

## New Merchant Checklist: Credit Card Processing

To ensure your application is processed in the most efficient and timely manner, please use this “checklist” to guide you through the application process. Complete and return everything on this checklist, and we’ll have you up and running as soon as possible!

### **Bank Card/Check Services Application**

- Page 1 is filled out and appropriate volumes are filled out under the product sold to you. (Credit Cards, Pin Debit Cards and/or Checks)
- Appropriate signatures have been signed on page 4. **(Signatures must be consistent)**
  - Sole Proprietor – Officer on the front of the application must sign for execution of the agreement under “Merchant” section and also sign the guarantor line of the agreement.
  - Partnership – One of the partners on the application must sign for execution of the agreement and also sign the guarantor line of the agreement.
  - LLC – One member on the application must sign for execution of the agreement and also sign the guarantor line of the agreement.
  - Corporation – The President must sign on the guarantor line of the agreement. The President must also be one of the officers on the application.
- Each page is initialed and dated at the bottom.

### **Business License or Articles Of Incorporation**

- There is a stamp showing that it has been filed
- Business name and address match to what is written on the application

### **Copy of a voided check**

- Voided check that is imprinted with the merchant’s business name.
- Business name must be the same as shown on the application.

### **Processing Statements (If applicable)**

- Copies of current last 3 months from current processor (Include all pages)

### **Bank statement** (Current statement from merchant’s business account)

**NOTE: if not providing SSN for officers then the following information is required:**

**Current years’ business financials**  
**Two Years Business Tax Returns**



## PRODUCT AND FEE SCHEDULE

Merchant hereby subscribes to the *ECHO* Merchant Services noted below and agrees to pay *ECHO* the applicable fees indicated. Merchant acknowledges all fees may be electronically netted from the proceeds of Merchant's sales or debited from the Merchant Account. Fees not collected within the month of billing will accrue interest at the maximum rate allowed by law per month beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full.

### CREDIT CARDS

<b>AVERAGE MONTHLY VOLUME:</b> \$	<b>MAXIMUM MC/VISA TRANSACTION AMOUNT:</b> \$
<b>AVERAGE TICKET SIZE:</b> \$	<b>CONSUMER'S MONTHLY STATEMENT DESCRIPTION: (Max. 18 characters)</b>
<b>AMERICAN EXPRESS: (Enter Merchant No.)</b>	

### PIN DEBIT CARDS

<b>ESTIMATED MONTHLY PIN DEBIT VOLUME:</b> \$	<b>AVERAGE PIN DEBIT TRANSACTION AMOUNT:</b> \$
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### CHECKS

<b>AVERAGE MONTHLY VOLUME:</b> \$	<b>AVERAGE TICKET SIZE:</b> \$	<b>NUMBER OF CHECKS PER DAY:</b>
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### CREDIT CARD PRICING

Select Applicable Services	TRANSACTION FEE		DISCOUNT FEE%	CHARGEBACK / RETURN FEE	OTHER FEE	MONTHLY MINIMUM FEE
VISA/MC/Discover® Network – Retail*	\$ 0.16	+0.14*	2.25 %	\$ 20.00	\$	\$
AMERICAN EXPRESS - Retail	\$					
VISA/MC/Discover® Network – MOTO*	\$0.16	+0.14*	2.59 %	\$20.00	\$	\$
AMERICAN EXPRESS - MOTO	\$					

### CREDIT CARD INCREMENTAL FEES FOR INDUSTRIES, CATEGORIES AND TRANSACTION CHARACTERISTICS\*

Credit card transactions will be charged as indicated in the Product and Fee Schedule. In addition, transactions that do not meet the card association's requirements for the best rate will be subject to additional fees as described in the table below. *ECHO* reserves the right to change the fees below from time to time. For further information on these Incremental fees, please contact *ECHO* Customer Support.

Industry	Qualified	Rewards	Partially Qualified (A)	Partially Qualified	Non-Qualified
<b>Retail</b>	\$0.14	0.32% + \$0.14	0.61% + \$0.14	1.11% + \$0.14	1.73% + \$0.14
<b>Restaurant</b>	\$0.14	0.43% + \$0.14	n/a	1.11% + \$0.14	1.73% + \$0.14
<b>MOTO (Mail Order/Telephone Order)</b>	\$0.14	0.28% + \$0.14	n/a	0.69% + \$0.14	1.27% + \$0.14
<b>DMA (Direct Marketing Account)</b>	\$0.14	0.28% + \$0.14	n/a	0.69% + \$0.14	1.27% + \$0.14
<b>Hotel/Auto Rental</b>	\$0.14	0.43% + \$0.14	0.49% + \$0.14	1.11% + \$0.14	1.73% + \$0.14
<b>Passenger Transport</b>	\$0.14	0.43% + \$0.14	n/a	1.08% + \$0.14	1.73% + \$0.14
<b>Service Station</b>	\$0.14	0.35% + \$0.14	n/a	1.11% + \$0.14	1.73% + \$0.14
<b>Commercial Card (Non Travel and Entertainment)</b>	0.50% + \$0.14	n/a	n/a	1.69% + \$0.14	1.79% + \$0.14
<b>Commercial Card (Travel and Entertainment)</b>	1.19% + \$0.14	n/a	n/a	n/a	1.83% + \$0.14

\*This represents a Card Association Fee.

**INTERCHANGE PLUS**

	VISA/MC	AMEX	DISCOVER
Auth Fee	\$	\$	\$
Capture Fee	\$	\$	\$
AVS Fee	\$	\$	\$

OTHER CREDIT CARD FEES	
CHARGEBACK/RETRIEVAL FEE:	\$
VOICE AUTHORIZATION FEE:	\$

INTERCHANGE MARGIN	
INTERCHANGE %:	%
INTERCHANGE \$:	\$

**OTHER ACCOUNT FEES**

SET-UP FEE: \$ 0	MONTHLY TECHNICAL SUPPORT FEE: \$ 0	ECHOLINK SERVICE: <input type="checkbox"/> YES <input type="checkbox"/> NO
CREDIT CARD DISCOUNT FEE BILLING: (select one) <input checked="" type="checkbox"/> Daily <input type="checkbox"/> Other: _____	TERM: (select one) <input checked="" type="checkbox"/> 5 years <input type="checkbox"/> Other: _____	OTHER FEE: \$
INTERNET SERVICES FEE: \$ 0	<input type="checkbox"/> Starter <input type="checkbox"/> Professional <input type="checkbox"/> Standard <input type="checkbox"/> Professional Plus	<input type="checkbox"/> Other (indicate below): _____

\*This represents a Card Association Fee.

**DEBIT CARD PRICING**

	TRANSACTION FEE	DISCOUNT FEE%	CHARGEBACK / RETURN FEE	OTHER FEE	MONTHLY MINIMUM FEE
PIN DEBIT CARD	\$			\$	

**CHECK**

<b>Please ✓ Services Selected</b>	TRANSACTION FEE	DISCOUNT FEE%	CHARGEBACK/RETURN FEE	OTHER FEE	MONTHLY MINIMUM FEE
POP (Electronic Check Conversion - ACH)	\$	%	\$	\$	\$
POP GUARANTEE (Elec. Check Conversion w/ Guarantee)	\$ 0.16	0.99%	\$	\$	\$ 20.00
PPD (Prearranged Payment & Deposit entry ACH)	\$ 0.16	0.99%	\$	\$	\$
CCD (B2B electronic check - ACH)	\$ 0.16	0.99%	\$	\$	\$
ARC (Mail-order/Lockbox - ACH)	\$ 0.16	0.99%	\$	\$	\$
TEL (Telephone ACH authorization)	\$ 0.16	0.99%	\$	\$	\$
WEB (Internet ACH authorization)	\$ 0.16	0.99%	\$	\$	\$

**TRADITIONAL COLLECTIONS - MERCHANT OPT-OUT:** Traditional Collection Services are provided as part of the VISA POP and ACH services. If you wish to "opt-out" please initial here. \_\_\_\_\_

GUARANTEE OPTIONS:  Stop Pay Coverage  No Image Coverage

**TRANSACTION SUBMISSION - NON TERMINAL PROCESSING (check applicable service)**

*INTERNET API	Merchant software & version:
INTERNET VIRTUAL TERMINAL	PERIPHERAL:
*INTERNET BATCH	Merchant software & version:
RECURRING PAYMENT MANAGER	
TOUCH-TONE PHONE	(Credit Card Only)
*FRAME RELAY	Merchant software & version:
PC SOFTWARE	Type of PC Software:

\*(Not available for PIN Debit, VISA POP, VISA POP with Guarantee or Paper Guarantee)

TRANSACTION SUBMISSION - TERMINAL PROCESSING (Check Verification not available on every terminal type)		
MODEL/TYPE	NEW or REPROGRAM	CONNECTION
TYPE OF TERMINAL:	<input type="checkbox"/> New / <input type="checkbox"/> Reprogram	<input type="checkbox"/> IP / <input type="checkbox"/> DIAL-UP
TYPE OF PRINTER:	<input type="checkbox"/> New / <input type="checkbox"/> Reprogram	
TYPE OF DEBIT PIN PAD (if any):	<input type="checkbox"/> New / <input type="checkbox"/> Reprogram	
TYPE OF CHECK READER/IMAGER:	<input type="checkbox"/> New / <input type="checkbox"/> Reprogram	<b>CALL WAITING</b>
<b>TELEPHONE PREFIX:</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO If YES, what is Prefix Number?: _____	<input type="checkbox"/> YES / <input type="checkbox"/> NO
<b>APPLICATION:</b>	<input type="checkbox"/> Retail/Service <input type="checkbox"/> Restaurant <input type="checkbox"/> Moto/E-Commerce <input type="checkbox"/> Other: _____	<input type="checkbox"/> Hotel

<b>THIRD-PARTY CONNECTION/GATEWAYS:</b>	_____
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CREDIT CARD TERMINAL	CHECK OPTIONS	ECHO IMAGE REPOSITORY	CHECK ADMIN RTN RESEARCH
Corporate Card: <input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> ECC / <input type="checkbox"/> C-Store	<input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> YES / <input type="checkbox"/> NO

CHECK COLLECTIONS REIMBURSEMENT OPTIONS FOR MULTIPLE LOCATIONS (Guarantee and/or Collections) – (select one)	CHECK ROUTE/ACCOUNT
<input type="checkbox"/> COMBINE ALL LOCATIONS <input type="checkbox"/> REIMBURSE INDIVIDUAL LOCATIONS	

CHECK COLLECTIONS – CHECKS SUBMITTED TO ECHO – (select one)
<input type="checkbox"/> FROM ACH SYSTEM <input type="checkbox"/> VIA FILE FROM MERCHANT <input type="checkbox"/> MAILED

**MERCHANT ACCOUNT: (select one)**

Open checking account with Sponsor Bank

Voided check attached for ACH deposit

**AUTHORIZED SIGNATURES AND DATE OF EXECUTION:**

Merchant acknowledges that he has read the general terms and conditions attached to this Application and product specific terms and conditions set forth in the product booklet for the services selected on this Application and agrees to be bound by these terms and conditions that are incorporated into this Application by this reference, and agrees that only the services selected shall be rendered under this Agreement.

Merchant further acknowledges that he is not relying on any verbal representations in subscribing to the above referenced services and in executing this Application, and if a specific section is left blank on this Application, that service is not being provided to the Merchant by *ECHO*.

IN WITNESS WHEREOF, the parties hereto have caused this Application to be executed on the date signed by Bank.

**SPONSOR FINANCIAL INSTITUTION**



21215 Burbank Blvd.  
Woodland Hills, CA 91367

**MERCHANT**

**Business Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, St. Zip:** \_\_\_\_\_

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

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

**Date:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**GUARANTOR**

By their signatures hereto the Guarantors certify that they have read and understand the terms and conditions attached to this Application, and agree to guarantee the performance of all of Merchant's duties and obligations under this Application.

**Guarantor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Guarantor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Merchant Services General Terms and Conditions**

These terms and conditions, the Product and Fee Schedule, the Product Booklet, the User Guide and the Merchant Application (hereinafter known as the "Agreement") is entered into by and among Electronic Clearing House, Inc., (*ECHO*), Sponsor Financial Institution ("Bank and/or ODFI") and the business entity indicated on the Merchant Application ("Merchant"). The Agreement shall become effective on the date executed by a duly authorized representative of *ECHO* and, if applicable, Bank. *ECHO*, Bank and Merchant shall be collectively known as the "Parties."

**WHEREAS**, Bank as a member of VISA, U.S.A., Inc. ("VISA") and MasterCard International, Inc. ("MasterCard") provides transaction processing and other services and products in relation to financial services provided by VISA, MasterCard and other financial service card organizations; and is a member of Point-of-Sale ("POS") bank merchant processing networks (i.e., Interlink and STAR) ("Networks"); and

**WHEREAS**, the Networks have established and administer a shared electronic funds transfer system (the "System"), by developing and using an on-line multi-institutional electronic funds POS transfer facility (the "Interchange") at which electronic funds transactions may be interchanged among Members of Networks, participating merchants and customers of participating merchants; and

**WHEREAS**, *ECHO* is a member of Discover Network<sup>®</sup> through which it provides Discover card processing for merchants; and **WHEREAS**, *ECHO*, through Bank provides credit card, debit card and ACH check processing services; and *ECHO* provides check verification and check collection services; and

**WHEREAS**, Merchant is engaged in the business of selling goods and services and desires that *ECHO* provide one or more Services to Merchant on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

Electronic Clearing House, Inc. ("*ECHO*") an Intuit<sup>®</sup>, Inc. company, is a registered ISO/MSP of First Regional Bank  
28632 Roadside Dr., Ste. 155, Agoura Hills, CA 91301, Ph (800) 777-0929, Member FDIC

**Initial:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Electronic Clearing House, Inc. ("*ECHO*") an Intuit<sup>®</sup>, Inc. company, is a registered ISO/MSP of National Bank of California  
145 S. Fairfax Ave., Los Angeles, CA 90036, Ph (323) 655-6001, Member FDIC  
LC0002- Preferred 11-24-09

## ARTICLE 1. GENERAL PROVISIONS

1. DEFINITIONS: For purposes of this Agreement, the following definitions shall apply to this Application and General Provisions section:
  - 1.1 "ACH" - the Federal Reserve Bank's Automated Clearing House.
  - 1.2 "ACH Network" - funds transfer system, governed by the NACHA operating rules, that provides for the clearing of electronic entries for participating financial institutions.
  - 1.3 "Application" - the document titled, Preferred Merchant Services Application, executed and delivered to *ECHO* by Merchant, upon which Merchant's acceptability for Merchant Services was evaluated.
  - 1.4 "Chargeback" –
    - 1.4.1 For credit cards, the procedure by which an issuer charges all of or part of the amount of a transaction back to the Merchant.
    - 1.4.2 For check services, the ACH debit of the Merchant Account for an ineligible Return of a guaranteed item.
  - 1.5 "Check" – a first-party personal or business check drawn on a United States financial institution and presented by a Checkwriter to Merchant for the contemporaneous purchase of Goods and Services. Check does not include payroll checks, third party checks, credit card convenience checks, drafts, money orders or traveler's checks.
  - 1.6 "Checkwriter" - the customer who writes a check or authorizes an ACH debit or credit in conjunction with the purchase or return of Merchant's Goods and Services.
  - 1.7 "Credit Voucher" – Merchant's record of return or refund to be credited to cardholder's account.
  - 1.8 "Discover Network<sup>®</sup>" – the payment network known as Discover Network<sup>®</sup>.
  - 1.9 "Goods and Services" - those goods and/or services for which Merchant is authorized by *ECHO* to utilize *ECHO*'s services.
  - 1.10 "Merchant Account" - the commercial demand deposit checking account designated by Merchant for use in conjunction with Merchant Services.
  - 1.11 "Merchant Services" – the services provided to Merchant by *ECHO* under this Agreement.
  - 1.12 "Monthly Minimum Fee" - the minimum amount of discount fees and transaction fees that Merchant shall pay on a monthly basis per merchant location as initially set forth in this Agreement.
  - 1.13 "NACHA" - National Automated Clearing House Association.
  - 1.14 "ODFI" - the Originating Depository Financial Institution designated by *ECHO* on behalf of which debit and credit transactions are submitted to the ACH Network in conjunction with Merchant Services.
  - 1.15 "Original Agreement" – the PDF file of the Agreement identified by the footer information maintained by *ECHO*'s contracts administration department.
  - 1.16 "Payment Network" – means the procedures and systems used to settle and process certain financial transactions such as Discover Network<sup>®</sup>.
  - 1.17 "POS" – means point of sale.
  - 1.18 "Return" - a Checkwriter transaction that, subsequent to submission to Settlement, was returned unpaid by either the Checkwriter's bank, or the ACH Network.
  - 1.19 "Sales Draft" – for credit card, Merchant's record of a Cardholder purchase.
  - 1.20 "Settlement" - the movement of electronic information into and out of the ACH Network that results in the debiting or crediting of funds to designated bank accounts.
  - 1.21 "Transaction Fee"
    - 1.19.1 for credit card services means the fee charged for each transmission initiated from Merchant's terminal to *ECHO*.
    - 1.19.2 for check services means the per transaction fee charged to Merchant for each Check Submitted by Merchant.
  - 1.22 "User's Guide" means the version of the documents issued to merchant detailing the Merchant Services and the conditions the Merchant must comply with in effect at the time this Agreement is executed and as amended and modified by *ECHO* from time to time.
  - 1.23 "Visa" and "MC" – Visa U.S.A. and MasterCard International.
2. AMENDMENTS AND MODIFICATIONS TO AGREEMENT AND USER'S GUIDE: Any amendment to this Agreement must be in writing and signed by all parties to this Agreement. Merchant agrees that the User's Guide may be amended and modified by Bank and/or *ECHO* from time to time. Any material amendments and modifications shall be signed by Bank and/or *ECHO* and delivered to Merchant, in writing, and shall become effective on the day of receipt by Merchant. Submission of a credit card transaction, debit card transaction or a Check by Merchant for determination of eligibility for approval hereunder on or after the effective date of any such amendment or modification shall constitute Merchant's acceptance of, and agreement to, such amendment or modification.
3. TERMINATION OF AGREEMENT: This agreement is for an initial term as set forth in Application, after which it will automatically renew for one (1) year periods. This agreement may be terminated by either party upon written notice to the other, such termination to become effective on the date specified by such notice. If Merchant terminates agreement pursuant to this section, in order to compensate *ECHO* for lost revenue, Merchant agrees to pay as liquidated damages an amount calculated by multiplying the average monthly fees (net of Association interchange, assessments and fines) from the prior six months by the number of months remaining in the contract term. All of Bank's and *ECHO*'s obligations will end upon termination of the Agreement. Notwithstanding anything to the contrary contained herein, in the event of any termination of this Agreement, the obligation of Merchant under this Agreement for fees, fines, expenses or other obligations incurred prior to the effective date of termination, and the obligations of Merchant under this Agreement for expenses or other liabilities arising from or relating to acts or omissions which occurred prior to the effective date of termination, shall survive the termination of this Agreement. No usage of Merchant Services by Merchant for a sixty (60) day Period may be considered, by Bank and/or *ECHO*, as Merchant's voluntary termination of this Agreement. Merchant is then subject to requalification for continuation of Merchant Services.
  - 3.1 With respect to check services, all obligations of Merchant with respect to *ECHO* fees payable on Checkwriter checks submitted to *ECHO* before the termination notice date but collected after the date of notice of termination shall survive the termination of this Agreement. *ECHO* shall have the obligation to reimburse Merchant for eligible Checks submitted during the term of the Agreement, however, at its sole discretion; *ECHO* may delay reimbursement(s) of eligible Checks to Merchant for sixty (60) days from the scheduled reimbursement date of such eligible Checks. *ECHO* shall have the right to pursue collection of all collection items for ninety (90) days following termination at which time *ECHO* shall cease its collection efforts and return uncollected collection items to Merchant.
  - 3.2 With respect to credit card transactions, all obligations of Merchant with respect to Sales Drafts accepted by Bank and or *ECHO* prior to the effective date of termination shall survive such termination. Merchant specifically agrees to maintain funds on deposit in Merchant Account for a reasonable time, based upon cardholder and Card issuer Chargeback rights following termination, an amount sufficient to cover all Chargebacks or other costs incurred by Bank and/or *ECHO* pursuant to this Agreement.
  - 3.3 Merchant will immediately stop using all program marks and return to *ECHO* or destroy (at *ECHO*'s sole option) all materials bearing any of the program marks.
4. HEADINGS: The headings listed after each section number in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.
5. NOTICE: Any notice required or permitted hereunder shall be in writing and shall be deemed given when deposited in the United States mail, or similar private mail carrier, postage prepaid, addressed to the respective parties at the addresses set forth below, or at such other address as the receiving party may have provided by notice to the other.
6. ASSIGNMENT: Either party may assign the rights and obligations under this Agreement to any affiliate, parent, subsidiary, the surviving corporation with or into which that party may merge or consolidate or an entity to which that party transfers all or substantially all of its business and assets. This Agreement may not be assigned either voluntarily or by operation of law without the prior written consent. Subject to the foregoing, all provisions contained in this Agreement shall extend to and be binding upon the parties hereto or their respective successors and permitted assigns.
7. NO WAIVER: Any waiver, permit, consent or approval by any party to this Agreement of any breach of any provision, condition, or covenant of this Agreement or the User's Guide must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of this Agreement or the User's Guide. Any failure or delay on the part of any party to this Agreement in exercising any power, right or privilege under this Agreement or the User's Guide shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

8. **CHOICE OF LAW: JURISDICTION:** The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in California and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California. This Agreement will be governed by California law, without regard to its conflicts-of-law principles, and applicable federal law. The parties hereby consent to the exclusive jurisdiction and venue for any action relating to the subject matter of this Agreement in California Superior Court in Santa Clara County, California and/or United States District Court for the Northern District of California. The parties consent to the jurisdiction of such courts and agree that process may be served in the manner allowed by the laws of the State of California or United States federal law. **ENTIRE AGREEMENT:** This Agreement, including the fee structure and any exhibits, constitutes a fully integrated agreement and sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and all prior or contemporaneous negotiations, conversations, discussions, correspondence, memorandums and agreements between the parties concerning the subject matter are merged herein.
9. **JURY WAIVER:** In the event any controversy or claim between or among the parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each party hereby waives its respective right to trial by jury of such controversy or claim. In addition, any party may elect to have all decisions of fact and law determined by a referee appointed by the court in accordance with applicable state reference procedures. Judgment upon any award rendered shall be entered in the court in which any such reference proceeding was commenced.
10. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY:**
  - 11.1 **MERCHANT AGREES AND ACKNOWLEDGES THAT NEITHER ECHO, BANK NOR THE ODFI, AS APPLICABLE SHALL HAVE LIABILITY, EITHER IN TORT, CONTRACT OR IN COMBINATION THEREOF, FOR CLAIMS ARISING FROM TRANSACTIONS PROCESSED UNDER THIS AGREEMENT EXCEPT IN THE CASE OF GROSS OR WILLFUL MISCONDUCT ON THE PART OF ECHO, BANK OR ODFI. ANY SUCH CLAIMS ARE SUBJECT TO LIMITATIONS SET FORTH BELOW AND IN NO EVENT SHALL ECHO, BANK OR ODFI BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES OR LOST BUSINESS OPPORTUNITIES.**
  - 11.2 **THE LIABILITY, IF ANY, OF ECHO AND/OR BANK, UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE DIFFERENCE BETWEEN (I) THE AMOUNT OF FEES PAID BY MERCHANT TO ECHO AND/OR BANK DURING THE MONTH IN WHICH THE TRANSACTION OUT OF WHICH THE LIABILITY AROSE OCCURRED, AND (II) ASSESSMENTS, CHARGEBACKS, RETURNS AND ANY OFFSETS AUTHORIZED UNDER THIS AGREEMENT AGAINST SUCH FEES WHICH AROSE DURING SUCH MONTH. IN THE EVENT MORE THAN ONE MONTH WAS INVOLVED, THE AGGREGATE AMOUNT OF ECHO AND/OR BANK'S LIABILITY SHALL NOT EXCEED THE LOWEST AMOUNT DETERMINED IN ACCORD WITH THE FOREGOING CALCULATION FOR ANY ONE MONTH INVOLVED.**
  - 11.3 **EXCEPT AS EXPRESSLY PROVIDED HEREIN, ECHO MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. ECHO AND BANK DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. ECHO AND BANK FURTHER DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. ECHO AND BANK FURTHER EXPRESSLY DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED ACCESS OF FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND ECHO OR BANK'S REASONABLE CONTROL.**
11. **DUE ORGANIZATION:** Each party to this Agreement is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on the business.
12. **AUTHORIZATION, VALIDITY and ENFORCEABILITY:** The execution, delivery and performance of this Agreement executed by each party to this Agreement is within that party's powers, has been duly authorized and constitutes a valid and binding obligation of the that party , enforceable in accordance with its terms.
13. **COMPLIANCE WITH APPLICABLE LAWS:** Each party to this Agreement has complied with all licensing, permit and fictitious name requirements necessary to lawfully conduct the business to which it is engaged and with all laws and regulations applicable to the sales of the Goods and Services described in the type of business therein.
14. **ECHO PROPRIETARY INFORMATION:** Merchant agrees that this Agreement, the appropriate User's Guide(s), the process utilized by ECHO for providing Merchant Services, and all written communications concerning Merchant Services hereunder are confidential, the proprietary information of ECHO, and trade secrets of ECHO. Merchant agrees that neither it nor any of its employees, agents, representatives, or independent contractors will disclose any of ECHO's confidential, proprietary information or trade secrets to any person or entity that is not a party to this Agreement without the express written consent of ECHO.
15. **COMPLIANCE:** ECHO agrees to comply with NACHA, all card association, debit network, state and federal rules and regulations and shall be responsible for timely and accurate implementation of all regulatory changes applicable to Merchant Services. ECHO agrees it will strictly comply with all requirements set forth in this agreement.
16. **MERCHANT COMPLIANCE WITH AGREEMENT AND USER'S GUIDES:** Merchant agrees that it will strictly comply with requirements set forth in this Agreement and the User's Guides which are incorporated herein by this reference.
17. **MERCHANT COMPLIANCE WITH FEDERAL AND STATE LAW:** Merchant agrees that it will strictly comply with requirements set forth in this Agreement and all applicable state, federal and local laws. Merchant agrees that it will not be engaged in internet gambling itself or in the processing of internet gambling payments of any kind for any party.
18. **FORCE MAJEURE:** If performance by any party to this Agreement or its affiliates, of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of, inter alia, labor disputes, strikes, acts of God, fire, floods, lightning, earthquakes, severe weather, utility or communications failures, failures of the ODFI or the ACH network, computer associated outages or delay in receiving electronic data, war, civil commotion, or any law, order or regulation, etc. having legal effect, then that party and its affiliates shall be excused from its performance hereunder to the extent of the prevention, restriction, delay or interference.
19. **FURTHER ASSURANCES:** At any time or from time to time upon the request of Bank or ECHO, Merchant will execute and deliver such further documents and do such other acts as Bank or ECHO may reasonably request in order to effectuate fully the purposes of this Agreement.
20. **JOINT AND SEVERAL:** Should more than one person sign this Agreement as Merchant, the obligations of each signer shall be joint and several.
21. **SEVERABILITY:** Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule or regulation, such determination will not affect the validity or enforceability of any other provision of this Agreement.
22. **INCONSISTENT LANGUAGE:** The parties agree that this Agreement is an exact copy of the Original Agreement. In the event that there is an inconsistency in the language in the final executed Agreement and Original Agreement, the duties and obligations of the parties shall be determined by the language set forth in the Original Agreement.
23. **RIGHTS CUMULATIVE:** All rights and remedies existing in this Agreement and the User's Guide are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.
24. **POS EQUIPMENT REQUIREMENT:** For POS services, Merchant agrees to utilize only equipment approved by ECHO for use in conjunction with Services.
25. **FAILURE OF POS EQUIPMENT:** Merchant agrees that Bank or ECHO shall not be responsible for damages incurred by Merchant or any third party as a result of mechanical failure of POS equipment or as a result of a third party's failure to provide POS equipment to Merchant in a timely manner.
26. **WARRANTY OF APPLICATION:** In connection with this Agreement, Merchant has executed and delivered an Application to Bank and/or ECHO containing, among other things, information describing the nature of Merchant's business and the individuals who are the principal owners of Merchant. Merchant warrants to Bank and/or ECHO that all information accompanying financial data (personal or business) and statements contained in such Application are true, correct and complete. Merchant further agrees to notify Bank and/or ECHO promptly of any and all changes which may occur from time to time regarding any information in such Application, including but not limited to, the identity of principal owners, types of Goods and Services provided, how sales are completed (i.e. by telephone, mail order, via the Internet or in person at the Merchant's place of business), or change in geographical location. Bank and/or ECHO reserve the right to immediately terminate this Agreement based upon the nature of changes reported by Merchant or discovered by Bank or ECHO. Merchant and principal owner(s) identified on approved application shall be jointly and severally liable to Bank and ECHO for any and all loss, costs and expense suffered or incurred by Bank or ECHO, resulting from incorrect or incomplete information contained in Application or Merchant's failure to report changes to Bank or ECHO in accordance herewith. If, in Bank's or ECHO's judgment, a significant discrepancy exists between Merchant's actual business activity and the business activity described in Merchant's Application, Bank or ECHO may immediately and without notice freeze all funds in Merchant

Account, chargeback all Returns to the Merchant, and/or suspend Services until Bank or ECHO, in its sole opinion, feels confident in releasing funds and/or allowing subsequent Services. Bank or ECHO may impose a monthly administration fee on such frozen accounts.

27. RIGHT TO INFORMATION/AUDIT: From time to time, Bank or ECHO may (a) obtain credit information and/or credit reports on Merchant and/or principals from others (such as lenders and credit reporting agencies); (b) request financial statements and tax returns from Merchant and/or principals; (c) furnish information on Bank's or ECHO's experience with Merchant to others seeking such information, and (d) examine and verify, at any reasonable time, all the records of Merchant pertaining to Sales Drafts and Credit Vouchers transmitted to and processed by Bank or ECHO. Merchant further agrees that Bank and ECHO can share Merchant Account information with its agents, and third parties engaged in the performance of this agreement.
28. ON-GOING RESPONSIBILITY: In instances where Merchant acquires a business currently processing with Bank or ECHO, Merchant agrees to assume responsibility for previous owner's billing, Chargebacks and other Merchant Services related obligations to Bank and ECHO.
29. RESERVE ACCOUNT: As a condition of providing continued Services, Bank or ECHO may require Merchant to fund and maintain an interest bearing deposit account (the "Reserve Account"), with Bank as security against any costs, losses or expenses incurred by Bank and ECHO in connection with the provision of Services to Merchant. Merchant hereby grants both Bank and ECHO a lien on and security interest in such Reserve Account, all amounts, funds, cash and other items therein and all proceeds thereof, to secure the obligations of Merchant to Bank and ECHO hereunder. Bank or ECHO may enforce such security interest without notice or demand, and Bank will comply with instructions originated by ECHO directing disposition of the funds in the Reserve Account without further consent by Merchant. Bank may also comply with instructions directing the disposition of amounts, funds, cash and other items in the Reserve Account originated by Merchant or its authorized representatives until such time as ECHO delivers a written notice to Bank that ECHO is thereby exercising exclusive control over the Account. Such notice is referred to herein as the "Notice of Exclusive Control." After Bank receives a Notice of Exclusive Control and has had reasonable opportunity to comply, it will cease complying with instructions concerning the Reserve Account or amounts, funds, cash and other items on deposit therein originated by Merchant or its representatives. Merchant's obligation to maintain such Reserve Account shall survive the termination of this Agreement by a period of one hundred, eighty (180) days (or longer depending on Merchant's product and business practices) during which time the security interest of Bank and ECHO shall continue.
30. GUARANTORS: Any individual(s), by execution as guarantor, hereby unconditionally and irrevocably guarantees the full and faithful performance of Merchant of each and all its duties and obligations herein set forth, whether prior or subsequent to termination of this Agreement.
31. INDEMNIFICATION: Each party to this Agreement shall indemnify and the other parties, its affiliates, officers, directors and employees, harmless from and against all claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards, and expenses (including reasonable attorneys' fees, expenses, arbitration costs and court costs) incurred by Bank, ECHO, ODFI, VISA, MasterCard, Discover Network<sup>®</sup>, any other financial service card organizations, Networks, or its affiliates, officers, directors and employees, arising out of, related to or in connection with a) any breach by any party of any of its duties or obligations under this Agreement, or b) credit Card, debit Card, or Check transaction occurring at that parties location (including any Chargebacks), c) any act or omission by any party or any of that parties employees in connection with any credit Card, debit Card or Check transaction at the Merchant's location (including, but not limited to fraudulent activity), d) Merchant's violation of the MasterCard merchant rules manual, as amended from time to time (fully incorporated herein by reference), the VISA rules for VISA merchants, as amended from time to time (fully incorporated herein by reference), the payment card industry data security standard (PCI) and CISP (fully incorporated herein by reference), Discover Network<sup>®</sup> rules (fully incorporated herein by reference), NACHA rules (fully incorporated herein by reference), any other VISA, MasterCard or Network rules and regulations as amended from time to time, or any applicable state, federal and/or municipal laws or ordinances, and e) any return of goods, price adjustments or other disputes with, or claims by a customer (whether or not such dispute or claim is valid). Merchant is responsible for its actions in honoring or refusing credit Cards, debit Cards or Checks and in retaining credit Cards, debit Cards, and Checks and all information contained therein in accordance with this Agreement and all of the laws, rules and regulations set forth above and agrees to indemnify Bank and ECHO harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof. Each party to this Agreement agrees to indemnify all other parties to the Agreement against all reasonable attorney's fees, expenses and court costs incurred in enforcing this Agreement or in defending any claim brought by any party against any other party (unless that party prevails on said claim after the exhaustion of all appellate remedies). This indemnification shall survive the termination of this Agreement.
32. ODFI INDEMNIFICATION: ECHO and Merchant hereby acknowledge and agree that ODFI's role, in providing the services contemplated herein, is limited to providing access to the ACH Network and, in certain circumstances, serving as a depository financial institution and that ODFI has no control over the origination of any ACH entry nor is ODFI responsible for providing the other services set forth in this Agreement. ECHO and Merchant hereby agree to indemnify and hold harmless ODFI from and against all claims, actions, losses and expenses, including attorneys' fees and costs arising from, related to, or in connection with, any error or omission or alleged error or omission of ECHO and/or Merchant or for any breach by ECHO and/or Merchant of any of the terms of this Agreement. These indemnifications shall survive the termination of this Agreement.
33. RIGHT TO SETOFF: Merchant hereby acknowledges that ECHO shall have a right of setoff against any and all fees or other funds owed ECHO by Merchant under this agreement.
34. MERCHANT ACCOUNT: Merchant agrees to immediately reimburse ECHO for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by Bank. Merchant also agrees to authorize Bank or ECHO to freeze all funds in Merchant Account, without prior notice to Merchant, if either Bank or ECHO in its sole opinion deems itself at risk relative to any ECHO service performed under this Agreement. Merchant agrees to execute any document required by Bank or ECHO and/or Merchant's depository bank in order to effectuate the ACH credits and debits contemplated hereunder. This authorization to initiate ACH credits and debits shall survive termination of this Agreement for a period of one hundred eighty (180) days.
35. COSTS AND EXPENSES: Merchant shall reimburse, upon demand, Bank and ECHO for all costs and expenses, including attorneys' fees expended or incurred by Bank or ECHO in any arbitration, mediation, judicial reference, legal action, or otherwise in connection with (a) the negotiation, preparation, amendment, interpretation and enforcement of this Agreement and/or the User's Guide, (b) collecting any sum which becomes due Bank or ECHO hereunder, (c) any proceeding for declaratory relief, any counterclaim to any proceeding, or any appeal, or (d) the protection, preservation or enforcement of any rights of Bank or ECHO.
36. COMPENSATION PAYABLE TO ECHO: Merchant agrees (i) to compensate ECHO, as set forth in this Agreement, (ii) that ECHO may collect its fees by netting against the proceeds of Merchant's processing activity, (iii) that any unfulfilled Monthly Minimum Fee obligation will be debited from Merchant Account before the fifth day of the following month, and (iv) the fees set forth in this Agreement are subject to modification by Amendment.
37. CONFIDENTIALITY.
  - 38.1 ECHO'S OBLIGATION: ECHO shall not disclose confidential information relating to Merchant's sales other than to financial institutions, Networks and third parties that need the information for a purpose relating to the Agreement. ECHO shall have no obligation, however, to keep confidential information, which becomes public other than as a result of its disclosure by ECHO. The obligations of this Section 38.1 shall survive termination of the Agreement.
  - 38.2 MERCHANT'S OBLIGATION: Except to the extent specifically required by the operating rules of VISA, MasterCard, Discover Network<sup>®</sup>, or NACHA or this Agreement and with prior written consent of ECHO, Merchant shall not disclose any information relating to ECHO, any Network, any financial institution, any POS Transaction any Cardholder or any Checkwriter to any person or entity other than ECHO, ECHO's employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information for a purpose relating to this Agreement (such as responding to a Cardholder inquiry, resolving a Cardholder dispute, or investigating a possible processing error), or as otherwise specifically required by law. Merchant shall treat all documents provided by ECHO, any financial institution or any Network relating to this Agreement as confidential and proprietary and protect them with the same degree of care as Merchant would protect its own confidential and proprietary information, and not less than reasonable care. The obligations of this Section 38.2 will survive termination of this Agreement.
38. BREACH OF SECURITY: Merchant agrees that any loss incurred as a result of any party gaining access to Merchant's bank account or ECHO's website using information which that party was not authorized to obtain or using such information in a manner not permitted by this Agreement (including but not limited to improper or unauthorized use of the Merchant's ID number and PIN) shall be the responsibility of Merchant and Merchant shall indemnify Bank and ECHO for any loss Bank or ECHO sustains unless the party obtained the information through a breach of security of ECHO's website without the participation in any way of Merchant.
39. PRESS RELEASE: Merchant acknowledges that ECHO may issue a press release upon execution of this Agreement.
40. TAXES: Merchant shall promptly pay when due and shall hold Bank and ECHO harmless from, any and all liability or expense relating to the payment of federal, state, and local taxes (other than taxes based in whole or in part upon income attributable to ECHO).

41. **MERCHANT DISPUTE DEADLINE:** Merchant is responsible for the timely reconciliation of all issues related to Services provided under this Agreement. Merchant must submit any dispute to *ECHO*, in writing within sixty (60) days of the initial posting of the disputed item to the Merchant Account or appearance of the disputed item on the Merchant's statement.
42. **PCI/CISP COMPLIANCE:** Merchant is required to implement and maintain compliance with the provisions of the payment card industry data security standard (PCI) which is also known as the cardholder information security program (CISP).
43. **ALTERATIONS:** Any alteration, strikeover, modification or addenda to the preprinted text or line entries of this Merchant Bank Card/Check Services Application shall be of no effect whatsoever, Bank and/or *ECHO*, at its sole discretion, may render this Application invalid.
44. **EXCLUSIVITY:** Merchant will tender all credit card transactions to *ECHO* according to our formats and procedures. You will not use the services of any other bank, corporation, entity, or person other than *ECHO* for authorization and processing of MasterCard and VISA transactions throughout the term of this Agreement.
45. **COUNTERPARTS:** This Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.