agreements

**FISCAL IMPACT STATEMENT:**

As part of the Springbrook Software Licensing and Maintenance Agreements signed in June 2008, the City elected to include web payment capabilities at an initial cost of \$10,225. In addition to the initial costs, the City will be charged an annual maintenance fee of \$2,045 which will commence in the sixth year following contract execution.

The agreements as described in the following memorandum, as prepared by the City Attorney, includes the Merchant Agreement which as stated, transitions the processing of online payments from UMB Bank to HSBS Bank for purposes of integration with the new utility billing software. After conducting a review of the online payment processing charges, staff has determined the transition from one bank to the other to be cost neutral.

**STAFF REFERENCE:**

If Councilmembers have any comments or questions, you may contact Shawn Cordsen at [scordsen@northglenn.org](mailto:scordsen@northglenn.org) or at 303-450-8719.

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-137  
Series of 2009

\_\_\_\_\_  
Series of 2009

A RESOLUTION APPROVING AGREEMENTS WITH SPRINGBROOK SOFTWARE, APPLIED MERCHANT SYSTEMS, AND MERCHANT BANKING INSTITUTIONS RELATING TO WEB-BASED UTILITY PAYMENTS SOFTWARE

WHEREAS, the City has entered into a master software license agreement and a software maintenance agreement with Springbrook Software ("Springbrook") for a suite of software;

WHEREAS, the master software license agreement establishes the payment terms for the suite of software and the maintenance agreement establishes payment terms for the maintenance of the suite of software;

WHEREAS, the City desires to have Springbrook implement and maintain web-based payment software, which is a part of the software suite covered by the software license and maintenance agreements; and

WHEREAS, to accomplish the implementation of a fully-functional web-based utility billing software system, the City must execute a series of agreements with the parties involved in the web-based utility billing process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby approves the following agreements:

1. Springbrook Software Web Payments Agreement
2. Merchant Agreement
3. First Addendum to Springbrook Software Web Payments Agreement
4. Indemnification Agreement

Copies of the above-referenced agreements are attached hereto as **Exhibits A** through **D**, respectively. The Mayor is hereby authorized to execute the above-referenced agreements.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

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JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

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COREY Y. HOFFMANN  
City Attorney

Springbrook Software, Inc.  
Web Payments Order Form

<b>Client Information</b>				
Licensee:	City of Northglenn		Contact Email:	sgarcia@northglenn.org
Licensee Contact:	SuzAnne Garcia		Contact Phone:	303-450-8811
Billing Address:	PO Box 330061			
City:	Northglenn	State:	CO	Zip: 80233
<b>Service Term (Pursuant to terms and conditions of the master Web Payments Agreement)</b>				
Term if Applicable :	12 Months			
Effective Date:	10/13/09			
Client Fiscal Year:				
<b>Web Payments Fees</b>				
<b>Product Family</b>	<b>Type</b>	<b>Details</b>	<b>Unit Price</b>	<b>Fee</b>
Utility Billing Web Payments	License Fee	<u>Online Web Payments for Utility Billing</u>	See Attachment A to SLA	See Attachment A to SLA
Utility Billing Web Payments	Setup Fee	<u>Online Web Payments Implementation Services</u>	See Attachment A to SLA	See Attachment A to SLA
Utility Billing Web Payments	Setup Fee	<u>Online Web Payments Training Services</u>	See Attachment A to SLA	See Attachment A to SLA
Utility Billing Web Payments	Annual Maintenance Fee	<u>Annual Maintenance/Subscription Fee</u>	See Attachment A to SLA	See Attachment A to SLA

Services not specifically identified by this Order Form, or identified in the Springbrook Software as Service Agreement, And Addenda are considered out of scope and may incur additional costs.

All Fees are due according to the schedule of fees as outlined in the SLA.

This order form is issued pursuant to the terms and conditions set forth in the Springbrook Web Payments Agreement and addenda thereto. Client also agrees that services not defined in this agreement or order form may incur additional costs. By signing below the client agrees by the terms of this order form and the agreement referenced above.

LICENSOR:
LICENSEE:

By:

By:

Signature:

Signature:

Name (Print):

Name (Print):

Title:

Title:

## SPRINGBROOK SOFTWARE WEB PAYMENTS AGREEMENT

This Springbrook Software, Web Payments Agreement (the "Agreement") is made and entered into as of 11/02/09 by and between Springbrook Software Inc, a Oregon corporation having its principal place of business at 111 SW Fifth Avenue, Suite 1850, Portland, Oregon 97204 ("Licensor") and Northglenn, Colorado having its principal place of business at 11701 Community Center Drive, Northglenn, CO 80233 ("Licensee").

This Agreement consists of the General Terms and Conditions a set forth below:

### GENERAL TERMS AND CONDITIONS

#### 1. DEFINITIONS.

"Change Order" means a written request to change the terms or scope of a Statement of Work.

"Citizens" Citizens consumers and others designated by the Client to access Web Payments services

"Client Data" means any and all data and information of any kind or nature submitted to Licensor by Licensee, or received by Licensor on behalf of Licensee, in connection with the Service, other than publicly available information.

"Enhancement" means any modification or addition that, when made or added to the Software, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Licensor reserves the right to designate any Enhancement released by Licensor after the Effective Date as a new version of the Software or as a new software application, and to condition release and right of access and use of the new application or version upon Licensee's payment of an adjusted Service Fee.

"Error" means any failure of the Software to conform in any material respect to its published specification.

"Error Correction" means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.

"Licensed Software" means the machine-readable, object-code version of the software licensed by Licensor, including all related Documentation and any modified, updated or enhanced versions of the program that Licensor may provide to Licensee, as set forth in the Order Form.

"Professional Services" means implementation, training, installation, data recovery, migration, restoration services, and other professional services provided by Licensor to Licensee.

"Project Coordinator" means that project coordinator, designated by Licensee, in connection with Professional Services.

"Releases" means new versions of the Software, which may include Error Corrections and/or Enhancements.

"Service" means the services and software provided by Licensor as set forth in Section 2 of this Agreement.

"Source Code" means the human-readable version of a software program than can be compiled into Executable Code.

"Statement of Work" means a statement of work signed by the parties pursuant to which Licensor provides Professional Services to Licensee.

"Temporary Fix" means an initial correction or "fix" to a problem in the Software prior to the release of an error correction.

"Third Party Vendors" mean vendors chosen by Springbrook to provide solutions and services provided for in this Agreement.

#### 2. SCOPE OF AGREEMENT.

The Service provided by Software Vendor to Licensee pursuant to this Agreement shall consist of the Web Payments services, as set forth on the appropriate order form and shall include:

##### 2.1 Online Payments.

The Service will allow Citizens to make payments and perform certain other functions via a website or webpage hosted and maintained by Vendor and/or its agents, accessible by hotlink from Licensee's own website, as set forth in the appropriate Order Form. Licensee agrees to use only such vendors which are

subject to an agreement between the Licensee and the merchant services providers, for merchant banking services. For purposes of the credit card and similar transactions, Licensee shall act as merchant, and Licensee shall be solely responsible for maintaining its merchant relationship with such providers, and for all payments related to that merchant relationship. Such merchant relationship is subject to the terms of the agreement signed between Licensee and the vendor and not subject to the terms and provisions of this Agreement. Licensee agrees to only use merchant services providers approved by Licensor.

## 2.2 Software.

Operation of the Service requires installation and maintenance of Licensed Software on servers maintained by Licensee on Licensee's premises. As used in this Agreement, the Software is limited to the most current released version of the Licensor's payment application, and includes any updates to the Software as made available by Licensor. The Software does not include new software applications, substantially new versions of any software application, or services necessary to implement new applications or versions of the applications. Licensee agrees that Licensor may designate any software application released by Licensor after the executed Agreement as a new version or a new application, and those additional fees may be required for any such new version or application.

## 2.3 Rights of Access and Use.

Licensor grants Licensee a terminable, non-exclusive and non-transferable right to access and use the Service solely for Licensee's internal business needs (including access by Citizens via password protected accounts), subject to the terms and conditions herein.

## 2.4 Professional Services.

### 2.4.1 Statements of Work.

If Licensee desires to engage Licensor to provide Professional Services, Licensee and Licensor shall enter into a Statement of Work that describes the specific services to be performed by Licensor. The terms and conditions set forth in this Agreement apply to all Professional Services rendered by Licensor. If there is a conflict between the provisions of this Agreement and a Statement of Work, the relevant provisions of this Agreement will control unless the Statement of Work expressly provides otherwise. Following execution of a Statement of Work, Licensee may request changes to the scope of the Professional Services described therein by sending to Licensor a Change Order. Licensor will review the Change Order and notify Licensee in writing of any financial or schedule change required to implement the Change Order. The Change Order will not be binding unless agreed upon in writing by both parties.

### 2.4.2 Performance of Services.

Unless the Professional Services are such that they must be performed at Licensee's premises, Licensor may perform the Professional Services at Licensor's or Licensee's place of business, at Licensor's option. Licensees are responsible for all travel expenses related to performance of services under this agreement. Licensor will have sole discretion to determine personnel assigned to perform the Professional Services.

### 2.4.3 Client Project Coordinator.

Licensee shall designate a Project Coordinator in each Statement of Work. The Project Coordinator will have the authority to bind Licensee in all matters with respect to this Agreement and any Statements of Work, including, without limitation, directing Licensor to perform work, agreeing to additional work or changes outside the scope of a Statement of Work, approving all Licensor delivered services and committing Licensee to pay for all work the Project Coordinator has directed Licensor to perform.

### 2.4.4 Access.

If Professional Services are performed at Licensee's place of business or via electronic means, Licensee shall provide Licensor personnel with the necessary access to hardware and other systems as well as reasonable office space. Licensee warrants that it owns all right, title and interest in and to, or has full and sufficient right and authority to use in the manner contemplated by this Agreement and any Statement of Work, any hardware, software, programming, materials or data furnished or made available by Licensor to Licensee in connection with Licensor's performance of this Agreement.

### 2.4.5 Intellectual Property Rights.

Licensor or its third party providers do and will at all times own all Intellectual Property Rights related to the Professional Services, the Deliverables and all documentation related to the foregoing, provided that upon full payment to Licensor for all amounts due from Licensee hereunder, Licensee will have a nonexclusive and nontransferable license to use such Deliverables for its own internal use for the business activities generally carried out by Licensee. This non exclusive and non transferable license is only valid while this agreement is in effect. All computer software and other materials owned by Licensor and used by Licensor in conjunction with the Professional Services or incorporated into the Deliverables will belong exclusively to Licensor or its third party providers, whether or not they were specifically adapted by Licensor for use by Licensee. Any concepts, ideas, know-how or techniques developed during the course of this Agreement or any Statement of Work by Licensor, or jointly by Licensor and Licensee, will be the exclusive property of Licensor.

## 3. FEES AND PAYMENT

All fees are set forth in the Software License Agreement entered into between the Parties dated 6/17, 2008.

#### 4. CONFIDENTIALITY & OWNERSHIP

##### 4.1 Obligations.

Each party acknowledges that, in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. Confidential Information disclosed pursuant to this Agreement will be subject to the terms of this Agreement during the Term of this Agreement and after Expiration or Termination of this agreement. Recipient shall take all reasonable steps to prevent the unauthorized disclosure of and maintain the confidentiality of the Confidential Information of Discloser. Recipient shall not disclose the Confidential Information of Discloser to any employees or third parties except to Licensor's third party providers, employees (including independent contractors), subsidiaries and consultants of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information on condition that Recipient shall be liable for any breach by such individual or entity. However, the parties acknowledge and agree that, notwithstanding such measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to Confidential Information. Accordingly, Recipient cannot and does not (and nothing in this Section 4.1 or this Agreement is intended to) guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under this Agreement. Client Data.

Licensee shall remain the sole and exclusive owner of all Client Data. All such, Client Data shall be subject to regulation and examination by the appropriate auditors and regulatory agencies to the same extent as if such information were on Licensee's premises.

##### 4.2 Vendor Systems, Service and Confidential Information.

Licensee acknowledges that it has no rights in the Service, including without limitation any software, systems, artwork, methods, documentation, guidelines, procedures and similar related materials or any modifications thereof provided by Licensor, and including material displayed on any Service website such as icons, screen displays, and the assembly and arrangement thereof, except with respect to and as limited by Licensee's access and use of the same during the term of this Agreement.

##### 4.3 Exceptions.

The obligations set forth herein will not apply to any information that is in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, will not be

considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Recipient will provide prompt written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure

#### 5. LICENSEE RESPONSIBILITIES.

Licensee acknowledges that operation of the Service requires Licensee's effort and cooperation, and that in addition to its other obligations under this Agreement, Licensee assumes the following responsibilities.

##### 5.1 Set-Up, Training.

Licensee shall use its best efforts to facilitate and participate in Service Set-Up, and afford Licensor reasonable access to information, equipment and facilities as requested by Licensor. Licensee shall require all of Licensee's personnel who use the Service to complete any training prescribed by Licensor at the time of implementation. Subsequent training of new personnel after implementation is not included in this agreement.

##### 5.2 Equipment Maintenance.

Licensee shall maintain hardware and software, including non-Licensor hardware or software, at Licensee's site as recommended by Licensor for operation and use of the Service. Licensee, at its expense, shall also maintain its own website, which shall feature a hotlink icon by which Citizens can access the Service website or webpage hosted by Licensor. Licensor may, at its discretion, provide a standard web page that appears to belong to Licensee but is actually housed on Licensor's website.

##### 5.3 Account Access, Creation and Termination.

Licensee shall exercise control over account access, creation and termination, and shall be solely responsible for assigning account passwords, creating or terminating accounts, allowing Citizens to open accounts, and for controlling account and password security. The Service shall restrict access to each Citizen account to users who enter the assigned account password, but otherwise Licensor shall not be responsible or liable for controlling access to or misuse of accounts.

##### 5.4 Monitor and Store Data.

Licensee shall verify account data accuracy on a regular basis, and assumes sole responsibility for maintaining data backup systems of systems located at the client site or managed and maintained but the client. Licensee shall immediately inform Licensor of any account data inconsistency, errors or corruption.

##### 5.5 Release of Licensee or Citizen Records.

Licensee shall assume responsibility for responding to and determining the validity of any requests or demands, whether from a court, a regulatory or other governmental agency, or the

public, for the release of any Licensee or Citizen Records or data in Licensors control or possession. Licensors shall not release any such records or data to any party without written authorization by Licensee, unless compelled to do so by a court or agency of competent jurisdiction. In the event that Licensors needs to release client information to defend a claim against Licensors, Licensors shall inform Licensee of any such required disclosure prior to disclosure, and seek approval to release information.

#### 5.6 Citizen Support.

Licensee assumes sole responsibility for providing all support services to Citizens, and shall be the sole contact for all support requests from Citizens. Client shall not refer any Citizen to Licensors directly for support requests, but may communicate such requests to Licensors together with contact information for the requesting Citizen. Licensors may, in its discretion and only with authorization from Licensee, respond directly to the Citizen or provide a response to Licensee, and may deem any such response support not covered by regular Maintenance and Support to be billed as an additional fee to Licensee at Licensors hourly rates.

#### 5.7 Credit Card Charge-backs.

Licensee assumes liability for, and to the extent permitted by law, indemnifies Licensors and its agents, against any claims or charges by any bank or credit card company for charge-backs related to any Citizen payment via the Service, and any claims or charges by any bank or credit card company for online payment processing fees related to online payments to Licensee.

### 6. LICENSOR RESPONSIBILITIES

Licensors shall provide support and maintenance related to the Software on the following terms and conditions:

#### 6.1 Scope of Maintenance.

During the term of this Agreement, Licensors shall provide Basic Maintenance services in support of the Software. Basic Maintenance services shall consist of:

#### 6.2 Downtime.

Licensors shall make its best efforts to limit Service downtime caused by maintenance, upgrades or repairs, to two (2) hours per incident, and shall make its best efforts to post on the Service website the expected downtime and the time at which service will be restored.

#### 6.3 Error Correction.

Licensors will use all reasonable diligence to correct verifiable and reproducible Errors within a reasonable time period after reported to Vendor. The Error Correction, when completed, may be provided in the form of a "temporary fix," consisting of

sufficient programming and operating instructions to implement the Error Correction.

#### 6.4 Telephone Support.

Licensors shall provide support during normal business hours (7:00am - 5:00pm PST) that permits Licensee to report Errors in the Software or Service access and to receive assistance. Licensors reserves the right to bill hourly (following Licensee's prior approval) for maintenance in cases of repeated operator error, or where a single operator error results in substantial effort by Licensors to resolve the problem.

#### 6.5 Changes in State and Federal Regulations.

Licensors may provide updates needed to conform to state and federal regulations, including changes to tax tables and routine forms. Maintenance services under this Agreement do not include updates to conform to any changes in local governmental regulations, including without limitation changes in utility billing rates, reports or methods.

#### 6.6 Routine Releases.

Licensors may, from time to time, issue Routine Releases of the Software, containing Error Corrections and Enhancements. Routine Releases will be made available to Licensees who have subscription agreements in place, as soon as reasonably possible, at times and on conditions to be established by Licensors. Licensors reserves the right to designate any Release as routine or non-routine.

#### 6.7 Exceptions.

The following matters are not covered by Basic Maintenance, and are outside the scope of services provided pursuant to this Agreement:

6.7.1 Onsite support by employees or agents of Licensors;

6.7.2 Except for initial training during implementation, training users in the proper operation of the Software and the Service;

6.7.3 Any problem resulting from Licensee's misuse, improper use, alteration, or damage of the Software, unless approved by Licensors in writing;

### 7. INDEMNIFICATION.

#### 7.1 By Licensee.

In addition to indemnification pursuant to Section 5.7., to the extent permitted by law, Licensee shall indemnify and hold Licensors harmless from and against any claims, demands, causes of action, debt or liability, including reasonable attorneys' fees (the "Claims"), to the extent that the Claims are for the



negligent, willful or intentional act of Licensee and are based upon:

- 7.1.1 the protection or disclosure of, or any request or demand to view, any account or payment records, data or information (other than disclosures caused solely by Licensor acting other than upon Licensee's instructions, including without limitation instructions regarding applicable laws or regulations);
- 7.1.2 compliance with any laws or regulations requiring disclosures to any Citizen;
- 7.1.3 Acts of Licensee using the Services in breach of law or regulation, or contrary to any term of this Agreement; and
- 7.1.4 Willful misconduct or Gross Negligence of Licensee

## 7.2 By Licensor.

Licensor shall indemnify and hold Licensee harmless from and against any claims, demands, causes of action, debt or liability, including reasonable attorneys' fees (the "Claims"), to the extent that the Claims are based upon;

- 7.2.1 A claim that any of the website content provided solely by Licensor infringes or violates any intellectual property rights of any third party; or
- 7.2.2 Willful misconduct or gross negligence of Licensor.
- 7.2.3 A claim resulting from Third Party Vendors failure to maintain Payment Card Industry Data Security Association Requirements (PCI)
- 7.2.4 A claim resulting from Third Party Vendors failure to maintain appropriate compliance with 2003 Fair and Accurate Credit Transactions Act Sections 114 and 315.

## 8. TERM; DEFAULT; RENEWAL.

### 8.1 Term.

This Agreement is effective upon execution and shall continue for a term as set forth in the order form, (the "Initial Term").

### 8.2 Termination

Either party may terminate this Agreement upon delivering notice of termination for any material breach of this Agreement by the other, provided such notice;

- 8.2.1 sets forth the grounds for termination, and;
- 8.2.2 gives the breaching party thirty (30) days to cure the breach, and;
- 8.2.3 Notwithstanding that a party gives notice of termination, such termination shall not be effective if the breach is cured prior to expiration of the thirty (30) day notice

period, and the terminating party is notified of the cure within the notice period.

### 8.3 Renewal

Effective upon the expiration of the Initial Term, and the expiration of each Renewal Term (as defined herein) thereafter, this Agreement shall be automatically renewed for successive Terms of 12 months each (each such successive term a "Renewal Term"), unless contrary notice is given by either party at least sixty (60) days prior to the expiration of the initial term.

## 9. LIMITED WARRANTY AND EXCLUSIONS.

LICENSOR WARRANTS THAT IT HAS TITLE TO THE INTELLECTUAL PROPERTY USED IN THE SERVICE AND THAT IT HAS AUTHORITY TO GRANT THE RIGHT OF ACCESS AND USE HEREIN TO LICENSEE. LICENSOR ALSO WARRANTS THAT, DURING THE TERM OF THIS AGREEMENT, THE SOFTWARE WILL FUNCTION IN CONFORMITY WITH THE DESCRIPTION AND SPECIFICATIONS CONTAINED IN THIS AGREEMENT AND THE ATTACHMENTS HERETO, AND THAT ALL SERVICES RENDERED HEREUNDER SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER.. LICENSOR MAKES NO WARRANTY REGARDING THE USABILITY OR CONVERTABILITY OF ANY OF LICENSEE'S PRE-EXISTING DATA. LICENSEE AGREES THAT THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF LICENSOR AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THAT THE OPERATION OF THE SERVICE WILL BE FREE FROM ERRORS OR INTERRUPTION, OR THAT THE LICENSEE DATA WILL BE FREE FROM CORRUPTION OR LOSS.

## 10. LIMITATION OF REMEDIES AND LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES.

Except pursuant to indemnification obligations under this Agreement, the cumulative liability of either party for all claims relating to this Agreement, the Software and any services rendered hereunder, in contract, tort, or otherwise, shall not exceed the total amount of the Fees, as set forth in the order form paid to Licensor during the six (6) months immediately preceding the date one party informs the other party of the claim. Licensor's liability for breach of warranty exists only during the warranty period set forth in Section 9. In no event shall either party be liable for any consequential, indirect, special or incidental damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss), whether arising out of contract, tort, warranty or otherwise. The foregoing limitation of liability and exclusion of certain damages shall apply

regardless of the success or effectiveness of other remedies, and applies to claims pursuant to the limited warranty created under this Agreement.

## 11. GENERAL

### 11.1 Taxes.

In addition to the Service Fees and other fees payable hereunder, Licensee shall be liable for any federal, state, county, local or other governmental taxes, duties and excise taxes, now or hereafter applied to Licensee's use of the Service including sales tax, use tax, value added tax or similar tax.

### 11.2 Entire Agreement.

This Agreement, including addenda thereto and any Order Forms or Statements of Work, constitutes the entire agreement between the parties and supersedes all previous and contemporaneous agreements, understandings and arrangements with respect to the subject matter hereof, whether oral or written.

### 11.3 Amendment.

This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed by both parties.

### 11.4 Waiver.

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

### 11.5 Severability.

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree that any invalid provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

### 11.6 Relationship of Parties.

The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party will have, and will not represent that it has, any power, right or authority to bind the other party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name.

### 11.7 Non-Exclusive Relationship.

This Agreement is non-exclusive. Each party will be free to enter into other similar agreements or arrangements with other third parties.

### 11.8 Assignment.

Neither party will indirectly or directly transfer or assign any rights under this Agreement, in whole or part, without the prior written consent of the other party. Notwithstanding the foregoing, the Licensor may, without the prior written consent of the other party, assign this Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation or to another party in connection with a merger, acquisition, or sale of substantially all assets or stock to which this Agreement relates, provided the successor agrees in writing to assume all of the assigning party's obligations hereunder. Any assignments contrary to this Section 11.7 will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

### 11.9 Compliance With Laws.

Each party shall be responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business and this Agreement, and agrees to comply with all such laws, regulations and other legal requirements.

### 11.10 Force Majeure.

Except for Licensee's payment obligations under this Agreement, neither party will be liable for any failure or delay in performance under this Agreement which might be due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party. Such causes include, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, power outage, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, act of terrorism, insurrection, riot, act of God or the public enemy, law, act, order, export control regulation, proclamation decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement). If, however, a party's performance is prevented for thirty(30) days or more, then the other party will be entitled to terminate this Agreement on written notice to the party suffering the force majeure at any time prior to resumption of performance by the party suffering the force majeure.

### 11.11 Inspections.

Licensee will permit Licensor or its representatives to review Licensee's relevant records and inspect Licensee's facilities and systems to ensure compliance with the Agreement, appropriate Order Forms or Statements of work. Licensor will give Licensee at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Licensee's normal operations.

#### 11.12 Governing Law.

Exclusive venue for any dispute between the parties arising out of or relating to this Agreement shall be in the Federal District Court for the District of Colorado, or, if Federal jurisdiction is not available, the state court located in Colorado. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Colorado, as such laws apply to a contract made and performed in such state, without regard to conflicts of law provisions.

#### 11.13 Dispute Resolution and Jurisdiction.

The parties will attempt to resolve any dispute relating to this Agreement by good faith negotiation between business principals. Thereafter, the parties shall have all remedies available at law.

#### 11.14 Attorneys Fees.

In the event any attorney is employed by any party to this Agreement with regard to any legal action brought by any party for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, then the party or parties prevailing in such proceeding, whether at trial or upon appeal, will be entitled to recover reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

#### 11.15 Notices.

All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by overnight mail service or by certified or registered mail, (postage prepaid and return

receipt requested) to the other party at the address set forth beneath such party's signature and will be effective upon receipt. Either party may change its address by giving written notice of the new address to the other party.

#### 11.16 Press Release.

In the event that Licensor wishes to issue a press release announcing the existence of the relationship between the parties and the nature of this Agreement, Licensor will provide such press release to Licensee for Licensee's written approval and consent. Such approval and consent will be in Licensee's sole discretion. No other press releases that mention the other party shall be issued without the other party's prior written approval. Licensee agrees to allow Licensor to list Licensee as a customer.

#### 11.17 Construction of Agreement.

This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof will not be construed for or against any party. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement, which will be considered as a whole.

#### 11.18 Counterparts and Electronic Signatures.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Each party agrees that electronic or facsimile signatures of authorized representatives of either party will be binding for the purposes of executing this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in duplicate by its duly authorized officer or representative.

Licensor

By:

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: Nov 2, \_\_\_\_\_, 2009

Licensee

By:

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2009

**APPLIED MERCHANT**737 North Michigan Avenue, Suite 2020  
Chicago, Illinois 60611800.675.6573 Toll-Free  
312.341.1568 Fax**Merchant Application & Agreement**

Sales Rep Name:

Yasir Haq

Sales Rep Phone:

(312) 893-6751

- ☐
- New Location
- 
- ☐
- Additional Information
- 
- ☐
- Owner Change

**Business Name**

Legal Business Name: <b>City of Northglenn</b>			Doing Business As (DBA) Name:		
Billing Address: <b>11701 COMMUNITY CENTER DRIVE</b>			Physical Street Address (No P.O. Boxes): <b>11701 COMMUNITY CENTER DRIVE</b>		
City: <b>NORTHGLENN</b>	State: <b>CO</b>	Zip: <b>80233</b>			
Business Phone: <b>(303) 450-8811</b>		Fax Number: <b>-</b>	Website Address: <b>www.northglenn.org</b>		
Mobile Phone:		Customer Service Phone:	Email Address (required to receive E-statement availability notification):		
No. of Locations: <b>1</b>	Years in Business: <b>40</b>	Federal Tax ID: (9 digits, no dashes) <b>840592083</b>	Contact Person (If different than the owner):		

**Merchant Profile****Visa & MasterCard Information**

Ownership Type: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Non Profit <input type="checkbox"/> Corp. <input type="checkbox"/> LLC <input type="checkbox"/> Government		Merchant Type:	Visa & MasterCard Sales Profit	All four columns below Must equal 100%
Types of Goods or Services Sold: <b>Water Utilities, Wastewater treatment, and Garbage</b>		SIC Code:	Card Swiped	<b>0 %</b>
Do you currently process Credit Cards? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Current Processor: <b>Elavon &amp; UMB Bank</b>	Manual key entry with imprint, Card present with signature	<b>0 %</b>
Has merchant or any associated principal disclosed below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If YES, date:	Mail & Telephone Order	<b>0 %</b>
			Internet & E-Commerce	<b>100 %</b>

**Additional Information**

Average Ticket Size: <b>\$ 40.00</b>	Est. Monthly Volume: <b>\$ 600.00</b>	Highest Ticket Size*: <b>\$</b>	Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. *Highest Ticket for informational purposes only.
Are customers required to pay a deposit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		How long until a delivery? <input type="checkbox"/> 0-7 days <input type="checkbox"/> 8-14 days <input type="checkbox"/> 15-30 days <input type="checkbox"/> 31 days+	Refund Policy: <input checked="" type="checkbox"/> All sales final <input type="checkbox"/> _____ days <input type="checkbox"/> Exchange Only
Does the Merchant use a Fulfillment House? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, was the Fulfillment House inspected? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Further comments by Inspector (Required):
Remises: <input type="checkbox"/> Retail Store <input checked="" type="checkbox"/> Office Building <input type="checkbox"/> Shopping Center <input type="checkbox"/> Residence <input type="checkbox"/> Commercial or Industrial <input type="checkbox"/> Other			If other:

**Important Member Bank Responsibilities****Important Merchant Responsibilities**

<b>Member Bank Information:</b> HSBC Bank USA, National Association, Merchant Support Group. P.O. Box 3263, Buffalo, NY 14240 (716) 841.6360	
1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant. 2. A Visa Member must be a principal (signer) to the Merchant Agreement. 3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the Merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from the settlement.	1. Merchant must ensure compliance with cardholder data security and storage requirements. 2. Merchant must maintain fraud and chargebacks below thresholds. 3. Merchant must review and understand the terms of the Merchant Agreement. 4. Merchant must comply with Visa Operating Regulations.  The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the merchant understands these specific responsibilities.

**Cardholder Electronic Data Storage**

\*Note that CAPs and VARs are third party solutions that may store or transmit data

Payment Card Industry Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PA DSS") compliant or you (merchant) must validate PCI DSS compliance (see #1(b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant

1. Have you ever experienced an Account Data Compromise ("ADC")? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide date of compromise _____ a) Have you validated PCI DSS compliance? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, go to #1(b); If no, go to #2 (b) Date of compliance, Report on Compliance ("ROC") or Self Assessment Questionnaire ("SAQ"): _____ (c) What is the name of your Qualified Security Assessor ("QSA")? _____ or SAQ (circle one): A, B, C or D (d) Date of last scan: _____ Approved Scanning Vendor's Name: _____ 2. Are you using a "dial-up" terminal or Touch Tone Capture ("TTC")? <input type="checkbox"/> Yes <input type="checkbox"/> No 3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number ("FCN"), electronically? <input type="checkbox"/> Yes <input type="checkbox"/> No (a) If yes, where is card data stored? <input type="checkbox"/> Merchant's location only <input type="checkbox"/> Merchant's Headquarters/Corp office only <input type="checkbox"/> Primary Service Provider <input type="checkbox"/> Both Merchant and Service Provider(s) <input type="checkbox"/> Other Service Provider: _____ <input type="checkbox"/> All apply	
4. What Primary Service Provider/Software Developer did you purchase your POS application from (i.e., Software, gateway)? _____ (A) What is the name of the Service Provider/Software Developer's application? _____ (B) Do your transactions process through any other Service Provider (i.e., Web hosting companies, gateways, corporate office)? <input type="checkbox"/> Yes <input type="checkbox"/> No (c) If yes, name of the other Service Provider: _____	

**Sale Representative Certification****Merchant Initials**

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief. Verified and Inspected by:

Yasir Haq

10/14/2009 10:36:43

Sales Representative Name

Sales Representative Signature

Date

Merchant Initials

Representative 1 Information			Representative 2 Information				
Name	Title	OTHER..	Name	Title	OTHER..		
<b>Billing &amp; Pricing Information</b>							
<b>Visa &amp; MasterCard CREDIT Qualified Discount Rate:</b> 0.00 % + 0.00 ¢ per item		<b>Visa &amp; MasterCard DEBIT Qualified Discount Rate:</b> 0.00 % + 0.00 ¢ per item		<input type="checkbox"/> <b>Pass Through I/C:</b> Includes Dues & Assessments 0.450 % + 0.30 ¢ per transaction			
<b>Discover CREDIT Qualified Discount Rate:</b> 0.00 % + _____ ¢ per item		<b>Discover DEBIT Qualified Discount Rate:</b> _____ % + 0.00 ¢ per item		<b>Existing Discover Merchant Account:</b>			
Set-Up Fee:	\$ 0.00	Credit Mid-Qualified Rate:	0.00 % + 0.00 ¢	<b>Additional Fees (for Optional Services)</b>			
Statement Fee:	\$ 9.95	Credit Non-Qualified Rate:	0.00 % + 0.00 ¢	E-Merchant View:	\$ 0.0000		
Monthly Minimum:	\$ 0.00	Debit Mid-Qualified Rate:	0.00 % + 0.00 ¢	Internet Gateway Fee:	\$ 0'00		
Non-Bankcard Transaction Fee:	\$ 0.30	Debit Non-Qualified Rate:	0.00 % + 0.00 ¢	Internet Gateway Trans. Fee:	\$ 0'00		
Voice AVS/Authorization Fee:	\$ 2.00	Annual Fee:	\$ 0.00	Wireless Setup Fee:	\$ 0'00		
Authorization Only Fee:	\$ 0.30	Term Agreement:	1 year	Wireless Monthly Access Fee:	\$ 0'00		
Batch Header Fee:	\$ 0.00	Early Termination Fee:	\$ 150.00/50.00	Wireless Transaction Fee:	\$ 0'00		
AVS Surcharge:	\$ 0.00	Return Fee:	\$ 25.00	<b>Pin-Based Debit Transactions</b> <input type="checkbox"/> <b>Pass Through Network &amp; Switch Fees</b>			
Chargeback/NSF Fee:	\$ 25.00	ACH Discount Rate:	1.00 %				
Retrieval Fee:	\$ 15.00	ACH Transaction Fee:	\$ 0.30	Transaction Fee:	\$ 0.20		
MICROS Transaction Fee	\$			Split Batch Fee (additional):	\$		
<b>I/we understand and agree to the following:</b> 1) Discount rate as stated above will be charged on "Qualified Rate" transactions. Qualified Rate transactions are defined as electronically authorized and swiped transactions that are batched and closed daily. 2) All lodging, car rental, small ticket, convenience and Express Services transactions may have a surcharge of up to 0.49% added to the Qualified Rate. 3) Discover transactions may have a surcharge of up to 0.50% added to the Qualified Rate. 4) A "Mid-Qualified" surcharge of up to 1.48% + \$0.20 will be added to the Qualified Rate under the following circumstances: a) Cardholder and card present at merchant's point of sale device, key entered, signature obtained, Address Verification Service ("AVS") with full match of billing zip code, settled within three days of authorization; settle amount must equal authorized amount; b) Card not present, single authorization only, order number required, AVS with full match of billing zip code, settled within two days of authorization, settle amount must equal authorized amount; c) Certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card transactions. 5) A "Non-Qualified" surcharge of up to 1.98% + \$0.20 may be added to the Qualified Rate for transactions that do not meet the requirements stated above and may also apply to transactions on Bus, Corp, Int'l, Purch, & Comm Cards; T & E, Mail/Telephone, e-Commerce, certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card. 6) If Interchange/Cost Plus: All transactions will be assessed the current, published interchange rates, dues, and assessments in addition to the basis points as stated above. The published rates for Visa and MasterCard can be viewed at: www.visa.com and www.mastercard.com. 7) Merchants may be charged a Cross Border transaction assessment of up to 0.75%, in addition to the applicable rate, on MasterCard and Maestro transactions when the country code of the Card Issuer differs from the country code of the Merchant. 8) Merchants may be charged an Association Acquirer Program Support Fee of up to 0.45% on certain transactions. 9) POS high-speed processing and/or gateway activation may be subject to a one time set up fee of up to \$100.00, depending on provider. 10) An early closure fee up to \$150.00 will be paid to Applied Merchant if the Merchant Processing Agreement is not terminated in accordance with the Terms and Conditions.			<b>Wireless Agreement:</b> By signing this document it is agreed that AMS shall not be held responsible for (a) any terminal repairs or (b) providing a replacement terminal due to equipment failure. The terminal manufacturer shall handle all terminal repairs and replacements. I also understand that due to the complexity of these terminals, the manufacturer may not be able to provide a replacement while completing repairs. AMS will not be responsible for any problems with the wireless services provided pursuant to this addendum. Fees are subject to change.				
			<b>Visa Authorization/Settlement Network Access/Usage Fee:</b>			\$ 0.0195	
			<b>MasterCard Authorization/Settlement Network Access/Usage Fee:</b>			\$ 0.0185	
			<b>Discover Authorization/Settlement Network Access/Usage Fee:</b>			\$ 0.0075	
<b>American Express Acceptance</b>							
<input type="checkbox"/> <b>YES</b> , I wish to apply for an American Express merchant account. <input checked="" type="checkbox"/> <b>NO</b> , I do not wish to accept American Express at this time.			Rate*: _____ Existing American Express Merchant Account: _____				
<b>NOTE:</b> By signing on page 3, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions. American Express transaction fees: \$0.10 for Retail + 0.30% Downgrade for CNP and Key Entered Transactions, and \$0.15 for Services, Wholesale & all other Merchant types.							
<b>Bank Information</b>							
Merchant authorizes any party to the Agreement to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which any such parties are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives written notice of revocation as required by this Agreement.							
Name as it Appears on Your Checking Account: <b>CITY OF NORTHGLENN</b>			Bank Name: <b>UMB BANK</b>				
Account Number:			ABA/Transit Number: <b>107001067</b>				
<b>Acknowledgement &amp; Agreement</b>							
<b>INVESTIGATIVE CONSUMER REPORT:</b> An investigative or consumer report may be made in connection with application. MERCHANT authorizes ANY PARTY TO THE AGREEMENT or any of their agents to investigate the references provided or any other statements or data obtained from MERCHANT, from any of the undersigned personal guarantor(s), or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested. <b>IMPORTANT NOTICE:</b> All information contained in this application was completed or supplied by all contracting parties. MSI, GLOBAL, and BANK shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of MSI, GLOBAL, and BANK. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing. <b>FOR ALL CORPORATION, CORPORATE RESOLUTION:</b> The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the here within named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.							
<b>If Merchant submits a transaction hereunder, Merchant will be deemed to have accepted the Terms and Conditions of the Merchant Processing Agreement</b>							
<b>OTHER..</b>			<b>10/14/2009 1</b>				
Signature 1	Title	Date	Signature 2	Title	Date		
					10/14/2009 1		

# Merchant Processing Agreement

## MERCHANT PROCESSING AGREEMENT

This document, "Merchant Processing Agreement" (the "Agreement"), accompanies the document "Merchant Application" ("Merchant Application") and includes the Terms and Conditions set forth below (the "Terms and Conditions") together with the terms and conditions of the Merchant Application. The bank ("Bank") identified in this Agreement is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), and is HSBC Bank USA, National Association ("HSBC"). Global Payments Direct, Inc. ("Global") is a registered independent sales organization of Visa, a member service provider of MasterCard, a registered acquirer of Discover Financial Services, LLC ("Discover") and has a relationship as a third party processor with HSBC. Merchant Services, Inc. d/b/a EVO ("MSI") is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is between Global, MSI, Bank, and the merchant identified in the Merchant Application ("Merchant"). Merchant, Global and MSI agree that the rights and obligations contained in this Agreement do not apply to the Bank with respect to Discover transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover. Any references to the Debit Sponsor shall refer to the debit sponsors identified below.

## RECITALS

Merchant desires to accept credit cards ("Cards") validly issued by members of Visa, MasterCard, and Discover. Bank, MSI and Global desire to provide credit card processing services to Merchant. Therefore, Merchant, MSI, Bank and Global agree as follows:

## TERMS AND CONDITIONS

### 1. Honoring Cards.

**A. Without Discrimination.** You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person processing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card.

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

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

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

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

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

**G. Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither MSI, Global nor Bank bear any responsibility for such transactions.

### 2. Authorization.

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

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

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

### 3. Presentation of Sales Drafts.

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

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

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

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

**E. Electronic Transmission.** In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions and, at MSI or Global's sole discretion, the deposit of those funds into the Reserve Account. If you provide your own electronic terminal or similar device, such terminals must meet MSI, Global and Bank's requirements for processing transactions, and must be Year 2000 compliant. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to MSI, Global and Bank or their agent in the form MSI, Global and Bank from time to time specifies or as required under the Rules. If MSI, Global or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

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

**A. Deposit of Funds.** i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You shall not be entitled to credit for any indebtedness that arises out of a transaction not processed in accordance with the terms of this Agreement or the rules and regulations of a card association or network organization. You acknowledge that your obligation to MSI, Global and Bank for all amounts owed under this Agreement arise out of the same transaction as MSI, Global and Bank's obligation to deposit funds to the Designated Account. ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will MSI, Global or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by MSI, Global and Bank. All Sales Drafts and deposits are subject to audit and final checking by MSI, Global and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to MSI, Global and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. MSI, Global and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within MSI, Global and Bank's sole discretion. iii. Processing Limits. MSI, Global and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by MSI, Global or Bank. This limit may be changed by MSI, Global or Bank upon written notice to you.

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

**C. Excessive Activity.** Your presentation to MSI, Global and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 10% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, MSI, Global and Bank to take any action they deem necessary including but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

**D. Credit.** i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. MSI, Global or Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to MSI, Global and Bank. You will not submit a credit relating to any Sales Draft not originally submitted to MSI, Global and Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction. ii. Revocation of Credit. MSI, Global or Bank may refuse to accept any Sales Draft, and MSI, Global and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to MSI,

## Merchant Processing Agreement

Global and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered, or those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay MSI, Global and Bank any amount previously credited to you for a Sales Draft not accepted by MSI, Global and Bank or where accepted, is revoked by MSI, Global and Bank.

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

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

### 5. Other Types of Transactions.

A. Debit Card Processing Services. You may elect to accept debit cards, and said election should be made by you on the accompanying Merchant Application. If you elect to accept debit cards, the following terms and conditions apply to you. Debit Sponsor shall act as your sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by you (the "Covered Terminals") in each of the following debit card networks ("Networks"): Accel, AFFN, Alaska Option, Interlink, Maestro, NYCE, Pulse, Shazam, Star, CU24, and Tyme, which Networks may be changed from time-to-time by Debit Sponsor, MSI or Global without notice. You may also have access to other debit networks that do not require a sponsor. MSI and Global will provide you with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks. MSI and Global will provide connection to such Networks, terminal applications, settlement, and reporting activities. You will comply with all federal, state, and local laws, rules, regulations and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). You will execute and deliver any application, participation, or membership agreement or other document necessary to enable Debit Sponsor to act as sponsor for you in each Network, and you shall obtain all consents, approvals, authorizations, or orders of any governmental agency or body required for the execution, delivery, and performance of this Agreement. You agree to utilize the debit card services in accordance with this Agreement, its exhibits or attachments, and MSI's and Global's instructions and specifications, and to provide MSI and Global with the necessary data in the proper format to enable MSI and Global to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to you upon request. You will provide prompt written notice to MSI and Global in the event that you are subject to any of the following: i. Conviction for a felony offense or any other crime involving moral turpitude; ii. Restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practice on your part; iii. Bankruptcy filing or petition; iv. Federal or state tax lien; v. Any material adverse change in your assets, operations, or condition, financial or otherwise; vi. The threat or filing of any litigation against you, the outcome of which reasonably could have a material adverse effect on your continuing operations; vii. Administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency or entity operating an EBT Network, that reasonably could have a material adverse effect on your continuing operations; or viii. Any disciplinary action taken by any Network against you or any of your principals. MSI or Global may terminate or suspend in its discretion Debit Sponsor's sponsorship of you in any Network or modify the provision of Services to you: i. Immediately upon notice to you of the occurrence of any of the conditions set forth in items (i), (ii), (iii), (v), or (viii) in the immediately preceding paragraph or if Debit Sponsor's authority to participate in such Network or act as your sponsor in such Network is terminated by such Network; ii. Thirty (30) days after written notice by MSI or Global to you of the occurrence of any of the conditions set forth in items (iv), (vi), or (vii) in the immediately preceding paragraph or if Debit Sponsor terminated its membership or participation in such Network; iii. Immediately upon notice to you in the event any financial statement, representation, warranty, statement or certificate furnished is materially false or misleading; or iv. Immediately upon notice to you of the occurrence of any other circumstance with respect to this Section that may reasonably be expected to have an adverse effect on MSI or Global. The parties hereto acknowledge and agree that MSI or Global shall pay Debit Sponsor any and all fees related to Debit Sponsor's sponsorship of you in the Networks; provided, however, that in the event MSI or Global fails to pay such amounts, Debit Sponsor shall be entitled to recover all such amounts directly from you and you agree to pay all such amounts. You shall not in any way indicate that Debit Sponsor endorses your activities, products, or services. Debit Sponsor and you are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and you. You shall indemnify and hold harmless MSI, Global and their affiliates (including parents and subsidiaries), and their respective officers, directors, employees, successors and assigns, from and against any and all direct or contingent losses, costs, claims, demands, and causes of action (including, without limitation, the cost of investigating the claim, the cost of litigation, and reasonable attorney's fees including those of in house counsel, whether or not legal proceedings are instituted) paid or incurred by or on behalf of MSI or Global as a result of your violation of any of the terms of this Section, Network Rules, or Applicable Laws, or otherwise arising from or related to Debit Sponsor's sponsorship of you in any Network. In the event that Debit Sponsor's sponsorship of you in any Network is terminated prior to the termination of this Agreement, MSI and Global may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this Section necessary to enforce the rights and obligations of the parties contained in this Section shall survive the termination of Debit Sponsor's debit sponsorship of you under this Agreement.

B. Mail/Telephone Order. MSI, Global and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify MSI, Global and Bank if your retail/mail order/telephone order mix changes from the percentages represented to MSI, Global and Bank in the Merchant Application. MSI, Global and Bank may cease accepting, mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees if this mix changes. i. BANK will release funds to MERCHANT five (5) business days after transaction date. ii. MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer. iii. MERCHANT agrees that transactions will not be processed until products are shipped to cardholder. iv. MERCHANT agrees to a charge of \$0.05 per AVS transaction, if applicable. v. Agreement may be immediately terminated by BANK if MERCHANT fails to comply with any of the terms of the agreement.

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

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

E. Partial Completion. i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of MSI, Global or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules. ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

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

G. Electronic Commerce Transactions. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained MSI's and Global's consent. If you submit EC transactions without our consent, we may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have reviewed the Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and to the extent that they apply to you, you agree to comply with, and ensure such transactions comply with, the terms. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions are your responsibility. You understand that MSI and Global will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency. i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: 1) complete description of the goods or services offered, ii) returned merchandise and refund policy, iii) customer service contact, including electronic mail address and/or telephone number, iv) transaction currency (such as U.S. or Canadian dollars); v) export or legal restrictions, if known, and vi) delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in the database, you must follow PCI DSS, CISP and SDP guidelines on securing such data. ii. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the PCI DSS, CISP and SDP Rules in contracts with other service providers. You understand that failure to comply with this Section may result in fines and you agree to indemnify and reimburse MSI, Global and Bank immediately for any fine imposed due to your breach of this Section.

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

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

J. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, deposit telemarketing transactions unless you obtain Bank, MSI or Global's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and MSI, Global or Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Visa, MasterCard or Discover reporting requirements.

### 6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank, MSI and Global ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank, MSI and Global to debit the Designated Account for chargebacks, fees and any other Penalties or amounts owed under this Agreement, and irrevocably authorizes Bank, MSI and Global to debit the Designated Account for any amount owed to Bank, MSI and Global under this Agreement other than the amounts directly attributable to the settlement of transactions. You also authorize MSI, Global and Bank to debit the Merchant Account for any fees due such vendor or agent under this Agreement. This authority will remain in effect for at least 210 days after termination of this Agreement whether or not you have notified MSI, Global and Bank of a change to the Designated Account in order to allow for the payment of chargebacks and other items due under this Agreement. Merchant must obtain prior written consent from Bank, MSI or Global to change the Designated Account. If Merchant does not get that consent, MSI, Global or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.



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**B. Deposit.** Bank will deposit all Sales Drafts to the Designated Account subject to Section 4 of this Agreement. The funds represented by Sales Drafts will be deposited 3 business days following MSI and Global's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank, MSI and Global to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. You authorize and appoint Bank, MSI and Global to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, Bank, MSI and Global in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

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

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

**E. ACH Authorization.** You authorize MSI, Global and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement and the ACH Authorization on the attached Exhibit B, Merchant Authorizations. The ACH Authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, you will execute a new ACH Authorization.

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

A. Intentionally Omitted.

**B. Reserve Account.** i. Establishment. A non-interest bearing deposit account ("Reserve Account") may be established and maintained at MSI, Global or Bank initially or at any time in the future as requested by MSI, Global or Bank, with sums sufficient to satisfy your current and future obligations as determined by MSI, Global and Bank. You authorize MSI, Global and Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank, MSI or Global may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. ii. Authorizations. MSI, Global and Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and MSI, Global or Bank. Also, MSI, Global and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to MSI, Global or Bank including, without limitation, rights of set-off and recoupment. In the event you submit a merchant application to MSI through the use of Insta-App, and MSI does not receive a completed written merchant application within 2 business days, you authorize MSI, Global or Bank to hold all of your funds in the Reserve Account until the completed written merchant application and other required documentation is received by MSI. iii. Funds. Funds in the Reserve Account will remain in the Reserve Account for 210 calendar days following the later of termination of this Agreement or the last activity in your account, provided, however, that you will remain liable to MSI, Global, and Bank for all liabilities occurring beyond such 210 day period. After the expiration of the 210 day period MSI will provide you with written notification via nationally recognized delivery service advising you that the 210 day period has expired, requesting that you provide MSI with an address where the funds should be delivered, and stating that in the event you fail to respond to this notification within 30 days, MSI will begin deducting a flat fee of \$95 each month from the funds you have remaining in the Reserve Account. In the event you fail to respond to the notification, the \$95 fee will then be deducted each month from the funds remaining in the Reserve Account. This fee will offset the administrative, clerical, legal, and risk management costs incurred by MSI to monitor the funds that remain in the Reserve Account beyond the 210 day period, and includes all monthly minimums and any other contractual fees that would ordinarily be assessed against your account pursuant to the terms of this Agreement. You agree that prior to the expiration of the 210 days, you will not use funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines, or other amounts you owe to MSI, Global, and/or Bank under this Agreement. MSI, Global, and Bank (and not Merchant) shall have control of the Reserve Account. iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to MSI, Global and Bank.

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

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

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

**A. Fees and Taxes.** You will pay MSI or Global fees for services, forms and equipment in accordance with the rates set forth on the Application. In addition, you will pay MSI a fee for research it performs at your request in an amount equal to \$200 per hour, or \$5 per statement. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity or will be netted out from the funds due you attributable to Sales Drafts presented to MSI, Global and Bank. MSI, Global and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below. If you do not have an active account at the time of the request, payment by certified check or money order must be received prior to the release of the requested document copies or research results. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. With respect to Visa, MasterCard and Discover products, you may elect to accept credit cards or debit/prepaid cards or both. You shall so elect on the Merchant Application being completed contemporaneously herewith. You agree to pay and your account(s) will be charged pursuant to Section 6.A of this Agreement for any additional fees incurred as a result of your subsequent acceptance of transactions with any Visa, MasterCard or Discover product that you have elected not to accept.

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

**C. Merchant Supply/Replacement Program.** Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If merchant elects to participate in MSI's Supply/Replacement Program, merchant understands that they are entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. It is the merchant's responsibility to contact MSI each month to order supplies. MSI will only provide the merchant with supplies for the current month, and merchant's failure to place an order with MSI will constitute a waiver of its right to receive supplies for that month under the Supply/Replacement Program. Quantity of supplies provided is at the discretion of MSI. Enrollment in MSI's Supply/Replacement Program also entitles merchant to free refurbished replacement equipment after MSI has collected 3 monthly payments from the merchant (merchant is responsible for all shipping costs). A separate program is required for each terminal merchant may have. If merchant's terminal type is unavailable, at MSI's discretion, a substitute may be provided. MSI's Supply/Replacement Program does not include labor, parts, or expenses necessary to replace or repair equipment damaged by fire, flood, accident, improper voltages, misuse of equipment, service performed by persons other than MSI representatives, and/or failure to continually maintain a suitable operating environment for the equipment. MSI may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminals.

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

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

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

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

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

**E. Representations By Salespersons.** All salespersons are independent contractors, and are not agents, employees, joint venturers, or partners of MSI, Global or Bank. Any and all representations and/or statements made by a salesperson are made by them in their capacity as an independent contractor, and cannot be imputed to MSI, Global or Bank. MSI, Global and Bank have absolutely no liability or responsibility for any representations and/or statements made to you by any sales representative.

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

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

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

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

**D. Transactions.** All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with MSI, Global and Bank. MSI may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent. Maintenance is not available for any wireless terminals.

**E. Rule Compliance.** You will comply with the Laws and Rules. Without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including, without limitation Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP).

## 11. Audit and financial information.

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

**B. Financial Information.** i. Authorizations. You authorize MSI, Global or Bank to make any business credit inquiries they consider necessary to review the acceptance and continuation of his Agreement. You also authorize any person or credit reporting agency to compile information to answer, those credit inquiries and to furnish that information to MSI, Global and Bank. ii. Documents. You will provide MSI, Global or Bank business financial statements and other financial information as requested from time to time. If requested, you will furnish within 150 calendar days after the end of each fiscal year to MSI, Global and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

## 12. Third Parties.

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

**B. Use of Terminals Provided by Others.** You will notify MSI, Global and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than MSI, Global and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals or payment software provided by others you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to MSI, Global and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules and this Agreement. Neither MSI, Global nor Bank will be responsible for any losses or additional fees incurred by you as result of any error by a third party agent, or a malfunction of your credit card terminal, including but not limited to Third Party Terminals.

## 13. Term and Termination.

**A. Term.** This Agreement shall become effective ("Effective Date") only upon acceptance by MSI, Global and Bank, or upon the submission of a transaction by you to MSI, whichever event shall occur first. The Agreement will remain in effect for a period of 1 year ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

**B. Termination.** The Agreement may be terminated by Merchant at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 30 calendar days before the end of the Initial Term or any Renewal Term. Further, this Agreement may be terminated by MSI, Global or Bank at any time with or without notice and with or without cause.

**C. Action upon Termination.** i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa, MasterCard and Discover when Merchant is terminated due to the reasons listed in the Rules. ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize MSI, Global and Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay MSI, Global and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by MSI and immediately pay MSI any amounts you owe them for equipment costs. iv. Early Termination. If you terminate this Agreement before the end of the Initial Term, or before the end of any successive Renewal Term, in violation of the procedure set forth in Section 13(B) above, or if MSI, Global or Bank terminates this Agreement based upon your failure to comply with the terms and conditions contained herein, you will immediately pay MSI or Global, as liquidated damages, a closure fee of \$150. You agree that this fee is not a penalty, but rather is reasonable in light of the financial harm caused by the early termination of this Agreement.

## 14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by MasterCard, Visa and Discover, and any policies and procedures provided by MSI, Global or Bank. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist MSI, Global and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to MSI, Global and Bank all instruments it may from time to time reasonably deem necessary. Without limiting the generality of the foregoing, you agree to comply with and be bound by the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including without limitation, Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program. You agree to cooperate at your sole expense with any request for an audit or investigation by MSI, Global, Bank, a card association or network organization in connection with cardholder and transaction information security. You may also be assessed a monthly or annual PCI fee, which will appear as a separate item on your monthly statement. This fee is assessed by MSI in connection with MSI's efforts to comply with the PCI DSS and does not ensure your compliance with the PCI DSS or any law, rule or regulation related to cardholder data security. The payment of such fee shall not relieve you of your responsibility to comply with all rules and regulations related to cardholder data security, including without limitation the PCI DSS. Without limiting the generality of the foregoing, you agree to use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. You will indemnify and hold MSI, Global and Bank harmless from any fines and penalties issued by Visa, MasterCard, Discover or any card association or network organization and any other fees and costs arising out of or relating to the processing of transactions by MSI, Global and Bank at your location(s) and will reimburse MSI, Global and Bank for any losses incurred by MSI with respect to any such fines, penalties, fees and costs. You also agree that you will comply with all applicable laws, rules and regulations related to the truncation or masking of cardholder numbers and expiration dates on transaction receipts from transactions processed at your location(s), including without limitation the Fair and Accurate Credit Transactions Act and applicable state laws ("Truncation Laws"). As between you, on the one hand, and MSI, Global and Bank, on the other hand, you shall be solely responsible for complying with all Truncation Laws and will indemnify and hold MSI, Global and Bank harmless from any claim, loss or damage resulting from a violation of Truncation Laws as a result of transactions processed at your location(s). **15. Use of Trademarks and Confidentiality.**

**A. Use of Trademarks.** Your use of Visa, MasterCard and Discover trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover, or other cards' promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover, or others endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover or others in stating eligibility for your products or services.

**B. Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks").** You are prohibited from using the Discover Program Marks other than as expressly authorized in writing. You shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you pursuant to this Agreement or otherwise approved in advance in writing. You may use the Discover Program marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance in writing. You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

**C. Confidentiality.** i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers and (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of MSI, Global and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. iii. Disclosure. You authorize MSI, Global and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

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

## 16. General Provisions.

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

**B. Intentionally Omitted.**

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

**D. Assignability.** This Agreement may be assigned by MSI, Global or Bank but may not be assigned by Merchant directly or by operation of law, without the prior written consent of MSI, Global and Bank. If Merchant

## Merchant Processing Agreement

nevertheless assigns this Agreement without the consent of MSI, Global and Bank, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

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

### MEMBER BANK INFORMATION

HSBC Bank USA, National Association  
Merchant Support Group  
P. O. Box 3263  
Buffalo, NY 14240  
716-841-6360

**Debit sponsorship** provided by either Wells Fargo Bank N.A. or JP Morgan Chase N.A., as applicable.

F. **Bankruptcy.** You will immediately notify MSI, Global and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include MSI, Global and Bank on the list and matrix of creditors as filed with the Bankruptcy Court whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to MSI, Global and Bank under applicable Rules or Law.

G. **Choice of Law/Attorney's Fees/Venue/Jury Trial Waiver.** Should it be necessary for MSI, Global, or Bank to defend or enforce any of its rights under this Agreement in any collection or legal action, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses including reasonable attorney's fees, as a result of such collection or legal action. Without limiting the generality of the foregoing, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by MSI, Global, Bank or their agent in any action arising out of, relating to, or in connection with this Agreement, without regard to whether there has been an adjudication on the merits in any such action. You waive trial by jury with respect to any litigation arising out of, relating to, or in connection with this Agreement. MSI, Global, Bank, you, and Guarantor agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of, relating to, or in connection with (i) this Agreement, (ii) the relationships which result from this Agreement, or (iii) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of New York, notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. MSI, Global, Bank, you, and Guarantor agree that all actions arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall only be brought in either the courts of the State of New York sitting in Suffolk County or in the United States District Court for the Eastern District of New York, and hereby irrevocably and unconditionally submit to the personal jurisdiction of those courts in any such action.

H. **Amendments.** MSI or Global will notify you on your monthly statement of any new or increased fees. Except for any fee increases imposed by Visa, MasterCard, Discover, or the debit network, you may cancel the Agreement without charge if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

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

J. **Independent Contractors.** MSI, Global, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other, except as provided in 6.C and 7.A(ii).

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

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

### 17. E-statements.

A. **Merchant Account Statement.** Upon opening a merchant processing account you will automatically have access to your monthly merchant account statement electronically (an "E-statement") by viewing it on line. This Agreement governs the electronic availability of your E-statement. You agree to abide by the terms and conditions stated herein, and to access E-statements, as well as all notices and initial and future disclosures regarding your E-statement, online. You acknowledge that by the third business day of each month, your E-statement will be available online. You will be notified in writing of the website where you can access your E-statement. Your E-statement will be accessible only through a secure Log In screen which requires the use of a unique User ID and Password. You understand that you will not receive a monthly merchant account statement by U.S. postal mail, and that making your E-statement available online constitutes MSI's compliance with delivery of your monthly merchant account statement. You can print the E-statement or save the file to your computer's hard drive or other disk in order to retain a copy of the E-statement. Your E-statement can be accessed through the E-statement link for three consecutive months from the date the E-statement is first made available. You further agree to receive all initial and periodic account disclosure information in an electronic format. All such disclosures shall be provided in a clear, conspicuous manner that you can print and/or save using the hardware and software specified below. You are also entitled to obtain a paper copy of all disclosures or E-statements upon written request, however such a request does not constitute a withdrawal of consent to receive monthly E-statements. A fee may apply for providing such documentation. You understand that you may withdraw your consent to receive E-statements, or change your email address, upon 30 days written notice to MSI. Please note that a withdrawal of consent does not apply to an E-statement that was furnished before the date on which the withdrawal of consent becomes effective. PC Requirements: Viewing your E-statement on line requires a personal computer with Adobe Acrobat and internet access through a standard web browser. The product version levels must be supported by the respective vendors (i.e., Adobe, Apple, Mozilla, and Microsoft). MSI is not obligated to ensure that your E-statements are accessible through outdated vendor products. In the event you are unable to access any of the information that has been made available by MSI in electronic format, it is your obligation to notify MSI in writing immediately.

B. **Reporting Of Errors.** You must promptly view all E-statements, and immediately notify MSI in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by MSI within 30 calendar days after the E-statement containing the asserted error is first made available. Your failure to notify MSI of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against MSI for any loss or expense relating to any asserted error for 60 calendar days immediately following MSI's receipt of your written notice. During that 60 day period, MSI will be entitled to investigate the asserted error and we will notify you of the results of our investigation.

C. **Miscellaneous.** MSI shall not be responsible for: (i) consequential or incidental damages caused by services performed by MSI, its agents, or your Internet Service Provider ("ISP"); (ii) damages arising from unauthorized access to E-statement services; or (iii) any costs associated with updating, modifying or terminating your software or hardware. MSI may change, suspend, or terminate all or any aspect of this service upon written notice to you.

### 18. Electronic Signatures.

Under the Electronic Signatures in Global and National Commerce Act ("E-Sign"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when: (a) your electronic signature is associated with the Agreement and related documents, (b) you consent and intend to be bound by the Agreement and related documents, and (c) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree: (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize MSI, Global or Bank to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.

## Electronic Signature Agreement Acknowledgment

I understand that the electronic application process in which I am currently engaged, does take advantage of an Electronic Signature process, which allows me to sign legally binding agreements on-line using my mouse. I understand that these signatures are legally binding, and are governed by the Federal E-Sign Act of 1997, and/or the UETA governances (or an amended version thereof) in my state of residence. I agree to be bound by these governances. I also agree that the signatures I provide on-line will also be binding upon me, and will not be construed by a court of law to have any less effect than a standard ink on paper signature

**FIRST ADDENDUM TO SPRINGBROOK SOFTWARE WEB PAYMENTS  
AGREEMENT**

THIS FIRST ADDENDUM TO SPRINGBROOK SOFTWARE WEB PAYMENTS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "Client") and Springbrook Software, Inc. (hereinafter referred to as "Springbrook"), amends the Springbrook Software Web Payments Agreement entered into by and between the Client and Springbrook on \_\_\_\_\_, 200\_\_.

A. Springbrook is providing the Client with interface software and services for the Client to implement a web-based utility billing system, which will accept electronic payments from Client utility-users over the web;

B. To implement the utility-billing system, the Client is required to execute a Merchant Agreement with HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc.;

C. The Merchant Agreement requires that the Client's web-based utility billing system complies with certain technical requirements, including without limitation, technical requirements set forth in Sections 3.D and 5.G of the Merchant Agreement (the "Technical Requirements");

D. Springbrook desires to indemnify the Client for claims relating to violations of the technological requirements established by the Payment Card Industry Data Security Standard Association concerning the use, access, and storage of certain credit card and non-public personal information, including without limitation the Technical Requirements. Likewise, the Client acknowledges its responsibility for internal processes and procedures that meet the Payment Card Industry Data Security Standard Association standards without limitation to those internal processes and procedures set forth in 3.D and 5.G.

NOW, THEREFORE, it is hereby agreed that for the consideration hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, this Addendum shall amend the Springbrook Software Web Payments Agreement by the addition of the following section:

**12. Special Warranty and Indemnification.**

12.1. Licensor warrants that the Software, including the web-based utility billing software, and all work performed by Licensor related to the Software, will comply with the system security requirements imposed upon the Client by the Payment Card Industry Data Security Standard Association, to the extent that Springbrook is responsible for implementation of the web-based utility billing software.

12.2. Licensor agrees to indemnify and hold harmless the Client, its officers,

from breach of contract, bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss, or damage is caused in whole or in part or is claimed to be caused in whole or in part by: (1) Licensor's breach of the warranty set forth in subsection (a) of this Section 21; or (2) based upon the failure of the Client's web-based utility system to meet the system security requirements established by the Payment Card Data Security Standard Association with regards to use, access, and storage of certain credit card and non-public personal information on behalf of the Client, including without limitation the technical requirements set forth in Sections 3.D and 5.G of the Merchant Agreement Client shall enter into with HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc.

Licensor agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Licensor, or at the option of the Client, agrees to pay the Client or reimburse the Client for the defense costs incurred by the Client in connection with, any such liability, claims, or demands. Licensor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the negligent, willful or intentional act of the Client, its officers, or its employees, the Client shall reimburse Licensor for the portion of the judgment and the portion of defense costs attributable to such negligent, willful or intentional act of the Client, its officers, or employees. This indemnification shall not extend to claims that the Client breached Payment Card Data Security Standard Association security standards unrelated to the web-based utility billing software or to the Client's misuse of the web-based utility payment billing software

12.3 This Section 12 shall supersede any terms to the contrary in this Agreement.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

**CITY OF NORTHGLENN, COLORADO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

**SPRINGBROOK SOFTWARE INC.**

By:  \_\_\_\_\_

Title: VP Implementation

STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L) \_\_\_\_\_ Notary Public

**INDEMNIFICATION AGREEMENT**

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2009, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "City") and Applied Merchant Systems, Inc. ("AMS"). (hereinafter referred to as "AMS").

A. The City has entered into an agreement with Springbrook Software, Inc. ("Springbrook") under which Springbrook will provide software and services to implement a web-based utility billing system, which will accept electronic payments from City utility-users over the web;

B. AMS provides back-end billing services to Springbrook, which enable Springbrook to provide the City with the web-based utility system;

C. To implement the utility-billing system, the City is required to execute a Merchant Agreement with HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc. (the "Merchant Agreement");

D. The Merchant Agreement imposes numerous obligations on the City, including indemnifying HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc. for violations of the Merchant Agreement and warranting that nothing in the Merchant Agreement violates any laws to which the City is subject;

E. The requirement that the City enter into the Merchant Agreement is due to contractual obligations between AMS and HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc.;

F. Because the City is required to enter into the Merchant Agreement because of the contractual obligations of AMS, AMS desires to indemnify the City for any violations of the indemnification or warranty obligations of the City in the Merchant Agreement, including without limitation violations of Sections 5.G, 6.D, 9.B, and 14 of the Merchant Agreement.

NOW, THEREFORE, the parties hereby agree for the consideration hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the following:

AMS shall indemnify and hold harmless the City, its officers, employees, and insurers, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from breach of contract, bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the City based upon the City's indemnification and warranty obligations under the Merchant Agreement entered into by the City with HSBC Bank, USA; Global Payments Direct; and Merchant Services, Inc., including without limitation violations of Sections 5.G, 6.D, 9.B, and 14 of the Merchant Agreement except for any liability, claims, and demands arising from the City's, its officers, employees, or insurers fraud or gross negligence.

AMS agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of AMS, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. AMS also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

**CITY OF NORTHGLENN, COLORADO**

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

**APPLIED MERCHANT SYSTEMS, INC.:**

By:  \_\_\_\_\_

Todd Whitman

Print Name

CEO

Title

11/11/09

Date

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

City's Contract # \_\_\_\_\_

\_\_\_\_\_  
Name of City's Project Manager