

**MERCHANT APPLICATION AND AGREEMENT
CTS HOLDINGS, LLC**

Chain ID _____

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|--|--|---|---|---|-------------------|
| BUSINESS NAME(S) | | Signing Rep: _____ | | Salesperson Number: 7 _____ | |
| Legal Name of Business: _____ | | Sales Office Phone: _____ | | | |
| DBA (doing business as): _____ | | MERCHANT PROFILE ("BUSINESS") | | | |
| Mailing/Billing Address: _____ | | Business Open Date: _____ | Length of Current Ownership: _____ | # of Locations: _____ | |
| City, State, Zip: _____ | | Combined Estimated Monthly Vol. for MC / V: \$ _____ | Estimated Average/Typical Ticket for MC / V: \$ _____ | Estimated Highest Ticket/Sales for MC / V: \$ _____ | |
| Contact Name: _____ | | Type of Business: _____ | | Type of Goods/Services Sold: _____ | |
| Phone Number: _____ | Fax Number: _____ | Site Inspection Performed: <input type="checkbox"/> Yes If yes, see attached <input type="checkbox"/> No | | | |
| Merchant E-Mail Address: _____ | | Merchant URL: _____ | | | |
| Location Address (if different from Mailing): _____ | | Seasonal Sales: <input type="checkbox"/> Yes <input type="checkbox"/> No High Volume Months: _____ | | | |
| City, State, Zip: _____ | | Swiped _____ % Keyed with Imprint _____ % Keyed without Imprint _____ % TOTAL 100% | | Face to Face _____ % | |
| Country: _____ | | | | Mail Order (MO) _____ % | |
| Contact Name: _____ | | | | Telephone Order (TO) _____ % | |
| Phone Number: _____ | | | | Internet _____ % | |
| Fax Number: _____ | | TOTAL 100% | | TOTAL 100% | |
| OWNERSHIP INFORMATION | | | | | |
| <input type="checkbox"/> Sole Prop. <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other: _____ <small>(51% ownership for a corporation, 100% ownership for a partnership or proprietorship, must be accounted for on the application.)</small> | | | | Federal Tax ID # (9 digits): _____ | |
| Owner 1/Partner/Officer Name: _____ | | Title in Business: _____ | | Ownership % _____ | |
| Home Address: _____ | | City, State, Zip: _____ | | | |
| Social Security #: (Required) _____ | | Phone Number: _____ | | DOB: _____ | |
| Owner 2/Partner/Officer Name: _____ | | Title in Business: _____ | | Ownership % _____ | |
| Home Address: _____ | | City, State, Zip: _____ | | | |
| Social Security #: (Required) _____ | | Phone Number: _____ | | DOB: _____ | |
| SETTLEMENT ACCOUNT (you MUST attach a voided check) | | | | | |
| We will automatically debit your Settlement Account for any amounts owed to us under the Merchant Application and Agreement. | | | | | |
| A voided check from this account must be attached | <input type="checkbox"/> Checking Only | | Contact Name: _____ | Bank Name: _____ | |
| | Phone Number: _____ | | Transit Number: _____ | | DDA Number: _____ |
| PROCESSOR | | | | | |
| Does your company or you, manage or own another business which already has a Merchant account with CTS? If yes, list name, address and Merchant #: | | | | | |
| Name of Business: _____ | | Address: _____ | | Merchant #: _____ | |
| Have you ever had a bankcard relationship terminated? <input type="checkbox"/> No <input type="checkbox"/> Yes (If yes, attach explanation.) _____ | | | | | |
| Do you use any third party to store, process or transmit cardholder data? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |
| If yes, give name and address: _____ | | | | | |

| CREDIT CARD ACCEPTANCE | ENTITLEMENTS |
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| <p>Check those cards you choose to accept (acceptance of all MasterCard and Visa transactions is presumed unless any selections below are checked (see section 1.3):</p> <input type="checkbox"/> Accept MasterCard Credit Transactions Only <input type="checkbox"/> Accept Visa Credit Transactions Only <input type="checkbox"/> Accept MasterCard Signature Debit Transactions Only <input type="checkbox"/> Accept Visa Signature Debit Transactions Only | <p>New American Express Agreement Attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Please provide the following MID #'s when available:</p> <p>Amex: _____ Discover: _____</p> <p>JCB: _____</p> <p>Check guar: _____ Chck guar Co.: _____</p> <p>Check guar method: Drivers License <input type="checkbox"/> MICR <input type="checkbox"/></p> <p>***Note: If no box is checked it will automatically default to Driver's License.</p> |
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| EQUIPMENT |
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|--|---|----------------------|------------|------------------------|------------|------------------------|------------|--|
| Front End Processor: <input type="checkbox"/> Memphis <input type="checkbox"/> Buypass <input type="checkbox"/> EFSNet <input type="checkbox"/> Vital <input type="checkbox"/> Other: _____ | | | | | | | | |
| <p>Circle store policy to be printed on receipts:</p> <p style="text-align: center;">NO REFUNDS ALLOWED NO REFUNDS, EXCHANGE ONLY IN 7 DAYS ALL SALES FINAL</p> <p>Agents must do all downloads and installs.</p> | <p>ECR Software/Internet (type): _____</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Terminal Type: _____</td> <td style="width:30%;">QTY: _____</td> </tr> <tr> <td>Type of Printer: _____</td> <td>QTY: _____</td> </tr> <tr> <td>Type of PIN pad: _____</td> <td>QTY: _____</td> </tr> </table> <p>(Tip line required?) Yes <input type="checkbox"/> No <input type="checkbox"/> Auto Batch: Yes <input type="checkbox"/> No <input type="checkbox"/></p> | Terminal Type: _____ | QTY: _____ | Type of Printer: _____ | QTY: _____ | Type of PIN pad: _____ | QTY: _____ | <p style="text-align: center;">MANUAL IMPRINTERS</p> <p>Is there an existing imprinter at this location? Yes No</p> <p style="text-align: center;">(Type of imprinter circle one) <u>Portable or regular manual</u> (Qty) _____</p> <p><input type="checkbox"/> Monthly Discount Rate Deduction* <input type="checkbox"/> Two-Line Transaction Credit/Discount Rate Debit Rate Table: _____ For Internal Use Only *notwithstanding "daily" reference in section 7.2</p> |
| Terminal Type: _____ | QTY: _____ | | | | | | | |
| Type of Printer: _____ | QTY: _____ | | | | | | | |
| Type of PIN pad: _____ | QTY: _____ | | | | | | | |

| PETROLEUM INFORMATION |
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| Pay at the Pump: YES <input type="checkbox"/> NO <input type="checkbox"/> | <input type="checkbox"/> Wright Express: 3.50% Transaction fee: 15¢ | <input type="checkbox"/> Voyager Rate: 3.40% Transaction fee: 9¢ <i>Charged by CTS Holdings, LLC</i> |
| Integrated Equipment: <input type="checkbox"/> VeriFone Ruby <input type="checkbox"/> Auto Gas <input type="checkbox"/> Gas Boy <input type="checkbox"/> Gilbarco <input type="checkbox"/> Other: _____ | | |

| EBT INFORMATION |
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The EBT Services Riders to Buypass Corporation and Schedule 1 must accompany the application

| | | |
|---|------------------|---|
| FNS #: _____ | Trans Fee: _____ | Benefit Issuance Availability: Days _____ Hours _____ |
| Electronic Voucher Support: Yes <input type="checkbox"/> No <input type="checkbox"/> | | Check all EBT services provided at this location: |
| <input type="checkbox"/> Food stamps <input type="checkbox"/> Cash Benefits <input type="checkbox"/> Purchase with Cash Back <input type="checkbox"/> Purchase <input type="checkbox"/> Cash Withdrawal If cash issuance, the limit amount: \$ _____ | | |

| SCHEDULE OF FEES (Charged by CTS Holdings, LLC) |
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All fees are subject to change as provided below. For further details, read this entire Merchant Application and Agreement.

| Three-Tier Pricing | | Two-Tier Pricing | |
|--|-------------------------------------|--------------------------------|-------------------------------------|
| DISCOUNT Rate Tier Description | Discount Rate (%) and Downgrade Fee | DISCOUNT Rate Tier Description | Discount Rate (%) and Downgrade Fee |
| Rate 1 for MasterCard and Visa | _____ % | Rate 1 for MasterCard and Visa | _____ % |
| Rate 2 for MasterCard and Visa RATE X | Rate 1 plus _____% + \$_____ | Rate 3 for MasterCard and Visa | Rate 1 plus _____% + \$_____ |
| Rate 3 for MasterCard and Visa | Rate 1 plus _____% + \$_____ | | |

| AUTHORIZATION AND TRANSACTION FEES |
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|--|----------------|------------------------------------|---------------|
| ACH Fee | \$ _____/batch | MasterCard/Visa Authorization Fee | \$ _____/each |
| American Express Authorization/EDC Fee | \$ _____/each | Pre-Auth Fee | \$ _____/each |
| Discover Authorization/EDC Fee | \$ _____/each | <input type="checkbox"/> Vital Fee | \$ _____/each |
| JCB Authorization/EDC Fee | \$ _____/each | Voice Authorization Fee | \$ _____/each |
| Decline Fee | \$ _____/each | Voice Response Unit (VRU) Fee | \$ _____/each |
| Debit/ATM Transaction Fee (Plus Debit Network Processing Fees) | \$ _____/each | | |

| OTHER FEES |
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| | | | |
|---|----------------|------------------------------|----------------|
| Annual Fee | \$ _____/year | Minimum Monthly Discount Fee | \$ _____/month |
| Chargeback Fee | \$ 10.00/each | Monthly Fee | \$ _____/month |
| Early Cancellation Fee * | \$ 300.00 | Statement Fee | \$ _____/month |
| <input type="checkbox"/> Merchant Club Fee _____ (Initials) | \$ _____/month | | |

* A fee charged if this Merchant Agreement is terminated or cancelled.

Merchant will be charged applicable sales tax when eligible to receive certain selected supplies at no additional charge.

Site Inspection Information

Location Type:

Retail Store Front Office Building Industrial Building Residence Trade Show Other:

Is Site Photo Included with Application: Yes No

Valid ID Verified: Yes No

Date of Birth:

Form of ID (choose one):

Driver's License #: State Issued ID #:
 Passport #: Military ID #:

Is Inventory Sufficient for Business Type: Yes No

Comments:

Is Business Open and Operating: Yes No

Are MasterCard and Visa Decals Visible: Yes No

Any Mail or Telephone Order Sales Activity: Yes No

Are Goods and Services Delivered at Time of Sale: Yes No

By the signature below, I verify that (i) I have physically inspected the business premises; and that (ii) the information stated in this Site Inspection Form is correct to the best of my knowledge and is as presented to me by Merchant.

Sales Representative Signature: _____

Sales Representative Name (Please Print): _____

Application Date: _____

1. Acceptance of Card Transactions

1.1 The following requirements apply to all Card transactions: (a) you cannot establish minimum or maximum amounts as a condition for accepting a Card; (b) you cannot impose a surcharge or fee for accepting a Card; (c) you cannot establish any special conditions for accepting a Card; (d) you cannot establish procedures that discourage, favor or discriminate against the use of any particular Card; however, you may choose not to accept either U.S. issued Debit Cards or U.S. issued credit Cards under the terms described in Section 1.3; (e) you cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by us, except for a mail order/telephone order or delivery required transaction, and ZIP code for a Card-present key-entered transaction in order to obtain an Address Verification (AVS); (f) Any tax required to be collected must be included in the total transaction amount and not collected in cash; (g) you cannot submit any transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible; (h) you cannot submit a transaction or sale that has been previously charged back; (i) you must deliver at least one copy of the Sales Draft or credit draft to the Cardholder; (j) you cannot submit a transaction or sale to cover a dishonored check. Failure to comply with any of the Association Rules may result in fines or penalties.

1.2 **Prohibited Transactions.** (a) you are prohibited from depositing transactions originating from Cards of owners, partners or officers of your business establishment except for transactions that are routine in type, size and frequency for your business and that represent actual sales of goods or services. Submission of sales transactions on Cards in order to obtain a cash advance is strictly prohibited and may result in immediate cancellation of your account. (b) cash payments by and cash disbursements to Cardholders are also prohibited. You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Card Issuing Bank to receive such payments. You may not make any cash disbursements to a Cardholder as part of a Card transaction except to the extent expressly authorized by the Merchant Application and Agreement or the Association Rules.

1.3 If you have indicated either in your Merchant Application and Agreement or by registering with us at least thirty (30) days in advance that you will limit your acceptance to either only accept Signature Debit Transactions or only accept credit Card transactions, then the following terms in this Section 1.3 will apply:

1.3.1 You will be authorized to refuse to accept for payment either Signature Debit or credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued credit or Debit Cards issued by MasterCard or Visa, so long as you accept any type of MasterCard or Visa branded Card.

1.3.2 While many Debit Cards include markings indicating debit (such as Visa Checkcard, Visa Buxx, Gift Card, DEBIT or Mastermoney), many Debit Cards do not include any such markings and will not have such markings until January 2007. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of BIN and ICA numbers currently associated with Debit Card transactions upon execution of confidentiality/non-disclosure agreements required by the Associations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.

1.3.3 To the extent that you inadvertently or intentionally accept a transaction that you are not registered to accept, such transaction will downgrade to a Rate 3 Credit transaction and the Discount Rate that will be applied to the transaction will be your Rate 3.

1.3.4 Based upon Merchant's choice to accept only the Card types indicated in your Merchant Application and Agreement, you must remove from your premises any existing signage indicating that you accept all Visa or MasterCard Cards and use approved specific signage reflecting your policy of accepting only Debit Cards or credit Cards.

1.3.5 Notwithstanding any election not to accept credit or Signature Debit Transactions, you may still accept PIN Debit Transactions if you have signed up for PIN Debit services.

1.4 Along with this Merchant Application and Agreement, you are being provided with Operating Procedures, which contain the operating procedures, instructional and other directives related to Card transactions. You agree that if you process Card transactions, you will comply with and be bound by the Operating Procedures for all transactions you process. You may also request a copy of the Operating Procedures from your sales representative and or Processor at any time.

2 Authorization

2.1 You must obtain an Authorization for all sales that you submit to us.

2.2 An Authorization only indicates the availability of credit on an account at the time the Authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback. If you fail to obtain an Authorization or if you submit a Card transaction after receiving a decline (even if a subsequent Authorization attempt provides an approval), your transaction may be assessed fines or fees by the Card Associations for which you will be responsible. These fines or fees currently range from \$50 per transaction to \$150. To avoid these costs, always obtain an Authorization directly from your terminal before submitting a transaction for settlement.

2.3 Do not attempt to obtain an Authorization provided by someone other than us, except as described in Section 2.6. If a Cardholder or another service provider provides you with either an Authorization number or with a telephone number for obtaining Authorizations, the Authorization you receive may not be valid. Even if the transaction is initially processed and funded, it may be subject to a Chargeback at a later date. Also, if you receive an Authorization from someone other than us, we will not have a record of it and will be unable to verify that you received the Authorization if it is later questioned in a Chargeback.

2.4 You may not attempt to obtain multiple Authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other Authorization sources. Instead, request another form of payment. If you accept and process a transaction that was declined, or attempt to submit multiple transactions and/or multiple Authorizations, you are subject to a Chargeback, Association Fines and/or cancellation of this Merchant Application and Agreement.

2.5 If you utilize AVS, you must review the response from the Authorization separately from the response from the AVS. A transaction can receive an Authorization from the Issuing Bank even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a transaction, you will be responsible for the resulting Chargeback.

2.6 **Third Party Authorization System.** If you have contracted with another Authorization network to obtain credit Card Authorization, i.e., your terminal can Split Dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization Approval Codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an Authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation.

IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.

If you utilize another authorization network, you will be responsible for the downgrade of any transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks.

If you use a third party authorization network, you must also comply with Section 4.10. of the Operating Procedures.

3 Sales Drafts

3.1 Each transaction that you submit must be supported by a single Sales Draft containing all of the following: (a) a clear imprint of the Card, showing account number and expiration date, (b) the signature of the Cardholder, (c) a short description of the goods or services sold, (d) the total amount charged, and (e) your business name and Merchant number.

3.2 Instead of an imprint of the Card on the Sales Draft, you may rely on the terminal printout of the Card account number on the Sales Draft only in cases where the terminal is able to successfully read the magnetic stripe from the Card (i.e., the Card number is not keyed in) and the transaction is authorized by the terminal without any referral or voice authorization.

- 3.3 You may not combine different papers to create a single Sales Draft. All the requirements of the Sales Draft must be met by a single page document.
- 3.4 You must timely provide us with copies of any Sales Drafts that we request. Failure to provide us with a valid Sales Draft may result in a Chargeback.
- 3.5 If you accept a transaction where you do not obtain a Sales Draft meeting all of the requirements of Section 3.1, you do so at your own risk.
- 4 Mail Order, Telephone Order, Internet Transactions.** You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total bankcard volume reflected on your Merchant Application and Agreement. Failure to adhere to this requirement may result in cancellation of this Merchant Application and Agreement, or we may hold your funds and/or interrupt or terminate your Services. Mail/Telephone/Internet transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face transaction, you will assume all risk associated with accepting a mail/telephone/Internet order transaction.
- 5 Settlement of Card Transactions**
- 5.1 Subject to your compliance with Association Rules and this Merchant Application and Agreement, we will settle the Card transactions for Cards specified in your Merchant Application and Agreement and will initiate a transfer of applicable funds to you. Such funds shall be subject to our withholding, set-off, security and reserve rights. All settlements for MasterCard and Visa Card transactions will be net of credits/refunds, adjustments, applicable Discount Rates when due, Chargebacks and any other amounts then due from you. All payments to you are provisional and are subject to, among other things, Chargebacks, fees and fines imposed by the Associations. We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, but not limited to, any Association or your financial institution.
- 5.2 In addition to any other remedies available to us under this Merchant Application and Agreement, we may, without prior notice, suspend payment of any funds should any Event of Default occur or if we have reason to believe there is any fraudulent activity related to the transactions that you submit to us.
- 5.3 The "Combined Estimated Monthly Volume for MC/V" and "Estimated Highest Ticket/Sales Amount for MC/V" appearing on your Merchant Application and Agreement is the maximum monthly transaction volume and maximum Sales Draft amount that you are permitted to submit to us. If you exceed these amounts, we may hold your funds and/or interrupt or terminate Services. Any request for an increase to these amounts is contingent upon our prior written approval.
- 6 Exclusivity.** During the term of this Merchant Application and Agreement, you shall use us as your exclusive provider of all Services unless we have otherwise specifically agreed in writing.
- 7 Fees; Adjustments; Collection of Amounts Due**
- 7.1 You shall be charged fees for the Services, which shall be calculated and payable pursuant to this Merchant Application and Agreement and any additional pricing supplements. You agree to pay any fines imposed on us by an Association or Debit Card network resulting from Chargebacks and any other fees or fines imposed by an Association with respect to your acts or omissions.
- 7.2 Discount Rates are charged on all sales and refunds. All Discount Rates will be deducted daily.
- 7.3 You acknowledge that for Visa and MasterCard transactions, we will process your Card transactions at the Rate 1 Discount Rate only when your transactions meet certain criteria set by the applicable Association and us. When your Card transactions fail to meet those qualification criteria, we will process your transactions at the higher Rate 3 Discount Rate (or, in certain circumstances, at an intermediate Rate 2 Discount Rate) indicated in this Merchant Application and Agreement.
- 7.4 The fees for Services set forth in your Merchant Application and Agreement may be adjusted to reflect changes by Associations in interchange, assessment and other Association fees or to pass through increases charged by third parties. All such adjustments shall become effective upon the date any such change is implemented by the applicable Association or third party, or upon such other date as identified by us.
- 7.5 Subject to Section 15.1, we may also increase the rates and/or fees for Services for any other reason by notifying you twenty (20) days prior to the effective date of any such change.
- 8 Electronic Funding**
- 8.1 To the extent the Automated Clearing House (ACH) settlement process is used to debit or credit your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association (NACHA). You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH settlement process and/or through direct instructions to (or such other arrangements as we deem appropriate) the financial institution where your Settlement Account is maintained for amounts due under this Merchant Application and Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to make all such debits and credits to your account. This authority will remain in full force and effect until all monies due under this Merchant Application and Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.
- 8.2 After you submit sales and credit drafts, you will receive settlement funds through ACH credit. We will initiate a transfer of such applicable settlement funds through ACH to your Settlement Account. Settlement by ACH credit generally will take place the second banking day after we process the applicable Card transactions. Settlement funds will be net of discount and all other amounts then due from you.
- 8.3 If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been affected.
- 8.4 If after your account has terminated, you fail to instruct us as to where to transmit funds that we are holding and that are due to you, we may deduct from those funds our reasonable costs associated with the maintenance of such funds on a monthly basis.
- 8.5 The following is a partial list of reasons for other debits to your Settlement Account. We may add to this list as required: (a) Association fees, charges and fines assessed as a result of your transactions; (b) currency conversion errors; (c) fees and Chargebacks not previously charged; and (d) deposits posted in error. For additional reasons, refer to your Operating Procedures.
- 9 Other Entitlements**
- 9.1 American Express is subject to separate approval.
- 9.2 Discover is subject to separate approval.
- 9.3 JCB is subject to separate approval. By executing this Merchant Application and Agreement, you hereby request that CTS HOLDINGS, LLC relay JCB Cards for Authorization, data capture and funding.
- 10 Chargebacks**
- 10.1 You are responsible for reimbursing us for any transaction that is charged back by the Card Issuing Bank and/or the Cardholder and for related fees.
- 10.2 Among the reasons that a transaction may be charged back are:
- 10.2.1 A Cardholder disputes the validity of a transaction;
- 10.2.2 A Cardholder disputes the quality or receipt of goods or services;
- 10.2.3 A copy of the Sales Draft was not provided when requested, or the copy provided was improperly completed or illegible in whole or in part;
- 10.2.4 A credit was not provided to the Cardholder;
- 10.2.5 The transaction was not authorized by the Issuing Bank at the time of sale, or efforts were made to avoid a decline of the Authorization (such as, but not limited to, attempts to obtain an Authorization after receiving either a decline or a referral to a call center or splitting a sale across multiple transactions of the same Card);
- 10.2.6 The Sales Draft was not imprinted using an imprinting machine (an electronic swipe of the magnetic stripe on the Card may only substitute for a manual imprint if the transaction is electronically authorized by the terminal after the swipe. In situations where the account number is keyed into the terminal or where the terminal provides a referral response, a physical imprint of the Card on the Sales Draft is mandatory);
- 10.2.7 All mail order/telephone order and Internet sales are at your risk and are subject to Chargeback;
- 10.2.8 Any other circumstance where a transaction is charged back.
- 10.3 You will incur a Chargeback Fee each time a transaction is charged back to you. If we reverse a Chargeback on your behalf and the Issuing Bank disputes the reversal (which may occur through a subsequent Chargeback, a pre-arbitration demand or an arbitration demand), the transaction may be charged back again, and you will incur an additional Chargeback Fee. You may also be charged an arbitration fee of up to \$500 and/or incur "good faith" collection fees in connection with a disputed Chargeback.
- 10.4 You must maintain sufficient funds in your designated Settlement Account to cover all Chargebacks and related fees. Simultaneously,

with each transaction processed by you, we have a contingent and unmatured claim against you for any amount we must pay as a result of your processing of transactions, including, but not limited to, any Chargebacks, fees, discounts, customer credits and adjustments, charges, fines, assessments and penalties. All settlements or credits given or payment made by us to you in connection with your transactions are provisional, and subject to revocation, Chargeback or refund, subject to the terms and conditions of this Merchant Application and Agreement, and Association Rules. Your right to receive any amounts due from us is expressly subject and subordinate to our Chargeback, set-off, lien and security interest rights without regard to whether such Chargeback, set-off, lien and security interest rights are applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured. **WE MAY, WITHOUT FURTHER NOTICE, ELECTRONICALLY DEBIT YOUR SETTLEMENT ACCOUNT TO COVER ALL SUMS OWING TO US PURSUANT TO THIS MERCHANT APPLICATION AND AGREEMENT, INCLUDING, BUT NOT LIMITED TO, AMOUNTS OWING FOR CHARGEBACKS, RELATED FEES AND FINES IMPOSED BY CARD ASSOCIATIONS.**

11 Representations; Warranties

11.1 For each Card transaction submitted to us, you warrant the following: (a) it is a lawful sale/rental not previously submitted and is only for the items sold or rented (including taxes, but without any surcharge); (b) it represents an obligation of the Cardholder for the transaction amount; (c) it is not an amount charged subject to any dispute, set-off or counterclaim; (d) it is for merchandise or service actually delivered or performed at the same time you accepted and submitted the Card for processing (except for any delayed delivery or advance deposit transactions expressly authorized by this Merchant Application and Agreement); (e) it is not the refinancing of an existing obligation of the Cardholder or arising from the dishonor of a personal check; (f) that you have no knowledge or notice that the transaction is improper, fraudulent or unauthorized; (g) that the transaction is between you and the Cardholder; and (h) the transaction is made in accordance with this Merchant Application and Agreement, the Operating Procedures and Association Rules.

11.2 THIS IS A SERVICE AGREEMENT. WE DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS MERCHANT APPLICATION AND AGREEMENT.

12 Limitations on Liability; Exclusion of Consequential Damages

12.1 IN NO EVENT SHALL WE, OUR AFFILIATES OR ANY OF OUR/THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 NOTWITHSTANDING ANYTHING IN THIS MERCHANT APPLICATION AND AGREEMENT TO THE CONTRARY (INCLUDING, BUT NOT LIMITED TO, SECTIONS 12.3 or 21, OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MERCHANT APPLICATION AND AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED (I) \$50,000 OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE MERCHANT APPLICATION AND AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS, WHICHEVER IS LESS.

12.3 NOTWITHSTANDING ANYTHING IN THIS MERCHANT APPLICATION AND AGREEMENT TO THE CONTRARY (INCLUDING, BUT NOT LIMITED TO, SECTION 21, OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%).

13 **Confidentiality.** Except as required or permitted pursuant to this Merchant Application and Agreement or otherwise required by law, you must not disclose any Cardholder information (including Cardholder names,

addresses and Card account numbers). You shall limit access to Cardholder information. All Cardholder information that has been discarded must be rendered unreadable. You may not retain or store magnetic stripe data after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request. You acknowledge that you will not obtain ownership rights in any information derived from Card transactions.

14 Assignments

14.1 Any transfer or assignment of this Merchant Application and Agreement by you, including any rights and obligations stated herein, is voidable by us and may result in the immediate termination of this Merchant Application and Agreement. We may transfer, assign and/or delegate this Merchant Application and Agreement to any third party without notice. Upon notice to you, another Bank may be substituted for the Bank under whose sponsorship this Merchant Application and Agreement is performed.

14.2 Except as set forth in this Section 14, this Merchant Application and Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns.

15 Term of Agreement

15.1 **Term and Termination.** This Merchant Application and Agreement shall become effective when accepted by Processor and Bank. The term of this Merchant Application and Agreement shall be for twelve months (1 year) after it becomes effective and shall continue month to month thereafter. If you elect to terminate this Merchant Application and Agreement, you shall provide us with written notice of termination at least thirty (30) days prior to the expiration of your current term. In the event Processor changes the rates, fees or terms of this Merchant Application and Agreement pursuant to Sections 7.5 or 17, you may terminate the Merchant Application and Agreement upon written notice received by Processor from you prior to the effective date of such change, and, if applicable, no Early Cancellation Fee will be charged.

15.2 The provisions of this Merchant Application and Agreement intended to remain in effect after termination, including, but not limited to, Sections 3.4, 5.1, 8.1, 8.2, 8.3, 10.1, 10.2, 10.3, 12.1, 12.2, 12.3, 18.2, 18.4, 19.1, 19.2, 19.3 and 25, shall survive termination. After termination of this Merchant Application and Agreement for any reason, you shall continue to be solely responsible for all amounts owing for Chargebacks and fees resulting from your Card transactions and all other amounts then due or which thereafter may become due under this Merchant Application and Agreement.

15.3 Notwithstanding any other provision of this Merchant Application and Agreement, we may terminate this Merchant Application and Agreement with or without cause at any time by providing 30 days' advance notice to you.

16 Early Cancellation Fee

16.1 If (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the initial twelve (12) month term, or (b) this Merchant Application and Agreement is terminated by us prior to the expiration of the initial term due to an Event of Default, we will suffer a substantial injury for which it is impracticable or extremely difficult to fix actual damages. In an effort to liquidate in advance the sum that should represent such damages, you agree to pay us as an "Early Cancellation Fee" in the amount of three hundred dollars (\$300.00). This sum represents a reasonable pre-estimate of the losses that we will incur as a result of the cancellation of this Merchant Application and Agreement prior to the expiration of the initial term of the Merchant Application and Agreement.

17 **Amendments.** Subject to Section 15.1, we may amend this Merchant Application and Agreement at any time by providing written notice to you of any amendment at least twenty (20) days prior to the effective date of the amendment.

18 Events of Default

18.1 If any of the following events shall occur (each an "Event of Default"), we may immediately terminate this Merchant Application and Agreement without notice: (a) a material adverse change in your business or financial condition, business procedures, products or services; (b) any assignment or transfer of voting control of you or your parent; (c) a sale of all or a substantial portion of your assets; (d) irregular Card sales, Excessive Chargebacks or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; (e) your breach of any of your representations or warranties in this Merchant Application and Agreement; (f) you breach and/or default in

the performance or observance of any term, covenant, condition or agreement contained in this Merchant Application and Agreement (or any agreement with any of our affiliates); (g) you default in the payment when due, of any material indebtedness for borrowed money; (h) you file a petition or have a petition filed by another party under the Bankruptcy Code; (i) a receiver or trustee is appointed or takes possession of your business; or (j) you make an assignment for benefit of creditors.

18.2 After termination of this Merchant Application and Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, credits, fines and adjustments resulting from Card transactions processed pursuant to this Merchant Application and Agreement and all other amounts then due or which thereafter may become due under this Merchant Application and Agreement.

18.3 In the event you file for protection under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our services, it is your responsibility to open new accounts to distinguish pre- and post-filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

18.4 If this Merchant Application and Agreement is terminated for cause, or if you voluntarily terminate this Agreement and grounds for termination for cause exists, you acknowledge that we may be required to report your business name and the names and other information regarding your principals to the Terminated Merchant File/MATCH File maintained by Visa and MasterCard. You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa or MasterCard or if such reasons exist at the time of your voluntary termination. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

19 Reserve Account; Security Interest

19.1 You expressly authorize us to establish a Reserve Account in an amount to be set by us in our sole discretion, based upon, among other things, your processing history and the potential risk of loss to us as we may determine from time to time. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

19.2 The Reserve Account may be funded without notice. The Reserve Account may be funded as follows: (i) debits to your Settlement Account or any other accounts held by Bank or any of its affiliates; (ii) deductions or offsets to any payments otherwise due to you; (iii) such other lawful manner acceptable to us. In the event of termination of this Merchant Application and Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Merchant Application and Agreement or for such longer period of time as is consistent with our liability for Card transactions in accordance with Association Rules. Your funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds of our Merchants. You shall not receive any accrued interest on any funds held by us as a result of your processing of transactions, including, but not limited to, funds held by us in a Reserve Account. Notwithstanding the foregoing, we shall be entitled to accrued interest on any such held funds.

19.3 To secure your obligations to us and our affiliates under this Merchant Application and Agreement and any other agreement for the provision of related equipment or related services (Obligations), you hereby grant us a lien and security interest in and to any of your funds pertaining to the Card transactions contemplated by this Merchant Application and Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you. In addition to any rights granted under applicable law, we are hereby authorized (any related notice and demand are hereby expressly waived) to set-off, recoup and to appropriate and to apply any and all such funds against and on account of your Obligations, whether such Obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as may be reasonably requested to perfect and confirm the lien, security interest, right of set-off, recoupment and subordination set forth in this Merchant Application and Agreement.

20 Financial and Other Information

20.1 You will provide to us financial statements and other information concerning your business and your compliance with the terms and provisions of this Merchant Application and Agreement as we may reasonably request. You will provide us with written notice of any judgment, writ, warrant of

attachment, execution or levy against any of your assets not later than three (3) days after you become aware of same. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Merchant Application and Agreement and our continuing evaluation of the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate.

20.2 From time to time, we may determine that an inspection of your business location is necessary. In such event, you shall pay the costs incurred by us for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations. Prior to the imposition of such costs, we shall notify you in writing of our intention to impose such costs and provide you with an estimate as to the amount of such costs. Your written consent to pay such costs shall not be unreasonably withheld.

21 Indemnification

21.1 We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Merchant Application and Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Merchant Application and Agreement; provided, however, that attorney's fees are not recoverable as a loss, liability or expense.

21.2 You agree to indemnify and hold us, our vendors and affiliates, as well as MasterCard, Visa and any other Card Association or Card Issuing bank, harmless from and against all losses, liabilities, damages and expenses resulting from your actions, including, but not limited to, any breach of any warranty, covenant or agreement or any misrepresentation by you under this Merchant Application and Agreement, or arising out of your or your employees' gross negligence or willful misconduct including as a result of your processing of transactions or use of any Services obtained; provided, however, that attorney's fees are not recoverable as a loss, liability or expense, except as to attorney's fees incurred by us in defending actions by any third parties against us or any party that we are obligated to indemnify.

22 Special Provisions for PIN Debit Transactions, EBT and Wireless Services. Your acceptance of PIN Debit Transactions and EBT transactions, and your use of any Wireless Services, are governed by specific provisions of the Operating Procedures. In accepting these transactions or using these services, you agree to abide by these provisions, and failure to do so may result in additional fees.

23 Processing Related Equipment

23.1 YOU WARRANT THAT ANY PROCESSING EQUIPMENT AND/OR SOFTWARE YOU OBTAIN IS FOR A COMMERCIAL PURPOSE AND IS NOT FOR HOME OR PERSONAL USE. Unless otherwise provided for in a separate sales agreement, the sale of all processing equipment is between you and third parties, including, but not limited to, our independent sales agents and representatives. WE ARE NOT IN THE BUSINESS OF LEASING EQUIPMENT. ALL LEASES ARE BETWEEN YOU AND AN INDEPENDENT LEASING COMPANY.

23.2 YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU OBTAIN MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS MERCHANT APPLICATION AND AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE THAT YOU HAVE OBTAINED.

23.3 We may upgrade or otherwise modify our computer system at any time without prior notice. You agree to provide us access to your processing equipment in the event that we deem it necessary as part of our upgrade or system modification.

24 Special Provisions Regarding Merchant Web Sites and Gateway Services

24.1 A gateway service provides you with an interface between you and your customers so you can accept sales from your customers over the Internet. Your choice of a third-party gateway service provider is subject to our approval. Notwithstanding any gateway service provider offered, suggested, or referenced by us or our sales agent, you acknowledge that all issues concerning your gateway service, including, but not

limited to, its service and functionality, are solely between you and your gateway service provider. The fees and terms for your gateway service and any services or products offered by your gateway service are set forth in the Merchant Application and Agreement or, if applicable, stated in a separate agreement between you and your chosen gateway service provider.

24.2 Programming of your Web site, technical support, and its functionality with the gateway service provider you have chosen, are your sole responsibility. We shall not be liable in any manner whatsoever for any errors, disruptions or security breaches related to your Internet business or Web site. You shall be liable to us for all fees and liabilities incurred under this Merchant Application and Agreement notwithstanding any errors, disruptions or security issues related to your Internet business or Web site.

25 Waiver of Trial by Jury. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS MERCHANT APPLICATION AND AGREEMENT OR THE SERVICES PROVIDED BY US.

26 Other Provisions

26.1 No party shall be liable for any default or delay in the performance of its obligations under this Merchant Application and Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including, without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under this Merchant Application and Agreement.

26.2 The headings contained in this Merchant Application and Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Merchant Application and Agreement.

26.3 If there are any inconsistencies between the Merchant Application and Agreement and the Operating Procedures, the Merchant Application and Agreement will govern. If any part of the Merchant Application and Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

26.4 This Merchant Application and Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, supersedes any previous agreements and understandings and, except as expressly provided in this Merchant Application and Agreement, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Merchant Application and Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

26.5 The parties acknowledge that the MasterCard and Visa Association Rules give MasterCard and Visa certain rights to require termination or modification of this Merchant Application and Agreement with respect to transactions involving MasterCard and Visa Cards and the MasterCard and Visa Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Association Rules with respect to this Merchant Application and Agreement's applicability to transactions involving such other Cards.

26.6 Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing and, if sent by us to you, by mail, courier or facsimile at your address appearing on your Merchant Application and Agreement, or any other address you provide notice to us in a manner consistent with this paragraph; and if sent by you to us, by mail, courier or facsimile at P.O. Box 5180, Simi Valley, CA 93062, facsimile: 805-552-8899, with a copy to Attention: Counsel's Office, 6101 Condor Drive, Moorpark, CA 93021.

27 GLOSSARY. As used in this Merchant Application and Agreement, the terms below will have the following meanings:

ACH Fee. A fee charged each time a Merchant's bank account is either debited or credited funds through the ACH Settlement process.

Address Verification Service (AVS). A service provided through which the Merchant verifies the Cardholder's address. Primarily used by mail order/telephone order Merchants. Not a guarantee that a transaction is valid.

Association. Any entity formed to administer and promote Cards, including, without limitation, MasterCard International, Inc.; VISA U.S.A., Inc.; and VISA International, Inc.

Association Rules. The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association.

Authorization. Approval by, or on behalf of, the Card Issuing Bank to validate a transaction for a Merchant or another affiliate bank. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.

Authorization Fee (Auth Fee). A Merchant is charged an Authorization Fee each time communication is made via the POS terminal, software or gateway.

Bank. Member of MasterCard and Visa that clears transactions for these Associations. The Bank is Wells Fargo Bank, N.A., MACA0347-023 Montego Way, Walnut Creek, CA, 94598, or such other member of MasterCard and Visa that may subsequently be assigned.

Card. A valid credit Card or Debit Card bearing the service mark of Visa or MasterCard and, to the extent that you have signed up for such services, the marks of any other Association.

Cardholder. The individual whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.

Chargeback. The procedure by which a Sales Draft or other indicator of a Card transaction (or disputed portion thereof) is returned to Bank or the Issuing Bank, the liability for which is the Merchant's responsibility.

Chargeback Fee. A fee incurred each time a transaction is charged back to you.

Credit. A refund or price adjustment given for a previous purchase transaction.

Debit Card. A Card used at a Merchant location bearing a MasterCard or Visa logo and/or the marks of ATM networks (such as MAC, NYCE, Star) where the Issuing Bank is not extending credit to the Cardholder, but where the Card is connected to either a deposit account, a prepaid account or a prepaid benefit account.

Debit Network Processing Fees. Fees charged by PIN Debit networks for processing PIN Debit Transactions. In addition to any Debit Network Processing Fees, Merchant will also pay the Debit Card/ATM transaction fee as indicated in the Merchant Application and Agreement. Debit Network Processing Fees are subject to change without notice.

Decline Fee. A fee charged each time the Merchant processes a transaction which does not receive an Authorization or is otherwise declined.

Dial-Up Terminal. An Authorization device which, like a telephone, dials an Authorization center for validation of transactions.

Discount Rate. An amount charged for processing credit Card transactions or Signature Debit Transactions. Discount Rates are charged on all sales and refunds. The discount rates for Rate 2 and Rate 3 transactions are higher as described in Section 7.3 and the "Schedule of Charges (Fees)" section of the Merchant Application and Agreement.

Downgrade Fee. An additional fee applied per settled item for transactions that are charged a Rate 2 Discount Rate or Rate 3 Discount Rate.

Early Cancellation Fee. A fee in the amount of three hundred dollars (\$300.00), charged in the event that (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the initial twelve (12) month term of the Merchant Application and Agreement, or (b) this Merchant Application and Agreement is terminated prior to the expiration of the initial twelve (12) month term due to an Event of Default, except as provided in Section 15.1.

Electronic Benefit Transfer (EBT). An electronic system that allows a government benefit recipient to authorize the transfer of his/her benefits from a Federal, State or local government account to a Merchant account to pay for products and services received.

Excessive Chargebacks. (a) Chargebacks or Retrieval Requests in excess of MasterCard or Visa rules as they may exist from time to time, (b) Chargebacks relating to a Merchant's transactions processed by Bank in excess of one percent (1%) of the average monthly dollar amount of such transactions, (c) Chargebacks relating to a Merchant's

transactions processed by Bank in excess of one and a half percent (1.5%) of the total number of transactions processed by the Merchant for a particular month or, (d) Retrieval Requests in excess of three percent (3%) of the total number of transactions processed.

Imprinter. A manual or electric machine used to physically imprint the Merchant's name and ID number as well as the Cardholder's name and Card number on a Sales Draft.

Issuing Bank. The bank that has issued a Card.

Magnetic Stripe. A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The magnetic stripe contains essential Cardholder and account information.

Merchant. The party identified as "Merchant" on the Merchant Application and Agreement. The words "you" and "your" refer to Merchant.

Merchant Agreement. The agreement among Merchant, Processor and Bank contained in the Merchant Application and Agreement, any attachments, addenda, schedules thereto, each as amended from time to time, all of which collectively constitute the agreement among the parties.

Merchant Club Fee. A recurring monthly fee, as indicated in your Merchant Application and Agreement, for the Merchant Club.

Provided Merchant is current on his/her Merchant Club fees as stated in this Merchant Application and Agreement and not otherwise in breach of this Merchant Application and Agreement, should the Merchant's printer, pin pad or terminal become defective as a result of normal business usage and through no fault of Merchant or any third party, CTS Holdings, LLC shall facilitate the exchange of said processing equipment, whether or not the device at issue is under a manufacturer's warranty, for a refurbished device (same in model, form, features, and function as the defective device) at no charge within 24 to 48 hours. If a defective terminal is obsolete, not compatible with industry required software applications or otherwise unavailable, a similar terminal (similar in form, features, and function as the defective terminal) will be exchanged. **YOU ARE REQUIRED TO RETURN THE DEFECTIVE DEVICE AS DIRECTED BY PROCESSOR. YOU SHALL BE CHARGED FOR ANY EQUIPMENT SENT TO YOU IF THE DEFECTIVE DEVICE IS NOT RETURNED AS DIRECTED BY PROCESSOR.** In addition, Merchant shall be entitled to the following supplies at no charge: six rolls of printer paper and 400 Sales Drafts per month; four printer ribbons and two imprinter plates per year (ink cartridges are not included).

The initial term of the Merchant Club is thirty-six (36) months, continuing month to month thereafter. Termination of this Merchant Application and Agreement terminates the Merchant Club.

Monthly Minimum Discount Fee. A fee, as indicated in the Merchant Application and Agreement, less the net Discount Rates, if any, for your MasterCard/Visa transactions during the month.

Operating Procedures. The then-current manual prepared by Processor, containing operating procedures, instructions and other directives relating to Card transactions. If you process Card transactions, you must comply with the Operating Procedures.

Monthly Fee. A recurring monthly fee, as indicated in your Merchant Application and Agreement, for maintaining an account with Processor.

PIN Debit Transaction. A transaction in which a Debit Card is used at a Merchant location by means of a Cardholder-entered Personal Identification Number (PIN) in the Merchant PIN Pad. PIN Debit Cards bear the marks of ATM networks (such as MAC, NYCE, STAR).

Pre-Authorization Fee. A fee charged when a Merchant completes a pre-authorization on a transaction.

Processor. CTS HOLDINGS, LLC or any successor, transferee, assignee or delegate thereof.

Referral. The message received from an Issuing Bank when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

Reserve Account. A fund established and managed by us to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges.

Retrieval Request/Transaction Documentation Request. A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

Sales Draft. Evidence of a purchase of goods or services by a Cardholder from Merchant using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Association Rules.

Services. The activities undertaken by Processor and Bank to authorize, process and settle all United States Dollar-denominated MasterCard and Visa Card transactions undertaken by Cardholders at Merchant's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Merchant Application and Agreement for all other Cards covered by this Merchant Application and Agreement.

Settlement Account. An account at a financial institution designated by Merchant as the account to be debited and credited by Processor or Bank for Card transactions, fees, Chargebacks and other amounts due under the Merchant Application and Agreement or in connection with the Merchant Application and Agreement.

Signature Debit Transaction. A transaction in which a Debit Card is used at a Merchant location bearing a MasterCard or Visa logo, but where the Cardholder does not enter a PIN.

Submission. The process of sending batch deposits to us for processing. This may be done electronically or by mail.

Us. Bank and Processor collectively.

Vital Fee. A fee charged for each transaction processed through the Vital Front-End processor.

Voice Authorization Fee. This is a fee charged when the Merchant contacts an authorization representative to process their transaction.

Voice Response Unit Fee.: This fee is charged when the Merchant calls into the 800 number to authorize a transaction

We. Bank and Processor collectively.

You, your. See Merchant.

AUTHORIZATIONS AND REPRESENTATIONS

The Bank's mailing address is MAC A0347-023, 1200 Montego Way, Walnut Creek, CA, 94598. Attn: ISO-CTS and its phone number is 925-746-4143. The Bank is the only entity approved to extend acceptance of Association products directly to you and it must be a signatory to this Agreement. Some of the Bank's important responsibilities are (i) educating Merchants on pertinent Association Rules, (ii) being responsible for and providing settlement funds to you and (iii) being responsible for all funds held in reserve that are derived from settlement. Some of your important responsibilities are to (i) ensure compliance with Cardholder data security and storage requirements; (ii) maintain fraud and chargebacks below Association thresholds; (iii) review and understand the terms of the Agreement; and (iv) comply with Association Rules.

Each of the undersigned authorize Bank/ CTS HOLDINGS, LLC to use credit bureau/reporting agencies and/or its own agents to verify the accuracy of all information provided herein and to assess and monitor each of the undersigned's credit status. Each of the undersigned authorizes all such credit bureau /reporting agencies to release any information they may have pertaining to him/her to Bank/CTS HOLDINGS, LLC. No sales agent of Bank or CTS HOLDINGS, LLC is authorized to make any verbal or written modification to this Merchant Application and Agreement.

Do not sign below unless and until you have received and reviewed all ten (10) pages of this Merchant Application and Agreement. Do not process Card transactions until you have received and reviewed the Operating Procedures.

I understand that the initial term of this Merchant Application and Agreement is twelve (12) months, continuing month to month thereafter, and that account termination prior to the expiration of the initial term shall require Merchant to pay an Early Cancellation Fee in the amount of three hundred dollars (\$300.00). I acknowledge that this complete and legible 10-page Merchant Application and Agreement has been provided to me, and I agree to be bound by its provisions. I have been provided Operating Procedures, which contain the operating procedures, instructions and other directives relating to Card transactions. I agree that if I process Card transactions, I will comply with and be bound by the Operating Procedures for all transactions. I understand that I may also request a copy of the Operating Procedures from my sales representative and or Processor at any time. I further understand that no strikeouts, interlineations, additions or modifications to this preprinted Merchant Application and Agreement may be made and that this Merchant Application and Agreement may be transmitted to or from CTS HOLDINGS, LLC and/or retained electronically by CTS HOLDINGS, LLC, which will constitute an original. I understand that this Merchant Application and Agreement is subject to approval by CTS HOLDINGS, LLC and Bank. I declare under penalty of perjury under the laws of the state of California and under the laws of the state in which my business is located that all of the information contained in this Application is true and complete.

Print Name of Principal or Corporate Officer

Signature (Title) Date

Print Name of Principal or Corporate Officer

Signature (Title) Date

PERSONAL GUARANTOR

All corporations and limited liability companies must have their obligations guaranteed. As a primary inducement to Bank and CTS HOLDINGS, LLC, if applicable, to enter into this Merchant Application and Agreement and any addendum or attachment thereto, with Merchant, the undersigned Guarantor(s), by signing this Merchant Application and Agreement and any addendum or attachment thereto, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Bank and CTS HOLDINGS, LLC, if applicable, pursuant to this Merchant Application and Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Merchant breaches its Merchant Application and Agreement, Bank and CTS HOLDINGS, LLC, if applicable, may proceed directly against Guarantor or any other person or entity responsible for the performance of the Merchant Application and Agreement, without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by Bank.

Print Name of Personal Guarantor

Signature, as an individual (No title) Date

Print Name of Personal Guarantor

Signature, as an individual (No title) Date

CTS Holdings, LLC on behalf of itself and Wells Fargo Bank, N.A.

For internal use only: SIC/MCC Code _____

Signature