



535 Menlo Dr. Suite 1, Rocklin, CA 95765

Agreement Number 02042002

MERCHANT PROCESSING AGREEMENT

This Merchant Processing Agreement and the related Merchant Application and Security Agreement (such Merchant Application and Security Agreement collectively referred to as the "Merchant Application") submitted by Merchant to Cornerstone either online or physically, (the Merchant Application and this Merchant Processing Agreement collectively referred to as this "Agreement") is entered into by and between you ("Merchant"), Cornerstone Payment Systems, L.L.C. ("Cornerstone"), and First Financial Bank, a Georgia special purpose (credit card) bank ("Bank")(Cornerstone and Bank collectively referred to as "Servicers"). The guarantor(s) to this Agreement is also a party as a continuing guarantor(s) pursuant to paragraph 7.20. **To the maximum degree permitted by law and by MasterCard International, Inc. ("MasterCard") and Visa U.S.A., Inc. ("Visa") rules and regulations, it is the intention of the parties that the rights of Bank under this Agreement may be exercised by Bank or Cornerstone.** Subject to the terms of this Agreement and to the full extent permitted by law and by MasterCard and Visa rules and regulations, the rights granted to Cornerstone, its successors and assigns shall also inure to the benefit of any entity affiliated with Cornerstone to the extent such affiliate may now or in the future have or may in the past have had a relationship with Merchant related to credit card processing. Merchant, Cornerstone and Bank enter into this Agreement in consideration of the mutual covenants set forth herein.

This Agreement shall not be effective until the Merchant Application, which incorporates this Merchant Processing Agreement by reference, is approved (as evidenced by the assignment of a merchant identification number to Merchant). Merchant's financial condition shall be one of the factors considered in deciding whether to accept the Merchant Application. By entering into this Agreement, Merchant agrees to comply with and be subject to, all MasterCard and Visa rules and regulations, as they may exist from time to time, including, but not limited to, those relating to Chargeback procedures and the resolution of any disputes relating thereto. Merchant's agreement to be so bound is made regardless of whether Merchant has seen or read such rules and regulations. Merchant acknowledges that the responsibility for obtaining such rules and regulations and updates thereto lies solely with Merchant.

Any violation of MasterCard or Visa rules and regulations by Merchant shall constitute a material breach of this Agreement and shall be grounds for Bank to terminate this Agreement.

ARTICLE 1 – GENERAL DEFINITIONS

1.01 Definitions

The following terms shall have the meanings indicated:

1.01.1 ACCOUNT NUMBER. A unique sequence of numbers assigned to a Cardholder account that identifies the Card Issuer and type of financial transaction card.

1.01.2 AUDIOTEXT. A type of Card Transaction that is initiated by a Cardholder via telephone or fax communication with Merchant.

1.01.3 AUTHORIZATION. The approval of a requested Card Transaction, which approval is transmitted to Merchant. An Authorization only validates a Card Transaction but does not

guarantee payment for the sale, rental or service underlying the Card Transaction.

1.01.4 AUTOMATED CLEARING HOUSE (ACH). One of the groups of processing institutions that have networked together to exchange (i.e., clear and settle) electronic debit transactions.

1.01.5 BATCH. A set of records within Merchant's closing transmission.

1.01.6 CARD ISSUER. The financial institution that issues a Card.

1.01.7 CARDHOLDER. The customer to whom a Card has been issued or the individual authorized to use such credit card.

1.01.8 CARD TRANSACTION. A transaction for a sale, rental or service, or any credit thereon, by and between Merchant and a bona fide MasterCard or Visa Cardholder, evidenced by a record of a sale ("Sales Slip") or a record of a return or refund ("Credit Slip") that Merchant presents to Bank for processing by way of interchange with the Card Issuer (the "Interchange System"). A Card Transaction may include transactions where the Cardholder's signature is not obtained or where the Sales Slip or Credit Slip does not contain a physical card imprint so long as the Cardholder has authorized the transaction in accordance herewith.

1.01.9 CASH RESERVE AMOUNT PERCENTAGE. The percentage as set forth in the Merchant Application (or any other agreement by and between Merchant and Bank) that Servicers are entitled to withhold from each Card Transaction and deposit in the Merchant Cash Reserve Account.

1.01.10 CHARGEBACK. When a Sales Transaction is returned for debiting to the Merchant Bank Account by Servicers because of (i) nonconformity with federal, state, local or Interchange System laws, ordinances, rules or regulations, (ii) Cardholder dispute, or (iii) violation of any term or condition of this Agreement.

1.01.11 CHARGEBACK RATIO. The Chargeback Ratio shall be calculated by dividing the number of Chargebacks received in any month by the number of sales during that month.

1.01.12 CREDIT TRANSACTION. A Card Transaction that results in a credit to the Cardholder's account and a debit to the Merchant Bank Account Merchant may not enter into a Credit Transaction unless a prior corresponding sales transaction was entered into with the same Cardholder using the same Card.

1.01.13 DISCOUNT FEE. A fee charged on all Sales Transactions and Credit Transactions that is payable by Merchant to Servicers for processing Merchant's Card Transactions.

1.01.14 MERCHANT BANK ACCOUNT. A business checking account established by Merchant at Merchant's financial institution.

1.01.15 MERCHANT'S BUSINESS. The business in which Merchant is engaged, as set forth specifically in the Merchant Application.

1.01.16 MERCHANT CASH RESERVE ACCOUNT. An non-interest bearing account established by Bank which is funded by:

(a) withholding and therein depositing the Cash Reserve Amount Percentage from each Card Transaction; and

(b) cash payment by Merchant of an amount equal to any required cash reserve amount set by Bank.

1.01.17 MID-QUALIFIED TRANSACTION. A Mid-Qualifying Transaction shall mean:

(a) any swiped Card Transaction that is the subject of an Authorization, presented to Servicers within two (2) business days following the transaction date, and is presented with complete electronic capture of all data; or

(b) any Card not present or key entered Card Transaction that is the subject of an Authorization, that does not contain address verification; or invoice order/number, mail/telephone order indicator is off, or is presented to Servicers within two (2) business days following the transaction date.

1.01.18 MONTHLY TRANSACTION LIMIT. The maximum aggregate amount of all Sales Transactions Merchant may submit to Bank for processing in a month, as set forth in the

Merchant Application (or any other agreement by and between Merchant and Bank).

1.01.19 NON-QUALIFYING TRANSACTION. A Non-Qualifying Transaction shall mean:

(a) any swiped Card Transaction that is not the subject of an Authorization, presented to Servicers three (3) or more business days following the transaction date, or any Card Transaction involving a business Card, corporate Card, purchasing Card, or foreign Card (i.e., a Card issued by a non-U.S. financial institution); or

(b) any Card not present or key entered Card Transaction that is not the subject of an Authorization, presented to Servicers three (3) or more business days following the transaction date, or any transaction involving a business, corporate, purchasing, or foreign card (i.e., a Card issued by a non-U.S. financial institution).

1.01.20 QUALIFYING TRANSACTION. A Qualifying Transaction shall mean:

(a) any swiped Card Transaction that is the subject of an Authorization, presented to Bank within one (1) business day following the transaction date, sale amount equals the Authorization amount, and is presented with complete electronic capture of all data; or

(b) any Card not present or key entered Card Transaction that is the subject of an Authorization, contains address verification, and invoice/order number, sale amount equals the Authorization amount, mail/telephone order indicator is on, and is presented to Bank within one (1) business day following the transaction date.

1.01.21 REVOLVING CASH RESERVE ACCOUNT DAYS. The number of days as set forth in the Merchant Application (or any other agreement by and between Merchant and Bank) that each deposit shall be held in the Merchant Cash Reserve Account.

1.01.22 SALES TRANSACTION. A Card Transaction that results in a debit to the Cardholder's account.

1.02 Honoring Cards in a Physical Location

(a) Merchant shall honor without discrimination all valid MasterCard and Visa cards ("Cards") when properly presented as payment by customers in connection with bona fide, legitimate business transactions in connection with Merchant's Business.

(b) Merchant shall not require, through an increase in price or otherwise, any Cardholder to pay any surcharge at the time of sale or to pay any part of any charge imposed on Merchant by Bank. However, discounts for payment in cash are permitted.

(c) Merchant shall not establish minimum or maximum Card Transaction amounts.

1.03 Card Examination

(a) Merchant shall not engage in any Card Transaction (other than an audio text, mail order, telephone order, internet or preauthorized transaction) with a Cardholder who fails to present the Card that is intended to be used to complete the transaction.

(b) Before honoring any Card, Merchant shall do all of the following, as applicable:

(i) Check the effective date (if any) and the expiration date on the Card. Merchant shall not honor any Card that is not yet effective or that has expired.

(ii) Examine any Card security features (such as holograms) included on the Card.

(iii) Seek Authorization as required by this Agreement.

1.04 Authorization.

Before honoring any Card in any Card Transaction, Merchant shall obtain Authorization for such Card Transaction from Bank's designated authorization center.

1.05 Completing the Card Transaction Record ("Transaction Record").

Except as otherwise provided below, Merchant agrees to do all of the following when honoring a Card:

(a) Include on the Sales Slip the transaction date, a description of the goods or services sold in detail sufficient to identify the transaction, and the price of the goods or services (including any applicable

taxes);

(b) Obtain the signature of the Cardholder on the Sales Slip after the total transaction amount is noted on the Sales Slip;

(c) Compare the signature on the Sales Slip and the signature panel of the Card, and if the Card has a photograph of the Cardholder, confirm that the customer resembles the person depicted in the photograph, and if either identification is uncertain or Merchant otherwise questions the validity of the Card or its use, to contact Services' designated authorization center for instructions before proceeding;

(d) Complete a conventional Sales Slip, including the Cardholder's signature and an imprint of the Card, or include an imprint of the Card directly on a blank portion of the printer slip produced by the electronic terminal if Merchant is using a magnetic stripe reading terminal in connection with a transaction and that terminal is unable to read the Card's magnetic stripe;

(e) Deliver a true and complete copy of the Sales Slip to the customer at the time of delivery of the goods or performance of the services;

(f) Include the following on the printer receipt if the transaction is initiated at a point-of-sale terminal:

- (i) The Cardholder's Account Number;
- (ii) Merchant's name;
- (iii) Merchant's location;
- (iv) The amount of the transaction;
- (v) The date of the transaction;
- (vi) Authorization code;
- (vii) Description of product or services sold;
- (viii) The Cardholder's name and signature; and
- (ix) The Card's expiration date

1.06 Advertising

Merchant shall display any advertising or promotional messages provided by Bank or Cornerstone on Merchant's Web site or at its physical location. This material will be designed to inform consumers that Cards will be honored for payment. Merchant shall not display or use advertising or promotional materials that suggest, implicitly or explicitly, that Merchant only honors Cards issued by Bank. Merchant shall have the right to use or display the proprietary names and symbols associated with Cards on Merchant's Web site or at its physical location, subject to the guidelines for such use or display as are dictated by MasterCard or Visa from time to time, only while this Agreement is in effect or until Merchant is notified by Bank, Cornerstone, MasterCard or Visa to cease such use or display. Merchant shall only use the proprietary names and symbols associated with Cards to indicate that Cards are accepted for payment and shall not indicate, implicitly or explicitly, that Bank, Cornerstone, MasterCard or Visa endorses Merchant's products or services.

1.07 Telephone Orders, Mail Orders, Pre-authorized Orders, Internet Orders, and Installment Orders.

(a) If a Card Transaction is made by telephone order ("TO"), mail order ("MO"), Internet order ("IO") or preauthorized order ("PO"), the Sales Slip may be completed without a customer's signature or a Card imprint, provided that Merchant agrees:

- (i) to imprint legibly on the Sales Slip sufficient information to identify Merchant and the Cardholder, including: Merchant's name and address, the Card Issuer's Interbank number and bank initials (if any), the Account Number, the expiration date and any effective date on the Card, the Cardholder's name and address, and any company name if the Card is a business or corporate Card;
- (ii) to print legibly on the signature line of the Sales Slip the letters "TO", "MO", or "PO" for MasterCard transactions and "Recurring Transaction" for Visa transactions, as appropriate;
- (iii) for TO and MO transactions, to include the address verification service and the expiration date as part of any Authorization inquiry; and to transmit sale data to Bank or Bank's processor within

- two (2) business days of the Authorization date including Merchant's customer service number for any consumer complaint; and,
- (iv) to be liable for the amount of any Sales Slip generated in a TO, MO, IO or PO transaction that proves to be uncollectable or becomes the subject of a Chargeback for any reason whatsoever.
- (b) In any non-imprint transaction, Merchant shall be deemed to warrant the customer's true identity as the Cardholder.
- (c) In connection with a recurring transaction (or preauthorized order) pursuant to which goods or services are delivered to or performed for a Cardholder periodically, Merchant agrees to do all of the following:
- (i) obtain a written request from the Cardholder to charge the recurring transaction to the Cardholder's account. The written request must specify the amount of the recurring transaction, the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect. Merchant shall retain the Cardholder's written request for as long as the preauthorized order is in effect and must provide a copy to Servicers upon request.
 - (ii) Obtain a subsequent written request from the Cardholder containing the same information as the original written request before renewing a preauthorized order.
- (d) Merchant may offer Cardholders an installment payment option for its mail order or telephone order merchandise subject to the following conditions:
- (i) Merchant's promotional material must clearly disclose the installment terms, including but not limited to:
 - (A) whether the installment payment option is available only for selected items or for the total amount of any order; and
 - (B) how shipping and handling charges and applicable taxes will be billed. The material also must advise Cardholders who are not billed in the customary transaction currency of the Merchant that the installment billing amounts may vary due to fluctuations in the currency conversion rates.
 - (ii) No finance charges may be added by Merchant. The sum of the installment transaction may not exceed the total sales price of the merchandise on a single-transaction basis.
 - (iii) Authorization is required for each installment payment transaction.
 - (iv) Merchant may not deposit or attempt to process any transaction with Servicers until the merchandise that is the subject of such transaction is shipped. Subsequent installment transactions must be deposited at intervals of 30 days or more, or on the monthly anniversary date of the transaction (i.e., the same date each month).
- (e) Even if Merchant follows the above guidelines and procedures, any transaction in which the Card and/or Cardholder is not present poses significant Chargeback and/or unauthorized transaction risk to the Merchant for which the Merchant bears sole liability and has no recourse against Bank or Cornerstone.

Before shipping any goods ordered, Merchant shall:

- (a) Review status reports to verify the positive Authorization of all payment types and appropriate response through AVS, CVV2, and other screening parameters as identified from time to time by Cornerstone.
- (b) Recognize that obtaining Authorization shall not, by itself, satisfy Merchant's obligation to exercise due diligence. Nor shall Authorization constitute a waiver by Bank of any other procedures required of Merchant by this Agreement or any MasterCard or Visa rules or regulation. Authorization shall not validate a transaction that does not strictly conform to this Agreement and all MasterCard and Visa rules and regulations or is otherwise invalid. Merchant shall remain fully and solely liable for any Chargeback and fees related to any transaction that does not strictly conform to this Agreement and all MasterCard and Visa rules and regulations or is otherwise invalid, whether or not prior Authorization was obtained.

Before settling a card transaction to receive payment, Merchant shall:

- (a) Obtain a valid tracking number, unique to the specific package charged to the specific

- transaction, from a legitimate freight provider.
- (b) MERCHANT ACKNOWLEDGES AND AGREES THAT BY CHARGING A CARDHOLDER PRIOR TO SHIPPING THE PURCHASED ITEM(S) OR SERVICE(S) IS IN DIRECT VIOLATION OF VISA AND MASTERCARD REGULATIONS AND IS CONSIDERED FRAUDULENT ACTIVITY BY BANK AND CORNERSTONE. ANY SUCH ACTIVITY MAY RESULT IN THE IMMEDIATE WITHHOLDING OF FUNDS, TERMINATION OF THE MERCHANT PROCESSING AGREEMENT, AND/OR REQUEST FOR PROSECUTION FROM THE APPROPRIATE GOVERNING AUTHORITIES.

1.08 Non-Imprint Transactions

In any non-imprint transaction, as a material inducement for Bank and Cornerstone to enter into this Agreement, Merchant acts solely at its own risk, and waives the right to dispute any Chargeback arising from a failure to produce an imprinted draft to Bank and Cornerstone. Merchant further assumes all other risks attendant to such non-imprint transactions.

1.09 Release of Cardholder Account Information

Unless required by law, Merchant shall not, under any circumstances, sell, purchase, provide, or otherwise disclose Cardholder's account information or other Cardholder personal information to anyone except the Card Issuer, Bank or Cornerstone.

1.10 Purged Transactions

Merchant acknowledges that Batches of transactions that are not closed within forty-five (45) days of submission shall be automatically purged and erased from the processing system, and are not recoverable. Merchant releases Bank and Cornerstone from any loss that Merchant may sustain as a result of such purging and erasure and agrees to indemnify each of them for any losses, including attorneys' fees and costs that Merchant may sustain as a result of such purging or erasure.

1.11 Monthly Volume and Average Ticket

Merchant represents that the estimated monthly volume of Sales Transactions ("Monthly Volume") and the estimated average Sales Transaction amount ("Average Ticket Amount") appearing on the Merchant Application are each good faith estimates and that there is a reasonable basis for each such estimate. Merchant acknowledges that any actual Monthly Volume or any actual Average Ticket Amount in excess of such estimates will cause Cornerstone to review Merchant's file and that such review may result in delay in transmission of funds and possible interruption or termination of service. Bank may withhold the payment of any amounts otherwise payable hereunder and may terminate this Agreement if the actual Monthly Volume or actual Average Ticket Amount materially exceeds such estimates.

ARTICLE 2 – REPRESENTMENT, PAYMENT AND CHARGEBACK

Fees:

Chargeback, Credit or Debit, or Representation – see Merchant Application

Documentation Retrieval Request – see Merchant Application

Additional Definitions:

Representation – A procedure in which a disputed transaction is returned to the Card Issuer. Merchant shall be assessed the fee set forth on the Merchant Application for each such Representation.

Documentation Retrieval Request – A request made by a Card Issuer to Merchant (via Bank or Cornerstone) for verification of the details of a transaction when a question arises as to the validity or details of such transaction.

2.01 Transmission of Data

Merchant shall transmit all sales data and credit data to Bank and Cornerstone by means of magnetic

tape or electronic data. "Sales data" refers to information transmitted by Merchant, which is contained in a Sales Slip or the electronic or magnetic tape record that is the equivalent of such Sales Slip. "Credit data" refers to the information transmitted by Merchant, which is contained in a Credit Slip or the electronic or magnetic tape record that is the equivalent of such Credit Slip. All such data ("Transaction Records") transmitted shall be in a media, form and format approved in advance by Bank and Cornerstone and shall be pre-sorted and organized according to Bank and Cornerstone's instructions. Such data shall include all information, which appears on the relevant Sales Slips or Credit Slips. All references in this Agreement to "Sales Slips," "Credit Slips," "sales data," or "credit data" shall include, as applicable, Transaction Records transmitted electronically or on magnetic tape, or in original format.

2.02 Acceptance and Discount

Subject to Merchant not being in default of this Agreement and subject to Servicers' rights with respect to Chargebacks, Servicers agree to accept valid Transaction Records from Merchant during the term of this Agreement and to pay Merchant the total amount represented by the Transaction Records, less any applicable Discount Fees and other charges set forth herein or otherwise agreed to by the parties and less any other amounts Servicers may withhold pursuant to the exercise of all rights of setoff that Bank or Cornerstone may have. All payments made by Servicers to Merchant shall not be final but shall be subject to subsequent review and verification by Servicers. Upon thirty (30) days written notice to Merchant, Bank retains the right to change any terms or conditional of or the fees set forth in this Agreement.

2.03 Endorsement

Merchant shall endorse any Transaction Record it presents to Bank and Cornerstone in such fashion as Bank or Cornerstone requests. If Merchant fails to do so, Merchant shall be deemed to have endorsed any Transaction Record it presents to Bank or Cornerstone in favor of Bank and Cornerstone and Merchant hereby appoints Bank and Cornerstone, acting either jointly or separately, as its attorney in fact to supply such endorsement on Merchant's behalf.

2.04 Chargeback

After acceptance by Bank and Cornerstone, Merchant shall nevertheless repay Servicers the amount represented by any Transaction Record, plus any applicable Chargeback or related fee, if Servicers are charged back by another financial institution or if any one or more of the following circumstances exist:

- (a) The Transaction Record or any material or information on a Sales Slip or Credit Slip (such as, by way of example only, the Account Number, expiration date of the Card, Merchant description, transaction description or notation of prior Authorization for the transaction amount or date) is illegible, incomplete or otherwise not discernible, is not endorsed or is not delivered to Bank and Cornerstone within the time limits required herein;
- (b) The Account Number was declined or was not the subject of an Authorization on the transaction date and Merchant failed to reject the transaction;
- (c) An Internet order does not contain information on the Card that was valid, effective and un expired on the transaction date;
- (d) The transaction was one for which prior credit Authorization was required and prior credit Authorization was not obtained or a valid Authorization number is not correctly and legibly included on the Transaction Record;
- (e) The Transaction Record is a duplicate of an item previously paid;
- (f) The Cardholder disputes the validity of the underlying data contained in the Transaction Record, the sale, delivery, quality or performance of the goods or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to Cardholder's account;
- (g) The price of the goods or service shown on the Transaction Record differs from the amount shown on the copy of the Sales Slip or the receipt delivered to the Cardholder at the time of the transaction;

- (h) Bank or Cornerstone reasonably determine that Merchant has violated any term, condition, covenant, warranty or other provision of this Agreement in connection with the Transaction Record or the transaction to which it relates;
- (i) Bank or Cornerstone reasonably determine that the Transaction Record is fraudulent or that the underlying transaction is not a bona fide transaction in Merchant's ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees;
- (j) The Transaction Record arises from a mail or telephone or Internet order transaction that the Cardholder disputes entering into or authorizing, or that involves an Account Number that never existed or that has expired and has not been renewed;
- (k) Merchant fails to provide Bank and Cornerstone with any Sales Slip or Credit Slip in accordance with this Agreement;
- (l) Multiple Authorization attempts were made by Merchant for a single transaction;
- (m) Merchant has divided a single transaction into multiple transactions, in violation of MasterCard and Visa regulations or of this Agreement; or
- (n) The Transaction Record is otherwise subject to Chargeback by the Card Issuer or Cardholder in accordance with MasterCard or Visa rules or applicable law.

2.05 Chargeback and Security Interest

Merchant covenants, agrees and acknowledges that, simultaneously with each purchase, a contingent and un matured claim for Chargeback accrues against Merchant in favor of Cornerstone and Bank for the amount that Cornerstone or Bank is required, or has the right, to pay to MasterCard or Visa with respect to any fees, discounts, customer credits and adjustments, charges, fines, assessments, penalties or other items which may be charged back to Merchant by Cornerstone or Bank, and that all settlements or credits given or payment made by Cornerstone or Bank in connection with such purchases are provisional, and subject to revocation, Chargeback, refund or rights of setoff subject to the other terms of this Agreement, the rules and regulations of MasterCard or Visa, and their operating procedures. The right of Merchant to receive any amounts due or to become due to it from Cornerstone or Bank is expressly subject and subordinate to the Chargeback, setoff, lien and security interest rights of Cornerstone and Bank without regard to whether such Chargeback, setoff, lien and security interest rights are being applied to claims that are liquidated, un liquidated, fixed, contingent, matured or un matured.

2.06 Chargeback and Documentation Retrieval Fee

Merchant shall pay Bank the fee set forth on the Merchant Application for each Chargeback or credit. Such fee shall be increased by \$10.00 per Chargeback or credit at any time that Chargebacks are classified as "excessive" as defined in paragraph 2.09 of this Agreement. Merchant shall pay the fee set forth above for each Documentation Retrieval Request. The amount of these fees are subject to change by Bank and Cornerstone upon Bank or Cornerstone giving Merchant thirty (30) days notice of any change.

2.07 Withholding

If Bank or Cornerstone reasonably believes that any of the circumstances listed in paragraph 2.04 exists or are likely to exist with respect to any Transaction Record which Bank has accepted and forwarded to the Card Issuer for payment, Bank may withhold from payments owing to Merchant under this Agreement an amount equal to the Transaction Record less any applicable Discount Fees or other fees until such time that:

- (a) Servicers are charged back by the Card Issuer for the transaction. In such event Servicers shall retain the funds pursuant to the Chargeback procedure; or

(b) The period of time by which Cardholder must dispute the Transaction Record has expired and the period of time by which the Card Issuer must exercise its Chargeback rights against Servicers has expired; or

(c) Bank otherwise determines in its sole and absolute discretion that a Chargeback on the Transaction Record will not occur.

Upon termination of this Agreement, Bank may withhold payment of any amount to Merchant for such period of time reasonably determined by Bank as necessary to establish a reserve to cover any Chargebacks, Credit Slips and uncollected Discount Fees or other applicable fees, including, but not limited to, costs for accounting, investigation and account management, that may result from transactions previously processed and appearing after the termination date.

2.08 Disputes with Cardholder

All disputes between Merchant and any Cardholder relating to any Card Transaction shall be settled between Merchant and such Cardholder. Merchant shall, in accordance with paragraph 7.12, indemnify Bank, Cornerstone, MasterCard and Visa from any claim or suit brought by Cardholder relating to any transaction with Merchant.

2.09 Excessive Chargebacks and Retrieval Requests

Merchant agrees that if Bank or Cornerstone are presented, during any monthly period, with (a) Chargebacks relating to Merchant's transactions processed by Servicers in excess of one percent (1%) of the average monthly aggregate dollar amount of Sales Transactions effected by such Merchant during the preceding six month period (or such shorter period if this Agreement has not then been in effect for six months) or (b) Documentation Retrieval Requests in excess of three percent (3%) of the total number of Sales Transactions processed during such month, then such Chargebacks or Documentation Retrieval Requests shall be conclusively deemed to be excessive under applicable MasterCard and Visa regulations. Bank and Cornerstone may thereupon terminate this Agreement or take such other action as may be authorized herein or by applicable MasterCard or Visa regulations. The thresholds set forth in this paragraph shall not in any way limit Servicers' rights to establish or maintain a Merchant Cash Reserve Account pursuant to the terms of this Agreement. Merchant agrees that the amount or extent of any such Merchant Cash Reserve Account shall be based on Bank and Cornerstone's reasonable estimation of the need for the same, in light of circumstances known to them at the time.

2.10 Rights of Setoff

Merchant agrees that each of Bank and Cornerstone shall have the right to set off any liability of Merchant to either Bank or Cornerstone against any amount otherwise owing to Merchant hereunder or in connection with the services to be provided hereunder. Without limiting the generality of the foregoing, each of Bank and Cornerstone shall have the right to set off the following amounts against any amount otherwise owing to Merchant hereunder: Chargebacks, ACH rejects or any other debit to be applied to Merchant's account. In addition, Bank may exercise its right of setoff by deducting from any reserve account or other funds held by Bank the amount that Bank is entitled to setoff against.

ARTICLE 3 – TERMINATION, MODIFICATION AND COMPLIANCE WITH LAW

3.01 Compliance with Law

Merchant shall comply with all laws, ordinances and regulations applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations. Neither Bank nor Cornerstone shall have any obligation to notify or advise Merchant of the existence of such laws or changes in such laws. Merchant warrants that it has the right to sell the products it sells or render the services it renders and to use the trade names it uses. Merchant may not enter into any Card Transactions in connections with, or enable a Cardholder to engage in, any illegal activity. Merchant may not enter into any Card Transaction in connection with, or

enable a Cardholder to engage in, any transaction that involves a wager or a gambling transaction, or provide a Cardholder with any form of currency or credit which would enable the entering into of a wager or gambling transaction.

3.02 Modification Required by Law

This Agreement is subject to such modifications, changes and/or additions as may be required, (as determined by Bank and Cornerstone), to comply with any state or federal statute, judicial decision, MasterCard or Visa rules or regulations, or the regulation or ruling of any federal agency having jurisdiction over Bank or Cornerstone or Merchant. Such modifications, changes and additions may be made unilaterally by Bank or Cornerstone, shall be in writing and shall be effective immediately upon dispatch of notice thereof to Merchant by Bank or Cornerstone.

3.03 Refusal or Revocation of Credit and Repayment by Merchant

Without derogating any of its other rights, Servicers may refuse to accept any online order or revoke their prior acceptance thereof in any one or more of the following circumstances:

- (a) The transaction giving rise to the online order was not made in compliance with all terms and conditions of this Agreement, as well as all applicable laws, rules or regulations; or
- (b) The Cardholder disputes his or her liability to Bank and Cornerstone or other issuer for any reason including, but not limited to, those Chargeback rights enumerated in MasterCard and Visa operating rules or regulations in effect from time to time; or
- (c) The transaction-giving rise to the online order was not a bona fide transaction directly between Merchant and Cardholder. Merchant shall not accept any transaction on behalf of any other person or persons, or any other business; or
- (d) Merchant has processed transactions accumulated prior to the issuance by Bank or Cornerstone of a Merchant identification number.

If such refusal or revocation by Servicers occurs, Merchant shall, in addition to any penalties and fees, immediately repay Servicers the full amount credited by Servicers to Merchant's account on the basis of such transaction(s).

3.04 Termination

The term of this Agreement shall be twenty- four (24) months unless otherwise provided for herein. Notwithstanding this twenty four (24) month term, and any renewals of that term as provided for in paragraph 3.05 of this Agreement, Merchant may terminate this Agreement by giving thirty (30) days written notice to Bank and Cornerstone and concurrently with said notice, paying Cornerstone \$240.00 as an early termination fee. Furthermore, if Bank and Cornerstone terminates this Agreement because of Merchant's breach of any of its obligations, such termination shall also be deemed an early termination and will require Merchant to pay to Cornerstone the early termination fee of \$240.00. Without limiting Cornerstone's rights to pursue its legal remedies for any breach of this Agreement by Merchant, Merchant and Cornerstone mutually agree that said \$240.00 is a reasonable estimate of the costs and expenses Cornerstone will incur as a result of any early termination of this Agreement by Merchant. **In addition, and without limiting Merchant's obligation to pay the early termination fee described above, upon any termination or expiration of this Agreement, all funds which remain in the Merchant Cash Reserve Account and the Termination Reserve Account (described in Section 7.15) at the time of expiration or termination shall become Bank's property and shall be deemed an administration fee owing to Servicers in consideration of Servicers administering, after expiration or termination, all of Merchant's processing activity that occurred prior to such expiration or termination.**

For a period of six (6) months from the effective date of this Agreement, Servicers will not increase the initial Discount Fee except as that rate is affected by any increased charges Servicers in interchange, assessments and communication costs from MasterCard, Visa and communications suppliers, or any other fees beyond Servicers control. Servicers shall not be bound by the preceding covenant after the

initial six (6) month term of this Agreement or at any time if Merchant has a higher than allowable percentage of keyed transactions, excessive Chargebacks or Document Retrieval Requests.

Notwithstanding the initial six (6) month term, Bank may terminate this Agreement, without cause and without liability, upon thirty (30) days prior written notice to Merchant.

Bank may terminate this Agreement immediately for cause and without prior notice if any of the following occur:

- (a) If Merchant is or becomes bankrupt or is otherwise unable to pay its debts as they become due; or
- (b) If Merchant violates any term, condition, covenant or warranty of this Agreement; or
- (c) If Merchant is identified on the MATCH File (as described in Section 3.06). MERCHANT ACKNOWLEDGES THAT SUCH IDENTIFICATION IS GROUNDS FOR IMMEDIATE TERMINATION OF THIS AGREEMENT AND OF IMMEDIATE TERMINATION OF SERVICE.

Upon the effective date of any termination, Merchant's right to utilize Cornerstone's electronic commerce payment system shall terminate along with Merchant's rights to make Card Transactions, to deposit transactions with Bank or Cornerstone and to use Sales Slip forms, Credit Slip forms, promotional material and/or any other items provided or made available through Bank or Cornerstone. However, Merchant's obligations in connection with any Transaction Record accepted by Bank or Cornerstone before or after termination shall survive such termination including, without limitation, Merchant's Chargeback obligations. Following the effective date of termination, Merchant shall maintain funds on deposit on account available to Bank for a reasonable period of time. Based upon Cardholder and Card Issuer rights with respect to Chargeback, the amount of funds shall be reasonably determined by Bank and Cornerstone so as to be adequate to cover all Chargeback deposit charges, refunds, and fees, including, but not limited to, costs for accounting, investigation and account management, incurred by Bank or Cornerstone pursuant to this Agreement, MasterCard or Visa operating regulations, or the regulations of any processing facility. Bank is hereby irrevocably authorized by Merchant to charge such account or other accounts maintained by Merchant, for the full amount of such items. Merchant shall pay Bank for all such items upon demand by Bank, together with all costs and expenses incurred by Bank or Cornerstone, including reasonable attorneys' fees.

3.05 Automatic Renewal

This Agreement will be automatically renewed for successive renewal terms of six (6) months unless either party notifies the other, in writing, of its intention not to renew no less than thirty (30) days and no more than ninety (90) days prior to the end of each renewal term.

3.06 Match File

MERCHANT EXPRESSLY ACKNOWLEDGES that the Member Alert To Control High-Risk (MATCH) File or any successor thereto is maintained by MasterCard containing the business name and names and identification of principals of merchants which have been terminated for one or more of the reasons specified in MasterCard or Visa operating regulations. Examples would be, but are not limited to, fraud, counterfeit drafts, unauthorized transactions, excessive Chargebacks and Document Retrieval Requests, laundering or where a high security risk exists.

MERCHANT ACKNOWLEDGES THAT BANK AND CORNERSTONE ARE REQUIRED TO REPORT THE BUSINESS NAME OF THE MERCHANT AND THE NAMES AND IDENTIFICATION OF ITS PRINCIPALS TO MATCH IF MERCHANT IS TERMINATED FOR ONE OR MORE OF THE REASONS SPECIFIED IN MASTERCARD OR VISA OPERATING REGULATIONS. MERCHANT EXPRESSLY AGREES AND CONSENTS TO SUCH REPORTING BY BANK AND CORNERSTONE.

ARTICLE 4 – GATEWAY PROGRAMMING

4.01 Applicability to This Agreement

In addition to all other provisions of this Agreement, the provisions of this Article 4 shall apply if Merchant elects to utilize an electronic commerce payment system offered by Cornerstone

4.02 Electronic Payment System

So long as Merchant is current in its obligations to Cornerstone and is not otherwise in breach of this Agreement, Cornerstone shall provide Merchant the use of its Internet-based electronic payment system.

4.03 Programming of Web Site

While Cornerstone provides specific APIs or programming scripts to Merchant or Merchant's Web site programmer(s), Merchant acknowledges that such sample programming scripts are insufficient in and of themselves to allow Merchant's Web site to function with an authorized Cornerstone Secure Payment Gateway. Programming of Merchant's Web site and its functionality are the sole responsibility of Merchant

4.04 Merchant's Programming Agent

Merchant has the sole responsibility to select and employ any competent programming agent to accomplish the programming required to make Merchant's Web site function correctly with an authorized Cornerstone Secure Payment Gateway.

4.05 Fees Subject to Fluctuation

All fees for use of the electronic commerce payment system offered by Cornerstone are based on the number of monthly transactions processed by Merchant. The amount of these fees will therefore fluctuate based on Merchant's transaction volume. Thus, notwithstanding anything to the contrary herein, the provisions of this Agreement which require notice prior to a change in fees shall not apply to any transactions or services covered by this Article 4.

4.06 Technical Support

Merchant shall be solely responsible for all technical support for Web site-related issues.

4.07 Shut Downs

Cornerstone reserves the right, from time to time, without prior notice, to shut down and restart the authorized Cornerstone Proprietary Gateway service for maintenance and/or software upgrades for any time period that may be deemed absolutely necessary. Any and all efforts will be made to keep this service shut down as short as possible, Cornerstone will have scheduled routine maintenance service shut downs, these shut downs however short or long will be scheduled with at least 24 hour advance notification and scheduled when general business activity is minimal.

4.08 Disclaimer

Bank disclaims all representations and warranties and all liabilities with respect to, Cornerstone's offering of the electronic commerce payment system offered pursuant to this Article 4. The electronic commerce payment system is offered, "as is". CORNERSTONE HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE ELECTRONIC COMMERCE PAYMENT SYSTEM, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR WARRANTIES ARISING FROM A COURSE DEALING, USAGE OR TRADE PRACTICE. In no event shall Cornerstone or its affiliates be liable for any indirect, incidental, special or consequential damages, including without limitation damages for loss of profits, data or use, incurred by Merchant or any third party in connection with the use of the electronic commerce payment system, whether in an action in contract or tort, even if Cornerstone has been advised of the possibility of such damages under this Article 4. shall in no event exceed the fees (including without limitation Discount Fees), net of all Chargebacks, actually collected

by Cornerstone in connection with the transaction or transactions processed using the electronic commerce payment system which give rise to such direct and proven damages.

ARTICLE 5 – OTHER FEES

Fees:

All Merchant fees, costs and charges will be noted on the Merchant Application.

All non bankcard applications will require a separate application and fee schedule

The Bank and Cornerstone are not in the business of Leasing equipment. All leases are between the Merchant and an Independent Leasing company.

The Bank and Cornerstone will not be financially responsible for any third party vendor or reseller of any software and/or hardware.

Audio/Video Text Fees - registration and renewal fees as mandated by MasterCard and Visa. All transactions in this category will be downgraded to Non-Qualifying Transactions.

Discount Fees:

Standard “Swiped” Transaction Rate (Merchants that will swipe 70% or greater)

The “Qualified Swiped Discount Rate” is a percentage rate set forth in the Merchant Application. This rate will be charged on all swiped bankcard transactions that are electronically authorized and closed in a daily batch. All manually keyed bankcard transactions that are closed in a daily batch, have Address Verification Service (AVS) and any additional prompt that may indicate a need for additional card information will be charged a Mid-Qualified rate which is Seventy basis points (.70% and \$.10) higher than the “Qualified Rate”. All bankcard transactions that do not meet the requirements stated above will be charged a Non-Qualified Rate which is One hundred forty basis points (1.40% and \$.10) higher than the Qualified Transactions Discount Fee rate. MasterCard and Visa corporate/business card and manually keyed foreign card transactions will always fall under the Non-Qualified category.

Standard “Keyed” Discount Rate (Merchants that swipe less than 70%)

The “Qualified Keyed Discount Rate” is percentage rate set forth in the Merchant Application. This rate will be charged on all bankcard transactions that are electronically authorized, closed in a daily batch and include the following additional information: Address Verification Service (AVS) and any additional prompt that may indicate a need for additional card information. All bankcard transactions that do not meet the requirements stated above will be charged a “Non-Qualified” Rate which is One hundred forty basis points (1.40% and \$.10) higher than the “Qualified Rate”. MasterCard and Visa corporate/business card and manually keyed foreign card transactions will always fall under the “Non-Qualified” category.

All discount rates will be deducted daily. Statements will be sent each month.

All of the fees set forth above are subject to change in Bank’s sole and absolute discretion upon thirty (30) days prior written notice to Merchant. In addition, Bank reserves the right to impose additional fees upon thirty (30) days prior written notice to Merchant.

As mandated by Visa, all direct marketing merchants (businesses where the Card is not present at the time of the sale) and non-direct marketing merchants who accept mail order and telephone order transactions and all Internet-based merchants must utilize the Address Verification Service (AVS) or face additional Non-Qualifying Transaction fees as well as increased risk. Visa or MasterCard may assess other fees or assessments.

6.01 Discount Percentage

Merchant shall pay Servicers the Discount Fees, Batch header fees, per item fees and other fees set forth in Merchant Application for processing credit card drafts. The Discount Fees shall include consideration for Qualifying Transactions, Mid-Qualified Transactions and Non-Qualifying Transactions. Merchant hereby authorizes Bank to debit any of the Merchant's accounts for payment of any and all fees set forth in Merchant Application and the Discount Fees, which shall be paid at the rate established as set forth on the Merchant Application. The rate of said Discount Fees may be revised from time to time upon thirty (30) days written notice to Merchant.

6.02 Monthly Minimum Charge

Merchant shall pay the Monthly Minimum Charge set forth in Merchant Application or such other sum as may be determined by Bank from time to time upon thirty (30) days notice to Merchant.

6.03 Customer Support Fee

Merchant shall pay to Bank and Cornerstone the monthly Customer Support Fee set forth in Merchant Application or such other sum as may be determined by Bank from time to time upon thirty (30) days notice to Merchant.

6.04 Reject Fee

Merchant acknowledges that failure by Merchant to maintain sufficient funds in its checking account to satisfy its obligations under this Agreement will result in the imposition of a Reject Fee per item or per daily Batch as applicable. This fee is subject to change as may be determined by Bank.

6.05 Documentation Fee

If Bank or Cornerstone are required to provide documentation, such as, by way of example only, statement copies, Merchant shall pay to Bank a fee per page provided to Merchant. This fee is subject to change as may be determined by Bank from time to time upon thirty (30) days notice to Merchant.

6.06 Over Limit Fee

Merchant acknowledges that Servicers will set a monthly bankcard processing dollar limit. Servicers reserve the right to charge Merchant a fee should the processing dollars exceed the stated limit. The assessed fee ("Qualified Rate" plus one (1) percent and \$25.00) will be calculated on difference between the limit and processed dollars.

6.07 Merchant Reserve Fee

Merchant acknowledges that Servicers may require a certain percentage of the bankcard processing dollars be held in an account designated by Servicers for the sole purpose mitigating any risk of chargeback. Cornerstone will provide the "Reserve Acknowledgement and Acceptance" form to the Merchant for their approval.

ARTICLE 7 – GENERAL PROVISIONS

7.01 Forms

Merchant shall use only such forms or modes of transmission for sales data as are provided or approved in advance by Bank and Cornerstone. Merchant shall not use forms or equipment available through Cornerstone except in connection with Card Transactions covered hereunder. Cornerstone will make

sales drafts and forms available for a fee and upon the order of Merchant.

7.02 Records

Merchant shall retain original transaction data or make legible copies of both sides of such actual paper Transaction Records, and store for a minimum of three (3) years. Within three (3) calendar days of receipt of Bank or Cornerstone's request, Merchant shall provide to Bank and Cornerstone, at Merchant's cost, either the actual paper Transaction Record, if requested by Bank or Cornerstone, or a legible copy thereof comparable in size to the actual paper Transaction Records. In addition, Merchant shall, within five (5) calendar days of Bank or Cornerstone's request, provide any other documentary evidence available to Merchant and reasonably requested by Bank or Cornerstone to meet its obligations under law, including, but not limited to, its obligations under the Fair Credit Reporting Act, or its obligations to otherwise respond to questions concerning Cardholder accounts. Following termination, for so long as Merchant is required to retain the same, Merchant shall promptly provide Bank and Cornerstone with all original and clear copies of records are required to be retained at the time of termination.

(a) Merchant assumes full and exclusive responsibility for the security of all data and records it obtains, whether received or in transit, or accumulates, as a result of entering into this Agreement. Neither Bank nor Cornerstone or their agents, contractors, licensees, employees, officers, directors or affiliates warrant the security of such data and records. Merchant agrees to indemnify and hold harmless Bank and Cornerstone from and against all losses incurred by Bank or Cornerstone arising from any breach of such security.

7.03 Change in Transmission Method

Merchant shall give Bank and Cornerstone at least thirty (30) days prior written notice of its desire to alter in any material respect its medium of transmission of sales data and credit data to Bank or Cornerstone. Any change shall be subject to Bank and Cornerstone's prior approval.

7.04 Supplementary Documents

References to "this Agreement" include any supplementary agreements, addenda, appendixes and amendments and any other agreements, schedules, appendixes and amendments promulgated by Bank or Cornerstone and furnished to Merchant from time to time.

7.05 Amendment

In addition to the modification rights contained in paragraph 3.02, Servicers may amend this Agreement at any time by mailing or faxing written notice to Merchant of any amendment at least thirty (30) days prior to the effective date of the amendment. The amendment shall become effective on the date specified by Bank or Cornerstone unless Bank and Cornerstone receive Merchant's notice of termination of this Agreement before such effective date.

All other modifications of this Agreement must be in writing and accepted in writing by the Bank and the corporate office of Cornerstone. No Party other than an authorized Individual of Bank and Cornerstone is authorized to make any modification to this Agreement or to make any representation, which is not set forth in this Agreement.

7.07 All Notices

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if delivered personally. If Merchant transmits notice by U.S. Mail, first class, postage pre-paid, notice shall be deemed served upon confirmed receipt by Bank and Cornerstone. If Merchant uses facsimile transmission, Merchant shall mail the original of the communication to the receiving party on the date of transmission, by first class

mail, postage pre-paid and it shall be deemed served on the day of confirmed receipt by Bank and Cornerstone. If Bank or Cornerstone use facsimile transmission, service is deemed to have been duly given on the day of transmission. If facsimile transmission is not used, notice shall be given by, U.S. Mail, postage pre-paid and it shall be deemed served on the day of mailing. Unless otherwise required by this Agreement, all communications to Cornerstone or Bank must be addressed as follows:

Cornerstone Payment Systems, L.L.C.
Attention: Chief Operating Officer
535 Menlo Drive, Unit 1
Rocklin, California 95765
Facsimile: (916) 435-4900

First Financial Bank
Attention: General Counsel
12500 East Belford Ave. suite M5-C
Englewood, CO 80112
Facsimile: 720-332-0033

Communications to Merchant shall be addressed to the address appearing on the Merchant Application. Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

7.08 Effect of Headings

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

7.09 Adherence

Merchant agrees to be responsible and liable for adhering to all provisions of this Agreement without exception. Failure to abide by the provisions herein constitute, among other remedies provided for herein, grounds for interruption or termination of service.

7.10 Change in Banking Information

Merchant shall notify Servicers of any change in business checking account, change of bank or any other banking information. Merchant shall pay Cornerstone a fee (as stated on the Merchant Application) for each checking account change.

7.11 Time Limitation for Asserting Claims and Instituting Actions

Notwithstanding any statute to the contrary, any claim arising from or relating to this Agreement (whether contract, tort, or both) shall be brought within two (2) years after it arises, provided that with respect to any claim or dispute concerning fees, charges or other costs charged to Merchant, Merchant must have, within ninety (90) days of the assessment of any disputed fee, charge or costs, appealed such determination to Cornerstone in writing by United States certified mail, return receipt requested, and such appeal must have been denied.

7.12 Indemnification

Merchant and Guarantor shall, jointly and severally, indemnify, defend, and hold harmless, Bank and Cornerstone, MasterCard and Visa, and all of their respective agents against and with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that Bank, Cornerstone, MasterCard or Visa may incur or suffer, that arise, result from, or relate to any breach of, or failure by Merchant to perform any of, its representations, warranties, covenants or agreements in this Agreement

or in any schedule, supplemental agreement, appendix or other instrument furnished or to be furnished to Merchant under this Agreement or in the event Bank or Cornerstone are named as parties to any litigation involving Merchant brought by a party not party to this Agreement.

7.13 Disclaimer; Limitation of Liability

All services provided by Bank and Cornerstone hereunder are provided “as is” and each of Bank and Cornerstone hereby disclaims all representations and warranties, express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights. **NEITHER OF BANK’S NOR CORNERSTONE’S LIABILITY TO MERCHANT WITH RESPECT TO ANY CARD TRANSACTION SHALL EXCEED THE AMOUNT REPRESENTED BY THE TRANSACTION RECORD IN CONNECTION WITH SUCH CARD TRANSACTION, LESS ANY APPLICABLE DISCOUNT FEES OR OTHER FEES. IN NO EVENT SHALL BANK OR CORNERSTONE BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER REGARDLESS OF WHETHER BANK OR CORNERSTONE HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF. THE AGGREGATE AND CUMULATIVE LIABILITY OF SERVICERS FOR DIRECT AND PROVEN DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED \$50,000.**

7.14 Entire Agreement; Waiver

This Agreement, together with any supplemental agreements, appendixes and schedules, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.15 Termination Reserve Account

In addition to the security interest and Chargeback rights granted to Bank by Merchant, Merchant hereby authorizes Servicers to establish a reserve account (the “Termination Reserve Account”), with or without prior notice to Merchant, at any time prior to, at or after termination of this Agreement, to ensure Servicers’ recovery of any liabilities owed to them or reasonably anticipated to be owed to them by Merchant pursuant to this Agreement.

(a) Such liabilities include, but are not limited to, those arising out of actual or potential post-termination Chargebacks, as well as any and all post-termination fees, including, but not limited to, costs for accounting, investigation and account management, charges and expenses due or anticipated to be due to Servicers from Merchant.

(b) Merchant agrees that if Servicers establish a Termination Reserve Account, it shall be in any amount that Servicers, in their sole discretion, deem reasonable under the circumstances. Unless Bank and Cornerstone agrees otherwise in writing with Merchant, the Termination Reserve Account shall not bear interest.

(c) Bank and Cornerstone may enforce its security interest in the Termination Reserve Account without notice or demand. Banks and Cornerstone’s right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Termination Reserve Account. Banks and Cornerstone’s rights with respect to the Termination Reserve Account, as well as the security interest granted Bank under this Agreement, shall survive the termination of this Agreement.

7.16 Bankruptcy

No assignee for the benefit of creditors, successor in interest, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party’s assets or business, shall have any right to continue or to assume or to assign this Agreement.

In the event any party becomes insolvent, makes an assignment for the benefit of its creditors, files a petition or otherwise seeks relief under or pursuant to any other bankruptcy, insolvency or reorganization statute or proceeding, or if any party dissolves, discontinues or substantially discontinues its business or if a receiver, trustee, or similar officer is appointed for Merchant or for a substantial portion of Merchant's business or assets, or if any judgment, writ of attachment execution, levy or similar process against any party is served on the others or is issued with respect to any substantial part (valued at twenty percent (20%) or more of the total tangible assets) of the property of any party, the other parties may, at their sole election, terminate this Agreement by written notice to the others.

7.17 Governing Law; Dispute Resolution

(a) This Agreement shall be construed in accordance with, and governed by, California law as applied to contracts that are executed and performed entirely in California without regard to any conflicts of laws, or choice of laws, principles that would result in the application of the laws of any other jurisdiction to this Agreement. The parties expressly stipulate, consent to and agree that the specific geographic location as the place of performance of this Agreement, in its entirety, shall be within the county of Placer in the State of California.

(b) All disputes, controversies or differences which may arise between the parties out of or in relation to or in connection with this Agreement, or the breach hereof, shall be finally settled exclusively by binding arbitration in accordance with the United States Arbitration Act (Title 9, U.S. Code), notwithstanding any choice of law provision in this Agreement, and under the Commercial Arbitration Rules of the American Arbitration Association then in effect. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrators.

(c) The arbitration shall be conducted by a panel of three (3) arbitrators, one of whom shall be designated by Merchant, one of whom shall be designated by Cornerstone, and the third of whom shall be designated by the mutual agreement of the other two arbitrators. The arbitration shall take place in Rocklin, California.

(d) Each party shall bear its own costs during the course of the arbitration, and all fees and expenses of the arbitrators shall be borne equally by the parties. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of such party's costs and fees, including without limitation administrative fees, arbitrator fees, travel expenses, out-of-pocket expenses, such as copying and telephone, facsimile, witness fees and attorneys' fees, in addition to any other relief to which such party may be entitled.

(e) The award of the arbitrators shall be the sole and exclusive remedy with respect to the subject matter of the arbitrated dispute. Judgment on the award rendered by the arbitrators may be entered and enforced in any court of competent jurisdiction. The parties hereby submit to the jurisdiction of the state and federal courts located in Placer County, California for the purpose of enforcing an arbitral award issued pursuant to this paragraph, including entry of judgment and any other appropriate relief.

(f) This agreement to arbitrate shall be binding upon the successors and assigns of each party hereto, and the rights and obligations of the parties hereto shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Neither party shall be required to follow the procedures set forth in this paragraph in the event of a breach or threatened breach by the other party of any of paragraphs 1.02 through 1.09 of this Agreement.

(h) **EACH PARTY HERETO UNDERSTANDS AND AGREES THAT THIS AGREEMENT TO ARBITRATE CONSTITUTES A WAIVER OF ANY RIGHT TO A TRIAL BEFORE A COURT OR JURY OR A HEARING BEFORE A GOVERNMENTAL AGENCY ON ANY MATTERS SUBJECT TO ARBITRATION UNDER THIS AGREEMENT.**

7.18 Assignability

Merchant may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Bank and Cornerstone. For purpose of this Agreement, assignment shall include, but not be limited to, transfer of control of Merchant and any ownership change, which

results in a new majority owner. Without such written consent, Merchant shall continue to be bound by this Agreement.

7.19 Attorneys' Fees and Costs

Merchant shall be liable for and shall indemnify and reimburse Bank and Cornerstone for any and all attorneys' fees and other costs and expenses paid or incurred by Bank or Cornerstone in the enforcement of this Agreement, or in collecting any amounts due from Merchant to Bank or Cornerstone hereunder or resulting from any breach of any of the terms or conditions of this Agreement. In addition, whether legal action is contemplated or commenced against Merchant, Cornerstone shall be entitled to recover from Merchant all of its investigative and other costs related to searching for the whereabouts of Merchant or any Guarantor. Merchant authorizes Cornerstone, at its sole option and without prior notice, to deduct such investigative and other costs from any monies that Merchant may have on deposit with Cornerstone or to which Merchant has previously granted Cornerstone access.

7.20 Guarantors

As a primary inducement to Bank and Cornerstone to enter into this Agreement with Merchant, each Guarantor of Merchant's performance under this Agreement, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Bank and Cornerstone pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not any Guarantor has received notice of any amendment. If Merchant breaches this Agreement, Bank and Cornerstone may proceed directly against any Guarantor or any other person or entity responsible for the performance of this Agreement, without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by Servicers.

7.21 Force Majeure

Bank and Cornerstone shall have no liability to Merchant for delay or failure to perform any part of this Agreement on account of an act of God or the public enemy, fire, explosion, flood, earthquake, riot, war, sabotage, accident, embargo or any circumstances of like or different character beyond Bank's or Cornerstone's reasonable control or by interruption or delay in transportation, inadequacy or shortage or failure of supply of materials, utilities, computer software, or equipment breakdown, labor trouble, or compliance with any order, direction, action or request of any governmental officer, department or agency.

7.22 Cumulative Remedies

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

7.23 Breach of Other Agreements

This Agreement is the principal agreement between Merchant and Bank and Cornerstone. In order to further effectuate the subject matter of this Agreement, the parties acknowledge that a number of additional agreements may be entered into between them. Merchant hereby agrees that Merchant's breach of any of those additional agreements shall also constitute a breach of this Agreement.

7.24 Fiduciary Relationship

As provided in California Financial Code Section 952 as it now exists and as it may be amended from time to time, whenever Merchant has a deposit with any bank which arises from or is subject to this Agreement, to which, pursuant to this Agreement, Bank or Cornerstone claims in writing Merchant is

not entitled, Merchant's entitlement to such deposit shall be as a fiduciary of Bank and Cornerstone until any claim by Bank or Cornerstone has been resolved. Merchant agrees that its failure to pay, within twenty (20) calendar days of notification, to Bank and Cornerstone funds to which Bank or Cornerstone claims in writing Merchant is not entitled, shall result in a presumption that Merchant intends to misappropriate such funds.

7.25 Security Interest and Merchant Performance Requirement

To secure Merchant's performance under this Agreement, including without limitation, Merchant's obligations arising out of Chargebacks, Merchant hereby grants, pursuant to the California Uniform Commercial Code, to Bank and Cornerstone, a security interest in all Transaction Records, sales drafts, credit drafts, and in all deposits, regardless of source, made to Merchant's account established or designated and maintained pursuant to this Agreement, as well as in the proceeds of those deposits, and in all other accounts maintained by Merchant. Servicers may enforce this security interest by one or more of the following:

- (a) Making an immediate debit (charge) to any account, without notice or demand of any kind, and/or interrupting the electronic transmission of funds to any account through the ACH system;
- (b) Freezing the entire account, without notice or demand of any kind, upon Servicers' reasonable determination that Merchant has breached any term of this Agreement; or
- (c) Taking possession of any or all of Merchant's Transaction records, sales drafts, verifications and confirmations of transactions.

Merchant shall execute such further documents and instruments, and take such further actions, as Bank or Cornerstone determines to be necessary to preserve, protect or perfect Bank's or Cornerstone's security interest, including without limitation any filings with public officials. Merchant's granting of this security interest in no way limits Merchant's liabilities to Bank or Cornerstone under this Agreement.

7.26 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

7.27 Change of Merchant Name or Business Type

Changes of, by way of example only, business name, business telephone and/or address, or any banking information shall be submitted, in writing, to Bank and Cornerstone by Merchant under the terms provided in this Agreement. Merchant represents that it is engaged in the Merchant's Business specified on the Merchant Application. Merchant shall not process payment transactions for any other type of business.

7.28 Electronic Formation [for online Agreements only]

Each of the parties hereto expressly agrees to the formation of this Agreement, which constitutes a valid and binding contractual obligation of each of the parties hereto, by electronic means. Each party acknowledges that when viewed or stored online this Agreement constitutes an electronic record, and that Merchant's completion of the online process culminating with Merchant clicking on "I Agree" constitutes Merchant's electronic signature on this Agreement with the intent to be legally bound thereby. The parties agree that Merchant's provision of the information required during such online process is sufficient to attribute such electronic signature to Merchant. Merchant acknowledges that the entering into of this Agreement is not conditioned upon Merchant's agreement to form this Agreement by electronic means, and that Merchant may enter into this Agreement by physically signing a paper version of this Agreement. Further, each party agrees that Bank's assignment of a Merchant identification number to Merchant shall constitute both Cornerstone's and Bank's electronic signature on this Agreement, and that no binding contractual obligation shall exist unless and until each of Merchant,

Bank and Cornerstone have electronically signed this Agreement in accordance with the foregoing or manually signed the Merchant Application.

I have read, understand and accept the terms and conditions of the Cornerstone Payment Systems, L.L.C. Merchant Agreement Number 02042002. If Merchant is a corporation or limited liability company, I represent and warrant that Merchant's principal owners have approved this contract and have agreed to personally guarantee Merchant's performance pursuant to paragraph 7.20 of the Merchant Agreement in regard to Guarantors. I further represent that Merchant's principal owners have authorized both Bank and Cornerstone to utilize credit bureau/reporting agencies and/or Bank's or Cornerstone's own agents for purposes of obtaining credit reports on Merchant and on each of Merchant's principals. These reports will be used to verify the accuracy of the information that has been provided and for assessing and monitoring Merchant's credit status. If Merchant desires to accept American Express Cards, I also represent that Merchant has reviewed and agrees to the terms and conditions of the American Express Card Acceptance Agreement.