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TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among **The City of Fort Lauderdale, NOVA Information Systems, Inc.** and **Wachovia Bank, National Association**. The TOS and the other portions of the Agreement govern the Merchant's participation in the Program.

Section A – Definitions

1) **DEFINITIONS.**
   a) **ACH**: Automated Clearing House.
   b) **Agreement**: The TOS, any Addendum, the Merchant Application, the Merchant Operating Guide, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.
   c) **American Express**: The American Express Company.
   d) **Authorization**: Merchant's request for approval of a Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.
   e) **Authorization Code**: The code sent by an Issuer in response to an Authorization request.
   f) **Automated Clearing House (ACH)**: The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.
   g) **Bankruptcy Proceeding**: With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.
   h) **Card Not Present**: The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.
   i) **Card Present**: The processing environment where the Payment Device is physically presented to the Merchant by the Cardholder as the form of payment at the time of the Transaction.
   j) **Cardholder**: (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

k) **Chargeback**: A sales Transaction disputed by a Cardholder or Issuer pursuant to the Payment Network Regulations.

l) **Confidential Information**: All information or items proprietary to NOVA or Member, of which the Merchant obtains knowledge or access as a result of the Merchant's relationship with NOVA and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, "know-how," marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.

m) **Convenience Fee**. Any fee or charge for the use of a Payment Device in a Transaction.

n) **Credit Card**: A: (i) Visa card or other card bearing the symbol(s) of Visa U.S.A., Inc. or Visa International, Inc. (including Visa Gold cards); (ii) a MasterCard card or other card bearing the symbol(s) of MasterCard International Incorporated (including MasterCard Gold cards); or (iii) any card bearing the symbol of any other Credit Card Association.

o) **Credit Card Associations**: (i) Visa U.S.A., Inc.; (ii) MasterCard International Incorporated; (iii) American Express; (iv) Discover; (v) Diners; (vi) JCB; and (vii) any other organization or association that hereafter contracts with NOVA and/or Member to authorize, capture, and/or settle Transactions effected with Credit Cards issued or sponsored by such organization or association, and any successor organization or association to any of the foregoing.

p) **Credit Card Rules**: All applicable rules and operating regulations of the Credit Card Associations, and all rules, operating regulations, and guidelines for Credit Card Transactions issued by NOVA from time to time, including, without limitation, all amendments, changes and revisions made thereto from time to time.

q) **Credit Transaction Receipt**: A document, in paper or electronic form, evidencing a Merchant's refund or price adjustment to be credited to a Cardholder account.

r) **Debit Card**: A card with a magnetic stripe bearing the symbol(s) of one or more EFT Networks which enables the holder to make a payment by authorizing an electronic debit to the Cardholder's designated deposit account, including PIN-based, online debit Transactions.

s) **Debit Card Rules**: All applicable rules and operating regulations of the EFT Networks, and all rules, operating regulations, and guidelines for Debit Card Transactions issued by NOVA from time to time, including, without limitation, all amendments, changes, and revisions made thereto from time to time.

t) **Demand Deposit Account (DDA)**: The commercial checking account at a financial institution acceptable to NOVA and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement.

u) **Diners**: Diners Club International Ltd.

v) **Discover**: Discover Financial Services, Inc.

w) **EBT Card**: A card utilized for electronic benefits transfers.

x) **Effective Date**: The date set forth in the signature block of NOVA herein.

y) **EFT Networks**: (i) Interlink Network Inc., Maestro U.S.A., Inc., Visa, and MasterCard; and (ii) any other organization or association that hereafter authorizes NOVA and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.

z) **Electronic Check Service Association**: Visa, NACHA, and any other organization or association hereafter designated as an Electronic Check Service Association by NOVA from time to time.

aa) **Electronic Check Service Rules**: All applicable rules and operating regulations of the Electronic Check Service Associations, and all rules, operating regulations, and guidelines for Electronic

Check Service Transactions issued by NOVA from time to time, including without limitation, all amendments, changes, and revisions made thereto from time to time.

bb) **Electronic Commerce Transaction**: A Transaction that occurs when the Cardholder uses the Internet to make a payment to a Merchant or a Merchant uses the Internet to submit the Transaction for processing to NOVA.

cc) **Electronic Gift Cards (EGC)**: A special card purchased by a customer that is redeemable for in-store merchandise or services.

dd) **Interchange**: The clearing and settlement system for Visa and MasterCard Credit Cards and Debit Cards where data is exchanged between NOVA and the Issuer.

ee) **Issuer**: The financial institution or other entity that issued the Credit Card or Debit Card to the Cardholder.

ff) **JCB**: JCB International Co., Ltd.

gg) **Laws**: All applicable state, federal and local laws, rules, regulations, orders and decrees, as amended from time to time.

hh) **Loyalty Cards**: A special card given to customers who are frequent shoppers of an establishment pursuant to which the customer may receive a discount or other reward.

ii) **Mail Order/Telephone Order (MO/TO) Transaction**: For MO, a Transaction that occurs when the Cardholder uses the mail to make a payment to a Merchant and for TO, a Transaction that occurs when the Cardholder uses a telephone to make a payment to a Merchant.

jj) **MasterCard**: MasterCard International Incorporated.

kk) **Member**: Wachovia Bank, National Association. The Member may be changed by NOVA at any time.

ll) **Merchant (or you)**: The City of Fort Lauderdale, and the affiliated entities listed on Schedule B attached hereto, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties, and Merchant may add additional accounts or locations that are owned by Merchant without the need to execute a new Schedule B.

mm) **Merchant Application**: Any document containing information regarding Merchant's business that is submitted to NOVA and Member in connection with Merchant's application for processing services, including documents submitted by Merchant as a part of the bid process, if applicable.

nn) **Merchant Operating Guide**: The operating manual provided by NOVA to its Merchants. The Merchant Operating Guide may be amended from time to time by NOVA in its sole discretion.

oo) **National Automated Clearing House Association (NACHA)**: The national association that establishes standards, rules, and procedures to enable depository financial institutions that are members of regional ACH associations to exchange electronic payments.

pp) **NOVA**: As applicable, NOVA Information Systems, Inc., a Georgia corporation, and any affiliate or subsidiary of NOVA Information Systems, Inc. that provides processing services to a Merchant related to Transactions. NOVA is a registered member service provider of each Member.

qq) **Payment Device**: Any device used for the purpose of obtaining credit or debiting a designated account including a Credit Card, Debit Card, and any other financial transaction device, including an Electronic Gift Card, check, (whether converted into electronic form or used as a source document for an electronic fund transfer), EBT Card, stored value card, "smart" card, or other device created to be used for the purpose of obtaining credit or debiting a designated account, that is now or hereafter effected through Transactions with Merchants.

rr) **Payment Network**: Any Credit Card Association, EFT Network, Electronic Check Service Association, governmental agency or authority, and any other entity or association that issues or sponsors a Payment Device.

ss) **Payment Network Regulations**: Individually and collectively, as the context may dictate, the Credit Card Rules, the Debit Card Rules, and/or the Electronic Check Service Rules.

tt) **Person**: Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.

uu) **POS Device**: A terminal, software or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by NOVA and the applicable Payment Network.

vv) **Prepaid Cards**: A reloadable card having available funds to the Cardholder paid for in advance.

ww) **Program**: The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.

xx) **Reserve Account**: The account established pursuant to Section (B)(6).

yy) **Reserve Amount**: The amount established pursuant to the calculation set forth in Section (B)(6).

zz) **Reserve Event**: The events designated in Section (B)(6).

aaa) **Retrieval Request**: A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder's signed Transaction Receipt within a specified period of time.

bbb) **TOS**: These Terms of Service and all additions to, amendments, and modifications of, and all replacements to the TOS, as applicable.

ccc) **Transaction**: Any action by a Cardholder using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, or return).

ddd) **Transaction Receipt**: The paper or electronic record evidencing the purchase of goods or services from, or payment to, a Merchant by a Cardholder using a Payment Device.

eee) **Value Added Services**: Any product or service provided by a third party unaffiliated with NOVA or Member to assist Merchant in processing Transactions, including without limitation, Internet payment gateways, integrated POS Devices, inventory management and accounting tools, loyalty programs, fraud prevention programs, and any other product or service that participates, directly or indirectly, in the flow of Transaction data.

fff) **Visa**: Visa U.S.A., Inc.

2) **RULES OF CONSTRUCTION**. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the TOS. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day", unless specifically stated otherwise. In the event of a conflict between the terms of Section B - General Provisions, and any subsequent section of the TOS, the terms of the subsequent section shall prevail.

Section B - General Provisions

3) **ACCEPTANCE OF PAYMENT DEVICES**. Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as payment for goods and services. The terms and conditions for the acceptance of Credit Cards are set forth in the TOS. The terms and conditions for the acceptance of any Payment Devices or methods other than Credit Cards shall be set forth in one or more addenda (each an "Addendum"), which shall incorporate the TOS by reference. Each Addendum shall be governed by the TOS, as well as by the terms set forth in the Addendum.

4) **DEPOSIT OF TRANSACTION RECEIPTS**.

a) **Funds**.

i) **Deposits**. You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, NOVA, and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to NOVA and Member for all amounts

owed under the agreement arises out of the same transaction as NOVA's and Member's obligation to deposit funds to the DDA.

ii) **Provisional Credit**. All Transaction Receipts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or NOVA may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and NOVA's sole discretion.

iii) **Original Transaction Receipts**. Under no circumstances will Member or NOVA be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and NOVA.

b) **Chargebacks**. You are fully liable to NOVA and Member for all Transactions returned to NOVA or Member for whatever reason including all Chargebacks. You will pay NOVA and Member for all Chargebacks. You agree to accept for Chargeback, and will be liable to Member and NOVA in the amount of any Transaction for which the Cardholder or Issuer disputes the validity of the Transaction for any reason. You authorize NOVA and Member to offset from funds due the Merchant for Transaction activity and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with NOVA and Member in complying with the Payment Network Regulations regarding Chargebacks.

5) **DEMAND DEPOSIT ACCOUNT (DDA).**

a) **Establishment and Authority**. You will establish and maintain with Member (or with an ACH receiving depository institution acceptable to Member) one or more DDAs to facilitate payment for Transactions. You will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under this Agreement. You irrevocably authorize NOVA and Member to debit the DDA for Chargebacks in accordance with the Payment Network Regulations and for returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You also authorize NOVA's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. You must obtain prior consent from Member and NOVA to change the DDA. If you do not get that consent, NOVA or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. NOVA and Member have the right to rely upon written instructions submitted by you to request changes to the DDA. You may request from NOVA written confirmation of NOVA's and Member's consent to change the DDA.

b) **DDA**. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. NOVA and Member may delay for a reasonable time crediting the DDA with funds evidenced by submitted Transaction Receipts in order to investigate fraudulent or suspicious activity, and any such delay will be no longer than necessary for such investigation. You authorize Member or NOVA to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at NOVA's direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and NOVA and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.

c) **Asserted Errors**. It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from NOVA, any Payment Network, and any third party vendors

with the statements Merchant receives for Merchant's DDA. You must promptly examine all statements relating to the DDA and immediately notify NOVA and Member in writing of any errors in the statement Merchant received from NOVA. 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 NOVA within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to NOVA within said thirty (30) days, NOVA and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or NOVA for any loss or expense relating to any asserted error for sixty (60) days immediately following NOVA's receipt of your written notice. During that sixty (60) day period, NOVA will be entitled to investigate the asserted error, and you shall not incur any cost or expense in connection with the asserted error without notifying NOVA.

d) **Depository Institution**. Merchant authorizes its depository institution to grant NOVA and/or Member access to any and all information or records regarding the DDA. You will not bring any actions or assert claims against NOVA or Member for any debits, credits or holds they take against the DDA or Reserve Account pursuant to the Agreement. You also will not bring any actions or assert claims against the depository institution at which you maintain your DDA for acting in accordance with any instruction from NOVA and/or Member regarding the DDA pursuant to the Agreement.

e) **ACH Authorization**. You authorize Member, NOVA, and their respective vendors and agents to initiate debit/credit entries to the DDA and the Reserve Account, all in accordance with the Agreement. This authorization will remain in effect after termination of the Agreement until all of your obligations to NOVA and Member have been paid in full. In the event you change the DDA, this authorization will apply to the new account and you shall provide NOVA and Member such information regarding the new DDA as they deem necessary. It may take NOVA up to ten (10) business days after NOVA's receipt of a written notice from you to reflect in its system any change to your DDA.

6) **RESERVE ACCOUNT, RECOUPMENT, AND SET-OFF.**

a) **Reserve Account.**

i) **Establishment**. NOVA may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and NOVA for any and all amounts owed by you. Member and NOVA shall have sole control of the Reserve Account. As of the execution of this Agreement, NOVA has elected not to impose a Reserve Account, but retains the right to do so upon the occurrence of a Reserve Event.

ii) **Reserve Amount**. The Reserve Amount is equal to the aggregate dollar value of: [(average % credits to processing volume during the same period + average % Chargebacks to processing volume during the same period) multiplied by four] multiplied by [average monthly processing volume] plus [one month's average fees] plus [# days delayed delivery multiplied by the average day's processing volume]. For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder's Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, NOVA will determine, in its sole discretion, the applicable period considering factors such as Merchant's sales growth and seasonality.

iii) **Reserve Event**. The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1%) of Merchant's average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1% of the total dollar value of incoming items to NOVA, (c) NOVA's reasonable belief that Merchant has accepted deposits but has not delivered the goods or

services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e) termination of the Agreement for any reason, (f) nonpayment of amounts owed to NOVA or Member, and (g) the occurrence of an adverse change in your financial condition.

iv) **Funding**. Member and NOVA may fund the Reserve Account up to the Reserve Amount by any one or more of the following means.
   (1) Member and NOVA may require you to deposit into the Reserve Account funds in an amount determined by NOVA;
   (2) Member and NOVA may debit the DDA in any amount;
   (3) Member and NOVA may deposit into the Reserve Account funds they would otherwise be obligated to pay you.

v) **Use of Funds in Reserve Account**. Member or NOVA may, without notice to you, apply funds in the Reserve Account against any outstanding amounts you owe or future amounts you will owe under the Agreement or any other agreement between you and Member or NOVA. Also, Member or NOVA may debit the Reserve Account to exercise their rights under the Agreement including, without limitation, their rights of set-off and recoupment to collect any amounts due to Member or NOVA. Further, you agree that NOVA or Member may be required to send funds in a Reserve Account to a third party in response to a tax levy or other court order.

vi) **Termination of Reserve Account**. Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.

b) **Recoupment and Set-off**. Member and NOVA have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to NOVA and Member, you must create or maintain the Reserve Account as required by NOVA and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to NOVA and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.

c) **Remedies Cumulative**. The rights conferred upon Member and NOVA in this section are not intended to be exclusive of each other or of any other rights and remedies of Member and NOVA under the Agreement, at law or in equity. Rather, each and every right of Member and NOVA under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

7) **FEES; OTHER AMOUNTS OWED; TAXES.**

a) **Fees**. You will pay Member and NOVA fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees. Such fees will be calculated and debited from the DDA once each month for the previous month's activity, or will be deducted from the funds due you under the Agreement. Debits for fees will occur by the tenth (10^{th}) business day of the following month. In addition, you will pay NOVA at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement will not be amended by NOVA for the Initial Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.

b) **Other Amounts Owed**. You will immediately pay NOVA or Member any amount incurred by NOVA or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of your Transaction processing), and any other payments due under the Agreement. NOVA or Member may debit these amounts (including any fees outstanding for more than 120 days) from your DDA by ACH, and in the event such ACH does not fully reimburse NOVA or Member for the amount owed, you will immediately pay NOVA or Member such amount. NOVA will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.

c) **Taxes**. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If you are a tax-exempt entity, you will provide NOVA and Member with an appropriate certificate of tax exemption.

8) **ACCURACY OF INFORMATION; RESPONSIBILITY; LIMITATION OF LIABILITY; PERFORMANCE.**

a) **Accuracy of Information.** You represent and warrant to Member and NOVA that all information provided to NOVA in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is correct and complete. You must notify NOVA in writing of any changes to such information pertaining to the types and amounts of transactions you are accepting , type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by NOVA at least ten (10) business days prior to the change. You will provide any additional information requested by NOVA within a reasonable time. You will not bring any actions or assert claims against Member or NOVA arising out of any such change, whether or not reported to NOVA, or your failure to provide requested information. NOVA may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize NOVA and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon NOVA's or Member's receipt of the Merchant Application.

b) **Responsibility**. Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute between Merchant and any Cardholder or between Merchant and any third party relating to any Transaction or any breach by Merchant of any of its obligations under this Agreement. Merchant will not bring any actions or assert claims against NOVA or Member arising out of or in connection with such Transactions and Merchant breaches.

c) **Limitation of Liability**. Merchant acknowledges that NOVA and Member's fees for the services provided to Merchant are very small in relation to the funds advanced to Merchant for Transactions and consequently NOVA's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on NOVA's or Member's liability that may be provided elsewhere, any liability of NOVA and Member under the Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by you during the last three (3) months. In no event will NOVA, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.

d) **Performance**. NOVA and Member will perform all services in accordance with the Agreement. NOVA makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. NOVA and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. Neither NOVA nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of NOVA or Member and without the fault or negligence of NOVA or Member.

9) **REPRESENTATIONS AND WARRANTIES.** You represent and warrant to NOVA and Member as of the time the Agreement is effective, and reaffirm to NOVA and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:
   a) **Information**. All information provided in the Merchant Application, in the bid process if applicable, or any other document submitted to NOVA is true and complete and properly reflects the business, financial condition and officers of Merchant. NOVA has the right to rely upon written instructions submitted by you to request changes to your business information. You may request written confirmation of NOVA's consent to the changes to your business information. You will not submit Transactions for processing to NOVA or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of NOVA.
   b) **Authority to Execute**. Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by NOVA, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.
   c) **No Litigation**. 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 been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to NOVA in writing.
   d) **Transactions**. All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with NOVA.
   e) **Compliance with Laws and Regulations**. You will comply with all Laws and Payment Network Regulations.
   f) **Business Use**. You are obtaining and using the processing services from NOVA for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.

10) **AUDIT AND INFORMATION.**
   a) **Audit**. You authorize NOVA and Member to perform an audit of your business, at NOVA's or Member's expense, to confirm compliance with the Agreement. You will obtain and submit a copy of an audit from a third party acceptable to NOVA of the financial, physical security, information security, and operational facets of your business at your expense when requested by the Payment Networks or required by the Payment Network Regulations. Further, you acknowledge and agree that the Payment Networks have the right to audit your business to confirm compliance with the Payment Network Regulations.
   b) **Information**.
      i) **Authority**. You authorize NOVA and Member to make, from time to time, any business or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to NOVA.
      ii) **Financial Information**. Upon the request of either NOVA or Member, you will provide NOVA and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to NOVA and Member such other

information regarding your financial condition as NOVA and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish NOVA, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

c) **Customer Identification**. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow NOVA and Member to identify you.

11) **RESPONSIBILITY FOR ACTIONS**. You are responsible for the actions of or failure to act by your employees acting within the scope of their employment.

12) **FRAUD MONITORING**. You are solely responsible for monitoring your Transactions and the actions of your officers, directors, employees, agents, business invitees, third party vendors including Value Added Services, and those of any other Person who, with or without your consent or cooperation, obtains access to your Transactions, for fraudulent or other suspicious activity. NOVA and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.

13) **BUSINESS CONTINUITY**. Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in providing disaster recovery capability to Merchant. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. NOVA is under no duty to recreate lost Transactions.

14) **THIRD PARTIES**.

a) **Products or Services**. You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to NOVA previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service used by you is registered with the Payment Networks prior to the performance of any contracted services on your behalf. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will include in any agreement between you and any such Value Added Service provider a clause requiring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will be responsible for any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service, including but not limited to any fees, fines or penalties assessed by the Payment Networks. Neither NOVA nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither NOVA nor Member is responsible for any Transaction until NOVA receives data for the Transaction in the format required by NOVA.

b) **Use of POS Devices Provided by Others**. In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to NOVA and Member via a data processing system or network compatible with NOVA's; and (ii) to assume full responsibility for any failure of that third party to comply with applicable Laws and the Payment Network Regulations and the Agreement. Neither Member nor NOVA will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither NOVA nor Member is responsible for any Transaction until NOVA receives data for the Transaction in the format required by NOVA.

15) **TERM AND TERMINATION.**

a) **Term**. Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the Effective Date. Thereafter, the Agreement will renew for three (3) successive one (1) year terms ("Renewal Term") unless terminated as set forth below. If after the Renewal Term Merchant continues to process Transactions with NOVA, then the applicable terms of this Agreement will govern such Transaction processing.

b) **Termination**.

i) **Merchant**.

(1) The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to NOVA at least one hundred twenty (120) days prior to the expiration of the then current term.

(2) The Agreement may be terminated by you in the event of a material breach of the terms of the Agreement by Member or NOVA, provided you give Member and NOVA written notice of any alleged breach and such breach remains uncured for a period of sixty (60) days following receipt of written notice by the party you claim to be in breach of the Agreement.

(3) The Agreement may be terminated by you in the event that sufficient legislative appropriation is not available, provided that you give NOVA and Member sixty (60) days notice prior to termination.

ii) **NOVA or Member**.

(1) The Agreement may be terminated by Member or NOVA effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to you at least one hundred twenty (120) days prior to the expiration of the then current term.

(2) The Agreement may be terminated by NOVA or Member immediately upon the occurrence of one or more of the following:

(a) The garnishment or attachment of your deposit accounts with Member, the DDA, the Reserve Account, or any of your property in the possession of NOVA or Member.

(b) The assignment of your assets generally for the benefit of creditors.

(c) The commencement of a Bankruptcy Proceeding of Merchant by or against you.

(d) Any representation and warranty by the Merchant is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.

(e) Any Payment Network requires Member or NOVA to terminate this Agreement or cease processing transactions for you.

(3) The Agreement may be terminated by NOVA or Member if, after providing sixty (60) days written notice and opportunity to cure, any of the following conditions remain:

(a) The occurrence of Excessive Activity (defined in Section C(24)(c)).

(b) The acceptance of Card Not Present Transactions without proper disclosure to NOVA and Member as set forth herein.

(c) The failure to pay NOVA or Member any amount you owe NOVA or Member in accordance with the terms of the Agreement.

(d) The failure by you to perform a material obligation of this Agreement.

NOVA's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this section shall not limit any other right of NOVA or Member to terminate the Agreement expressed elsewhere.

c) **Notice of Termination**. Notice of termination by Merchant, NOVA, or Member shall be given in writing. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with NOVA may take up to thirty (30) days following NOVA's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by NOVA following termination by either Merchant or

NOVA, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) **Action Upon Termination**.

i) **Accounts.** All your obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be placed in a Reserve Account until you pay all amounts you owe NOVA or Member or amounts for which you are liable under the Agreement. You must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, and other amounts due under the Agreement for a reasonable time, but in any event, not less than 180 days from termination. If a Reserve Account is established by NOVA, then any balance remaining after Chargeback rights have expired and all other amounts owed by you have been paid will be disbursed to you.

ii) **Equipment**. If your equipment is leased, you are obligated to honor the terms and conditions of your leasing contract. If your equipment is owned by NOVA, you must return all equipment owned by NOVA within ten (10) business days and immediately pay NOVA any amounts you owe for such equipment.

iii) **Return to NOVA**. All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of NOVA and must be returned to NOVA or destroyed within ten (10) business days after termination of the Agreement..

16) **COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™.**

a) **Compliance with Laws and Payment Network Regulations**. You agree to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or NOVA.. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) electronic fund transfers; and (iii) confidential treatment of information. You will assist Member and NOVA in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and NOVA all documents they may from time to time reasonably deem necessary to verify your compliance with this provision.

b) **MATCH™**. You acknowledge that Member and/or NOVA is required to report Merchant's business name and, if applicable, the name of Merchant's principals to the MATCH™ listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by NOVA and Member, the listing itself and you will not bring any actions or assert claims against NOVA and Member as a result of such reporting.

c) **Security Program Compliance**. You must comply with the requirements of the Payment Card Industry (PCI) Data Security Standard including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. You also shall ensure that all third parties from whom you procure Value Added Services or third party POS Devices comply with the requirements of those programs. Upon request, NOVA will provide you with the respective website links to obtain the current requirements of the Visa and MasterCard programs. You are responsible for your own actions or inactions, and those of your , employees and agents, including any third party vendors with whom you contract to perform services for you. You shall be responsible for any liability, loss, cost, or expense resulting from the violation of any of the program requirements by any of the individuals or entities listed in the immediately preceding sentence. Should you participate in a program with any other Payment Network or Issuer, or accept a Payment Device of any other Payment Network that has a security

program in place, you must comply therewith and ensure that your employees and agents also comply with the program requirements of such Payment Network.

d) **Data Compromise**. You must notify us immediately (and if notice is given orally, it must be confirmed in writing within two (2) business days), if you know or suspect that Cardholder information has been accessed or used without authorization. In such case, you must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us with (and seeking to obtain any waivers necessary for) all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to such data incident and all costs NOVA or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance. You must provide to us, on request, audit reports of data compromise incidents or allow us to perform such audits, subject to any software licensor's intellectual property rights, at your expense. Audits must identify the cause of the data compromise incident and confirm whether or not you were in compliance with the Payment Networks' PCI Data Security Standard at the time of the incident.

17) **USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.**

a) **Use of Trademarks**. You will prominently display the promotional materials provided by NOVA in your place of business. Your use of Visa and MasterCard marks, as well as marks of other Payment Networks, will fully comply with the Payment Network Regulations. Your right to use all such marks will terminate upon termination of the Agreement. Your use of promotional materials, provided by Visa, MasterCard, and/or other Payment Networks will not indicate, directly or indirectly, that Visa, MasterCard, or such other Payment Networks endorse any goods or services other than their own and you may not refer to Visa, MasterCard, or any other Payment Networks in stating eligibility for your products or services.

b) **Confidentiality**.

i) **Cardholder and Transaction Information**. You shall, at all times protect the confidentiality of Cardholder and Transaction information in accordance with all applicable Laws and Payment Network Regulations. You will not disclose Cardholder or Transaction information to any third party, except to an agent of yours assisting in completing a Transaction, or as required by Laws or the Payment Network Regulations. You must maintain all systems and media containing Cardholder and Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorized personnel. You must maintain Cardholder and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that you no longer deem necessary or appropriate to maintain. Further, you must take all steps reasonably necessary to ensure that Cardholder and Transaction information is not disclosed, except pursuant to Laws, or otherwise misused. You acknowledge that bank account numbers and debit, charge and credit card numbers are exempt from public inspection and copying pursuant to § 119.071(5)(b), Fla. Stat. (2006). You may not retain or store magnetic stripe or CVV2/CVC2 data after authorization for record keeping or additional authorization processing. In accordance with Section B(16)(d), Merchant shall immediately notify NOVA of any Cardholder or Transaction information compromise of which it becomes aware whether such compromise occurred at: (i) the Merchant; (ii) a third party from whom Merchant procures Value Added Services; (iii) NOVA or Member; or (iv) elsewhere.

ii) **Bankruptcy**. In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that

contain Cardholder or Transaction information to third parties. You must, except as prohibited by Laws:
(1) Return this information to NOVA, or
(2) Provide acceptable proof of destruction of this information to NOVA.

iii) **NOVA or Member Confidential Information**. Except as otherwise provided by Laws, you shall at all times protect NOVA's and Member's Confidential Information. You will not disclose any of NOVA's or Member's Confidential Information to any third party except as required by Laws.

c) **Passwords**. If you receive a password from NOVA to access any of NOVA's databases or services you will, except if ordered otherwise by a court of competent jurisdiction: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to NOVA's databases or services; and (iii) be responsible for all action taken by any user of the password except if such password was not obtained from Merchant, its employees or agents or as a result of the actions or inactions of the same. You agree to promptly notify NOVA if you believe NOVA's databases or services or your information has been compromised by use of the password. You agree to notify NOVA within a reasonable time following the commencement of a legal proceeding by you or within a reasonable time following service on you of the initial pleading in a legal proceeding against you regarding the disclosure or non-disclosure of such password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and be responsible for any losses, costs, or expenses that arise from your use or misuse of such third party passwords.

d) **Proprietary Interest**. Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by NOVA. Nothing in the TOS shall be construed as granting Merchant any patent rights or patent license in any patent which NOVA may obtain in respect to NOVA's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of NOVA's services, equipment, or software.

18) **MISCELLANEOUS PROVISIONS.**

a) **Entire Agreement**. The Agreement, Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement. In the event of a conflict between the documents comprising the Agreement, the following order of priority will apply: (i) any Addendum; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) the Merchant Operating Guide; and (vi) any other guides or manuals provided to Merchant from time to time.

b) **Construction**. Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS 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.

c) **Assignability**. The Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of NOVA. If you, nevertheless, assign the Agreement without NOVA's consent, the Agreement will be binding on the assignee as well as you. NOVA shall not transfer or assign the performance required under this Agreement without the prior written consent of Merchant, provided that such consent shall not be required (i) for the assignment or delegation to a subsidiary or parent corporation of NOVA, and (ii) for the assignment or delegation to any Person into or with which NOVA shall merge or consolidate, or who may acquire all of NOVA's stock or assets. Nothing herein shall prohibit NOVA or Member from using subcontractors to perform the services provided hereunder.

d) **Notices**. Any written notice to the Merchant under the Agreement shall be sent by U.S. mail or a nationally recognized overnight carrier to: Director of Finance, City of Fort Lauderdale, 100 N. Andrews Ave., Fort Lauderdale, FL 33301, and will be deemed received only upon actual receipt. Any written notice to NOVA, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.

e) **Bankruptcy**. You will immediately notify NOVA of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant. You will include NOVA 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 do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to NOVA under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

f) **Attorneys' Fees**. The non-prevailing party will be liable for and will reimburse the other parties for all attorneys' fees and other costs and expenses paid or incurred in the enforcement of this Agreement, or in collecting any amounts due or resulting from any breach of the Agreement.

g) **Customer Contact**. You authorize Member and NOVA to contact your customers or their Issuer if Member or NOVA determines that such contact is necessary to obtain information about any Transaction between you and a customer.

h) **Telephone Recording**. You authorize NOVA to monitor and record telephone conversations at any time without further notice to the parties to such conversations, in accordance with Laws. The decision to record any conversation shall be solely in NOVA's discretion.

i) **Information Sharing**. You understand and agree that NOVA may disclose any information gathered by NOVA to (i) NOVA's "affiliates" (i.e., companies related to NOVA by common control or ownership) that offer financial products or services, including those identified in the Agreement and to NOVA's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist NOVA in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

j) **Communication with Merchant**. You agree that NOVA and Member may provide you with information about the Program including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.

k) **Amendments**. Member and NOVA may propose amendments or additions to the Agreement. Member or NOVA will inform you of a proposed change in a periodic statement or other notice. You will be deemed to have agreed to the change if you continue to present Transactions to Member and NOVA after thirty (30) days following the issuance of the notice. NOVA is entitled to pass through to you any fee increases imposed upon NOVA by Visa, MasterCard, any other Payment Network, and any other third party including telecommunications vendors.

l) **Severability and Waiver**. If any provision of the Agreement is found by a court of competent jurisdiction to be illegal or otherwise unenforceable, the invalidity or unenforceability of that provision will not affect any of the remaining provisions and the Agreement will be construed as if the illegal or unenforceable provision is not contained in the Agreement. Neither the failure, the delay by NOVA or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by you must be signed by NOVA.

m) **Independent Contractors**. NOVA, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. This Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.

n) **Privacy Laws.** In addition to Section (B)(17)(b) above, to the extent required by applicable Laws, Merchant must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Cardholder and Transaction information, using a standard of care at least equal to the standard required of NOVA to protect such information pursuant to applicable Laws. Further, a Merchant that is a "covered entity" or "business associate", as defined under HIPAA, must not use any NOVA product to store, transmit, or otherwise maintain "protected health information" as defined by HIPAA. NOVA is not a "business associate" as defined by HIPAA and it is not NOVA's practice to store or accept any information that would cause it to be a "business associate" under HIPAA.

o) **Survival.** All or your obligations to NOVA and Member shall survive termination of the Agreement, including, without limitation, Sections (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(11), (B)(14), (B)(15)(d), (B)(16), (B)(17) and (B)(18)(f) of the TOS.

p) **Counterparts; Facsimile Signatures; Delivery.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission, and such a signed facsimile or copy shall constitute a signed original.

Section C – Acceptance of Visa and MasterCard

19) **ACCEPTANCE OF VISA AND MASTERCARD.** Merchant agrees to the following provisions in addition to the Definitions in Section (A) and the General Provisions of Section (B) above:

20) **VISA AND MASTERCARD DEFINITIONS.** For purposes of this Section, "Credit Card" shall be deemed to be limited to a: (i) credit/business product of Visa; (ii) consumer debit/prepaid product of Visa; (iii) credit/business product of MasterCard; or (iv) consumer debit/prepaid product of MasterCard as applicable. The credit/business products of Visa are those products for which transactions by the Cardholder are paid by the Cardholder at least fifteen (15) days after the transaction including: (i) consumer credit products (including co-branded and smart Visa versions) such as Classic, Gold, Platinum, Signature, and Infinite cards; and (ii) business products such as business credit, business debit, business line of credit, and smart Visa business, purchasing cards, corporate cards, fleet cards, and commercial prepaid cards. The consumer debit/prepaid products of Visa are those products for which Transactions by the Cardholder are paid by accessing the Cardholder's asset account immediately including: (i) consumer Visa check cards such as Classic, Gold, Platinum and Visa Check Card II; and (ii) consumer prepaid/EBT cards such as Visa Buxx, Visa Payroll, Visa gift cards (including incentives, promotional, and rebate), child support cards, unemployment cards, insurance claim cards, customer service cards, state disbursement cards (not including unemployment or child support), flexible spending account cards, general purpose reloadable and one-time use prepaid cards, and student aid college cards. The consumer debit/prepaid products of MasterCard include Cardholder signature debit cards, prepaid cards, stored value cards, EBT cards and payroll cards. The credit/business products of MasterCard include all other MasterCard products.

21) **HONORING CREDIT CARDS.**

a) **Honoring Cards.** Merchant may choose to accept (i) only the credit/business products of Visa and/or MasterCard; (ii) only the consumer debit/prepaid products of Visa and/or MasterCard; or (iii) both the credit/business products and consumer debit/prepaid products of Visa and/or MasterCard. You must indicate your decision to accept a limited category of products on the Merchant Application and if you wish to discontinue acceptance of either category of products, you must provide NOVA with thirty (30) days advance written notice. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, NOVA and Member are not required to reject the Transaction and you will be charged

our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.

b) **No Minimum or Maximum**. Merchant shall not establish minimum or maximum Credit Card Transaction amounts.

c) **Cardholder Identification**. In Card Present Transactions, you will identify the Cardholder and check the expiration date and signature on each Credit Card. You will not honor any Credit Card if: (i) the Credit Card has expired; (ii) the signature on the Transaction Receipt does not correspond with the signature on the Credit Card, is blank, or uses language to the effect of "see id"; or (iii) the account number embossed on the Credit Card does not match the account number on the Credit Card's magnetic stripe.

d) **Credit Card Recovery**. You will use reasonable, peaceful means to recover or attempt to recover any Credit Card: (i) on Visa Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member (or its designee), the Issuer, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Credit Card is lost, stolen, counterfeit, fraudulent, or otherwise invalid, or its use is not authorized by the Cardholder; or (iv) for MasterCard Cards, if the printed four digits below the embossed account number do not match the first four digits of the embossed account number, or the Credit Card does not have the "Twin Globes" hologram on the lower right corner of the Credit Card face.

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

f) **Convenience Fees.** You may not assess Convenience Fees unless you have disclosed such fees to NOVA previously in writing and you have been approved by NOVA to assess such fees. If you complete a Transaction and assess a Convenience Fee without having disclosed such fee previously in writing and obtained NOVA's consent, you will be in breach of the Agreement and NOVA may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Payment Network Regulations. Transactions that include a Convenience Fee must comply with each of the following requirements:

   i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.
   ii. The Convenience Fee is permitted only for one-time payments and may not be imposed on recurring payments or transactions. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition or utility charges.
   iii. You must provide a true "convenience" in the form of an alternative payment channel outside of your customary payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.
   iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the Transaction if the Cardholder does not want to pay the fee.
   v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.
   vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and check) within a particular payment channel (mail, telephone, and internet).

vii. Additional Visa Convenience Fee Requirements are as follows: (i) it must be a flat fee; (ii) it cannot be tiered or percentage based regardless of the value of the payment due; (iii) it must not be authorized and settled separately from the primary transaction; (iv) the fee must be assessed by the *same Merchant actually providing the goods and services*; and (v) the fee may not be assessed by a different merchant.

viii. Additional MasterCard Convenience Fee Requirements are as follows: (i) the fee may be tiered, percentage based, or flat; and (ii) the fee may be authorized and settled separately from the primary transaction.

ix. Merchants who accept both Visa and MasterCard Credit Cards are restricted to assessing Convenience Fees equally across card types and as such the Merchant is restricted to a flat Convenience Fee and must combine all charges into one authorization and clearing Transaction.

x. To the extent Merchant's state or other governing body has passed legislation that requires Convenience Fee assessment by government agencies as a component of card acceptance, such laws may conflict with the Payment Network Regulations. Merchant bears all responsibility for all liability associated therewith, including all fees, fines and penalties levied by the Payment Networks.

xi. Convenience Fees may be prohibited by Laws in some States. Merchant may not charge Convenience Fees where prohibited by Laws.

xii. In no event is a Convenience Fee to be referred to as a surcharge or advertised as an offset to processing fees.

xiii. If you have received approval from Visa to participate in the Tax Payment Pilot Program, then you may assess a variable service fee so long as: (i) only eligible tax payments are accepted (personal income, personal property, real property, unemployment, business income and sales and use taxes); (ii) Cardholders are notified of the fee and given the opportunity to opt-out of the Transaction; (iii) the variable fee must be processed as a separate Transaction and not combined with the tax payment; (iv) the variable fee may be assessed on all payment channels and the fee cannot be higher than any other card-based payment offered through the same channel; and (v) you submit appropriate reports of CISP compliance to Visa and receive Visa approval and certification annually.

g) **Return Policy**. You must disclose to the Cardholder, at the time of the sales Transaction and in accordance with the Credit Card Rules, any limitation you have on accepting returned merchandise.

h) **No Claim Against Cardholder**. You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Transaction unless Member or NOVA refuses to accept the Transaction Receipt or revokes its prior acceptance of the Transaction Receipt (after receipt of a Chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Transaction Receipt, and if you receive such payments, you will promptly remit them to NOVA.

i) **Disputes With Cardholders**. All disputes between you and any Cardholder relating to any Transaction will be settled between you and the Cardholder. Neither NOVA nor Member bears any responsibility for such disputes, other than with respect to processing Transactions and Chargebacks under the Credit Card Rules.

22) **AUTHORIZATION**.

a) **Required on all Transactions**. You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any reasonable instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any case in which a sales Transaction is completed without

imprinting or electronically swiping the magnetic stripe of the Credit Card, the Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.

b) **Effect**. An Authorization Code does not: (i) guarantee the Merchant final payment for a sales Transaction; (ii) guarantee that the sales Transaction will not be disputed later by the Cardholder as any sales Transaction is subject to Chargeback; or (iii) protect you in the event of a Chargeback regarding unauthorized sales Transactions or disputes involving the quality of goods or services. Authorization Codes will not waive any provision of the TOS or otherwise validate a fraudulent sales Transaction or a sales Transaction involving the use of an expired Credit Card.

c) **Unreadable Magnetic Stripes**. For Card Present Transactions, if you authorize and present Transactions electronically and your terminal is unable to read the magnetic stripe on the Credit Card, you must obtain the following in addition to key-entering the Transaction into the POS Device for processing: (i) a physical imprint of the Credit Card using a manual imprinter and (ii) the Cardholder's signature on the imprinted Transaction Receipt.

23) **PRESENTMENT OF TRANSACTION RECEIPTS.**

a) **Transaction Receipts.**

i) **Card Present and Card Not Present Transactions (other than Electronic Commerce Transactions)**. You will use a Transaction Receipt to document each Card Present and Card Not Present Transaction. Each such Transaction Receipt must include:

(1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
(2) Merchant name and location.
(3) Location Code (i.e., merchant identification number issued by NOVA).
(4) Transaction amount, including applicable taxes.
(5) Transaction date.
(6) Space for Cardholder signature for Card Present Transactions.
(7) Indication of who shall receive each copy of the Transaction Receipt (e.g., Merchant Copy, Bank Copy, Cardholder Copy).
(8) Authorization Code.
(9) Terms and conditions of the sale, if restricted.

If the Merchant is accepting consumer debit products of Visa or MasterCard, no data referencing the Cardholder's PIN number shall be printed on the receipt.

ii) **Electronic Commerce Transactions**. You will use a Transaction Receipt to document each Electronic Commerce Transaction. Each such Transaction Receipt must include:

(1) Card account number (truncated account number required on the Cardholder's copy) including the specific payment brand (i.e. Visa or MasterCard).
(2) Merchant name.
(3) Merchant online address.
(4) Purchaser name.
(5) Authorization Code.
(6) Transaction amount.
(7) Transaction date.
(8) Customer service contact, including telephone number.
(9) Terms and conditions of the sale, if restricted.

b) **Signatures**. In Card Present Transactions, Transaction Receipts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Transaction Receipt will only be waived if the Credit Card Transaction is a valid Card Not Present Transaction which fully complies with the requirements set forth in the TOS.

c) **Reproduction of Information**. For Card Present Transactions, if the following information embossed on the Credit Card is not legibly printed on the Transaction Receipt, you will legibly reproduce on the Transaction Receipt the: (i) Cardholder's name; (ii) account number; (iii) expiration date; and (iv) Merchant's name and place of business. Additionally, for MasterCard Transactions, on the Transaction Receipt you will legibly reproduce the name of the bank that issued the Credit Card as it appears on the face of the Credit Card.

d) **Truncation**.
   i) The Credit Card account number must be truncated on all Cardholder-activated Transaction Receipts. Truncated digits should be replaced with a fill character such as "x," "*," or "#," and not with blank spaces or numeric characters.
   ii) Effective July 1, 2003, all new POS Devices must suppress all but the last four digits of the Credit Card account number and the entire expiration date on the Cardholder's copy of the Transaction Receipt generated from electronic (including Cardholder-activated) POS Devices. Effective July 1, 2006, all existing POS Devices must comply with the rule set forth in this subsection.
   iii) These truncation rules do not apply to Transactions in which the only way to record a Credit Card account number is in handwriting or by making an imprint or copy of the Credit Card.

e) **Delivery and Retention of Transaction Receipts**. For Card Present Transactions, you will deliver a complete (as defined in Section C(23)(a)(i) above) and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder at the time of the Transaction. For Card Not Present Transactions, you will deliver a complete and legible copy of the Transaction Receipt or Credit Transaction Receipt to the Cardholder promptly following completion of the Transaction in either electronic (e.g., e-mail or fax) or paper (e.g., handwritten or terminal-generated) format. You will retain the "Merchant Copy" of the Transaction Receipt or Credit Transaction Receipt for at least eighteen (18) months following the date of completion of the Credit Card Transaction (or such longer or shorter period as the Credit Card Rules or the Laws may require).

f) **Electronic Transmission**. If you utilize electronic Authorization and/or data capture services, you will enter the data related to Transactions into a POS Device and settle the Transactions and transmit the data to NOVA or its designated agent in the form specified by NOVA no later than the close of business on the date the Transactions are completed. If Member or NOVA requests a copy of a Transaction Receipt, Credit Transaction Receipt, or other Transaction evidence, you must provide it within the time frame specified in the request.

24) **RETRIEVAL REQUESTS AND CHARGEBACKS; CREDITS; REPROCESSING; FRAUD; AND FACTORING**.

a) **Retrieval Requests**. You must respond to a Retrieval Request with a legible copy of the Transaction Receipt within the time frame specified. If you fail to provide a legible copy of the Transaction Receipt, you will receive a Chargeback that cannot be cured.

b) **Chargebacks**. You are fully liable to NOVA and Member for all Transactions returned to NOVA or Member for whatever reason including, but not limited to, Chargebacks. You agree to accept for Chargeback and will be liable to Member and NOVA in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay NOVA and Member on demand the value of all Chargebacks. You authorize NOVA and Member to offset from incoming Transactions and to debit the DDA and the Reserve Account for the amount of all Chargebacks. You will fully cooperate with NOVA and Member in complying with the Credit Card Rules regarding Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.
   i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
   ii) Unauthorized use of a Credit Card as alleged by the Cardholder,

iii) Dispute by the Cardholder over the quality of goods or services,
iv) Failure by Merchant to provide goods or services,
v) The Transaction Receipt does not bear the Cardholder's signature,
vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

c) **Excessive Activity**. Your presentation to NOVA of Excessive Activity will be a breach of the Agreement and cause for termination of the Agreement as set forth in Section B(15)(b)(ii)(3). "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or merchant identification numbers, Chargebacks and/or Retrieval Requests in excess of one percent (1%) of the gross dollar amount of your sales Transactions or returns in excess of two and one-half percent (2.5%) of the gross dollar amount of sales Transactions. You authorize, upon the occurrence of Excessive Activity, Member and NOVA to take additional actions as either of them may deem necessary including, without limitation, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with the TOS.

d) **Credits**.
i) **Credit Transaction Receipt**. You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to NOVA. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to NOVA, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide NOVA with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.
ii) **Revocation of Credit**. Member or NOVA may, for any risk-mitigating reason, refuse to accept any Credit Transaction Receipt for processing, except if such actions would be illegal.
iii) **Reprocessing**. You will not resubmit or reprocess any Transaction that has been charged back.

e) **Fraud and Factoring**. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a transaction directly between you and a Cardholder or any Transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of fraudulent Transactions will be referred to law enforcement officials. You will not deposit any Transaction Receipt representing the refinancing of an existing obligation of a Cardholder. You agree that NOVA may, within its sole discretion, suspend the disbursement of funds from Transaction Receipt for any reasonable period of time required to investigate suspicious or unusual deposit activity. NOVA and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.

25) **OTHER TYPES OF TRANSACTIONS**.

a) **Mail Order/Telephone Order (MO/TO)**. You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to NOVA previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and NOVA may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge, pursuant to Schedule A (which Interchange, Dues and Assessments may be adjusted by the Payment Networks), on each such

Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service ("AVS") on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or "TO," or mail order or "MO," as appropriate. NOVA recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

b) **Recurring Transactions.**

i) **Requirements.** For recurring Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's 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) a notice from NOVA or Member that authority to accept recurring Transactions has been revoked; or (iii) a response that the Payment Device is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder. Merchant is responsible for ensuring its compliance with Laws with respect to recurring Transactions.

ii) **Limitations on the Resubmission of Recurring Transactions**. In some limited instances, you may resubmit a preauthorized recurring Transaction up to four (4) times within sixteen (16) calendar days of the original Authorization request, provided that the decline response is one of the following: (i) authorization denied; (ii) insufficient funds; (iii) exceeds approval amount limit; or (iv) exceeds withdrawal frequency.

iii) **Recurring Transaction Receipts**. You must print legibly on the Transaction Receipt the words "Recurring Transaction." You must obtain the Cardholder's signature, including an electronic signature or other similar authentication that is effective under Laws, on the Transaction Receipt. For an Electronic Commerce Transaction, you must also include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Receipt.

iv) **Electronic Commerce Recurring Transactions.** In addition to the above, for an Electronic Commerce Transaction, you must also provide a simple and easily accessible online cancellation procedure that complies with Laws, if the Cardholder's request for goods or services was initially accepted online.

v) **Recurring Transactions With Varying Amounts.** For Recurring Transactions of varying amounts, all of the following apply: (i) the order form must allow the Cardholder to specify a minimum and maximum Transaction amount to be charged, unless the Cardholder will be notified of the amount and date of each charge, as specified in the remainder of this section; (ii) you must inform the Cardholder of their right to receive, at least ten (10) calendar days prior to each scheduled Transaction Date, written notification of the amount and date of the next charge; and (iii) the Cardholder may choose to receive the notification in any of the following ways: (a) for every charge; (b) when the Transaction amount does not fall within the range of amounts specified on the order form; or (c) when the Transaction amount will differ from the most recent charge by more than an agreed upon amount. Merchant is responsible for ensuring that all communications with, and disclosures to, Cardholders comply with Laws.

c) **Multiple Transaction Receipts**. You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial

payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.

d) **Deposits.**
   i) **Prior Consent**. You will not accept for payment by Credit Card any amount representing a deposit or partial payment for goods or services to be delivered in the future unless you have disclosed such method of sale to NOVA previously in writing. If you accept a Credit Card for payment or partial payment of goods or services to be delivered in the future without having disclosed such method of sale to NOVA previously in writing, you will be in breach of the Agreement and NOVA may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules.
   ii) **Acceptance**. If you have disclosed such method of sale to NOVA previously in writing, then you will complete such sales Transactions in accordance with the Agreement, Laws, and Credit Card Rules. Merchant must execute one Transaction Receipt when processing the deposit Transaction and a second Transaction Receipt upon processing the balance of the Transaction. You will note the words "deposit" or "balance" on the applicable Transaction Receipt, as appropriate. You will not deposit the Transaction Receipt labeled "balance" until the goods have been delivered to Cardholder or until you have fully performed the services.

e) **Future Delivery**. You will not present any Transaction Receipt or Credit Transaction Receipt to Member or NOVA for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery unless you have disclosed such method of sale to NOVA previously in writing and you have been approved by NOVA to submit such Transactions. If you have disclosed such method of sale to NOVA previously in writing, you represent and warrant to Member and NOVA that you will not rely on any proceeds or credit resulting from such sales 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 Transaction Receipts or other Credit Transaction Receipts in connection with future delivery sales Transactions or until you have fully performed the services.

f) **Electronic Commerce.**
   i) **Electronic Commerce**. You may not solicit or accept Electronic Commerce sales Transactions unless you have disclosed such method of sale to NOVA previously in writing, and you may process such Transactions only if the Transactions have been encrypted by a third party vendor acceptable to NOVA and Member. If you submit Electronic Commerce sales Transactions without having disclosed such method of sale to NOVA previously in writing, you will be in breach of the Agreement and NOVA may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and the Payment Network Regulations. You understand that sales Transactions processed via the Internet are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to your Electronic Commerce Transactions, whether or not: (i) such Transactions have been encrypted; and (ii) you have obtained NOVA's consent to engage in such Transactions. Encryption is not a guarantee of payment and does not waive any provision of the TOS or otherwise validate a fraudulent Transaction. NOVA recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by the Cardholder for all Electronic Commerce sales Transactions. All communication costs and compliance with Laws related to Electronic Commerce Transactions will be your responsibility. You understand that NOVA will not manage the telecommunications link for Electronic Commerce Transactions and that it is your responsibility to manage that link. Merchant authorizes NOVA and Member, at Merchant's costs and expense, to perform an annual audit and examination of Merchant's website and a due diligence review as required

by the Payment Network Regulations for Electronic Commerce Merchants and/or the PCI Data Security Standard.

ii) **Requirements**. For goods to be shipped on Electronic Commerce sales Transactions, you may obtain authorization up to seven (7) days prior to the shipment date. You need not obtain a second authorization if the Transaction Receipt amount is within fifteen percent (15%) of the authorized amount, provided 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 contacts, including electronic mail address and/or telephone number; (d) complete address (street address, city, state, zip code, and country) of the permanent establishment of the business; (e) complete address of the permanent establishment of the business on either the checkout screen (which displays the total purchase amount) or within the sequence of Web pages presented to the Cardholder during the checkout process; (f) Transaction currency (such as U.S. or Canadian dollars); (g) export or legal restrictions, if known; (h) delivery policy; (i) customer data privacy policy; and (j) your method of Transaction security. If you store Cardholder account numbers, expiration dates, or other personal Cardholder data in a database, you must follow the applicable Payment Network rules on securing such data. You may not retain or store CVV2/CVC2 data after authorization for record keeping or additional authorization processing.

26) **INTERCHANGE**. Interchange qualification requirements, as defined by the Credit Card Associations, affect the Merchant's fees or surcharges owed for Transactions. Merchant will pay a higher discount rate, higher fees, and surcharges for Transactions that do not meet the best rate qualification criteria or have been processed in a manner other than for which the Merchant was approved.

Section D – Acceptance of American Express, Discover, Diners or JCB

27) **ACCEPTANCE OF AMERICAN EXPRESS, DISCOVER, DINERS, AND/OR JCB CARDS**. If NOVA provides authorization and/or data capture services to Merchant for American Express, Discover, Diners, and/or JCB Transactions, Merchant agrees to the following provisions, in addition to the Definitions in Section (A) and the General Provisions of Section (B) above.

28) **ACCESS**. Upon request and fulfillment of the following conditions, NOVA will provide access to authorization and/or data capture services for American Express, Discover, Diners, and/or JCB Transactions to Merchants who have been approved by American Express, Discover, Diners, and/or JCB and who have entered into a separate agreement with American Express, Discover, Diners, or JCB, respectively; provided, however that neither NOVA nor Member shall be responsible for funding such Transactions.

29) **FORWARDED INFORMATION**. NOVA will forward certain information pertaining to Merchant, including, but not limited to, contact information and DDA numbers, to one or more of such Card Associations, unless NOVA receives from Merchant written instructions to the contrary.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, the parties hereto have executed this TOS.

City of Fort Lauderdale

By: _____
Jim Naugle, Mayor

ATTEST:

Jonda K. Joseph, City Clerk

By: _____
George Gretsas, City Manager

Approved as to form:

Paul G. Bangel
Senior Assistant City Attorney

NOVA Information Systems, Inc.

By: _____
Print Name: Timothy I. Miller
Title: Senior Vice President
Date: "Effective Date"

STATE OF TENNESSEE
COUNTY OF Knox

The foregoing instrument was acknowledged before me this 27th day of June, 2007, by Timothy I. Miller, as (title) Sr. Vice President, for NOVA Information Systems, Inc., a Georgia corporation authorized to transact business in the State of Florida.

(SEAL)

Michael K. Rainwater
(Signature of Notary Public - State of Tennessee)

(Print, Type, or Stamp Commissioned Name of Notary Public)

MICHAEL K. RAINWATER STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

Personally Known ✓ OR Produced Identification —

Type of Identification Produced N/A

My commission expires Oct. 11, 2008

WITNESSES:

Judy A Williams
Name: JUDY A. WILLIAMS

Susan L Graham
Name: Susan L. Graham

(CORPORATE SEAL)

Wachovia Bank, N.A.

By: Carey J Bowles
Print Name: Carey J. Bowles
Title: Vice President

ATTEST:

Mary Ann Chesser
Print Name: Mary Ann Chesser
~~Secretary~~ VICE PRESIDENT

STATE OF Florida:
COUNTY OF Duval:

The foregoing instrument was acknowledged before me this 16th day of July, 2007, by Carey J. Bowles, as (title) Vice President, and Mary Ann Chesser, as Secretary, for Wachovia Bank, N.A.

(SEAL)

Sandra K. Doss
Commission #DD308901
Expires: May 22, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

(Signature of Notary Public – State of Florida)

Sandra K. Doss
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____

SCHEDULE A
SCHEDULE OF FEES

Discount Rate Schedule[1]:

Visa / MasterCard

Interchange, Dues & Assessments (ID&A):	At cost pass through (see Additional Info below)
NOVA processing Fee:	0.22%

Other Account Fees:

One time Setup fee[2]	$95
Statement fee	$5.00
Monthly minimum fee	$25 per MID
Chargeback fee	$12 per occurrence
Voice Auth Fee	$.65
Voice Auth + Operator Assisted	$.95
Voice Auth + Issuer referral	$4.00

Non Bankcard Fees:

PIN-based Debit Card Transactions[3]	$.65 per item regional; $.85 national
NON-Bankcard (Amex, Discover) transaction fee:	$.10 per item[4]

OptionalECS Electronic Check Conversion & Processing: (required RDM6000i check imager w/VeriFone Omni or Hypercom T7Plus terminals)

ECS Check Verifications:	$.30 per item
ECS w/Guarantee:	$0.30 per item + 2.06%
Monthly Minimum:	$25.00 per location (if applicable)
Returned Items:	$4.00 per occurrence
NSF billing service:	$2.50 per occurrence
NetCheck™ Image Web Access:	$24.95 Monthly per User

Reporting:

Basic Merchant reporting:	**$0.00**; Free through www.merchantconnect.com
Advanced Reporting Service (ARS™) by Nova Monthly Access Fee	$20.00; Full chain level reporting

Terminal pricing:

Nova Certified Equipment Manufacturers:	Hypercom, VeriFone or Nurit
Reprogram Fee:	$25.00 per Terminal
Other (Non-certified) Equipment Manufactures: equipment certified on the following Networks:	The Nova Network can process credit card transaction from
- Vital (VisaNet)	no extra per item fee

[1] Qualified Emerging Market rates. Based on current Interchange, Dues and Assessments (ID&A) from Visa USA and MasterCard International. Other qualification levels subject to surcharges pursuant to the current ID&A. If there is an increase in ID&A, Nova will adjust rates accordingly.

[2] All location initial setup. Subsequent add-on locations will be $35 ea.
[3] PIN-based Debit assumes certification to the Nova Network for PIN-encryption.
[4] Discount rates and fees applicable direct from Issuers.

- Nova	no extra per item fee
- Paymentech	$0.05 per item
Hypercom T7Plus Terminal Printer combo:	$649.00 purchase or $29.00/mos lease (36 mos)[1]
Hypercom P1300 PinPad:	$175.00 purchase or $8.00/mos lease (36mos)
VeriFone Omni 3730LE Terminal Printer combo	$599.00 purchase or $26.00/mos Lease (36 months)
VeriFone P1000SE Pin Pad	$165.00 purchase or $7.00/mos lease (36 months)
RDM6000i Check Imager:	$645.00 purchase or $28.00/mos lease (36mos)

Wireless Processing

Nurit 3010 Wireless Terminal:	$$1,250.00 purchase or $58.00/mos lease (36mos)
Wireless processing Monthly Fee:	$20.00
Wireless one time Setup Fee:	$25.00

Internet Processing and IVRU processing

ViaKLIX™ by Nova Website Gateway	$20.00 per month
ViaKLIX™ one time Setup fee:	$195.00
3rd Party Internet Payment Gateway Trxns:	Contact *Harbor Payments* for direct cost information
3rd IVRU Integrated Voice Response Svc:	Contact *Harbor Payments* for direct cost information
Other Internet & Software Payment Gateway Trxns:	$0.00; No cost (above rates/fees apply). Internet payment engine (i.e. VerSign, Authorize.net PC charge, etc.) must be certified to one of the following payment networks:
- Vital (VisaNet)	$0.10 per item
- Nova	$0.00
- Paymentech	$0.15 per item

Software PC Processing

ViaWARP™ by Nova

Up to 10 User License	$599.99
Monthly support fee:	$12.00
Up to 50 User License	$999.99
Monthly support fee:	$15.00
Up to 150 User License	$1599.99
Monthly support fee:	$25.00

[1] All lease pricing based on 36 month non-cancelable lease from LADCO Leasing, Inc.

Current Interchange, Dues & Assessments (as of April 1, 2007):

		Cons/Comm Rates April 2007			Off-line Debit Rates April 2007		
Visa Interchange Category	**Chg Type**	**% Rate**	**+**	**Per Item**	**% Rate**	**+**	**Per Item**
CPS Retail	1056/1590	1.54%	+	$0.10	1.03%	+	$0.15
CPS Supermarket	1053/1591	1.24%	+	$0.05	1.03%	+	0.15**
CPS Rewards 1	1093	1.65%	+	$0.10			
CPS Rewards 2	1094	1.90%	+	$0.10			
CPS Rewards 2 T&E	1095	1.90%	+	$0.10			
CPS Retail 2 Card Present	1050/1550	1.43%	+	$0.05	0.80%	+	$0.25
CPS Retail 2 Card Not Present	1060/1560	1.43%	+	$0.05	0.80%	+	$0.25
Utility***	1092/1592	0.00%	+	$0.75	0.00%	+	$0.75
CPS Hotel/Car Rental	1063-1066/1563-1566	1.58%	+	$0.10	1.36%	+	$0.15
CPS Card Not Present	1067/1567	1.85%	+	$0.10	1.60%	+	$0.15
CPS Retail Key Entered	1069/1569	1.85%	+	$0.10	1.60%	+	$0.15
CPS Small Ticket	1084/1584	1.65%	+	$0.04	1.55%	+	$0.04
CPS Retail Service Station	1086/1586	1.43%	+	$0.10	0.70%	+	$0.17
CPS Restaurant	1085/1585	1.54%	+	$0.10	1.19%	+	$0.10
EIRF	1059/1559	2.30%	+	$0.10	1.75%	+	$0.20
CPS E-commerce Basic	1051/1551	1.85%	+	$0.10	1.60%	+	$0.15
CPS E-commerce Preferred	1052/1552	1.80%	+	$0.10	1.55%	+	$0.15
CPS E-commerce Preferred - Hotel	1082/1582	1.58%	+	$0.10	1.36%	+	$0.15
CPS E-commerce Preferred - Auto Rental	1083/1583	1.58%	+	$0.10	1.36%	+	$0.15
CPS E-commerce Preferred - Pass Transport	1081/1581	1.75%	+	$0.10	1.60%	+	$0.15
CPS Account Funding	1055/1555	2.14%	+	$0.10	1.75%	+	$0.20
Standard	1000/1500	2.70%	+	$0.10	1.90%	+	$0.25
GSA Large Ticket - existing	1014	0.95%	+	$35.00			
GSA Large Ticket - that are ≥$8,750	1017	1.35%	+	$0.00			
Purchasing Large Ticket***	1015	0.95%	+	$35.00			
CPS Automated Fuel	1068/1568	1.50%	+	$0.05	0.70%	+	$0.17
CPS Passenger Transport	1061/1561	1.75%	+	$0.10	1.60%	+	$0.15
Purchasing Card Level III Data Rate	1088	1.80%	+	$0.10			
Corporate Card Level II Data Rate	1687	2.00%	+	$0.10			
Business\Purchasing Card Level II Data Rate	1087	2.00%	+	$0.10			
Commercial Card Retail	1600	2.20%	+	$0.10			
Commercial Card Business to Business	1601	2.10%	+	$0.10			
Purchasing Card - Card Not Present	1604	2.40%	+	$0.10			
Business Card - Card Not Present	1602	2.25%	+	$0.10			
Corporate Card - Card Not Present	1603	2.20%	+	$0.10			
Purchasing Electronic with Data	1688	2.45%	+	$0.10			
Purchasing Card Electronic	1636	2.45%	+	$0.10			
Business Card Electronic	1635	2.40%	+	$0.10			
Corporate Card Electronic	1002	2.20%	+	$0.10			
Commercial Card Standard	1001	2.70%	+	$0.10			
International Electronic	1071	1.10%	+	$0.00			
International Standard	1070	1.60%	+	$0.00			

International Commercial Card	1072	1.80%	+	$0.00			
Signature Card Electronic	1012	2.30%	+	$0.10			
Signature Card Standard	1011	2.70%	+	$0.10			
Cash Advance	0070	-0.18%	+	-$1.50			
Consumer Credit Vouchers	1077	1.73%	+	$0.00	1.31%	+	$0.00
Commercial Card Credit Vouchers	1078	2.24%	+	$0.00			
Consumer MO/TO Credit Vouchers*	1079	2.04%	+	$0.00	1.87%	+	$0.00
Passenger Transport Credit Vouchers	1076	2.06%	+	$0.00			
Assessments		0.0925%	+	$0.00	0.0925%	+	$0.00

*excludes Direct Marketing Sic Codes 596X

** $0.35 Cap

***program requires registration

		Cons/Comm Rates April 2007			Off-line Debit Rates April 2007		
MasterCard Interchange Category	**Chg Type**	**% Rate**	**+**	**Per Item**	**% Rate**	**+**	**Per Item**
Merit III	1023/1523	1.64%	+	$0.10	1.05%	+	$0.15
SuperMarket***	1024/1524	1.48%	+	$0.05	1.05%	+	$0.15*
Warehouse Club***	1026/1526	1.10%	+	$0.00	1.05%	+	$0.15*
Key Entered	1027/1527	1.95%	+	$0.10	1.64%	+	$0.16
Merit I	1021/1521	1.95%	+	$0.10	1.64%	+	$0.16
Utility***	1636/1536	0.00%	+	$0.75	0.00%	+	$0.75
Petroleum**	1695	1.90%	+	$0.00			
Standard	1000/1500	2.75%	+	$0.10	1.90%	+	$0.25
MC Passenger Transport	1022/1522	1.83%	+	$0.10	1.60%	+	$0.15
Convenience Purchases	1080	1.90%	+	$0.00			
MC Travel Industries Premier Service***	1033/1035 / 1533/1535	1.74%	+	$0.10	1.36%	+	$0.15
Service Industries***	1029	1.15%	+	$0.05	1.15%	+	$0.05
Public Sector CNP & CP	1032/1089	1.55%	+	$0.10			
US Merchant UCAF	1006/1530	1.64%	+	$0.10	1.05%	+	$0.15
US Full UCAF	1007/1531	1.74%	+	$0.10	1.15%	+	$0.15
Small Ticket	1593				1.55%	+	$0.04
Petroleum- CAT/AFD**	1595				0.70%	+	$0.17
Petroleum - Service Stations**	1596				0.70%	+	$0.17
Restaurant	1594				1.19%	+	$0.10
Emerging Market	1597				0.80%	+	$0.25
Corporate Face to Face (Purchasing Cards)	1040	2.05%	+	$0.00			
Corporate Data Rate III	1046	1.75%	+	$0.00			
Corporate Data Rate II	1047	2.05%	+	$0.00			
Corporate Data Rate I	1048	2.65%	+	$0.10			
Corporate T&E III	1005	2.15%	+	$0.10			
Corporate T&E II	1004	2.20%	+	$0.10			
Corporate T&E I	1002	2.35%	+	$0.00			
Corporate Standard	1001	2.70%	+	$0.10			
Corporate Large Ticket 1	1042	1.20%	+	$40.00			
Corporate Large Ticket 2	1642	1.20%	+	$40.00			
Corporate Large Ticket 3	1643	1.20%	+	$40.00			
World & World Elite Business Corp Face to Face	1440	2.20%	+	$0.00			

World & World Elite Business Large Ticket 1	1442	1.35%	+	$40.00			
World & World Elite Business Large Ticket 2	1470	1.35%	+	$40.00			
World & World Elite Business Large Ticket 3	1484	1.35%	+	$40.00			
World & World Elite Business Data Rate III	1446	1.90%	+	$0.00			
World & World Elite Business Data Rate II	1447	2.20%	+	$0.00			
World & World Elite Business Data Rate I	1448	2.80%	+	$0.10			
World & World Elite Business T&E III	1465	2.30%	+	$0.10			
World & World Elite Business T&E II	1464	2.35%	+	$0.10			
World & World Elite Business T&E I	1462	2.50%	+	$0.00			
World & World Elite Business Standard	1499	2.85%	+	$0.10			
International Electronic [1]	1031	1.47%	+	$0.00			
International Standard [2]	1030	2.20%	+	$0.10			
Int'l Full UCAF	1034	1.70%	+	$0.10			
Int'l Merchant UCAF	1049	1.60%	+	$0.10			
Int'l Corporate [3]	1041	2.25%	+	$0.00			
Int'l Corporate Purchasing [3]	1043	2.25%	+	$0.00			
Int'l Corp. Purch. Data Rt II	1045	1.65%	+	$0.00			
Int'l Corporate Large Ticket	1044	0.85%	+	$30.00			
Diners Electronic	1098	2.00%	+	$0.00			
Diners Standard	1099	2.50%	+	$0.00			
World Merit III	1423	1.73%	+	$0.10			
World SuperMarket***	1424	1.58%	+	$0.05			
World & World Elite Warehouse Club***	1426	1.10%	+	$0.00			
World Key Entered	1427	2.05%	+	$0.10			
world Merit I	1421	2.05%	+	$0.10			
World Standard	1400	2.95%	+	$0.10			
World & World Elite Convenience Purchases	1480	2.00%	+	$0.00			
World & World Elite Utility	1436	0.00%	+	$0.75			
World Card T&E	1428	2.30%	+	$0.10			
World & World Elite Service Industries***	1429	1.15%	+	$0.05			
World & World Elite Public Sector CNP & CP	1432/1489	1.55%	+	$0.10			
World Restaurant	1494	1.73%	+	$0.10			
World Merchant UCAF	1430	1.73%	+	$0.10			
World Full UCAF	1431	1.83%	+	$0.10			
World Petroleum**	1495	2.00%	+	$0.00			
World Elite Merit III	1445	2.20%	+	$0.10			
World Elite SuperMarket***	1450	1.90%	+	$0.05			
World Elite Key Entered	1435	2.50%	+	$0.10			
World Elite Merit I	1434	2.50%	+	$0.10			
World Elite Standard	1433	3.25%	+	$0.10			
World Elite T&E	1451	2.75%	+	$0.10			
World Elite Restaurant	1449	1.73%	+	$0.10			
World Elite Merchant UCAF	1441	2.20%	+	$0.10			
World Elite Full UCAF	1443	2.30%	+	$0.10			
World Elite Airline	1454	2.30%	+	$0.10			
World Elite Petroleum**	1496	2.00%	+	$0.00			
World Elite T&E Large Ticket	1488	2.00%	+	$0.00			
Cash Advance	0070	0.00%	+	-$2.05			
Consumer Debit Refund Group 1	1401				1.72%	+	$0.00
Consumer Debit Refund Group 2	1402				1.68%	+	$0.00
Consumer Debit Refund Group 3	1403				1.40%	+	$0.00

Consumer Credit Refund Group 1	1404	2.42%	+	$0.00			
Consumer Credit Refund Group 2	1405	2.09%	+	$0.00			
Consumer Credit Refund Group 3	1406	1.95%	+	$0.00			
Consumer Credit Refund Group 4	1407	1.82%	+	$0.00			
Consumer Credit Refund Group 5	1408	1.73%	+	$0.00			
Corporate Refund Group 1	1409	2.37%	+	$0.00			
Corporate Refund Group 2	1410	2.30%	+	$0.00			
Corporate Refund Group 3	1411	2.21%	+	$0.00			
Corporate Refund Group 4	1412	2.16%	+	$0.00			
MC Assessments		0.095 %	+	$0.00	0.095 %	+	$0.00

[1] Includes Acquirer Program support fee of 0.21%

[2] Includes Acquirer Program support fee of 0.41%

[3] Includes Global Corporate Acquirer support fee of 0.30%

SCHEDULE B
AFFILIATED ENTITIES

None

CERTIFICATE OF INCUMBENCY

The undersigned hereby certifies that CARA D. MELENYZER is the duly elected, qualified and acting Assistant Secretary of NOVA Information Systems, Inc. ("NOVA"), that the following named person is a duly elected, qualified and acting officer of NOVA, that such person currently holds the office set forth opposite his name and that the signature set forth opposite his name is his own true signature.

The undersigned officer, acting in his individual capacity has all requisite authority to execute the Terms of Service by and between The City of Fort Lauderdale, NOVA Information Systems, Inc. and Wachovia Bank, National Association on behalf of NOVA and any and all documents related thereto.

Name	Title	Signature
Timothy Miller	Senior Vice President	

IN WITNESS WHEREOF, the undersigned has hereunto affixed her hand and corporate seal of the Company this 30th day of July, 2007.

[SEAL]

Cara D. Melenyzer, Assistant Secretary

The undersigned, MELINDA M. DOSTER, in her capacity as Senior Vice President of NOVA, hereby certifies that CARA D. MELENYZER is the duly elected, qualified and acting Assistant Secretary of NOVA and the signature set forth opposite her name is her own true signature.

IN WITNESS WHEREOF, the undersigned has hereunto affixed his/her hand and corporate seal this 30 day of July, 2007.

Melinda M. Doster, Senior Vice President