



## **INTRODUCTION**

1. This is a civil action seeking declaratory relief, monetary damages, and restitution from Defendants, arising from their assessment and collection of unauthorized and excessive payment processing fees and charges from Plaintiff and the other Class members.

2. In today's business world, the vast majority of merchants accept payment for goods and services via credit and debit cards. In order to accept these payment methods, merchants must use payment processing systems.

3. Merchants rely on the companies that provide payment processing services to do so at a fair, agreed upon price. Indeed, fees for card processing services are likely the third highest expense most merchants incur, following labor and product costs.

4. The card processing system can be a difficult one to understand, with many involved parties. For instance, in addition to the merchant who receives payment and the customer who provides such payment, the processing of a card transaction involves several other parties:

(a) The Card Issuer – the company that issued the credit or debit card to the customer, which is typically a bank such as Chase or Bank of America, and which charges a fee whenever a customer uses one its cards for a transaction.

These companies charge fees that are usually calculated as a percentage of a transaction plus a per-transaction fee (e.g., 1.65% + \$0.10/transaction). This fee varies based on the type of card used. For example, the card issuing companies will charge a higher fee for transactions involving a rewards credit card than a card with no rewards program. Although it is paid to the card issuer, the amount of this fee is set by the card networks (see below). These fees are generally known as “interchange rates.”

(b) The Card Network – the card networks (*i.e.*, Visa, MasterCard, Discover, and American Express) also charge fees on a per-transaction basis. By way of example, Visa assesses a fee known as the “APF” (“Acquirer Processing Fee”), and MasterCard charges a fee known as the “NABU” (“Network Access Brand Usage”) fee. These fees are generally known as “access fees.” The card networks also charge various additional fees, including fees calculated as a specific percentage of transaction volumes (e.g., “assessments” of 0.11% on all Visa transactions before July 2016, and 0.13% since July 2016).

(c) The Payment Processor – this is the entity that actually processes the payment through the card network and ensures that whenever a customer pays for an item or service with a credit or debit card, the customer’s account is debited and the merchant’s account is credited. Defendant Global is a

payment processor.

(d) The Member Bank – only banks, such as Wells Fargo and HSBC, may be members of card networks. These member banks “sponsor” payment processors so they may process transactions through the card networks.

(e) The Merchant Acquirer – this is the company that markets the payment processor’s services to merchants or aggregates accounts of Independent Sales Organizations (“ISOs”) or Merchant Service Providers (“MSPs”) who deal directly with merchants. Merchant acquirers and ISOs/MSPs essentially act as a “middle man” between merchants and payment processors. They enroll merchants in payment processing services, ensure that the services are working properly, and provide customer support to the merchant. Defendant NAB is a merchant acquirer.

5. Ordinarily, a merchant that wants to accept credit and debit cards as a form of payment contracts with a payment processor and/or merchant acquirer to obtain such services. This contract sets forth the fees that the merchant will be charged, which commonly consist of two parts:

(a) “Pass Through” Costs – these charges consist of the interchange rates charged by card issuers and the access fees and assessments imposed by card networks. These are set costs incurred by the member bank that apply universally at any given time, regardless of the type of the transaction or the identity of the

merchant. These costs are set, unavoidable, and are “passed through” to the merchant on their monthly billing statement.

(b) Payment Processing Fees – these are the fees which the merchant is charged by the payment processor and/or merchant acquirer for payment processing services. Unlike interchange rates, access fees, and assessments, these fees are negotiated on the front end of the parties’ relationship. They too are reflected on the merchant’s monthly billing statement.

6. The number of involved parties and moving pieces can make it difficult for small- and medium-sized merchants to understand whether their card processing companies are only charging them fees allowed by their contracts.

7. Unfortunately, some companies that implement and service card processing systems take advantage of this confusion. They induce merchants to execute standardized contracts for their services with the promise of straightforward, transparent pricing, but then implement mark-ups and junk fees.

8. These improper fees are assessed for the sole purpose of raising additional revenue at the merchants’ expense.

9. For several years, Defendants have perpetrated this scheme. This case challenges the amount and nature of the payment processing fees that have been imposed. Such fees violate the express terms of the parties’ form “Merchant

Service Agreement,” as well as the covenant of good faith and fair dealing. Furthermore, several pertinent provisions of the adhesive Agreement are unconscionable or otherwise unenforceable. Additionally, the fees charged are unjust and it would be inequitable for Defendants to retain them. Finally, Defendants misrepresented and omitted key facts concerning their billing practices both in the Application and in monthly statements.

### **PARTIES**

10. Plaintiff T.S. Kao, Inc. d/b/a Lucky 7 Chinese Restaurant (“Lucky 7”) is a Michigan corporation. Lucky 7 is a merchant that owns and operates a Chinese food restaurant in Ypsilanti, Michigan. It receives payment processing services through Defendants.

11. Defendant NAB is a Delaware limited liability company. NAB is one of the world’s largest merchant acquirers. Indeed, NAB provides merchant services to more than 250,000 merchants nationwide.

12. Defendant Global is a New York corporation. Global is a payment processor that, according to its websites, services 1.5 million merchants in 29 countries and processes \$6.5 billion in transactions and generates \$2.6 billion in revenue per year.

### **JURISDICTION AND VENUE**

13. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2) because there are more than 100 Class members and the aggregate amount in controversy exceeds \$5 million exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants. As a limited liability company, NAB is considered an “unincorporated association” for purposes of jurisdiction under the Class Action Fairness Act. 28 U.S.C. § 1332(d)(10).

14. This Court has personal jurisdiction over Defendants because they both conduct substantial business within the State of Georgia, such that they have significant, continuous, and pervasive contacts with this State. Jurisdiction also exists because the Merchant Service Agreement (Exhibit A) specifies this Court as the proper forum for any litigation arising out of or relating to that document or the relationships it creates.

15. Venue lies within this judicial district under 28 U.S.C. § 1391 because Defendants both conduct business in this district, and a substantial portion of the events, omissions, and acts giving rise to the claims herein occurred in this district.

## **COMMON FACTUAL ALLEGATIONS**

### **I. Merchants Contract for Transparent, Low Cost Payment Processing Services.**

16. NAB is headquartered in Troy, Michigan. According to its website, NAB “help[s] those striving for the American dream achieve it by providing them access to industry-leading merchant services.” NAB purports to offer “some of the lowest rates for payment processing you can find today.”

17. NAB specializes in enrolling merchants in payment processing services. Thereafter, NAB is charged with ensuring that the services are working properly, providing customer support to merchants, and handling monthly billing and collections.

18. NAB does not, however, process payments itself. Rather, such services are provided through the metro-Atlanta-headquartered Global, a back-end payment processing company.

19. NAB has partnered with Global to provide payment processing services to merchants for well over a decade.

20. Whenever NAB solicits business from a merchant, it provides the merchant with the form Merchant Service Agreement (“Agreement” or “MSA”). The MSA consists of (a) the Merchant Application; and (b) the Terms and Conditions of Merchant Service Agreement (“Terms”).

21. NAB is not specifically identified as a party to the Agreement. *See* MSA, p. 2 (identifying merchant, Global, and the member bank as the parties).

22. Nevertheless, NAB is clearly a party to the Agreement. For instance, NAB's logo is prominently featured on the Merchant Application. *See* MSA, p. 1. The Application also directs merchants to address "[a]ll questions regarding merchant processing" to NAB. *Id.* There is also a signature block on the Application for "Application Accepted by ISO." *Id.* at 11. Because NAB is the ISO in Plaintiff's transaction, this signature block is clearly intended for NAB.

23. Moreover, the Terms do impose obligations on NAB. *See* MSA, p. 11 (authorizing NAB to "initiate automated deposit or debit (ACH) entries to [Plaintiff's] bank account" and to collect merchant fees, "subject to and only as pursuant to [NAB's] separate written agreement with Global Direct").

24. The Merchant Application identifies the fees and charges to which the merchant will be subject *if* it decides to enroll in Defendants' services. The Application explicitly provides that merchants will be subject to two general types of charges.

25. The first general type of charge is "cost-plus" pricing. Under this method of pricing, the interchange rates, access fees, and assessments set by the card networks are passed through to the merchant *at cost* and the merchant is

separately charged an additional amount representing the payment processing fee (*i.e.*, the interchange rates, access fees, and assessments together comprise the “cost” in “cost-plus” pricing and the “plus” is Defendants’ fee).

26. By way of example, attached as Exhibit A is a copy of Lucky 7’s MSA, which on pages 1, 10, and 11 contains the Merchant Application. This Application states that for each transaction swipe, the merchant will be charged “Interchange Passthrough +50 Basis Points” and a per “Transaction Fee: \$.10.” *See* MSA, p. 10 (also stating, “Actual Interchange Passthrough and Assessments plus 50 BPS”).

27. In addition to such cost-plus pricing, the Application also specifically identifies the second type of charges – “Other Fees” – to which the merchant will be subject “if applicable.” *Id.* In the case of Lucky 7, for example, such “Other Fees” include a “Wireless Network Access (Monthly)” of \$14.95 and a “Monthly Basic Service Fee” of \$9.95. *Id.* (indicating these fees are applicable to Lucky 7 by denoting a “\*” next to them).

28. The Application thus informs the merchant – in clear, unambiguous terms – what it will be charged if it agrees to enroll in Defendants’ services and how such charges will be calculated.

29. This transparency is very important because the Agreement extends for a set period of time, typically three years. If a merchant desires to end its relationship with Defendants prior to the expiration of this term, it often must pay an early termination fee of at least \$295.00.

30. Those merchants that are interested in doing business for the specified fees identified in the Application sign it. The information contained in the Application is part and parcel of the deal.

## **II. Defendants Systematically Overcharge Their Merchants.**

31. Over the course of its relationship with merchants, NAB has imposed payment processing fees that do not comport with those set forth in the Application. These unauthorized and inflated fees are imposed for no other reason than to improve NAB's bottom line (and that of its partner, Global).

32. Upon information and belief, NAB chooses what fees to impose on merchants that are above and beyond those set forth in the merchant contracts. NAB then provides specifications to Global as to the nature and amount of future merchant overcharges (e.g., what new junk fees to impose and when, what pass-through access fees and assessments to increase, when to increase them, etc.).

33. Despite being a party to the Merchant Agreements and knowing that such fees are unauthorized, Global nevertheless ensures that merchants are charged

these amounts. For instance, Global prepares the monthly statements that impose such fees.

34. It is currently unknown which Defendant actually distributes the monthly statements to merchants and/or debits the fees from merchant accounts. For example, NAB is identified at the top of each statement but the form and format of the statement appears to be generated by Global (as shown by the fact that it is very similar to statements used by other merchant acquirers that have partnered with Global). Regardless, it is clear that they both are integral cogs in the scheme and share in its proceeds. Discovery will reveal the precise nature of each Defendant's back office role.

35. The various unauthorized and inflated fees imposed by Defendants are described in more detail below.

36. First, Defendants charged several types of fees that are not set forth in Lucky 7's Application. Among the fees that were charged to Lucky 7 that are mentioned *nowhere* in the Application are: (a) an annual PCI service fee (\$79.00 to \$99.00/year); (b) a monthly PCI non-compliance fee (\$6.95 to \$29.95/month); (c) an annual regulatory fee (\$99.00); (d) a PCI scan fee (\$64.95); and (e) an EMV readiness fee (\$29.99).

37. Second, on information and belief, Defendants routinely charge other fees that are mentioned *nowhere* in Class member Applications, including: (a) fixed acquirer network fees (\$4.00); (b) “www.mypci.com” fees (\$24.95 to \$99.00); and (c) annual fees (up to \$192.00 or more).

38. Third, Defendants charged Lucky 7 several types of fees that, although set forth in its Application, were not fees that were denoted as being applicable to Lucky 7, including: (a) a monthly minimum discount fee (\$25.00); (b) batch header fees (\$.035/transaction); and (c) a chargeback fee (\$25.00).

39. Fourth, on information and belief, Defendants routinely charge other fees that, although set forth in the Application, are not denoted as being applicable to Class members, including a monthly basic service fee (\$5.00 to \$10.00).

40. Fifth, Defendants charge fees at times when the Application specifically states they would not be charged. For example, they charged Lucky 7 an \$11.95 monthly “Biz Perks” fee before the Application said such fee would be charged. On information and belief, Lucky 7 alleges that Defendants routinely charge a “Biz Perks” (or “www.mybizperks.com”) fee of \$11.95 that is contrary to the contract and without merchant authorization.

41. Sixth, Defendants systematically overcharged merchants for assessments and access fees imposed by the Card Networks (Visa, MasterCard,

etc.). Although Defendants represented in the Application that they would charge Lucky 7 “actual interchange passthrough and assessments plus 50 BPS,” in fact, they illegally and impermissibly inflated those assessments. The 50 basis points which Lucky 7 agreed to pay in addition to actual interchange and assessments are reflected in the “discount rate” indicated on Lucky 7’s monthly statements. But Defendants systematically increased the Visa and MasterCard assessments – which are listed separately on the monthly statements – by five or more additional basis points per transaction. This tactic artificially increased the amount Lucky 7 was required to pay for assessments that were required to be “passed through,” and thus artificially inflated Defendants’ revenues at Lucky 7’s expense.

42. For example, as reflected on its April 2013 through June 2013 statements, Defendants passed through the actual assessments imposed by the card networks, as the Agreement required. However, in July 2013, they increased these assessments by five basis points. Such overcharges continued monthly until April 2014 when assessments increased by another two basis points (for a total of seven basis points). Such overcharges continued into 2016.

43. Moreover, Lucky 7 expressly agreed to pay \$0.0198 per transaction for the MasterCard access fee (the NABU fee, defined above) and \$0.0218 per transaction for the Visa access fee (the APF fee, defined above). *See* MSA, p. 10.

But Defendants charged Lucky 7 more than \$0.0198 for MasterCard transactions and \$0.0218 for Visa transactions.

44. For example, as reflected on its April 2013 through June 2013 statements, Defendants charged the agreed rates of \$0.0198 per MasterCard transaction and \$0.0218 per Visa transaction, but, beginning in July 2013, they began charging \$0.0368 per MasterCard transaction and \$0.0378 per Visa transaction. This practice continued until March 2014.

45. For each month from April 2014 to April 2016, Defendants charged \$0.0468 per MasterCard transaction and \$0.0478 per Visa transaction, more than *doubling* the permitted fee on a per-transaction basis.

46. By inflating the pass-through assessments and card association access fees in this way, Defendants pilfered thousands of dollars from Lucky 7 and untold amounts from other Class members.

47. Merchants that have been overcharged and billed for unauthorized junk fees and inflated assessments and access fees in contravention of the Merchant Service Agreement are disincentivized from terminating their relationship with Defendants, because they are on the hook for an early termination fee if the term has not yet expired. Thus, merchants that are subject to the

termination fee are essentially put to a Hobson's Choice – pay the early termination fee (often in excess of \$295.00) or accept the overbilling.

**III. Defendants Endeavor to Legitimize Their Overbilling Via Adhesive Terms.**

48. To further harm merchants, Defendants have buried oppressive provisions in the adhesive Terms.

49. The Terms are a boilerplate form document that is not negotiable and is presented to the merchant on an adhesive, take-it-or-leave-it basis. *See* MSA, pp. 2-9. The Terms consist of small font text occupying more than 30 densely-worded paragraphs over nine pages.

50. The Terms represent a unilateral effort by Defendants to: (a) backtrack from the agreements as to fees that were reached in the Application; and (b) immunize themselves from liability for their misconduct.

51. The Terms include clauses purporting to:

(a) give Defendants broad discretion to change the amounts of agreed-upon fees or impose whatever new fees they desire (MSA, pp. 2-3, 5);

(b) limit Defendants' liability to one month's worth of overcharges (*id.* at 4);

(c) limit the statute of limitation for claims related to "billing errors" to 90 days (*id.*);

(d) require merchants to pay attorneys fees in any legal action (regardless of whether Defendants are deemed the prevailing parties) (*id.* at 6);

(e) prohibit merchants from pursuing their claims in a class action (*id.*); and

(f) prohibit merchants from enforcing their right to a jury trial (*id.*).

52. These provisions violate public policy, lack mutuality, are unconscionable, and are otherwise void and unenforceable.

**IV. Defendants' Practices Have Harmed Plaintiff and the Other Class Members.**

53. The wrongful overbilling policies and practices described above harmed Plaintiff and the other Class members.

54. Lucky 7 was a merchant customer of Defendants beginning in early 2013. Defendants victimized and damaged Lucky 7 through the overbilling practices described herein. Specifically, NAB charged Lucky 7 junk fees that were not identified in the Merchant Application (or identified as being applicable to Plaintiff) and, as described in detail above, inflated access fees and assessments above and beyond the "pass through" charges it agreed to pay.

55. As a consequence of Defendants' overbilling policies and practices, Plaintiff and the other Class members have been wrongfully forced to pay unauthorized fees and charges. Defendants have improperly deprived Plaintiff and

the other Class members of significant funds, causing them to sustain damages. Because Defendants' practices of imposing unauthorized junk fees and inflating assessments and access fees were applied to the other Class members' accounts (of which there may be over 250,000) in an automated fashion, Defendants have pilfered hundreds of millions of dollars from their clients.

56. As a consequence of Defendants' improper charges and fees, Defendants have wrongfully deprived Plaintiff and the other Class members of funds to which Defendants have no legitimate claim.

### **CLASS ACTION ALLEGATIONS**

57. Plaintiff brings this action individually and on behalf of the following class of similarly situated merchants pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure:

All NAB customers in the United States who paid a fee or charge that was not authorized by the Merchant Service Agreement.

58. Plaintiff reserves the right to modify or amend the definition of the proposed Class, or other proposed classes or subclasses, before the Court determines whether certification is appropriate and as the Court may otherwise allow.

59. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendants have a controlling interest, all customers who make a timely election to be excluded, the government, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

60. The time period for the Class is the number of years immediately preceding the date on which this Complaint is filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendants remedy the conduct complained of herein. Based on Georgia's statute of limitations for breach of contract actions, the class period is likely to be six years if the contract is held to be enforceable.

61. The proposed Class meets all requirements for class certification. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members and the identity of those persons and entities is within the knowledge of Defendants and can be ascertained by resort to Defendants' records.

62. The claims of the representative Plaintiff are typical of the claims of the other Class members. Plaintiff, like all other Class members, was overcharged by Defendants as a result of their improper practices, including the imposition of

inflated assessments and access fees and unauthorized junk fees. The representative Plaintiff, like all Class members, has been damaged by Defendants' misconduct. Furthermore, the factual basis of Defendants' misconduct is common to all Class members, and represents a common thread of conduct resulting in injury to all Class members.

63. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Class members.

64. Among the questions of law and fact common to the Class are whether Defendants:

- (a) Imposed unauthorized junk fees;
- (b) Inflated assessments and access fees;
- (c) Breached contractual provisions and/or the covenant of good faith and fair dealing through their billing practices;
- (d) Required merchants to enter and enforced standardized account agreements which included unconscionable or otherwise unenforceable provisions;
- (e) Were unjustly enriched through their billing practices; and

(f) Acted and continue to act deceptively, misleadingly, unfairly, unlawfully, and/or fraudulently by imposing unauthorized junk fees and inflating assessments and access fees.

65. Other questions of law and fact common to the Class include:

(a) The proper method or methods by which to measure damages;  
and

(b) The declaratory and/or injunctive relief to which the Class is entitled.

66. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Defendants, most Class members could not afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will be unable to obtain redress for their losses and Defendants' misconduct will have occurred without remedy.

68. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

69. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards for Defendants.

70. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. Specifically, Defendants continue to knowingly overbill the Class and to enforce unconscionable or otherwise unenforceable contractual provisions in order to block Plaintiff and the other Class members from seeking legal relief. Class-wide declaratory and/or injunctive relief is appropriate to put an end to these illicit practices.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Breach of Contract and Breach of the  
Covenant of Good Faith and Fair Dealing**

71. Plaintiff repeats paragraphs 1 through 70 above.

72. Plaintiff, on behalf of itself and the other Class members, asserts a claim for breach of contract, including breach of the covenant of good faith and fair dealing.

73. Plaintiff and Defendants have contracted for payment processing services. As described above, Defendants' actions have violated the specific terms of the form Merchant Service Agreements with their customers. Defendants are liable for the losses of Plaintiff and the other Class members that have resulted from Defendants' breaches of the parties' contractual agreements.

74. Georgia law imposes upon each party to a contract the duty of good faith and fair dealing.<sup>1</sup> Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing

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<sup>1</sup> The Merchant Service Agreement provides that Georgia law applies. *See* MSA, p. 6.

the power to specify terms constitute examples of bad faith in the performance of contracts.

75. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing are evasion of the spirit of the bargain, willful rendering of imperfect performance, and abuse of a power to specify terms.

76. Defendants have breached the covenant of good faith and fair dealing with Plaintiff and the other Class members through their practices as alleged herein.

77. Plaintiff and the other Class members have performed all, or substantially all, of the obligations imposed on them under the Merchant Service Agreement, or those obligations are waived.

78. Plaintiff and the other Class members sustained damages as a result of Defendants' breaches of the Agreement, as well as the further breaches of the Agreement as modified by the covenant of good faith and fair dealing.

**COUNT TWO**  
**Unconscionability**

79. Plaintiff repeats paragraphs 1 through 70 above.

80. Defendants have attempted to immunize themselves from legal claims by imposing adhesive, unfair, and draconian terms in their Merchant Service Agreement making it extremely costly and practically impossible to obtain relief from their improper overbilling practices, as alleged in this Complaint.

81. Such terms include those purporting to:

(a) give Defendants broad discretion to change the amounts of agreed-upon fees or impose whatever new fees they desire (MSA, pp. 2-3, 5);

(b) limit Defendants' liability to one month's worth of overcharges (*id.* at 4);

(c) limit the statute of limitation for claims related to "billing errors" to 90 days (*id.*);

(d) require merchants to pay attorneys fees in any legal action (regardless of whether Defendants are deemed the prevailing parties) (*id.* at 6);

(e) prohibit merchants from pursuing their claims in a class action (*id.*); and

(f) prohibit merchants from enforcing their right to a jury trial (*id.*).

82. The Merchant Service Agreement, as a whole or in part, is substantively and procedurally unconscionable.

83. Indeed, the Agreement is a contract of adhesion in that it is a standardized form, imposed and drafted by Defendants, which are the parties of vastly superior bargaining strength, that only allowed Plaintiff and the Class members the opportunity to adhere to them or reject them entirely.

84. The Agreement is deceptive, unfair, illusory, and misleading to any extent it allowed Defendants to perpetrate the grossly improper acts described herein.

85. Considering the great business acumen and experience of Defendants in relation to Plaintiff and the Class members, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, the Agreement is unconscionable and, therefore, unenforceable as a matter of law.

86. Plaintiff and the Class members have sustained damages as a result of Defendants' unconscionable Agreement as alleged herein.

87. Accordingly, Plaintiff seeks monetary, declaratory, and injunctive relief, including attorneys' fees and costs of suit.

**COUNT THREE**  
**Unjust Enrichment**

88. Plaintiff repeats paragraphs 1 through 70 above.

89. Plaintiff, on behalf of itself and the other Class members, asserts a common law claim for unjust enrichment. This claim is brought in the alternative to Count One and is contingent on the Merchant Service Agreement either being deemed unenforceable or inapplicable to Plaintiff's relationship with either or both Defendants (for instance, NAB is not identified as a party to the Agreement). In either scenario, unjust enrichment will dictate that Defendants must disgorge all improper fees.

90. By means of Defendants' wrongful conduct alleged herein, Defendants knowingly engaged in billing practices against Plaintiff and the other Class members that were unfair, unconscionable, and oppressive.

91. Defendants knowingly received and retained wrongful benefits and funds from Plaintiff and the other Class members. In so doing, Defendants acted with conscious disregard for the rights of Plaintiff and the other Class members.

92. As a result of Defendants' wrongful conduct as alleged herein, they have been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the other Class members.

93. Defendants' unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

94. Under the common law doctrine of unjust enrichment, it is inequitable for Defendants to be permitted to retain the benefits they have received, and are still receiving, without justification, from the imposition of illicit junk fees on Plaintiff and the other Class members in an unfair, unconscionable, and oppressive manner. Defendants' retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

95. The financial benefits derived by Defendants rightfully belong to Plaintiff and the other Class members. Defendants should be compelled to disgorge into a common fund for the benefit of Plaintiff and the other Class members all wrongful or inequitable proceeds. A constructive trust should be imposed upon all wrongful or inequitable sums received by Defendants traceable to Plaintiff and the other Class members.

**COUNT FOUR**  
**Fraud**

96. Plaintiff repeats paragraphs 1 through 70 above.

97. Plaintiff, on behalf of itself and the other Class members, asserts a common law claim for fraud. This count is premised on Defendants' fraudulent misrepresentations in the Application as well as in the monthly statements transmitted by Defendants to Plaintiff and other Class members, and on Defendants' fraudulent omissions in the Application as well as in the monthly statements transmitted by Defendants to Plaintiff and other Class members.

98. As alleged above, Defendants have affirmatively misrepresented their billing practices in the Application. Paragraphs 24 through 28 above describe in detail the misstatements as to what Plaintiff would be charged.

99. In reality, Defendants never intended to honor these representations. Defendants charged junk fees not mentioned and inflated assessments and access fees beyond the amounts identified in the Application.

100. Moreover, the Application contains fraudulent omissions because the fact that Defendants would inflate or mark up both the assessments and the access fees was not disclosed therein. That fact was material to Plaintiff and to all Class members because the entire purpose of any merchant's acquisition of card processing services from Defendants on an interchange-plus basis is to obtain

transparency into the fee structure for each transaction cost, and to eliminate unnecessary transaction costs.

101. Defendants' monthly invoices also contain fraudulent misrepresentations and fraudulent omissions. As alleged above, Defendants inaccurately described certain charges as card association assessments or access fees, when in fact such charges include inflation or mark-up arbitrarily added by Defendants. Moreover, Defendants inaccurately describe certain charges as fees required for various purposes (including PCI fees, EMV fees, acquirer network fees, annual fees, and basic service fees), when in fact such charges are imposed solely to benefit Defendants. All such descriptions on monthly invoices are false representations.

102. Similarly, each monthly invoice fails to disclose that the charges labeled as card association assessments and access fees in fact include inflation or mark-up arbitrarily imposed by Defendants. Moreover, each monthly invoice fails to disclose that the charges labeled as various standalone fees (including PCI fees, EMV fees, acquirer network fees, annual fees, and basic service fees) are in fact charged solely to benefit Defendants. Such omissions are material to Plaintiff and all Class members because the entire purpose of any merchant's acquisition of card processing services from Defendants on an interchange-plus basis is to obtain

transparency into the fee structure for each transaction cost, and to eliminate unnecessary transaction costs.

103. Plaintiff and all Class members relied upon Defendants to disclose the truth about its charges, and relied upon the representations in the Application and the monthly invoices in paying Defendants what Defendants claimed was due.

104. Plaintiff and all Class members have been damaged as a result of Defendants' fraudulent misrepresentations and omissions as alleged herein.

105. Accordingly, Plaintiff seeks monetary, declaratory, and injunctive relief, including attorneys' fees and costs of suit.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of itself and the other Class members, respectfully requests that this Court enter judgment against Defendants as follows:

1. Declaring the several challenged provisions of the Merchant Service Agreement to be unenforceable and enjoining their enforcement;
2. Declaring Defendants' fee assessment policies and practices to be violative of the Merchant Service Agreement, wrongful, and unconscionable;
3. Awarding restitution of all illicit fees at issue paid to Defendants by Plaintiff and the other Class members as a result of the improper practices alleged herein in an amount to be determined at trial;

4. Compelling disgorgement of the ill-gotten gains derived by Defendants from their misconduct;
5. Awarding actual damages in an amount according to proof;
6. Awarding punitive and exemplary damages;
7. Awarding pre- and post-judgment interest at the maximum rate permitted by applicable law;
8. Reimbursing all costs and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law;
9. Granting a trial by jury; and
10. Awarding such other relief as this Court deems just and proper.

DATED this 10th day of November, 2016.

Respectfully submitted,

BY: WEBB, KLASE & LEMON, LLC

/s/ E. Adam Webb

E. Adam Webb

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## 1. INTRODUCTION AND DEFINITIONS.

This document, "Terms and Conditions of Merchant Service Agreement" ("Terms and Conditions") accompanies the document "Global Payments Merchant Application" ("Merchant Application"). The Merchant Service Agreement ("Agreement" or "Card Services Agreement") includes these Terms and Conditions and the terms and conditions of the Merchant Application. The Member bank identified in such Merchant Application ("Member") is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"). Global Payments Direct, Inc. ("Global") is a registered independent sales organization of Visa, a member service provider of MasterCard and a registered acquirer for Discover Financial Services LLC ("Discover"). Merchant and Global Direct agree that the rights and obligations contained in these Terms and Conditions of Merchant Service Agreement do not apply to the Member with respect to Discover transactions and Switched Transactions (as defined below). To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover. To the extent Merchant accepts Discover cards and has a separate agreement with Discover, Discover card transactions shall be processed as Switched Transactions (as defined below). Any references to the Debit Sponsor shall refer to the debit sponsor identified below. The Agreement is between Global Direct, the Member and the merchant identified in the Merchant Application ("Merchant"). Under the terms of the Agreement, Merchant will be furnished with the services and products described herein and in the Merchant Application, and selected by Merchant therein (collectively and individually, as applicable, the "Services"). Global Direct will be the sole and exclusive provider of the Services to Merchant during the term of this Agreement. Any Merchant accepted by Global Direct for card processing services agrees to be bound by the Agreement, including the terms of the Merchant Application and these Terms And Conditions as may be modified or amended in the future. A Merchant's submission of a transaction to Global Direct shall be deemed to signify Merchant's acceptance of the Merchant Services Agreement, including the Terms and Conditions herein. Except as expressly stated in the first three paragraphs of Section 13, all terms and conditions of this Merchant Services Agreement shall survive termination to the extent necessary to protect Global Direct, Member's and anyone acting on Global Direct or Member's behalf's rights herein.

## 2. SERVICE DESCRIPTIONS.

Credit Card processing services: Global Direct's actions to the appropriate card associations and/or issuers (e.g., Visa, MasterCard, Diners, Discover); settlement; dispute resolution with cardholders' banks; and transaction-related reporting, statements and products. Debit/ATM Processing Services: Global Direct has connected to the following debit card networks ("Networks"): Accel, AFFN, Interlink, MAC, Maestro, NYCE, Pulse, Star, and Tyme. Global Direct will provide Merchant with the ability to access the Networks that Global Direct has connected to for the purpose of authorizing debit card transactions at the point of sale from cards issued by the members of the respective Networks. Global Direct will provide connection to such Networks, terminal applications, settlement and reporting activities. EBT Transaction Processing Services: Global Direct offers electronic interfaces to Electronic Benefits Transfer ("EBT") networks for the processing of cash payments or credits to or for the benefit of benefit recipients ("Recipients"). Global Direct will provide settlement and switching services for various Point of Sale transactions initiated through Merchant for the authorization of the issuance of the United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and/or government delivered cash assistance benefits ("Cash Benefits," with FS Benefits, "Benefits") to Recipients through the use of a state-issued card ("EBT Card"). With respect to Visa and MasterCard products, Merchant agrees to pay and Merchant's account(s) will be charged pursuant to Section 5 of this Agreement for any additional fees incurred as a result of Merchant's subsequent acceptance of transactions with any Visa or MasterCard product that it has not elected to accept.

## 3. PROCEDURES.

Merchant will permit holders of valid cards bearing the symbols of the cards authorized to be accepted by Merchant hereunder to charge purchases or leases of goods and services and the debt resulting there from shall be purchased hereunder on a provisional basis in accordance with Section 5 below, provided that the transaction complies with the terms of this Agreement. All indebtedness submitted by Merchant for purchase will be evidenced by an approved sales slip. Merchant will not present for purchase any indebtedness that does not arise out of a transaction between a cardholder and Merchant. Merchant agrees to follow the Card Acceptance Guide which is incorporated into and made part of this Agreement, and to be bound by the operating regulations and rules of Visa, MasterCard, Discover and any other card association or network organization covered by this Agreement, as any of the above referenced documents may be modified and amended from time to time. Merchant acknowledges that the Card Acceptance Guide is located on Global Direct's website at [www.globalpaymentsinc.com](http://www.globalpaymentsinc.com). Without limiting the generality of the foregoing, Merchant agrees to comply with and be bound by, and to cause any third party who provides Merchant with services related to payment processing or facilitates Merchant's ability to accept credit and debit cards and who is not a party to this Card Services Agreement to comply with and be bound by the rules and regulations of Visa, MasterCard, Discover and any other card association or network organization related to cardholders and transaction information security, including without limitation, Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program. Furthermore, Merchant is required to annually validate PCI DSS compliance, with the initial validation required to be completed within ninety (90) days of the effective date of the Agreement. Merchant will be charged an annual compliance fee ("Compliance Fee"), which is subject to change at agent's sole discretion, to offset the costs associated with maintaining compliance with PCI DSS and other governmental and regulatory requirements. Merchant also agrees to cooperate at its sole expense with any request for an audit or investigation by Global Direct, Member, a card association or network organization in connection with cardholder and transaction information security. Without limiting the generality of the foregoing, Merchant agrees that it will use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. Merchant will indemnify and hold Global Direct, Member and anyone acting on Global Direct or Member's behalf harmless from any fines and penalties issued by Visa, MasterCard, Discover or any card association or network organization and any other fees and costs arising out of or relating to the processing of transactions by Global Direct and Member at Merchant's location(s) and will reimburse Global Direct for any losses incurred by Global Direct with respect to any such fines, penalties, fees and costs. Global Direct may, from time to time, issue written directions (via mail or Internet) regarding procedures to follow and forms to use to carry out this Agreement. These directions and the terms of the forms are binding as soon as they are issued and shall form part of these Terms and Conditions of the Agreement. Such operating regulations and rules may be reviewed upon appointment at Global Direct's designated premises and Merchant acknowledges that it has had the opportunity to request a review and/or review such operating regulations and rules in connection with its execution of this Card Services Agreement.

## 4. MARKETING.

Merchant shall adequately display the card issuer service marks and promotional materials supplied by Global Direct. Merchant shall cease to use or display such service marks immediately upon notice from Global Direct or upon termination of this Agreement.

## 5. PAYMENT, CHARGES AND FEES.

Fees and charges payable by Merchant shall be as set forth in the Merchant Application and these Terms and Conditions. Merchant will be paid for indebtedness purchased under this Agreement by credit to Merchant's account(s). Each purchase of indebtedness shall be funded on a provisional basis until all chargebacks, fees, fines, penalties and other adjustments are identified and implemented in respect of such purchase under this Card Services Agreement and/or the rules and regulations of a card association or network organization. Accordingly, any such provisional funding is subject to reversal and recoupment with regard to any such chargebacks, fees, fines, penalties and other adjustments. Merchant's account(s) will be credited for the gross amount of the indebtedness deposited less the amount of any credit vouchers deposited. Merchant shall not be entitled to credit for any indebtedness that arises out of a transaction not processed in accordance with the terms of this Card Services Agreement or the rules and regulations of a card association or network organization. Availability of any such funds shall be subject to the procedures of the applicable financial institution. Chargebacks and adjustments will be charged to Merchant's account(s) on a daily basis. Merchant agrees to pay and Merchant's account(s) will be charged for the discount, fees, chargebacks and other fees and charges described in this Agreement. Merchant also agrees to pay and Merchant's account(s) will be debited for all fees, arbitration fees, fines, penalties, etc. charged

or assessed by the card associations or network organizations on account of or related to Merchant's processing hereunder, including without limitation with regards to any third party who provides Merchant with services related to payment processing or facilitates Merchant's ability to accept credit and debit cards and who is not a party to this Card Services Agreement. If any type of overpayment to Merchant or other error occurs, Merchant's account(s) may be debited or credited, without notice, and if Merchant's account(s) do not contain sufficient funds, Merchant agrees to remit the amount owed directly to Global Direct. Merchant agrees not to, directly or indirectly, prevent, block or otherwise preclude any debit by Global Direct or Member to Merchant's account which is permitted hereunder. Merchant represents and warrants that no one other than Merchant has any claim against such indebtedness except as authorized in writing by Member and Global Direct. Merchant hereby assigns to Member and Global Direct all of its right, title, and interest in and to all indebtedness submitted hereunder and agrees that Member and Global Direct have the sole right to receive payment on any indebtedness purchased hereunder. Merchant acknowledges and agrees, notwithstanding anything set forth in this Card Services Agreement to the contrary, that each purchase of indebtedness under this Card Services Agreement is of such a nature that the price to be paid by the Member and Global Direct cannot be equitably determined until the respective periods permitted for chargebacks, fees, fines, penalties and other adjustments to be assessed or implemented have all expired under this Card Services Agreement and/or the rules and regulations of the applicable card association or network organization. These chargebacks, fees, fines, penalties and other adjustments are an integral part of the purchase transaction, and the final price that is to be paid for such indebtedness by the Member and Global. To the extent that any chargeback, fee, penalty, fine or other adjustment is assessed or implemented, the Member and Global Direct may exercise their right of recoupment with regard to the price provisionally paid for the respective indebtedness that was purchased. In the absence of this remedy, the Merchant acknowledges that it would be overpaid for the indebtedness purchased, and such overpayment shall be held in trust by the Merchant as the legal and equitable property of the Member and Global Direct.

#### **6. EQUIPMENT AND SUPPLIES/THIRD PARTY SERVICES.**

Merchant agrees that it will not acquire any title, copyrights, or any other proprietary right to any advertising material; leased equipment including imprinters, authorization terminals, or printers; software; credit card authenticators; unused forms; and Merchant deposit plastic cards provided by Global Direct in connection with this Card Services Agreement. Merchant will protect all such items from loss, theft, damage or any legal encumbrance and will allow Global Direct and its designated representatives reasonable access to Merchant's premises for their repair, removal, modification, installation and relocation. Merchant acknowledges that any equipment or software provided under this Agreement is embedded with proprietary technology ("Software"). Merchant shall not obtain title, copyrights or any other proprietary right to any Software. At all time, Global Direct or its suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Global Direct. Global Direct's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to such suppliers' ownership rights; such suppliers have the right to rely on and directly enforce such terms against Merchant. The operating instructions will instruct Merchant in the proper use of the terminals, and Merchant shall use and operate the terminals only in such manner. If Merchant has purchased the maintenance/help desk service hereunder for its terminals, Merchant will promptly notify Global Direct of any equipment malfunction, failure or other incident resulting in the loss of use of the equipment or need for repair or maintenance, whereupon Global Direct will make the necessary arrangements to obtain required maintenance. Merchant is responsible for shipping costs. Merchant shall cooperate with Global Direct in its attempt to diagnose any problem with the terminal. In the event the Merchant's terminal requires additional Software, Merchant is obligated to cooperate and participate in a dial in down line load procedure. With respect to any item of equipment leased to Merchant by Global Direct, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Global Direct in the event that any leased item of equipment is lost, destroyed, stolen or rendered inoperative. Merchant will indemnify Global Direct against any loss arising out of damage to or destruction of any item of equipment provided hereunder for any cause whatsoever. Merchant also agrees to hold harmless and indemnify Global Direct for any costs, expenses, and judgments Global may suffer, including reasonable attorney's fees, as a result of Merchant's use of the equipment provided hereunder. Any unused equipment in its original packaging purchased from Global hereunder may be returned to Global Direct at Merchant's expense within 60 days of receipt. Merchant shall receive a refund of any money paid in connection therewith subject to a re-stocking fee of an amount equal to 20 percent of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after 60 days. Merchant acknowledges that some of the services to be provided by Global Direct and Member hereunder may be provided by third parties. Merchant agrees that except for its right to utilize such services in connection with this Card Services Agreement, it acquires no right, title or interest in any such services. Merchant further agrees that it has no contractual relationship with any third party providing services under this Card Services Agreement and that Merchant is not a third party beneficiary of any agreement between Global Direct or Member, as applicable, and such third party. Merchant may not resell the services of any third party providing services under this Card Services Agreement to any other party.

#### **7. FINANCIAL INFORMATION.**

Merchant agrees to furnish Global Direct and Member such financial statements and information concerning Merchant, its owners, principals, partners, proprietors or its affiliates as Global Direct may from time to time request. Global Direct, or its duly authorized representatives, may examine the books and records of Merchant, including records of all indebtedness previously purchased or presented for purchase. Merchant agrees to retain copies of all paper and electronic sales slips and credit slips submitted to Global Direct for a period of two years from submission, or such longer period of time as may be required by the operating rules or regulations of the card associations or network organizations, by law, or by Global Direct as specifically requested in writing in individual cases. Merchant agrees that Global Direct, Member and anyone acting on Global Direct or Member's behalf may seek injunctive relief with respect to Merchant's failure to furnish financial or other information upon request.

#### **8. CHANGE IN BUSINESS.**

Merchant agrees to provide Global Direct and Member 60 days prior written notice of its intent to (a) transfer or sell any substantial part (10% or more) of its total stock, assets and/or to liquidate; or (b) change the basic nature of its business, or (c) convert all or part of the business to mail order sales, telephone order sales, or to other sales where the card is not present and swiped through Merchant's terminal. Upon the occurrence of any such event, the terms of this Agreement may be modified to address issues arising there from, including but not limited to requirements of applicable card associations or network organizations.

#### **9. TRANSFERABILITY.**

This Agreement is not transferable by Merchant without the written consent of Global Direct and Member. Any attempt by Merchant to assign its rights or to delegate its obligations in violation of this paragraph shall be void. Merchant agrees that the rights and obligations of Global Direct hereunder may be transferred by Global Direct without notice to Merchant. Merchant agrees that the rights and obligations of Member hereunder may be transferred to any other member without notice to Merchant. Merchant acknowledges that the transferable rights of Global Direct and Member hereunder shall include, but shall not be limited to, the authority and right to debit the Merchant's account(s) as described herein.

#### **10. WARRANTIES AND REPRESENTATIONS.**

Merchant warrants and represents to Global Direct and Member: (a) that each sales transaction delivered hereunder will represent a bona fide sale to a card holder by Merchant for the amount shown on the sales slip as the total sale and constitutes the binding obligation of the card holder, free from any claim, demand, defense, setoff or other adverse claim whatsoever; (b) that each sales slip or other evidence of indebtedness will accurately describe the goods and services which have been sold and delivered to the card holder or in accordance with his instructions; (c) that Merchant will comply fully with all federal, state and local laws, rules and regulations applicable to its business; (d) that Merchant will fulfill completely all of its obligations to the cardholder and will resolve any customer dispute or complaint directly with the card holder; (e) that the signature on the sales slip will be genuine and authorized by cardholder and not forged or unauthorized; (f) that the sales

transaction shall have been summarized on the sales slip prepared in full compliance with the provisions of the Card Acceptance Guide and the operating regulations and rules of the applicable card association or network organization, as amended from time to time; (g) that none of the sales transactions submitted hereunder represent sales by telephone, or mail, or Internet, or where the card is not physically present at the Merchant's location and swiped through Merchant's terminal, unless Merchant is specifically authorized in writing by Global Direct to submit such sales slips for purchase, (h) that none of the sales transactions submitted hereunder for purchase represent sales to any principal, partner, proprietor, or owner of Merchant, (i) that, without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of Visa, MasterCard, Discover and any other card association or network organization related to card holder and transaction information security, including without limitation Payment Card Industry (PCI) Data Security Standards, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program, and (j) that all of the information contained in this Merchant Application and Service Agreement is true and correct. In the event that any of the foregoing warranties or representations is breached, the affected sales slips or other indebtedness may be refused, or prior acceptance revoked and charged back to the Merchant. Furthermore, if Merchant submits for purchase hereunder a sales transaction that is not the result of a sale of Merchant's goods or services offered to the general public or if Merchant submits any sales transactions for purchase hereunder which represents a sale to any principal, partner, proprietor, or owner of Merchant, such sales transaction may be refused or charged back. Merchant must notify Global Direct if Merchant elects to use the terminal service of American Express, Novus, or any other third party provider. If Merchant elects to use a third-party terminal provider, that provider becomes Merchant's agent for the delivery of card transactions to Global via the applicable card processing network. Merchant agrees to assume full responsibility and liability for any failure of such agent to comply with the operating regulations and rules of the applicable card association or network organization, including without limitation any violation, which results in a chargeback to the Merchant. Merchant also agrees that the obligation hereunder to reimburse the Merchant for the value of the card transactions captured by an agent is limited to the value of the transactions (less applicable fees) received by the card processing network from the agent. NEITHER MEMBER, NOR GLOBAL DIRECT, NOR ANY SUPPLIER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY TERMINAL, ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH, OR ANY OF THE SERVICES FURNISHED HEREUNDER.

#### **Internal Revenue Service ("IRS") Reporting**

Merchant hereby warrants and certifies that: (i) the taxpayer identification number ("TIN") provided on the Merchant Application is Merchant's true and correct TIN; (ii) Merchant is not subject to backup withholding because (a) Merchant is exempt from backup withholding, (b) Merchant has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Merchant that it is no longer subject to backup withholding, and (iii) Merchant is a citizen of the United States of America ("U.S.") or other U.S. person. (For federal tax purposes, Merchant is considered a U.S. person if Merchant is: an individual who is a U.S. citizen, or U.S. resident alien, partnership, corporation, company or association created or organized in the United States or under the laws of the United States, and estate (other than a foreign estate), or a domestic trust (as defined in the Internal Revenue Code section 301.7701-7.))

#### **11. INDEMNITY.**

Merchant agrees to satisfy directly with the card holder any claim or complaint arising in connection with the card sale. Merchant agrees to indemnify and hold Global Direct and Member harmless from and against any and all liabilities, losses, claims, damages, disputes, offsets, claims or counterclaims made by a cardholder or any other person or entity with regard to indebtedness sold by Merchant hereunder or any other Service provided hereunder.

#### **12. LIMITATION OF LIABILITY.**

Neither Member nor Global Direct shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, or other similar causes beyond such party's control. The liability of Global Direct and Member for any loss hereunder, including but not limited to damages arising out of any malfunction of the equipment or the failure of the equipment to operate, the unavailability or malfunction of the Services, personal injury, or property damage, shall, in the aggregate, be limited to actual, direct, and general money damages in an amount not to exceed one (1) month's average charge paid by Merchant hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Merchant's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of Global's and Member's liability in the event of any alleged default by Global Direct or Member arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the form in which any legal or equitable action may be brought against Global Direct or Member, whether contract, tort or otherwise, and the foregoing shall constitute Merchant's exclusive remedy. Under no circumstances shall Global Direct or Member be liable for any lost profits, lost interest, or for special, consequential, punitive or exemplary damages, including but not limited to, damages arising out of placement of a Merchant's name on any terminated merchant list for any reason, even if Global Direct or Member has been advised of the possibility of such damages. It is agreed that in no event will Global Direct or Member be liable for any claim, loss, billing error, damage, or expense caused by Global Direct's or Member's performance or failure to perform hereunder which is not reported in writing to Global Direct by Merchant within 60 days of such failure to perform or, in the event of a billing error, within 90 days of the date of the invoice or applicable statement. Merchant expressly waives any such claim that is not brought within the time periods stated herein.

#### **13. TERM AND TERMINATION.**

This Agreement shall remain in full force and effect for an initial term of three (3) years. This Agreement shall be automatically extended for successive one (1) year periods on the same terms and conditions expressed herein, or as may be amended, unless Merchant gives written notice of termination as to the entire Agreement or a portion thereof at least 60 days prior to the expiration of the initial term or any extension or renewals thereof, in which case this Agreement will terminate at the end of the then-current term. Notwithstanding anything to the contrary set forth herein, in the event Merchant terminates the Agreement in breach of this Section 13, all monthly fees assessed to Merchant under the Agreement and due to Global Direct for the remainder of the then existing term of the Agreement, including all minimum monthly fee commitments, shall be immediately due and payable to Global Direct, and Merchant hereby authorizes Global Direct to deduct the greater of (a) \$295 and (b) all remaining monthly fees (provided in no event shall either such amount exceed the maximum amount permitted by applicable state law) from Merchant's account referenced in Section 5, or to otherwise withhold the total amount from amounts due to Merchant from Global Direct, immediately on or after the effective date of termination. If the Merchant's account does not contain sufficient funds for the debit or the amount cannot be withheld by Global Direct from amounts due to Merchant, Merchant shall pay Global Direct the amount due within ten (10) days of the date of Global Direct's invoice for same. The payment of accelerated monthly fees as described here is not a penalty, but rather is hereby agreed by the parties to be a reasonable amount of liquidated damages to compensate Global Direct for its termination expenses and all other damages under the circumstances in which such amounts would be payable. Such amounts shall not be in lieu of but in addition to any payment obligations for Services already provided hereunder (or that Global Direct may continue to provide), which shall be an additional cost, and any and all other damages to which Global Direct may be entitled hereunder. Notwithstanding the foregoing, Global Direct may terminate this Agreement or any portion thereof upon written notice to Merchant. Furthermore, Global Direct may terminate this Agreement at any time without notice upon Merchant's default in performing under any provision of this Agreement, upon an unauthorized conversion of all or any part of Merchant's activity to mail order, telephone order, or to any activity where the card is not physically present and swiped through the Merchant's terminal, upon any failure to follow the Card Acceptance Guide or any operating regulation or rule of a card association or network organization, upon any misrepresentation by Merchant, upon commencement of bankruptcy or insolvency proceedings by or against the Merchant, or in the event Global

Direct reasonably deems itself insecure in continuing this Agreement. In the event that Global Direct and Member breach the terms and conditions hereof, the Merchant may, at its option, give written notice to Global Direct and Member of its intention to terminate this Agreement unless such breach is remedied within 30 days of such notice. Failure to remedy such a breach shall make this Agreement terminable, at the option of the Merchant, at the end of such 30 day period unless notification is withdrawn. Any Merchant deposit of sales or credit slips that is accepted by Global Direct and Member or by a designated depository after the effective date of termination will be returned to Merchant and will not be credited (or debited) to its account(s). If the deposit has already been posted to Merchant's account(s), said posting will be reversed and the deposit returned to Merchant. Termination of this Agreement shall not affect Merchant's obligations which have accrued prior to termination or which relate to any indebtedness purchased hereunder prior to termination, including but not limited to charge backs even if such charge backs come in after termination. In the event of termination, all equipment leased from Global Direct (but not from any other leasing agent), including but not limited to im printers, terminals, and printers; all supplies; Card Acceptance Guides; and operating instructions must be returned immediately to Global at Merchant's expense. Notwithstanding the foregoing, if within forty-five (45) days of Merchant's execution of this Agreement Merchant both provides NAB or Global with written notice that it wishes to terminate this Agreement immediately and, if applicable, returns to Global, or anyone acting on Global Direct or Member's behalf, at Merchant's expense any free terminals Merchant received in connection with this Agreement, Merchant shall not be responsible for the payment of the above-referenced accelerated monthly fees, but shall be responsible for compliance with all other terms and conditions set forth in this Agreement, including but not limited to payment for all fees incurred prior to the termination of this Agreement.

#### 14. RETURNED ITEMS/CHARGEBACKS.

If a card holder disputes any transaction, if a transaction is charged back for any reason by the card issuing institution, or if Global Direct or Member has any reason to believe an indebtedness previously purchased is questionable, not genuine, or is otherwise unacceptable, the amount of such indebtedness may be charged back and deducted from any payment due to Merchant or may be charged against any of Merchant's accounts or the Reserve Account (as defined below). Merchant acknowledges and agrees that it is bound by the rules of the card associations and network organizations with respect to any chargeback. Merchant further acknowledges that it is solely responsible for providing Global Direct and Member with any available information to re-present a chargeback and that, regardless of any information it provides or does not provide Global Direct and Member in connection with a chargeback, or any other reason, Merchant shall be solely responsible for the liability related to such chargeback. A list of some common reasons for chargebacks is contained in the Card Acceptance Guide provided, however, that such list is not exclusive and does not limit the generality of the foregoing. If any such amount is uncollectible through withholding from any payments due hereunder or through charging Merchant's accounts or the Reserve Account, Merchant shall, upon demand by Global Direct, pay Global Direct the full amount of the charge back. Merchant understands that obtaining an authorization for any sale shall not constitute a guarantee of payment, and such sales slips can be returned or charged back to Merchant like any other item hereunder.

#### 15. RESERVE ACCOUNT.

At any time, Global Direct and Member may, at their option, establish a reserve account to secure the performance of Merchant's obligations under this Agreement to such party ("Reserve Account"). The Reserve Account may be funded, at Global Direct's (or anyone acting on Global Direct's behalf's) sole discretion, through any or all of the following: (a) Direct payment by Merchant - At the request of Global Direct or Member, Merchant will deposit funds in the Reserve Account; (b) The proceeds of indebtedness presented for purchase; or (c) The transfer by Global Direct and Member into the Reserve Account of funds withdrawn from any of the accounts referred to in Section 5 or any other accounts, including certificates of deposit, maintained by Merchant or Merchant's guarantor, if any, with any designated depository or other financial institution. Merchant and Merchant's guarantor hereby grant Member a security interest in all said accounts and authorize Global Direct (to the extent authorized by Member) or Member to make such withdrawals at such times and in such amounts as it may deem necessary hereunder. Merchant and Merchant's guarantor hereby instruct said financial institutions to honor any requests made by Global Direct and Member under the terms of this provision. Merchant and Merchant's guarantor will hold harmless the financial institutions and indemnify them for any claims or losses they may suffer as a result of honoring withdrawal requests from Global Direct and Member. Merchant hereby agrees that Global Direct and Member may deduct from this Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in the Reserve Account may be held until the later of (a) the expiration of any potentially applicable chargeback rights in respect of purchased indebtedness under the rules and regulations of the card associations or network organizations and (b) the period necessary to secure the performance of Merchant's obligations under this Card Services Agreement, which holding period may extend beyond termination of this Agreement. The Merchant will not receive any interest on funds being held in a Reserve Account. Without limiting the generality of the foregoing, Merchant shall, upon termination of this Card Services Agreement, maintain the sum of at least five percent (5%) of gross sales for the 90 day period prior to termination to be held in a Reserve Account in accordance with the terms of this Card Services Agreement. Global Direct may, at its discretion upon termination of this Agreement, require that the Merchant maintain more than five percent (5%) of gross sales for the 90 day period prior to termination in a Reserve Account.

#### 16. DEFAULT/SECURITY INTEREST.

Upon failure by Merchant to meet any of its obligations under this Agreement (including funding the Reserve Account), any of the accounts referred to in Section 5 or any other accounts belonging to Merchant or Merchant's guarantor held by any designated depository (or by any other financial institution) may be debited without notice to Merchant, and Merchant and Merchant's guarantor gives Member and Global Direct a security interest in all such accounts for these purposes. The scope of the security interest, and Merchant's and Merchant's guarantor's instructions to its financial institutions to accept withdrawal requests from Global Direct and Member, and Merchant's agreement to hold such institutions harmless and to indemnify them are described above in Section 15. Merchant also agrees that, in the event of a default by Merchant, and in furtherance of its rights under Section 5 above and otherwise, Member has a right of setoff and may apply any of Merchant's deposit balances or any other monies due Merchant from Member towards the payment of amounts due from Merchant under the terms of this Agreement. The rights stated herein are in addition to any other rights Global Direct and Member may have under applicable law.

#### 17. AMENDMENTS.

This Agreement may be amended only in writing signed by Global Direct, Member, and Merchant, except that (a) the Card Acceptance Guide and any and all fees, charges, and/or discounts (including without limitations non-qualified surcharge rates) may be changed immediately, or (b) Global Direct may mail Merchant either a notice describing amendments to this Agreement or an entirely new agreement, which amendments or new agreement will be binding upon Merchant if it deposits sales or credit slips after the effective date of such amendment or new agreement set forth in Global's notice.

#### 18. WAIVER.

No provision of this Agreement shall be deemed waived by any party unless such waiver is in writing and signed by the party against whom enforcement is sought. No failure to exercise, and no delay in exercising on the part of any party hereto, any right, power or privilege under this Card Services Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Card Services Agreement preclude any other or further exercise thereof or the exercise of any right, power, or privilege.

#### 19. EXCHANGE OF INFORMATION.

Merchant authorizes Global Direct to order a credit report on Merchant or any owner, officer, shareholder, partner, proprietor, managing agent or guarantor of Merchant. Merchant hereby authorizes Member or any depository institution to release any financial information concerning Merchant or its accounts to Global Direct. Subsequent credit reports may be ordered in connection with updating, renewing or continuing this Agreement. Upon the written request of any individual who is the subject of a consumer credit report, Global Direct will provide the name and address of the consumer credit reporting agency furnishing such report, if any. Global Direct may exchange information about Merchant, Merchant's owners, principals, partners, proprietors, officers, shareholders, managing agents and guarantors with Member, other financial institutions and credit card associations, network organizations and any other party. Merchant hereby authorizes Global Direct to disclose information concerning Merchant's activity to any card association, network organizations, or any of their member financial institutions, or any other party without any liability whatsoever to Merchant.

If Merchant elects to receive monthly statements by accessing them on-line (an "E-statement"), Merchant will need to visit and register at [www.mybizperks.com](http://www.mybizperks.com), agent's secure website, to obtain a user ID and password. Merchant will be required to provide their merchant ID and other additional information to verify their identification. After completing the registration process, Merchant will be able to access their E-statement(s) by visiting [www.mybizperks.com/](http://www.mybizperks.com/) and logging in with their user ID and password, which user ID and password can be reset at any time by Merchant. Merchant will typically have access to the E-statement by the third business day of the following month. Merchant acknowledges and agrees that if they elect to receive E-Statements, they will not receive a monthly paper account statement by mail. However, Merchant is entitled to also receive a paper copy of monthly statements through the U.S. mail by visiting [www.mybizperks.com/paper](http://www.mybizperks.com/paper), and following the opt-out procedures provided through that link, or by contacting their agent or the customer service number provided on their statements and in the welcome letter; provided, however, exercising the option to opt out does not constitute a withdrawal of consent to receive monthly E-statements. If Merchant chooses to receive paper statements, Merchant will be charged a monthly fee of \$1.00 for each statement. In order to register to receive and access to E-statements, Merchant will need (i) internet access, (ii) a currently supported version of one of the following internet browsers: Internet Explorer, Firefox or Safari, and (iii) a currently supported PDF viewer (such as Adobe Reader which is available for free download at <http://get.adobe.com/reader/>). These requirements, browsers and/or PDF readers may change from time to time, and Merchant will be provided notice of any such change. Neither Member, Global Direct nor its agents are responsible for ensuring that Merchant's E-statements are accessible through outdated vendor products. In the event Merchant is unable to access any of the information that has been made available on the E-statement, it is Merchant's obligation to notify its agent immediately. Without limiting any of the rights under this Agreement, neither Member, Global Direct nor its agents are responsible for: (i) consequential or incidental damages caused by services performed by Member, Global Direct nor its agents, any agents of Member, Global Direct or its agents, or Merchant's internet services provider; (ii) damages arising from unauthorized access to E-statements; or (iii) any costs associated with updating, modifying, or terminating Merchant's software or hardware. Member, Global Direct or its agents may change, suspend, or terminate all or any aspect of the E-statement upon notice to Merchant.

#### 21. GENERAL.

If any provision of this Agreement or portion thereof is held to be unenforceable, such a determination will not affect the remainder of this Agreement. Paragraph headings are included for convenience only and are not to be used in interpreting this Agreement.

#### 22. NOTICES.

All notices required by this Agreement shall be in writing and shall be sent by telefax, by overnight carrier, or by regular or certified mail. All notices sent to Global Direct or Member shall be effective upon actual receipt by the Corporate Secretary of Global Payments Direct, Inc. 10 Glenlake Parkway North Tower, Atlanta, Georgia 30328. Any notices sent to Merchant shall be effective upon the earlier of actual receipt or upon sending such notice to the address provided by Merchant in the Merchant Application. The parties hereto may change the name and address of the person to whom all notices or other documents required under this Agreement must be sent at any time by giving written notice to the other party.

#### 23. Telephone Monitoring and Contacting the Merchant.

From time to time Global and/or its agents may monitor and record telephone calls regarding Merchant's account to assure the quality of their service(s). Merchant agrees, in order for Global and/or its agents to service the account or to collect any amounts Merchant may owe, that Global and/or its agents may from time to time make calls and/or send e-mails and/or text messages to the Merchant, using prerecorded/artificial voice messages and/or through the use of an automatic dialing device, at any telephone number associated with Merchant's account, including wireless telephone numbers that could result in charges to Merchant, or at any email address Merchant provide to Global and/or its agents.

#### 24. MERGER.

The Agreement, including these Terms and Conditions and the Merchant Application, constitutes the entire Agreement between Merchant, Global Direct, and Member and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing. The Merchant, Global Direct and Member agree that, in order for the rights and obligations of the parties to be fairly and equitable administered, the various purchases of indebtedness contemplated under these Terms and Conditions and the Merchant Application shall constitute a single, integrated transaction, and not a series of separate or discrete transactions.

#### 25. CHOICE OF LAW/ATTORNEY'S FEES/VENUE/JURY TRIAL WAIVER.

Should it be necessary for Global or Member to defend or enforce any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Global and/or Member, as applicable, for all costs and expenses, including reasonable attorney's fees, as a result of such collection or legal action. Without limiting the generality of the foregoing, Merchant agrees to reimburse Global and/or Member, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by Global and/or Member in enforcing or defending its rights under this Section 24, without regard to whether there has been an adjudication on the merits in any such action. Merchant waives trial by jury with respect to any litigation arising out of or relating to this Agreement. Global, Member, and Merchant agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of Georgia, notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. Global, Member, and Merchant agree that all actions arising out, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provision of this Agreement shall be brought in either the courts of the State of Georgia sitting in Fulton County or the United States District Court for the Northern District of Georgia, and expressly agree to the exclusive jurisdiction of such courts.

#### 26. EFFECTIVE DATE

This Card Services Agreement shall become effective only upon acceptance by Global Direct and Member, or upon delivery of indebtedness at such locations as designated by Global Direct for purchase, whichever event shall first occur.

#### 27. DESIGNATION OF DEPOSITORY.

The financial institution set forth in the Merchant Application is designated by Merchant as a depository institution ("Depository") for its credit card indebtedness. Such financial institution must be a member of an Automated Clearing House Association. Merchant authorizes payment for indebtedness purchased hereunder to be made by paying Depository therefore with instructions to credit Merchant's accounts. Depository, Member, and/or Global Direct may charge any of Merchant's accounts at Depository for any amount due under this Agreement. Global Direct must approve in writing any proposed changes to the account numbers or to the Depository. Merchant hereby authorizes Depository to release any and all account information to Global Direct or anyone acting on Global Direct's behalf as Global Direct may request without any further authorization, approval or notice from or to Merchant.

#### 28. FINANCIAL ACCOMMODATION.

The acquisition and processing of sales slips hereunder is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced, and Global Direct and Member shall be excused from performance hereunder.

Debit Sponsor shall act as Merchant's sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by Merchant (the "Covered Terminals") in each of the following debit card networks ("Networks"): Accel, AFFN, Alaska Option, CU24, Interlink, Maestro, NYCE, Pulse, Shazam, Star, and Tyme, which Networks may be changed from time-to-time by Debit Sponsor or Global Direct without notice. Merchant may also have access to other debit networks that do not require a sponsor. Global Direct will provide Merchant with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks. Global Direct will provide connection to such Networks, terminal applications, settlement, and reporting activities. Merchant will comply with all federal, state, and local laws, rules, regulations, and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). Merchant will execute and deliver any application, participation, or membership agreement or other document necessary to enable Debit Sponsor to act as sponsor for Merchant in each Network. Merchant agrees to utilize the debit card Services in accordance with the Card Services Agreement, its exhibits or attachments, and Global Direct's instructions and specifications (including but not limited to the Card Acceptance Guide which is incorporated into and made a part of this Card Services Agreement), and to provide Global Direct with the necessary data in the proper format to enable Global Direct to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to Merchant upon request. Merchant shall not in any way indicate that Debit Sponsor endorses Merchant's activities, products, or services. Debit Sponsor and Merchant are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind the other to any third party. Nothing contained in this Section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and Merchant. In the event that Debit Sponsor's sponsorship of Merchant in any Network is terminated prior to the termination of the Card Services Agreement, Global Direct may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this Section necessary to enforce the rights and obligations of the parties contained in this Section shall survive the termination of Debit Sponsor's debit sponsorship of Merchant under the Card Services Agreement. Debit Sponsor may assign this Agreement to any parent, subsidiary, affiliate, or successor-in-interest. DEBIT CARD MERCHANT. EACH DEBIT CARD TRANSACTION WILL BE ASSESSED THE NETWORK'S ACQUIRER FEE IN ADDITION TO THE DEBIT CARD PER ITEM FEE QUOTED IN THE CARD SERVICES FEE SCHEDULE OF THE MERCHANT APPLICATION

### 30. MERCHANT ACCEPTANCE OF EBT TRANSACTIONS: ADDITIONAL TERMS AND CONDITIONS.

Merchant agrees to issue Benefits to Recipients in accordance with procedures specified herein, and in all documentation and user guides provided to Merchant by Global Direct, as amended from time-to-time (including but not limited to the Card Acceptance Guide which is incorporated into and made a part of this Card Services Agreement); and pursuant to the Quest Operating Rules (the "Rules"), as amended from time-to-time, issued by the National Automated Clearing House Association as approved by the Financial Management Service of the U.S. Treasury Department. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed them in the Rules. Merchant will provide each recipient a receipt of each Benefit issuance. Merchant will be solely responsible for Merchant's issuance of Benefits other than in accordance with authorizations. Merchant agrees to comply with all the requirements, laws, rules and regulations pertaining to the delivery of services to Benefit Recipients and Benefit Recipient confidentiality. If Merchant issues FS Benefits under this Card Services Agreement, Merchant represents and warrants to Global Direct that Merchant is and FNS-authorized "Merchant" (as such term is defined in the Rules) and is not currently suspended or disqualified by FNS. Merchant agrees to secure and maintain at its own expense all necessary licenses, permit, franchises, or other authorities required to lawfully effect the issuance and distribution of Benefits under this Card Services Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that Merchant will not issue Benefits at any time during which Merchant is not in compliance with the requirements of any applicable law. Merchant agrees to hold Global Direct harmless from any costs of compliance or failure to comply with any such obligation by Merchant. Global Direct may terminate or modify the provision of Services to Merchant if any of Global Direct's agreements with government EBT agencies are terminated for any reason or if any party threatens to terminate services to Global Direct due to some action or inaction on the part of Merchant. If any of these Card Services Terms & Conditions are found to conflict with Federal or State law, regulation or policy of the Rules, these Card Services Terms & Conditions are subject to reasonable amendment by Global Direct, the State or its EBT Service Provider to address such conflict upon ninety (90) days written notice to Merchant, provided that Merchant may, upon written notice, terminate the Card Services Agreement upon receipt of notice of such amendment. Nothing contained herein shall preclude the State from commencing appropriate administrative or legal action against Merchant or for making any referral for such action to any appropriate Federal, State, or local agency. Any references to "State" herein shall mean the State in which Merchant issues Benefits pursuant hereto. If merchant issues Benefits in more than one State pursuant hereto, then the reference shall mean each such State severally, not jointly.

### 31. DISCOVER PROGRAM MARKS

Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks"). Merchant is prohibited from using the Discover Program Marks other than is expressly authorized in writing by Global Direct. Merchant shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to Merchant by Global Direct pursuant to this Card Services Agreement or otherwise approved in advance in writing by Global Direct. Merchant may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by Merchant must be approved in advance by Global Direct in writing. Merchant shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by Merchant are sponsored or guaranteed by the owners of the Discover Program Marks. Merchant recognizes that it has no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

### 32. MID AND NON-QUALIFIED SURCHARGES/CROSS-BORDER FEES

Merchant pricing appears in the Card Services Fee Schedule of the Merchant Application. T&E merchants (airline, car rental, cruise line, fast food, lodging, restaurant, travel agent, transportation) may have separate rates quoted for consumer and commercial (business) transactions. Transactions that do not clear as priced are subject to MID or non-qualified surcharges (MID/NQS) that are billed back to you on your monthly statement. The most predominate market sectors and applicable MID or non-qualified surcharge rates appear below. Most MID or non-qualified surcharges can be avoided by using products that support authorization and market data requirements established by the card associations and that are subject to change from time to time. Some MID or non-qualified surcharges occur on specific types of cards (including without limitation Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, MasterCard World Elite Card and "foreign" cards issued outside the United States), if the merchant accepts credit cards. **Unless your Card Services Fee Schedule specifically addresses commercial cards (i.e., Business Cards, Corporate Cards, Fleet Cards, GSA Cards, Purchase Cards), you will be billed back for the higher cost of acceptance of commercial cards; this is also unavoidable based on the card association requirement to accept all types of credit cards, if the merchant accepts credit cards, unless you are primarily a business-to-business supplier with corresponding pricing based on acceptance of commercial cards.** The card associations require that information from the original authorization, including a life cycle identifier, be retained and returned with subsequent authorizations and/or the settled transaction data. The card associations validate this information as part of the clearing and settlement process. If authorization data is not retained and returned at settlement, then the transaction will not clear as priced and will incur MID/NQS. The items listed in this Section 30 are not and are not intended to be a comprehensive list of all instance in which non-qualified surcharges may apply. Non-qualified surcharges may apply in additional situations. All non-qualified surcharges include additional fees assessed by the applicable card association and Global Direct. Merchant will also be assessed (a) Cross-Border fees and a U.S. Acquirer Support fee for international MasterCard and Maestro transactions and (b) an International Service Assessment fee for international Visa transactions. These fees, which are applicable to transactions between the merchant and a MasterCard or Maestro or Visa

card holder, as applicable outside the United States, which are in addition to any fees stated in the Merchant Application and will be displayed as a separate item on Merchant's monthly statement. All references to non-qualified surcharges in this Section 30 shall include both mid-qualified and non-qualified surcharges.

#### MID AND NON-QUALIFIED SURCHARGES FOR PREDOMINANT MARKET SECTORS

##### Retail/Restaurant Electronic Merchant

If you are a Retail Merchant or a Restaurant Merchant with retail-only pricing (no Business Card Rate) and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each consumer card transaction you submit which meets all of the following requirements will be priced at the rate quoted. Each transaction not processed as outlined, including without limitation retail commercial card transactions in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, MasterCard World Elite Card and all Commercial Cards, will be priced at the non-qualified rate quoted in the Merchant Application

- Obtain a single electronic authorization with magnetic strip read or contactless data capture (electronic imprint) at the time of sale.
- Obtain a single electronic authorization and settle for authorized amounts.
- Obtain a cardholder signature (unless transaction is eligible for No Signature Required [NSR] program).
- Settle and transmit batches same day via your terminal/electronic system.
- The electronic authorization amount must be equal to the transaction amount on all Visa debit card transactions unless a Restaurant (MCC 5812), Fast Food (MCC 5814), Service Station (MCC 5541) or Bar/Tavern (MCC 5513), Beauty/Barber Shop (MCC 7230), or Taxi/Limousines (MCC 4121).
- The electronic authorization amount must be equal to the transaction amount on Discover retail transactions except that Taxi Limousines (MCC 4121) and Beauty/Barber Shop (MCC 7230) merchant transactions may vary up to 20%. Restaurant (MCC 5812), Fast Food (MCC 5814), Service Station (MCC 5541) or Bar/Tavern (MCC 5513) transactions may vary by more than 20% from the electronic authorization without incurring NQS.

##### Restaurant Electronic Merchant

If you are a Restaurant Merchant MCC 5812 or Fast Food Merchant MCC 5814 and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each consumer card transaction you submit which meets all of the following requirements will be priced at the rate quoted. Each transaction not processed as outlined, in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, and MasterCard World Elite Card will be priced at the non-qualified rate quoted in the Merchant Application. Commercial Card transactions that meet these requirements will be subject to the Business Card rate quoted in the Fee Schedule. Commercial Card transactions not processed in accordance with these requirements will be subject to the non-qualified rate quoted in the Merchant Application.

- Obtain a single electronic authorization with magnetic strip read or contactless data capture (electronic imprint) at the time of sale.
- Obtain a cardholder signature (unless transaction is eligible for NSR program).
- Settle and transmit batches same day via your terminal/electronic system.

##### Supermarket Electronic Merchant

If you are an approved (certified) supermarket merchant and utilize a terminal or electronic system for authorization and settlement through Global Direct, each transaction you submit which meets all of the following requirements will be priced at the rate(s) quoted for Supermarket Credit Card and Supermarket Check Card. Each transaction not processed as outlined, in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, MasterCard World Elite and commercial cards, will be priced at the nonqualified rate quoted in the Merchant Application.

- Obtain a magnetic strip read (card swipe/contactless data capture/electronic imprint) at the time of sale.
- Obtain a single electronic authorization and settle for authorized amounts.
- Obtain a cardholder signature (unless transaction is eligible for NSR program).
- Settle and transmit batches same day via your terminal/electronic system.
- The electronic authorization amount must be equal to the transaction amount on all Visa debit card transactions.

##### Developing Market Electronic Merchant

If you qualify as a Developing Market Merchant (as defined by Association guidelines from time to time) and utilize a terminal or electronic system for authorization and settlement through Global Direct, each transaction you submit which meets all the following requirements will be priced at the rates quoted. Any other transaction, including commercial card transactions, Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, and MasterCard World Elite Card, and non-magnetic stripe read foreign transactions will be priced at the non-qualified rate quoted in the Merchant Application. In addition, each Visa transaction not processed as outlined, but transmitted same day or next day via your terminal/electronic system, will be priced at the non-qualified rate quoted in the Merchant Application.

- Obtain a single electronic authorization.
- Settle and transmit batches same day via your terminal/electronic system.
- Provide market data as required: *If card is not present and a magnetic stripe read does not occur, then Merchant may be required to comply with "Direct Marketer" market data requirements including AVS request on cardholder billing address at time of authorization. If card is present and cardholder signature is obtained, however the magnetic stripe is damaged, then Merchant may be required to obtain AVS match on cardholder billing address zip code.*

##### Direct Marketer Electronic Merchant

If you are a Direct Mail/Telephone Order Merchant (non-magnetic swipe read transactions), and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each transaction you submit which meets all of the following requirements will be priced at the rate quoted. Any other transaction, including all foreign transactions and commercial card transactions in addition to transactions using Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, and MasterCard World Elite Card will be priced at the non-qualified rate quoted in the Merchant Application.

- Obtain an electronic authorization and settle for authorized amounts (one reversal permitted on Visa transactions to make authorization amount equal to settle amount).
- Address Verification Request in authorization on cardholder billing address. For Discover transactions, Merchant must obtain full address verification request on street number and/or 9 digit postal code.
- CID verification for Discover merchants on non-recurring transactions.
- Purchase date (settled date) is ship date.
- Send order number with each transaction.
- Settle and transmit batches same day via your terminal/electronic system.
- Send level 3 data (line item detail, sales tax, customer code) with every eligible commercial card transaction.

NOTE: Card Not Present transactions involving one-time, recurring, or installment bill payment transactions are subject to additional card association requirements which must be complied with to avoid NQS. Electronic commerce transaction requirements are also subject to additional card association requirements which must be complied with to avoid NQS. Please refer to Card Acceptance Guide for additional requirements.

##### Purchase Card Electronic Merchant

If you are a Purchase Card Merchant (non-magnetic swipe read transactions) and utilize a certified terminal product or electronic system for authorization and settlement through Global Direct, each transaction you submit which meets the following requirements will be priced at the rate quoted. Each Visa transaction not processed as outlined, but transmitted same day or next day via your terminal/electronic system, will be priced

at the non-qualified rate quoted in the Merchant Application. Each Visa business and commercial card transaction will be priced at the rate quoted plus 1.09%. Any other transaction that does not meet the following requirements, including without limitation foreign transactions, tax-exempt Visa Commercial transactions, Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, and MasterCard World Elite Card, will be priced at the non-qualified rate quoted in the Merchant Application.

- Obtain an electronic authorization and settle for authorized amounts (one reversal permitted on Visa transactions to make authorization amount equal to settled amount).
- Address Verification Request in authorization on cardholder billing address.
- Purchase date (settled date) is ship date.
- Send order number (customer code) with each transaction.
- Send tax amount with every transaction.
- Send Level 3 data (line item detail) with every eligible commercial card transaction. Sales tax exempt transactions will not be considered to meet these requirements unless they include Level 3 data (line item detail).
- Settle and transmit batches same day via your terminal/electronic system.

#### Lodging/Auto Rental Electronic Merchant

If you are a Lodging or Auto Rental Merchant utilizing a terminal or electronic system for authorization and settlement through Global Direct, each consumer card transaction you submit which meets the following requirements will be priced at the rate quoted. Each transaction not processed as outlined, including without limitation non-magnetic stripe read foreign transactions, and transactions using Visa Rewards Card, Visa Signature Card, Visa Signature Preferred Card, Visa Infinite Card, MasterCard Rewards Card, MasterCard World Card, MasterCard World Elite Card will be priced at the rate plus 1.48%. Commercial Card transactions that meet these requirements will be subject to the Business Card rate quoted in the Fee Schedule. Commercial Card transactions not processed in accordance with these requirements will be subject to the non-qualified rate quoted in the Merchant Application.

- Obtain a magnetic swipe read (card swipe/electronic imprint) at the time of check-in.
- Obtain additional electronic authorizations or send partial reversals to bring total authorized amount within 15% of settled amount. Authorizations must meet card association requirements.
- Obtain a cardholder signature for final transaction amount.
- Purchase Date is hotel check-out date/auto return date.
- Length of guest stay/rental in initial authorization.
- Hotel Folio/Rental Agreement Number and check-in date/check-out date transmitted with each transaction.
- Additional market data may be required for commercial card transactions to avoid NQS. Lodging merchants who (1) accept credit cards for advance payment; (2) guarantee reservations using a credit card; or (3) provide express check-out services to guests, must comply with additional card association requirements for these services in addition to additional authorization and settlement market data requirements. Lodging merchants who subject charges to final audit and bill for ancillary/additional charges must comply with additional bank card association requirements for these services in addition to additional authorization and settlement market data requirements to avoid NQS. These transactions may also be subject to the rate quoted plus 1.48%. Please see Card Acceptance Guide for requirements and best practices for these transactions.

#### TouchTone Capture Merchant

Transactions which utilize our TouchTone Capture system for authorizations and settlement, settle beyond 48 hours, or are not transmitted via the TouchTone Capture system, will be priced at the non-qualified rate quoted in the Merchant Application.

#### Paper Deposit Merchant

Non-terminal/electronic paper deposit transactions will be priced at the rate quoted in the Card Services Fee Schedule of the Merchant Application.

#### Debit Card Merchant

Each debit card transaction will be assessed the network's acquirer fee in addition to the debit card per item fee quoted in the Card Services Fee Schedule of the Merchant Application.

#### Card Present: / Mag Stripe Failure:

A magnetic stripe read is also referred to as an electronic imprint. If the magnetic stripe is damaged, then other validation means may be required to protect against counterfeit cards and merchant must obtain a manual imprint. Most products will prompt for cardholder billing zip code and perform an AVS check for a zip code match. CID verification is recommended for Discover key-entered transactions. Key-entered retail transactions are subject to higher interchange and NQS.

The foregoing information regarding NQS is not comprehensive and is subject to change by the card association. Additional or different rates or fees may apply based on the details of a subject transaction.

#### For Member contact:

HSBC Bank USA, National Association  
Merchant Support Group  
P.O. Box 3263  
Buffalo, NY 14240

Debit sponsorship provided by Wells Fargo Bank N.A.

**COMPLETE IF YOUR SALES ARE GENERATED THROUGH MAIL/TELEPHONE/INTERNET**

1. Description of product sold: \_\_\_\_\_
2. Who owns product?  Merchant  Vendor (Drop Ship Required)
3. List the name(s) of vendors from which the product is purchased. \_\_\_\_\_
4. How do you advertise?  Catalog /Direct Mail/Flyers  TV or Radio  Internet (list Web Page Address) \_\_\_\_\_
5. How does the customer order the product?  Mail  Telephone  Fax  Internet
6. Do your customers sign a service agreement with you?  Yes  No
7. If Yes, what is the timeframe of the service agreement?  Monthly  Quarterly  Annual
8. Name of Fulfillment House (if any) \_\_\_\_\_ Inspected  Yes  No Date Inspected \_\_\_\_\_
9. Are consumers required to provide a deposit?  Yes  No
10. Delivery Time Frame:  0-7 Days  8-14 Days  15-30 Days  More than 30 Days
11. Shipping Service Used:  Fed Ex  UPS  Airborne  Express Mail  By Merchant
12. What is your return or refund policy? \_\_\_\_\_
13. When you receive an authorization, how long before the merchandise is shipped? \_\_\_\_\_
14. In what geographic areas will the product be marketed and sold? \_\_\_\_\_

**BUSINESS TRADE SUPPLIERS (LIST TWO)**

Name	Address	Contact	Phone

**MERCHANT SITE SURVEY REPORT (To Be Completed by Sales Representative)**Merchant Location:  Store Front  Office Building  Warehouse  Residence  Other

The Merchant:	Landlord Name	Landlord Telephone Number
<input type="checkbox"/> Owns <input checked="" type="checkbox"/> Leases the Premises		

I hereby verify that this application has been fully completed by merchant applicant and that I have inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.

Verified and Inspected by (Print Name)	Representative Signature	Date
James Myrick		

**PRICING SCHEDULE****Other Fees (if applicable)**

Retail (if any % is Swiped) Interchange Passthrough +50 Basis Points Transaction Fee: \$0.10	MOTO/Internet (100% Keyed only) Interchange Passthrough +50 Basis Points Transaction Fee: \$0.10 (Must use AVS)	Touch Tone Transactions: \$ 0.50 T & E Draft Capture Transactions: \$ 0.25 Address Verification: \$ 0.05 Batch Header: \$ 0.35 Wireless Transaction Fee: \$ 0.10 Wireless Network Access (Monthly) \$ 14.95 * Wireless Activation Fee: \$ 35.00 Debit Transaction: \$ 0.35 Debit Gateway (Monthly): \$ 5.00 EBT Transaction Fee: \$ 0.20 Internet Gateway Fee (Monthly): \$ 20.00 Internet Transaction Fee: \$ 0.10 Monthly Minimum Discount Fee: \$ 25.00 Monthly Basic Service Fee: \$ 9.95 * Statement Mailing Fee: \$ 0.00 Chargeback Fee: \$ 25.00 Retrieval Fee: \$ 15.00 Voice Authorization Fee: \$ 1.00
* Actual Interchange Passthrough and Assesments plus 50 BPS.	* Actual Interchange Passthrough and Assesments plus 50 BPS.	
Mastercard Network Access Fee: \$0.0198. Visa Network Access Fee: \$0.0218. Discover Network Access Fee: \$0.0185.	Mastercard Network Access Fee: \$0.0198. Visa Network Access Fee: \$0.0218. Discover Network Access Fee: \$0.0185.	

See Terms and Conditions of Merchant Service Agreement for further information on Mid and Non-Qualified Surcharges.

I understand and acknowledge that I will be automatically enrolled in a 60-day free trial of the My Biz Perks Program, which includes custom reporting and alerts, supplies, extended warranty, overnight replacement on equipment, partner discounts, and more! At the end of the trial, I understand that my account will be charged a monthly membership fee, and I may opt out at any time by visiting [www.mybizperks.com](http://www.mybizperks.com) or call 877-898-1992. \$ 11.95

**CARDHOLDER DATA STORAGE COMPLIANCE & SERVICE PROVIDER**

\*\* PCI DSS and card association rules prohibit storage of track data under any circumstances. If you or your point of sale(POS) system pass, transmit, store or receive full cardholder's data, then the POS software must be PA DSS (Payment Application Data Security Standard)compliant or you (merchant) must validate PCI DSS compliance (see 1(b) below and questions 3 and 4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.\*\*

1. Have you ever experienced an Account Data Compromise "ADC"?  Yes  No If yes, provide date of compromise \_\_\_\_\_
  - a) Have you validated PCI DSS (Payment Card Industry Data Security Standard) compliance?  Yes  No If yes, go to 1(b); If no, go to #2
  - b) Date of compliance, Report on Compliance "ROC" or Self Assessment Questionnaire "SAQ"? \_\_\_\_\_
  - c) What is the name of your Qualified Security Assessor "QSA" Control Scan or Self Assessment Questionnaire(pick one)  A  B
  - d) Date of last scan 20/12/0229 Approved Scanning Vendor's name: Control Scan  C  D
2. Are you using a "dial-up" terminal or "TTC" Touch Tone Capture?  Yes  No
3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number "FCN", electronically?  Yes  No
  - a) If yes, where is card data stored?  Merchant's Location Only  Merchant's Headquarters/Corp office only  Primary Service Provider  
 Both Merchant and Service Provider(s)  Other Service Provider  All Apply
4. What Primary Service Provider/Software Developer did you purchase your point of sale "POS" application from (e.g., software, gateway)? \_\_\_\_\_
  - a) What is the name of the Service Provider/Software Developer's application? \_\_\_\_\_ Software Version #? \_\_\_\_\_
  - b) Do your transactions process through any other Service Provider (e.g., web hosting companies, gateways, corporate office)?  Yes  No
  - c) If yes, name the other Service Provider? \_\_\_\_\_

**AMERICAN EXPRESS**

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions.

Merchant's Signature \_\_\_\_\_ Name (printed): \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

**MERCHANT ACCEPTANCE**

A copy of the Card Services Terms and Conditions, revision number 10/11, has been provided to you. Please sign below to signify that you have received a copy of the Card Services Terms & Conditions and that you agree to all terms and conditions contained therein. The undersigned is duly authorized to sign on behalf of the Merchant and to bind the Merchant to the terms and conditions set forth in this Merchant Application and Merchant Service Agreement ("Agreement"), which terms and conditions are hereby acknowledged and agreed to by the Merchant, and certifies that all information provided in this Merchant Application is true, correct and complete. The undersigned, on behalf of the Merchant, authorizes Global Direct and the Member or any credit reporting agency employed by the Member or any agent of the Member, to make whatever inquiries the Member deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this Merchant Application and for accompanying POS terminals or equipment financing. The undersigned, on behalf of the Merchant, authorizes (i)Global Direct, or (ii)the Member, or (iii)solely with respect to uncollected merchant fees, and subject to and only as pursuant to North American Bancard's separate written agreement with Global Direct, North American Bancard, or, (iv)solely with respect to supplies and/or hardware related to merchant business under this Merchant Application, North American Bancard, to initiate automated deposit or debit (ACH) entries to the Merchant's bank account as indicated on this Merchant Application or subsequently provided by Merchant. A MERCHANT'S SUBMISSION OF A TRANSACTION TO GLOBAL DIRECT SHALL BE DEEMED TO SIGNIFY MERCHANT'S ACCEPTANCE OF THE AGREEMENT, INCLUDING THE TERMS AND CONDITIONS HEREIN.

:autocredit::98.243.173.156 \_\_\_\_\_ :autocredit::98.243.173.156 \_\_\_\_\_  
 #1 From Application - Signature Date #2 From Application - Signature Date

INDIVIDUAL GUARANTY (NO TITLES)/We hereby guarantee to Global Direct and Member, their successors and assigns, the full, prompt and complete performance of Merchant and all of Merchant's obligations under this Agreement, including, but not limited to, all monetary obligations arising out of Merchant's performance or nonperformance under this Agreement, whether arising before or after termination of this Agreement. The guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of this Agreement made by or agreed to by Global Direct, Member, and/or Merchant. I/We hereby waive any notice of acceptance of this guaranty, notice of non-payment or non-performance of any provision of this Agreement by Merchant, and all other notices or demands regarding this Agreement. I/We agree to promptly provide to Global Direct and Member any information requested by either of them from time to time, concerning my/our financial condition(s), business history, business relationships and employment information. I/We have read, understand, and agree to be bound by the terms and conditions contained in this Agreement on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

\_\_\_\_\_  
 #1 From Application - Signature Date  
 \_\_\_\_\_  
 #2 From Application - Signature Date

For Office Use Only	
X _____	Date
Application Accepted by ISO	Date
X _____	Date
Accepted by HSBC Bank USA NA	Date
X _____	Date
Accepted by Global Direct	Date

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food
(b) County of Residence of First Listed Plaintiff Washtenaw County, MI
(c) Attorneys (Firm Name, Address, and Telephone Number)
E. Adam Webb; Webb, Klase & Lemond, LLC; 1900 The Exchange S.E., Suite 480, Atlanta, GA 30339; (770) 444-0773

DEFENDANTS
North American Bancard, LLC; Global Payments Direct, Inc.
County of Residence of First Listed Defendant Oakland County, MI
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act - 28 U.S.C. § 1332(d)(2)
Brief description of cause:
Defendants overcharged Plaintiff and the Class for payment processing services.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE Steve C. Jones DOCKET NUMBER 1:15-CV-3059-SCJ

DATE 11/10/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ E. Adam Webb

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.