

Merchant Service Sales Agreement

This Merchant Service Sales Agreement (“Agreement”) is entered into on the Effective Date defined in Section 12.A, below, between the business indicated on the Merchant Application (“Merchant” or “you”), Credomatic of Florida, Inc. (“Credomatic”) and BAC Florida Bank (“Bank”).

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Visa U.S.A., Inc. (“Visa”), MasterCard International, Incorporated (“MasterCard”), and DFS Services LLC (“Discover ® Network”), and by American Express Company (“American Express”). “Debit Card” means all Visa or MasterCard or Discover Network cards issued by a non-U.S. bank, a Visa or MasterCard or Discover Network card that accesses a consumer’s asset account within 14 days after purchase, including but not limited to stored value, prepaid, payroll, EBT, gift, and Visa consumer check cards, and debit cards validly issued by the debit card networks indicated on the Merchant Application (“Debit Networks”), such as on-line (PIN-based) cards. “Other Cards” means all cards issued by a non-U.S. bank and all Visa or MasterCard or Discover Network or American Express cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as “Cards”. You may elect to accept any Debit Card or Other Card without also accepting other Debit Cards and/or Other Cards. Bank and Credomatic desire to provide Card processing services to Merchant. Therefore, Merchant, Credomatic and Bank agree as follows:

Terms and Conditions

1. Honoring Cards.

- A. **Without Discrimination.** You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder as payment for goods and services (other than those goods and services prohibited by this Agreement, or the Rules) sold, or (if applicable) for charitable contributions made at all of your business locations and websites, except as expressly permitted by state statute. “Cardholder” means a person presenting a Card and purporting to be the person in whose name the Card is issued. You will not indicate or imply that you prefer, directly or indirectly, any particular any Card, try to dissuade cardholders from using any particular Card, criticize or mischaracterize any particular Card or any of its services or programs; try to persuade or prompt Cardholders to use any other Card or any other method of payment (e.g., payment by check); impose any restrictions, conditions, disadvantages or fees when any Card is accepted that are not imposed equally on all other Cards, except for electronic funds transfer, or cash and check; suggest or require Cardholders to waive their right to dispute any sale; engage in activities that harm the business or brand (or both) of Visa, MasterCard, Discover Network or American Express; promote any Card brand (except your own private label card that you issues for use solely at your business locations and websites) more actively than other Cards; or convert the currency of the original sale to another currency when requesting authorization or submitting sales (or both). You will honor, without discrimination, Discover Network Card checks and will handle these Cards like any other personal check drawn on a bank. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Credomatic and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the applicable Debit Network) in connection with the acceptance of Debit Cards.
- B. **Cardholder Identification.** You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card’s magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a driver’s license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 13, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder’s account number, Card expiration date, signature, or any other Card account data in plain view when mailed. You must not refuse to complete a Card transaction solely because the Cardholder who has complied with the conditions for presentment of a Card refuses to provide additional information, except as specifically permitted or required by the Rules. You may not refuse to complete an electronic commerce transaction solely because the Cardholder does not have a digital certificate or other secured protocol.
- 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 Credomatic or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. **Surcharge.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card, provided that (to the extent required by law): (i) you clearly and conspicuously disclose the terms of the discount or in-kind incentive to your customers, (ii) the discount or in-kind incentive is offered to all of your prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, American Express).
- 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. Your refund policies for sales made with any Debit Card or Other Card must be at least as favorable as your refund policy for purchase on any other Debit Card or Other Card, and the refund policy must be

disclosed to cardholders at the time of purchase and in compliance with laws.

- F. No Claim Against Cardholder. You will not have any claim against or right to receive payment, and you may not bill or attempt to collect, from a Cardholder unless Credomatic and Bank refuses to accept the Sales Draft (as defined in Section 2) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback (and you have fully paid for such 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 Credomatic and Bank.
- G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Credomatic nor Bank bears any responsibility for such transactions.
- H. Merchant Responsibility. You are responsible for ensuring that each Cardholder understands that Merchant is responsible for each Card transaction, including the goods and services, related customer service, dispute resolution and the performance of the terms and conditions of such transaction. You must prominently and unequivocally inform the Cardholder of your identity at all points of interaction.

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 Credomatic and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

Presentment of Sales Drafts.

- D. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Credomatic and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable. If you have multiple locations you must ensure that Bank is able to identify the location of each transaction on the Sales Draft.
- E. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- F. 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 Credomatic and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.
- G. 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). You must not deposit a Sales Draft for a transaction until you (i) complete the transaction, (ii) ship or provide the goods, (iii) perform the purchase service, or (iv) obtain the Cardholder's consent for a recurring transaction. You may deposit a prepayment, within certain time limits, if you advise the Cardholder of the immediate billing at the time of the transaction for prepayment services, excluding estimates for services to be provided, and full prepayment of custom-ordered merchandise, manufactured to the Cardholder's specifications.
- H. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Credomatic's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Credomatic and Bank or their agent in the form Credomatic and Bank from time to time specifies or as required under the Rules. If Credomatic 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.

3. 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 5 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that we may withhold deposit and payment to you without notice until the expiration of any chargeback period for: (a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and (b) if we determine, in our sole and reasonable discretion, that a transaction or batch of

transactions poses a risk of loss to us. We are not responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Credomatic and Bank for all amounts owed under this Agreement arise out of the same transaction as Credomatic and Bank's obligation to deposit funds to the Designated Account.

- ii. *Provisional Credit.* Notwithstanding the previous sentences, under no circumstance will Credomatic or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Credomatic and Bank. All Sales Drafts and deposits are subject to audit and final checking by Credomatic and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (a) in accordance with the Rules; (b) for any of your obligations to Credomatic and Bank; and (c) 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. Credomatic 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 Credomatic and Bank's sole discretion.
 - iii. *Processing Limits.* Based on the information you provided in the Merchant Application, Credomatic 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 Credomatic and Bank. This cap may be changed by Credomatic and Bank at any time upon written notice to you. If the cap amount is exceeded by Merchant, Credomatic and Bank reserve the right to: (a) hold funds until financial exposure expires, or (b) create a reserve account which will be funded directly by Merchant, or (c) terminate this Agreement.
- 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 6, 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 Credomatic and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Credomatic and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.
- D. Credit.
- i. *Credit Memoranda.* You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction.
 - ii. *Revocation of Credit.* Credomatic or Bank may refuse to accept any Sales Draft, and Credomatic 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 Credomatic and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Credomatic and Bank any amount previously credited to you for a Sales Draft not accepted by Credomatic and Bank or where accepted, is revoked by Credomatic 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 submit for payment any transaction that is illegal or may damage the goodwill of Visa, MasterCard, Discover Network or American Express or reflect negatively on any brand. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not request or use Card account information for any purpose other than as payment for your goods and services. You will not add any tax to transactions, unless applicable law expressly requires that a Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the transaction amount and not collected separately. You will not disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from the Merchant. You will not disburse funds in the form of cash unless approved by Credomatic and Bank, and permitted by the Rules. You will not accept a Visa Card, Electron Card, or Visa Electron card for the purchase of scrip. You must not submit for payment any transaction that arises from the acceptance of Cards at terminals that dispense scrip. You will not accept a card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services. You will not enter into interchange a Transaction that represents collection of a dishonored check. You will present all valid transactions no later than 3 bank business days after the date of the transaction.
- G. Debit Card Processing.
- i. *Credit Refunds.* You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.
 - ii. *Adjustments.* Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Credomatic. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.
 - iii. *Error Resolution.* You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Credomatic and with each applicable Debit Network and its other members to resolve any alleged errors

relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

4. *Other Types of Transactions.*

- A. Mail/Telephone Order. Credomatic and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present (“mail/telephone orders”) due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or “TO” or mail order or “MO” You must promptly notify Credomatic and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Credomatic and Bank in the Merchant Application. Credomatic and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 6.B), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.
- B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Credomatic or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words “Recurring Transaction”.
- C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single transaction in the total amount on a single Sales Draft except as set forth above.
- D. Partial Completion.
- i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Credomatic or Bank. Such consent will be subject to Bank’s final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.
 - ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words “deposit” or “balance” as appropriate. You will not deposit the Sales Draft labeled “balance” until the goods have been delivered to Cardholder or you have fully performed the services.
- E. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Credomatic or Bank’s prior written authorization. Such consent will be subject to Bank’s final approval. If Credomatic or Bank has given such consent, you represent and warrant to Credomatic and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.
- F. Electronic Commerce. You may process electronic commerce (“EC”) transactions only if you have so indicated on the Application, and only if you have obtained Credomatic’s consent. If you submit EC transactions without such consent, Credomatic may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program (“CISP”) manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Credomatic 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: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, electronic mail address and/or telephone number and Merchant’s permanent address including the country, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, you must follow Visa, MasterCard, Discover Network and American Express guidelines on securing such data. You shall immediately notify Credomatic of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Visa, MasterCard, Discover Network, American Express, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.
 - ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard (“PCI-DSS”) requirements, Visa’s Cardholder Information Security Program (“CISP”), Discover Network Information Security Compliance (“DISC”), MasterCard’s Site Data Protection Program (“SDP”), and American Express’s Data Security Operating Policies (“DSOP”) including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network

firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to Cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of Cardholder information and compliance with PCI-DSS, CISP and SDP in contracts with other service providers. You agree to indemnify and reimburse Credomatic and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

- G. American Express Transactions. Upon your request, Credomatic and Bank will provide authorization and/or data capture service, for American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of American Express, including without limitation the following:
- i. Your participation in American Express card acceptance is subject to the approval of American Express. You authorize Bank and Credomatic and/or its affiliates to submit American Express sales to, and receive settlement on such sales from, American Express on your behalf. You agree to comply with the terms and conditions contained in the Merchant Operating guide, which is available at www.americanexpress.com/merchantopguide.
 - ii. You may opt out of accepting American Express at any time without directly or indirectly affecting your rights to accept other Debit Card or Other Card.
 - iii. American Express may use the information about you obtained at the time of setup to screen and/or monitor your activities in connection with American Express marketing and administrative purposes. You agree that you may receive messages from American Express, including important information about American Express products, services, and resources available to its business. These messages may be sent to your mailing address, phone numbers, email addresses or fax numbers. You may be contacted at its wireless telephone number and the communications sent may include autodialed short message service (SMS or "text") messages or automated or prerecorded calls. You agree that you may be sent fax communications.
 - iv. You may opt-out of receiving future commercial marketing communications from American Express by contacting Bank and Credomatic. Note that you may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.
 - v. You shall not assign to any third party any payments due to you from American Express, and all indebtedness arising from sales will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes.
 - vi. Notwithstanding anything in this Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of the Agreement applicable to American Express card acceptance to enforce such terms against you.
 - vii. If you are not able to resolve a Claim against American Express, or a Claim against Bank or Credomatic or any other entity that American Express has a right to join in resolving a Claim, this section explains how Claims can be resolved through arbitration.
 1. You or American Express may elect to resolve any Claim by individual, binding arbitration. Claims are decided by a neutral arbitrator.
 2. If arbitration is chosen by any party, neither you nor Bank or Credomatic nor American Express will have the right to litigate that Claim in court or have a jury trial on that Claim. Further, you will not have the right to participate in a representative capacity or as a member of any class pertaining to or be a named party to a class-action with respect to any Claim for which any party elects arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or American Express would have in court may also not be available in arbitration.
 3. Initiation of Arbitration. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration Agreement and the selected organization's rules in effect when the Claim is filed, except where those rules conflict with this Agreement. Contact JAMS or AAA to begin an arbitration or for other information. Claims may be referred to another arbitration organization if all parties agree in writing, or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA). Any arbitration hearing that you attend shall take place in New York, New York unless all parties agree to an alternate venue.
 4. Limitations on Arbitration. If any party elects to resolve a Claim by arbitration, that Claim will be arbitrated on an individual basis. There will be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other merchants or other persons or entities similarly situated. The arbitrator's authority is limited to Claims between you, Bank, Credomatic and American Express. Claims may not be joined or consolidated unless all parties to this agreement agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case brought by you, Bank, Credomatic, or American Express and cannot be used in any other case except to enforce the award as between you, Bank, Credomatic and American Express. This prohibition is intended to, and does, preclude you from participating in any action by any trade association or other organization against American Express. Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these Limitations on Arbitration is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.
 5. Previously Filed Claims/No Waiver. You, Bank, Credomatic or American Express may elect to arbitrate any Claim that has been filed in court at any time before trial has begun or final judgment has been entered on the Claim. You, Bank, Credomatic, or American Express may choose to delay enforcing or to not exercise rights under this arbitration provision, including the right to elect to arbitrate a Claim, without waiving the right to exercise or enforce those rights on any other occasion. For the avoidance of any confusion, and not to limit its scope, this section applies to any class-action lawsuit relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the American Express Merchant Regulations, or any similar provisions of any prior American Express

- Card acceptance agreement, that was filed against American Express prior to the effective date of this Agreement.
6. Arbitrator's Authority. The arbitrator shall have the power and authority to award any relief that would have been available in court, including equitable relief (e.g., injunction, specific performance) and cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter this Agreement or any of its separate provisions, including this section, nor to determine any matter or make any award except as provided in this section.
 7. Split Proceedings for Equitable Relief. You, Bank, Credomatic, or American Express may seek equitable relief in aid of arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all reasonable attorneys' fees and costs, including legal fees, to be paid by the party against whom enforcement is ordered.
 8. Small Claims. American Express shall not elect to use arbitration under this section for any Claim you properly file in a small claims court so long as the Claim seeks individual relief only and is pending only in that court.
 9. Governing Law/Arbitration Procedures/Entry of Judgment. This arbitration section is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence, provided that any party may request that the arbitrator to expand the scope of discovery by doing so in writing and copying any other parties, who shall have fifteen (15) days to make objections, and the arbitrator shall notify the parties of his/her decision within twenty (20) days of any objecting party's submission. If a Claim is for \$10,000 or less, you or American Express may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the rules of the selected arbitration organization. At the timely request of a party, the arbitrator shall provide a written and reasoned opinion explaining his/her award. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA. If a Claim is for \$100,000 or more, or includes a request for injunctive relief, (a) any party to this Agreement shall be entitled to reasonable document and deposition discovery, including (x) reasonable discovery of electronically stored information, as approved by the arbitrator, who shall consider, inter alia, whether the discovery sought from one party is proportional to the discovery received by another party, and (y) no less than five depositions per party; and (b) within sixty (60) days of the initial award, either party can file a notice of appeal to a three-arbitrator panel administered by the selected arbitration organization, which shall reconsider de novo any aspect requested of that award and whose decision shall be final and binding. If more than sixty (60) days after the written arbitration decision is issued the losing party fails to satisfy or comply with an award or file a notice of appeal, if applicable, the prevailing party shall have the right to seek judicial confirmation of the award in any state or federal court where your headquarters or your assets are located.
 10. Confidentiality. The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the Claim resolution process, including but not limited to any related negotiations, mediations, arbitration, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by mediator or arbitrator, including any arbitration award or judgment related thereto, are confidential and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non discoverable as a result of its use in the negotiation, mediation, or arbitration.
 11. Costs of Arbitration Proceedings. You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a Claim in court. American Express will be responsible for any additional arbitration fees. At your written request, American Express will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.
 12. Additional Arbitration Awards. If the arbitrator rules in your favor against American Express for an amount greater than any final settlement offer American Express made before any arbitration award, the arbitrator's award will include: (1) any money to which you are entitled as determined by the arbitrator, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees incurred by you.
 13. Definitions. For purposes of the above arbitration provisions only, (i) "American Express" includes any of its affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables, and all agents, directors, and representatives of any of the foregoing, and (ii) "you" includes any of your affiliates, licensees, predecessors, successors, or assigns, any purchasers of any receivables and all agents, directors, and representatives of any of the foregoing, and (iii) "Claim" means any allegation of an entitlement to relief, whether damages, injunctive or any other form of relief, against American Express or against Bank, Credomatic or any other entity that American Express has the right to join in resolving a Claim, including, a transaction using an American Express product or network or regarding an American Express policy or procedure.
- viii. Your Right to Opt Out of American Express Card Acceptance. You may opt out of accepting American Express Cards at any time without directly or indirectly affecting its rights to accept any other payment products.
 - ix. American Express Right to Modify or Terminate Agreement. American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate your acceptance of American Express Card transactions and to require Processor to investigate your activities with respect to American Express Card transactions.
 - x. Conversion to a Direct Relationship with American Express. You acknowledge and agree that upon written notice

from us, you will be converted to a direct American Express Card acceptance relationship with American Express if and when the annual American Express Card charges that you submit under this Agreement are greater than \$1,000,000. You agree that , upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement with respect to American Express Transactions; (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance; and (iii) you will no longer be able to submit American Express Card transactions under this Agreement, but this Agreement will continue in full force and effect with respect to other payments and services you elected to receive on your Application.

- H. **Cash Advances.** You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.
- I. **Prohibited Transactions.** You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Credomatic's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Visa, MasterCard, Discover Network and American Express reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through any Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward through any Debit Network any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Credomatic and with each Debit Network in the event that Credomatic or any Debit Network determines that there is a substantial risk of fraud arising from your access to the Debit Network. You will take whatever actions Credomatic or Debit Networks reasonably deem necessary in order to protect such Debit Network, its members, and its Cardholders. Neither the Debit Network, Credomatic, nor any of their respective personnel will have any liability to you for any action taken in good faith.
- J. **Debit Card Transactions.**
- i. **PIN.** For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.
 - ii. **PIN Pad.** Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.
 - iii. **Disclosure.** You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.
 - iv. **Encryption.** The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.
 - v. **Rules.** You will comply with any other requirements relating to PIN security as required by Credomatic or by any Debit Network.
 - vi. **Receipt.** A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.
 - vii. **Transaction Amount.** You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.
 - viii. **Fees.** You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.
 - ix. **Tax.** You may not collect tax as a separate cash transaction.
- K. **Debit Card Terminals.** Debit Card terminals, including hardware and software, must be certified for use by Credomatic and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through Credomatic or through a third party

5. **Designated Account.**

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

any asserted error for 60 calendar days immediately following Credomatic's receipt of your written notice. During that 60 day period, Credomatic and Bank will be entitled to investigate the asserted error.

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

6. Security Interests, Reserve Account, Recoupment and Set-Off.

A. **Security Interests.**

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

B. **Reserve Account.**

- i. **Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Credomatic and Bank, with sums sufficient to satisfy your current and future obligations as determined by Credomatic and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.
- ii. **Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Credomatic or Bank. Also, Credomatic and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Credomatic or Bank including, without limitation, rights of set-off and recoupment.
- iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of the expiration of any chargeback period or your last transmission of Sales Drafts to Credomatic or Bank, provided, however, that you will remain liable to Credomatic and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Credomatic with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Credomatic and Bank under this Agreement. Bank (and not Merchant) shall have sole control of the Reserve Account.
- iv. **Assurance.** In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Credomatic and Bank.

- C. **Recoupment and Set Off.** Credomatic and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Credomatic 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 Credomatic and Bank, you must create or maintain the Reserve Account as required by Credomatic and Bank, and Credomatic and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Credomatic 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 Credomatic 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 Credomatic and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

7. Fees and Other Amounts Owed Bank.

- A. **Fees and Taxes.** You will pay Credomatic and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Credomatic and Bank. Credomatic and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 15.1, below. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. You are also solely responsible for any sales, use, excise, value-added, gross receipts, services, consumption or other taxes or duties that may be levied on Credomatic, Bank or any Card issuer arising from fees or assessments payable to Credomatic, Bank or any Card issuer pursuant to this Agreement.

- B. Other Amounts Owed. You will immediately pay Credomatic and Bank any amount incurred by Credomatic and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa, MasterCard, Discover Network or American Express, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Credomatic 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 Credomatic or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Credomatic or Bank demand sums due or such ACH does not fully reimburse Credomatic and Bank for the amount owed, you will immediately pay Credomatic and Bank such amount.

8. Application, Indemnification, Limitation of Liability.

- A. Application. You represent and warrant to Credomatic and Bank that all information in the Application is correct and complete. You must notify Credomatic 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), change in transaction processing methods, entry into a loan or other agreement with a third party that seeks to affect this Agreement, or you become a voluntary or involuntary party in a bankruptcy case. The notice must be received by Credomatic within 10 business days of the change. You will provide updated information to Credomatic within a reasonable time upon request. You are liable to Credomatic for all losses and expenses incurred by Credomatic arising out of your failure to report changes to it. Bank and Credomatic may immediately terminate this Agreement upon notification by you of a change to the information in the Application.
- B. Indemnification. You will hold harmless and indemnify the Debit Networks, Credomatic 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 Credomatic 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 Credomatic 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 Credomatic 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 Credomatic's and Bank's liability shall not exceed the lowest amount determined in accordance with the foregoing calculation for any one month involved. Neither Credomatic, Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.
- D. Performance. Credomatic and Bank will perform all services in accordance with this Agreement. Credomatic is the exclusive agent of Bank. Bank is at all times and entirely responsible for and in control of Credomatic's performance under this Agreement. Credomatic may not subcontract, sublicense, assign, license, franchise or in any manner extend or transfer to any third party any of its rights or obligations. Bank may not waive, forgive, release, assign or in any manner fail to insist on strict performance by Credomatic. Credomatic may not have access directly or indirectly to any account of funds or funds due to Merchant or funds withheld from Merchant for chargebacks arising from or related to this Agreement. Bank may not assign or transfer its obligation to pay or reimburse Merchant. Credomatic and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **Credomatic and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the other 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 Credomatic nor Bank shall be liable for the acts or omissions of any third party.
- E. Merchant Performance. You must inform Bank promptly of the identity of any third party that engages, or proposes to engage in the processing, transmission or storage of Cardholder data on your behalf, whether directly or indirectly, regardless of the manner or duration of such activities.

9. Representations and Warranties. You represent and warrant to Credomatic and Bank at the time of execution and during the term of this Agreement the following:

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

10. Audit and Financial Information.

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

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

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

12. Term and Termination

- A. Term. The Agreement will become effective on the first date Bank either executes this Agreement or accepts your first transaction for processing ("Effective Date"). The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.
- B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention to terminate or not to renew at least 60 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Credomatic and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; (ii) automatically, upon termination or expiration of Credomatic's or your access to such Debit Network whether caused by termination or expiration of Credomatic's agreement with such Debit Network or otherwise; (iii) you do not meet the eligibility requirements to be a merchant under the Rules; (iv) you do not meet the standards of proof of identity or creditworthiness; (v) your corporate structure does not comply with the Rules; (vi) you operate a business in a prohibited merchant category, (vii) you or any principal of Merchant is a sanctioned person (as defined in the Rules), (viii) your business does not comply with the requirements of the Laws or Rules; (ix) your business operations cause Credomatic or Bank to violate the Rules or the Laws; (x) you use the Visa, MasterCard or Discover Network trademarks in a manner inconsistent with the sublicense granted to you. In addition, in the event that Credomatic's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Credomatic will immediately notify you of that event. Neither Credomatic, Bank, nor any Debit Network will have any liability to you as a result of any such suspension of termination. If you create any circumstance that causes harm or loss of goodwill to Visa, MasterCard, Discover Network or the Debit Networks this Agreement shall be immediately terminated.
- 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 Network if Merchant is terminated due to any adverse 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 Credomatic 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 Credomatic 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 Credomatic and immediately pay Credomatic and Bank any amounts you owe them for equipment costs.
 - iv. Early Termination. Unless you notify Credomatic your intentions to terminate or not renew the Agreement 60 days prior to the end of the Initial or Renewal Term, you will be assessed an early termination fee of \$1,500.00, as stated in your Merchant Processing Application Agreement Summary Information Section. You agree that the early termination fee is not a penalty, but rather reasonable deconversion costs in light of the financial harm caused by your early termination. Other remedies Bank or Credomatic may have under this agreement still apply

13. Compliance With Laws And Rules. You agree to comply with, and shall cause any third parties you enlist to facilitate sales processing to comply with, all Rules and operating regulations issued from time to time by a Debit Network, Diners' Club, JCB, and any other issuers of Cards, MasterCard, Visa, Discover Network and American Express, and any policies and procedures provided by Credomatic or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. Failure to comply with the Rules may impact your ability to successfully process sales. You

may be assessed non-compliance fees if you fails to comply with the Rules. 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 Credomatic 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 Credomatic and Bank all instruments it may from time to time reasonably deem necessary.

14. Use of Trademarks, Confidentiality and Data Security.

- A. Use of Trademarks. Your use of Visa, MasterCard, Discover Network and American Express trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover Network or other cards’ promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover Network or American Express endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover Network or American Express in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Visa-owned marks to indicate acceptance of Debit Cards and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected. If you elect to accept American Express Cards, then whenever payment methods are communicated to customers, or when customers ask what payments are accepted, you must indicate your acceptance of American Express and display American Express marks (including any American Express card application forms provided to you) as prominently and in the same manner as any other Card brands. You must not use the American Express marks in any way that injures or diminishes the goodwill associated with the mark, nor (without prior written consent from BANK/ISO) indicate that American Express endorses your goods or services. You shall only use the American Express marks as permitted by this Agreement. In the event your participation in American Express card acceptance is terminated for any reason, you must immediately remove all American Express branding and marks from your website and wherever else they are displayed.
- B. Discover Network Trademarks. You are prohibited from using the Discover Network Program Marks other than as expressly authorized in writing by Credomatic or Bank. “Discover Network Program Marks” mean the brands, emblems, trademarks, and/or logos that identify Discover Network Cards. Additionally, you shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to you by Credomatic or Bank pursuant to the merchant program or otherwise approved in advance by Credomatic or Bank. Merchant may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by Credomatic or Bank in writing. Merchant shall not use the Discover Network 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 Network Program Marks. Merchant recognizes that it has no ownership rights in the Discover Network Program Marks. Merchant shall not assign to any third party any of the rights to use the Discover Network 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, a Debit Network, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders’ account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization.
 - ii. Compliance with Payment Card Industry Data Security. Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with card organizations’ bylaws, operating regulations and Rules related to data security, data integrity and the safeguarding of Cardholder Information including PCI DSS, DISC, SDP, and CISP, in effect and as may be amended, supplemented or replaced. Merchant must inform Credomatic and Bank promptly of the identity of any data storage entity that Merchant engages or proposes to engage, in the processing, transmission, or storage of account data, transaction data or both on behalf of Merchant, whether directly or indirectly, regardless of the manner or duration of such activities. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP, DISC and CISP requirements at all times. Merchant will report any non-compliance immediately to Bank and Credomatic. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.
 - iii. Annual Certification. Merchant will provide an annual certification to Credomatic and Bank if requested (in a form acceptable to Credomatic) certifying compliance with the data security provisions of this Agreement, including compliance with applicable card organization requirements such as PCI, SDP, DISC and CISP. Merchant will provide annual certifications for Merchant’s service providers, subcontractors and agents.
 - iv. 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 Credomatic and Bank (including without limitation the terms of this Agreement), all information relating to Visa, MasterCard, Discover Network and American Express and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
 - v. Disclosure. You authorize Credomatic 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. You authorize Credomatic and Bank to disclose Card transaction data and other information to current and prospective issuers, current and prospective acquirers, regulatory authorities and other entities to whom Credomatic or Bank are required to provide such information and to each of their affiliates, agents, subcontractors and employees for the purposes deemed necessary in Credomatic’s reasonable discretion. Such information shall include (1) information about the card transactions conducted by you, (2) aggregate and individual information about the Card transactions accepted by you, (3) collective and detailed information about your individual Card transactions, disputes and other information reasonably required by Credomatic or Bank during an investigation, and (4) information regarding the aggregate number, type and kind of Card transactions accepted by you. You agree that the recipients of such information may use it for promotion, analysis, creation of reports, and any other lawful business purposes including commercial marketing communications and transactional or relationship communications.

D. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied

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to you and not purchased by you or consumed in use will remain the property of Credomatic and Bank and will be immediately returned to Credomatic upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Credomatic and Bank arising out of the failure to return or destroy such materials following termination.

- E. Account Compromise. You must immediately notify Credomatic and Bank of a Cardholder account compromise.

15. General Provisions.

- A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of Florida. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Miami-Dade County, Florida. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Miami-Dade County, Florida.
- C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Credomatic and Bank as contemplated by this Agreement without Credomatic and Bank's prior written consent.
- D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
- E. Assignability. This Agreement may be assigned by Credomatic with Bank's approval, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Bank. Notwithstanding the previous sentence, the Bank must consent to the assignment and/or transfer of this Agreement to another member bank if requested by Merchant. If Merchant nevertheless assigns this Agreement without the consent of Credomatic, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.
- F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.
- G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa, MasterCard or Discover Network transaction information to third parties. You must either return this information to Credomatic or provide acceptable proof of destruction of this information. You will immediately notify Credomatic 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 Credomatic 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 Credomatic and Bank under applicable Rules or Laws.
- H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Credomatic and Bank for all attorneys' fees and other costs and expenses paid or incurred by Credomatic and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
- I. Amendments. Bank and Credomatic may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Visa, MasterCard, Discover Network or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process after the 30th day after receiving notice of the fee change, you will be deemed to assent to the new fees.
- J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Credomatic or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.
- K. Independent Contractors. Credomatic, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.
- L. Employee Actions. You are responsible for your employees' actions while in your employment.
- M. Survival. Sections 3.D, 4.A, 4.B., 6, 7, 8, 9, 13.C, 15, 16.B, 16.H and 17 will survive termination of this Agreement.
- N. Bank Contact. You may contact Bank at the following address and telephone number: BAC Florida Bank, , 169 Miracle Mile, R-10, Coral Gables, Florida 33134, Attention: Branch Manager. Telephone Number: (305) 789-7000.

16. Personal Guaranty.

As a primary inducement to Credomatic and Bank to enter into this Agreement, the Guarantor(s) indicated on the Application, by signing the Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Credomatic and Bank pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands further that Credomatic and Bank may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by Credomatic and Bank or Merchant. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives

and assigns and may be enforced by or for the benefit of any successor of Credomatic and Bank. Guarantor(s) understand that the inducement to Credomatic and Bank to enter into this Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

17. In all other respects the parties ratify, confirm and approve the Agreement.