AGENDA ITEM REQUEST FORM

AGENDA DATE: June 12, 2007

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Dawn M. Langston, Treasurer/Tax Collector

SUBJECT: Approve and Authorize Agreement with Nova Merchant Services.

RECOMMENDATION FOR BOARD ACTION:

Approve and authorize the Treasurer to execute the agreement with Nova Merchant Services

SUMMARY:

Del Norte County would like to enter into an agreement with Nova Merchant Services to provide credit and debit card payment options to county departments. Nova partners with Union Bank. The county currently uses Union Bank for banking services; therefore, the cost is more reasonable than other vendors. The interested departments would be responsible for providing the funding to utilize this service. This may require an amendment to the Master Fee Ordinance. We are being offered a waiver of the set-up fees and two years of monthly maintenance fees through the month of June 2007.

FINANCING: Participating Departments

OTHER AGENCY INVOLVEMENT: Chairman, Board of Supervisors

SIGNATURES REQUIRED: Clerk of the Board of Supervisors; Treasurer

COPY DISTRIBUTION:
COUNTY COUNSEL REVIEW/SIGN OFF:
PERSONNEL REVIEW/SIGN OFF:
CAO REVIEW/SIGN OFF:
CLERK OF THE BOARD INSTRUCTIONS

____ Consent Agenda.

Request to set a public hearing. The setting of a public hearing will be placed on the consent agenda unless the Clerk of the Board received specific directions to the contrary. The public hearing will automatically be agendized by the Clerk of the Board after the date has been set.

____ Ordinance.

First reading Second reading
(NOTE: The second reading of an ordinance will automatically be set by the Clerk of the Board.)

Regular agenda item. Indicate department name: Treasurer/Tax Collector
Item of public interest (Any item presented by anyone other than a county department and not fitting under any of the other above categories.

The above described matter requires approval or adoption of ___ Minute Order
Resolution Ordinance Contract Agreement Budget Transfer or Other (specify)

___ Must document be recorded at the Recorder’s Office ___ Yes ___ No

Copies of documents will be provided only if the following is completed.

Number of copies requested ___ Must they be certified? ___ Yes ___ No

Copies will be sent to person or department presenting the agenda item. Further distribution will be that department’s responsibility.

AGENDIZING INSTRUCTIONS

1. Requests to hold timed item and agenda inquiries should be directed to the Clerk of the Board of Supervisors, 583 G Street, Suite 1, Crescent City, California, (707) 464-7204. The County Administrative Office must review all items before they are placed on the agenda. In most cases this will happen during the agenda review meeting.

2. The deadline for agenda items is the Wednesday of the week preceding the Board meeting (first and third Wednesdays of the month) at 5:00 p.m.

3. Every attempt should be made to keep all documents at the 8 1/2 x 11 size. If an item is of legal size please make reduced copies (8 1/2 x 11).

4. Documents that require legal review (agreements, contracts, leases, etc.) must be forwarded to County Counsel’s Office for review.

9. Budget transfers. Budget transfers/revisions must be accompanied with a cover memorandum or letter describing the need for the transfer, the reasons why the transfer cannot be done in the next fiscal year and why monies exist to make the transfer. Transfers are to be sent to the Auditor-Controller’s Office for signature before being sent to the County Administrative Officer for approval and submittal to the Clerk of the Board for the agenda.

10. Resolutions and proclamations. If a resolution or proclamation is requested by your department, you must provide an original. One copy will be provided to your department after adoption, unless you indicate otherwise on the agenda form.

Should you have any questions, please contact the Clerk of the Board of Supervisors at (707) 464-7204 between the hours of 8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m.
NOVA Merchant Services

Profit from Expertise – Backed by Experience
When you partner with NOVA Merchant Services, your business is backed by the strength of Union Bank of California and supported by the electronic payment processing expertise of the NOVA Network. By combining our banking expertise with the NOVA Network’s premier payment processing network, you can enjoy a one-stop solution for all your banking and processing needs. Best of all, you receive your funds in one business day when depositing into your Union Bank account.

Payment Solutions

Credit Cards
NOVA’s point-of-sale programs combine a broad range of credit payment choices with built-in business tools that make managing payments a breeze.

Debit and Electronic Benefits Transfer (EBT)
Our Gateway Services has connectivity to all major debit and EBT networks.

Corporate Purchasing Cards
Solidify your relationships with corporate, government and educational customers. Reduce paperwork, enhance customer relationships and win new business with corporate purchasing cards.

Dynamic Currency Conversion
DCC allows retailers to offer international cardholders the convenience of paying in their home currency rather than U.S. dollars. NOVA will rebate a percentage of the foreign exchange conversion back to you on your monthly statement, resulting in a new revenue stream for your business.

Point-of-Sale Solutions

POS Equipment
No matter the size of your business you can take charge with a variety of terminals certified on the NOVA Network. We support all major terminals, printers, PIN pads and peripherals from a wide variety of manufacturers.

Software & Internet Products
NOVA offers a variety of propriety PC Software and Internet products that can turn your desktop PC into a powerful POS payment processing solution for face-to-face and mail order/telephone order transactions.

VAR Interfaces
We partner with more than 100 value-added resellers and software providers to integrate payment processing into your POS solution.

Reporting Solutions

Online Reporting & Support Tools
Monitor your account around the clock from any Web browser through MerchantConnect. This convenient online site lets you display recent deposits, view chargebacks and retrieval requests, access customer support, and much more.

Automated Customer Service (ACS)
ACS is an advanced reporting and account reconciliation tool. With ACS you can view detailed reports from across multiple locations, including transaction activity, statement detail, and card type history – all through this desktop application. Data can even be integrated with your accounting systems.
Value Added Solutions

Electronic Check Service (ECS)
If you’re like most merchants, check acceptance is a necessary—but burdensome—part of conducting business. Now, thanks to ECS, you can continue offering your customers the option of paying by check, while dramatically reducing the risk and costs associated with accepting those checks.

ECS converts paper checks into safe, efficient electronic checks right at the point of sale. By submitting checks through the same system that you use to authorize credit cards and debit cards, we can help you significantly lower costs and enrich your cash flow.

The costs of accepting, processing and handling paper checks are extremely high, ranging from $.75 to $3.00 and averaging $1.22 per check (Source: Visa U.S.A.). Converting paper checks to electronic transactions eliminates many of the risks and costs, adding money to your bottom line.

Electronic Gift Cards (EGC)
Gift card sales have increased from $30 billion in 2002 to $45 billion in 2003, and are predicted to rise to $90 billion by 2007. More than half of all adults in the U.S. purchased a gift card in 2004. If you currently offer or have been considering gift certificates, you can’t afford to pass up your piece of the multi-billion-dollar gift card pie. It keeps on giving by bringing customers back to your business.

Your gift card transactions will be handled by the NOVA Network with the same speed and ease of credit cards. This keeps your lines moving, even on the busiest days. Compare that to the hassle of manually processing paper gift certificates. Further, you’ll have the advantage of consolidating your gift card program with all your card-based and electronic check payment processing and settlement. You have one source for assistance, and one place to go should an issue ever need to be resolved.

Support & Operations

Risk Management & Fraud Control
The NOVA Network has built-in fraud monitoring and control features to protect your business and your customers’ card data. We provide a robust set of risk management and fraud prevention tools.

Customer Service & Voice Authorization
NOVA’s customer support is there whenever you need it. NOVA operates a 24/7 call center for voice authorization and client assistance that is supported by a dedicated and well-trained staff of service professionals.

We Are Better At Our Business So You Can Be Better At Yours.

Choosing the right payments partner can be critical to your bottom line. When compared to other processing networks, Union Bank of California and the NOVA Network® clearly deliver the most powerful platform in the industry.

Absolute Reliability From The #1 Payments Network.
Rated by MasterCard® as the fastest and most reliable network in the industry. With the NOVA Network, you can be assured that your transactions will be processed without fail. Excellence...it’s our way of doing business.
Pricing

<table>
<thead>
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<th>Interchange Rates</th>
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<td>Qualified-Swiped</td>
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<td>Merchant Account Set Up (one-time fee)</td>
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<td>Voice Authorizations</td>
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<td>Chargeback Fee (per occurrence)</td>
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<td>ECS with Check Guarantee</td>
<td>1.85% + $0.30 per item</td>
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<td>The check guarantee limit is $2000.00</td>
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<tr>
<td>ECS with Verification</td>
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<td>N/A</td>
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<tr>
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Note: Pricing is based on a three year term and is valid for thirty day from the date of this proposal.

March 9, 2007

Hi Dawn,

I appreciate the opportunity to offer the County of Del Norte this proposal. When you are ready to move forward call me at the number listed below. We will need you to complete a Merchant application which will be submitted to our underwriting Department for approval. It will take approximately 2-3 business days to receive a response from Underwriting and another 3-5 business days to deploy the equipment. Should you have any questions, please do not hesitate to call me.

Sincerely,

Emmett Templeton
(209)277-2327
Emmett.templeton@novainfo.com
NOVA

TERMS OF SERVICE

These Terms of Service are entered into as of the Effective Date by and among Del Norte Co NOVA Information Systems, Inc. and U.S. Bank National Association. The TOS and the other portions of the Agreement govern the Merchant’s participation in the Program.

Section A - Definitions

1) DEFINITIONS.

a) ACH: Automated Clearing House.

b) Agreement: The TOS, any Addendum, the Merchant Application, the Merchant Operating Guide, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.

c) American Express: The American Express Company.

d) Authorization: Merchant’s request for approval of a sales Transaction by an Issuer. Authorization is initiated by accessing the authorization center by telephone or electronic terminal.


f) Automated Clearing House (ACH): The funds transfer system governed by the rules of NACHA. ACH allows financial institutions to clear interbank entries electronically.

g) Bankruptcy Proceeding: With respect to a Person means (i) that the Person or any subsidiary of such Person shall: (a) commence a voluntary case under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect); (b) file a petition seeking to take advantage of any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body; (c) consent to or fail to contest, in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other applicable laws or consent to an Involuntary Bankruptcy Proceeding; (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a trustee, receiver, custodian, liquidator, or similar entity of such Person or of all or any substantial part of its assets, domestic or foreign; (e) admit in writing its inability to pay its debts as they become due; (f) make a general assignment for the benefit of creditors; (g) make a conveyance fraudulent as to creditors under any applicable law; or (h) take any action for the purpose of effecting any of the foregoing; or (ii) that a case or other proceeding shall be commenced against the Person or any subsidiary of such Person in any court of competent jurisdiction, or through any regulatory agency or body, seeking: (a) relief under the Bankruptcy Code of 1978, as amended, or other federal bankruptcy laws (as now or hereafter in effect) or under any other applicable laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition, or adjustment of debts; or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person or of all or any substantial part of the assets, domestic or foreign, of such Person or any other similar conservatorship or receivership proceeding instituted or administered by any regulatory agency or body.

h) Card Not Present: The processing environment where the Payment Device is not physically presented to the Merchant by the Cardholder as the form of payment at the time of sale. Card Not Present includes, but is not limited to, Mail Order, Telephone Order, and Electronic Commerce Transactions.

i) Card Present: The processing environment where the Payment Device is physically
presented to the Merchant by the Cardholder as the form of payment at the time of sale.

j) **Cardholder**: (i) the individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.

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

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

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

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

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

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

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

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

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

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

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

v) **EBT Card**: A card utilized for electronic benefits transfers.
w) **Effective Date**: The date set forth in the signature block herein.

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

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

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

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

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

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

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

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

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

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

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

ai) **MasterCard**: MasterCard International Incorporated.

aj) **Member**: U.S. Bank National Association. The Member may be changed by NOVA at any time.

ak) **Merchant (or you) means**: California, a subdivision corporation and the affiliated entities listed on Schedule B attached hereto, and any additional accounts or locations established by you, jointly and severally. Entities may be added to Schedule B by substituting a new Schedule B that is in writing and signed by all parties.

al) **Merchant Application**: Any document containing information regarding Merchant's business that is submitted to NOVA and Member in connection with Merchant's application for processing services.

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

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

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

ap) **NOVA Processing Fee:** The direct cost to NOVA of the respective Credit Card Association and EFT Network credit and debit card interchange and/or gateway fees, any third party’s telecommunication costs, NOVA’s and/or any third party’s authorization and capture switch fees, and a service processing fee.

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

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

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

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

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

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

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

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

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

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

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

bb) **Third Party Terminal:** A terminal, other point-of-sale device, or software provided to Merchant by any entity other than NOVA or its authorized designee.

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

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

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

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

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

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

Section B - General Provisions

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

4) DEPOSIT OF TRANSACTION RECEIPTS.

a) Funds.
   i) Deposits. You agree that the Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. Section 365, as amended from time to time. Subject to this Section, NOVA, and Member will deposit to the DDA all funds evidenced by Transaction Receipts complying with the terms of the Agreement and the Payment Network Regulations and will provide you provisional credit for such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, and other payments due under the Agreement). You acknowledge that your obligation to NOVA and Member for all amounts owed under the agreement arises out of the same transaction as NOVA's and Member's obligation to deposit funds to the DDA.
   ii) Provisional Credit. All Transaction Receipts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies or errors. You acknowledge that all credits for funds provided to you are provisional and subject to Chargebacks and adjustments in accordance with the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer. Member or NOVA may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and NOVA's sole discretion.
   iii) Original Transaction Receipts. Under no circumstances will Member or NOVA be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Member and NOVA.

b) Processing Limits. NOVA may impose a cap on the dollar amount of Transaction Receipts that it will process for you as indicated on the Merchant Application as your annual volume or as otherwise established by NOVA. This limit may be changed by NOVA from time to time, without prior notice to you. If you exceed the established limit, NOVA may suspend the processing of Transaction Receipts, and either return all Transaction Receipts evidencing funds over the cap to you or hold those deposits in a separate account or Reserve Account.

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

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

   b) DDA. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA, subject to Section (B)(4) of the TOS. NOVA and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. You authorize Member or NOVA to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement and the ACH Authorization (defined below). To the extent required, you authorize and appoint Member to act as your agent to collect Transaction amounts from the Issuer. Member, in its sole discretion or at NOVA’s direction, may grant you provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and NOVA and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, and any other payments due under the Agreement. You shall maintain sufficient funds on deposit in your DDA to pay all items as they come due in the ordinary course of business.

   c) Asserted Errors. It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from NOVA, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant’s DDA. You must promptly examine all statements relating to the DDA and immediately notify NOVA and Member in writing of any errors in the statement Merchant received from NOVA. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by NOVA within thirty (30) days after you receive the statement containing the asserted error. If you fail to provide such notice to NOVA within said thirty (30) days, NOVA and Member shall not be liable to you for any errors you assert at a later date. You may not make any claim against Member or NOVA for any loss or expense relating to any asserted error for sixty (60) days immediately following NOVA’s receipt of your written notice. During that sixty (60) day period, NOVA will be entitled to investigate the asserted error, and you shall not incur
any cost or expense in connection with the asserted error without notifying NOVA.

d) **Depository Institution.** Merchant authorizes its depository institution to grant NOVA and/or Member access to any and all information or records regarding the DDA. Merchant authorizes NOVA and/or Member to direct the depository institution to hold funds in the DDA in an amount which NOVA and/or Member, in their respective discretion, either individually or collectively, deem sufficient to fully protect NOVA’s and Member’s rights under the Agreement or to block or restrict Merchant’s or others’ access to funds in the DDA (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from NOVA or Member.

e) **Indemnity.** You will indemnify and hold harmless NOVA and Member for any action they take against the DDA or Reserve Account pursuant to the Agreement. You will also indemnify and hold harmless the depository institution at which you maintain your DDA for acting in accordance with any instruction from NOVA and/or Member regarding the DDA.

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

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

a) **Security Interests.**

i) **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. You grant to Member and NOVA a security interest in and lien upon: (a) all funds at any time in the DDA, regardless of the source of such funds; (b) all funds at any time in the Reserve Account, regardless of the source of such funds; (c) present and future Transaction Receipts; and (d) any amount which may be due to you under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the “Secured Assets”). You agree to provide other security to NOVA and Member, upon request, to secure your obligations under the Agreement. These security interests and liens will secure all of your obligations under the Agreement and any other agreements now existing or later entered into between you and NOVA and/or Member including your obligation to pay any amounts due and owing to Member or NOVA. NOVA and Member may execute this security interest, without notice or demand of any kind, by making an immediate withdrawal or by restricting your access to the Secured Assets.

ii) **Perfection.** Upon request of Member or NOVA, you will execute one (1) or more control agreements or other documents to evidence or perfect this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Member and NOVA will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Member and NOVA written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Member and NOVA are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from
the automatic stay filed by NOVA or Member. You authorize NOVA and appoint NOVA your attorney in fact to sign your name to any control agreement used for the perfection of any security interest or lien granted hereunder.

b) **Reserve Account.**

i) **Establishment.** NOVA may establish a Reserve Account in the Reserve Amount upon the occurrence of a Reserve Event for the purpose of providing a source of funds to pay Member and NOVA for any and all amounts owed by you. Member and NOVA shall have sole control of the Reserve Account.

ii) **Reserve Amount.** The Reserve Amount is equal to the aggregate dollar value of:

\[
\left(\text{average } \% \text{ credits to processing volume during the same period} + \text{average } \% \text{ Chargebacks to processing volume during the same period}\right) \times 4 \\
\times \text{average monthly processing volume} + \text{one month's average fees} \\
+ \# \text{ days delayed delivery} \times \text{average day's processing volume}
\]

For purposes of this calculation, the number of days delayed delivery means the number of days between the date on which the Cardholder’s Payment Device is charged and the date the Cardholder receives and is satisfied with the product. Further, for purposes of this calculation, NOVA will determine, in its sole discretion, the applicable period considering factors such as Merchant’s sale’s growth and seasonality.

iii) **Reserve Event.** The following will constitute Reserve Events: (a) fraudulent activity in any monthly period that equal or exceeds one percent (1\%) of Merchant’s average monthly volume over the preceding twelve (12) month period, (b) Chargebacks in any monthly period that equal or exceed 1\% of the total dollar value of incoming items to NOVA, (c) NOVA’s reasonable belief that Merchant has accepted deposits but has not delivered the goods or services, (d) the commencement of a Bankruptcy Proceeding by or against you, (e) termination of the Agreement for any reason, (f) nonpayment of amounts owed to NOVA or Member, and (g) the occurrence of an adverse change in your financial condition.

iv) **Funding.** Member and NOVA may fund the Reserve Account by any one or more of the following means.

1. Member and NOVA may require you to deposit into the Reserve Account funds in an amount determined by NOVA;
2. Member and NOVA may debit the DDA in any amount;
3. Member and NOVA may deposit into the Reserve Account funds they would otherwise be obligated to pay you.

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

vi) **Termination of Reserve Account.** Funds held in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (1) the Agreement has been terminated; and (2) Merchant has paid in full all amounts owing or that could ever be owed under the Agreement, including all Chargebacks, returns, adjustment, fees, fines, penalties, and any other payments due under the Agreement. In no event shall you be entitled to a return of any funds remaining in the Reserve Account before 270 days following the effective date of termination of the Agreement.
c) Recoupment and Set-off. Member and NOVA have the right of recoupment and set-off. This means that they may offset any outstanding or uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the DDA; and (ii) any other amounts they may owe you under the Agreement or any other agreement. You acknowledge that in the event of a Bankruptcy Proceeding, in order for you to provide adequate protection under Bankruptcy Code Section 362 to NOVA and Member, you must create or maintain the Reserve Account as required by NOVA and/or Member and either of them shall have the right to offset against the Reserve Account for any and all obligations you may owe to NOVA and Member, without regard to whether the obligations relate to Transaction Receipts initiated or created before or after the filing of the bankruptcy petition.

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

7) FEES; OTHER AMOUNTS OWED; TAXES.

a) Fees. You will pay Member and NOVA fees for services, supplies, and equipment in accordance with Schedule A, Schedule of Fees, and any additional application or setup form(s). Such fees will be calculated and debited from the DDA once each day or month for the previous day’s or month’s activity as applicable, or will be deducted from the funds due you under the Agreement. In addition, you will pay NOVA at its standard rates for research including, but not limited to, research required to respond to any third party or government subpoena, levy, or garnishment on your account. The fees set forth in the Agreement and any additional application or set up form will not be amended by NOVA for the Initial Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party. Notwithstanding the previous sentence, the NOVA Processing Fee may be adjusted during the Initial Term or any Renewal Term in NOVA’s or Member’s discretion for the remainder of the then current term of the Agreement if: i) your annualized Visa/MasterCard average ticket or volume falls below projections by more than 20%, or ii) your Visa/MasterCard average ticket or volume for any month falls below 50% of such Visa/MasterCard average ticket or volume during the same month the previous calendar year.

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

c) Taxes. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement.

8) ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

a) Accuracy of Information. You represent and warrant to Member and NOVA that all information provided to NOVA in the Merchant Application or otherwise in the Agreement is correct and complete. You must notify NOVA in writing of any changes to such information, including, without limitation, any additional location or new business at which you desire to accept payment services, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by NOVA at least ten (10)
business days prior to the change. You will provide any additional information requested by NOVA within a reasonable time. You will defend, indemnify, and hold harmless Member and NOVA for all losses and expenses incurred by Member or NOVA arising out of any such change, whether or not reported to NOVA, or your failure to provide requested information. NOVA may immediately terminate the Agreement upon notification by you of a change to the information in the Merchant Application. You authorize NOVA and Member to contact credit reporting agencies and your creditors to make inquiries and obtain reports regarding your credit standing upon NOVA's or Member's receipt of the Merchant Application.

b) **Indemnification.** You will be liable for and indemnify, defend, and hold harmless NOVA, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or NOVA in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by you of the Agreement and those related to any Bankruptcy Proceeding.

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

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

9) **REPRESENTATIONS AND WARRANTIES.** You represent and warrant to NOVA and Member as of the time the Agreement is effective, and reaffirm to NOVA and Member each time a Transaction is effected during the initial term or any renewal term of the Agreement, the following:

a) **Information.** You are a corporation, limited liability company, partnership, or sole proprietorship validly existing and organized in the United States. All information provided in the Merchant Application or any other document submitted to NOVA is true and complete and properly reflects the business, financial condition and principal partners, owners, or officers of Merchant. NOVA has the right to rely upon written instructions submitted by Merchant to request changes to the Merchant's business information. Merchant may request written confirmation of NOVA's consent to the changes to the Merchant's business information. You will not submit Transactions for processing to NOVA or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of NOVA.

b) **Corporate Power.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person
executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in Schedule B to all provisions of the Agreement as if each affiliated entity had executed the Agreement, and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by NOVA, now or in the future. Further, you represent and warrant that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which you are subject.

c) No Litigation. There is no action, suit, or proceeding pending, or to your knowledge, threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), or, if you have, you have disclosed that fact to NOVA in writing.

d) Transactions. All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from you or a return or adjustment related to such purchase. No Transaction involves a Cardholder obtaining cash from you unless allowed by the Payment Network Regulations and agreed to in writing with NOVA.

e) Compliance with Laws and Regulations. You will comply with all Laws and Payment Network Regulations.

f) Business Use. You are obtaining and using the processing services from NOVA for business purposes only and to facilitate lawful business Transactions between yourself and your customers. You also acknowledge that the DDA into which debits and credits are made is being used for lawful business purposes only.

10) AUDIT AND INFORMATION.

a) Audit. You authorize NOVA and Member to perform an audit of your business to confirm compliance with the Agreement. You will obtain and submit a copy of an audit from a third party acceptable to NOVA of the financial, physical security, information security and operational facets of your business at your expense when reasonably requested by NOVA or Member. Further, you acknowledge and agree that the Payment Networks have the right to audit your business to confirm compliance with the Payment Network Regulations.

b) Information.

i) Authority. You authorize NOVA and Member to make, from time to time, any business and personal credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to NOVA.

ii) Financial Information. Upon the request of either NOVA or Member, you will provide NOVA and Member audited financial statements prepared by an independent certified public accountant selected by you. You further agree to provide to NOVA and Member such other information regarding your financial condition as NOVA and/or Member may request from time to time. Within 120 days after the end of each fiscal year, you will furnish NOVA, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

c) Customer Identification. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, you must provide certain information and identifying documents to allow NOVA and Member to identify you.
11) RESPONSIBILITY FOR ACTIONS. You are responsible for the actions of or failure to act by your officers, directors, employees, agents, business invitees, and those of any other Person who, with or without your consent or cooperation, obtains access to information related to Transactions.

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

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

14) THIRD PARTIES.
   a) Products or Services. You may desire to employ Value Added Services to assist you. You shall not utilize any Value Added Services, unless you have disclosed such use to NOVA previously in writing, and unless such Value Added Services are fully compliant with all applicable Laws and Payment Network Regulations. You must ensure that any Value Added Service that is engaged by Merchant is registered with the Payment Networks prior to the performance of any contracted services on behalf of the Merchant. Further, you will be bound by the acts and omissions of the third party offering such Value Added Services and you will be responsible for ensuring compliance by the third party offering such Value Added Services with all applicable Laws and Payment Network Regulations. You will indemnify and hold harmless NOVA and Member from and against any loss, cost, or expense incurred in connection with or by reason of your use of any Value Added Service. Neither NOVA nor Member is responsible for the Value Added Services provided by an unaffiliated third party and neither NOVA nor Member is responsible for any Transaction until NOVA receives data for the Transaction in the format required by NOVA.
   b) Use of Terminals Provided by Others. In addition to the foregoing, if you use Value Added Services for the purposes of data capture and/or authorization, you agree: (i) that the third party providing such services will be your agent in the delivery of Transactions to NOVA and Member via a data processing system or network similar to NOVA's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor NOVA will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or by a malfunction in a Third Party Terminal. Neither NOVA nor Member is responsible for any Transaction until NOVA receives data for the Transaction in the format required by NOVA.

15) TERM AND TERMINATION.
   a) Term. Unless terminated as set forth below, the Agreement will remain in effect for a period of three (3) years ("Initial Term") following the date of acceptance of the Merchant Application by NOVA and Member, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive two (2) year terms ("Renewal Term") unless terminated as set forth below.
   b) Termination.
      i) Merchant.
         (1) The Agreement may be terminated by you effective at the end of the Initial Term or any Renewal Term by providing written notice of an intent not to renew to NOVA
at least one hundred twenty (120) days prior to the expiration of the then current term.

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

ii) NOVA or Member.

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

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

(a) The occurrence of Excessive Activity (defined herein);
(b) The acceptance of Card Not Present Transactions without proper disclosure to NOVA and Member as set forth herein;
(c) The failure to pay NOVA or Member any amount you owe NOVA or Member.
(d) The occurrence of an adverse change in your financial condition.
(e) The garnishment or attachment of your deposit accounts with Member, the Merchant Account, or any of your property in the possession of NOVA or Member.
(f) The assignment of your assets generally for the benefit of creditors.
(g) The commencement of a Bankruptcy Proceeding by or against you;
(h) The failure by you to perform a material obligation of this Agreement that continues for a period of thirty (30) days after your receipt of notice of the breach.
(i) Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement; or
(j) Any Payment Network requires Member or NOVA to terminate this Agreement or cease processing transactions for you.

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

c) Notice of Termination. Notice of termination by Merchant, NOVA, or Member may be given orally or in writing, but if given orally, must be confirmed in writing as soon as practical. Termination shall be effective on the date specified by the oral or written notice; provided, however Merchant agrees that closing Merchant's account with NOVA may take up to thirty (30) days following NOVA's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by NOVA following termination by either Merchant or NOVA, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive Renewal Terms effective on the date of reinstatement.

d) Action Upon Termination.

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

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

iii) Return to NOVA. All promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to you and not purchased by you or consumed in use will remain the property of NOVA and must be returned to NOVA or destroyed within ten (10) business days after termination of the Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by NOVA arising out of any failure to return or destroy such materials following termination.

iv) Early Termination Fee. If you terminate this Agreement before the end of the Initial Term, you will immediately pay us, as liquidated damages, an early termination fee equal to: a) $3000 if you terminate this Agreement in the first 12 months immediately after the Effective Date, b) $2000 if you terminate this Agreement in the 13th through 24th month after the Effective Date, and c) $1000 if you terminate this Agreement in the 25th through 36th month after the Effective Date. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination.

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

a) Compliance with Laws and Payment Network Regulations. You agree to comply with the Payment Network Regulations, and with any policies and procedures provided by Member or NOVA. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. You further agree to comply with all Laws, including without limitation, Laws related to: (i) Payment Devices; and (ii) confidential treatment of information. You will assist Member and NOVA in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. You will execute and deliver to Member and NOVA all such instruments they may from time to time reasonably deem necessary to verify your compliance with this provision.

b) MATCH™. You acknowledge that Member and/or NOVA is required to report Merchant’s business name and the name of Merchant’s principals to the MATCH™ listing maintained by MasterCard and accessed by Visa pursuant to the requirements of the Payment Network Regulations. You specifically consent to the fulfillment of the obligations related to the listing by NOVA and Member, the listing itself and you waive and hold harmless NOVA and Member from all claims and liabilities you may have as a result of such reporting.

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

d) Data Compromise. You must notify us immediately if you know or suspect that Cardholder information has been accessed or used without authorization. You must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service. You must work with us to rectify any issues that may result, including providing us (and obtaining any waivers necessary) with all relevant information to verify your ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of our rights and remedies, you are liable for all fraudulent transactions related to such data incident and all costs NOVA or Member incur as a result of such incident, including claims from third parties and all costs related to the notification of Cardholders and cancellation and re-issuance of Cards, forensic investigation, and PCI review for a report of compliance, unless you notify us pursuant to this section that you are and were in compliance with the Payment Network’s PCI Data Security Standard. You must provide to us, on request, audit reports of your computer systems or data incidents or allow us to perform such audits. Audits must identify the cause of the data incident and confirm whether or not you were in compliance with the Payment Network’s PCI Data Security Standard at the time of the incident.

17) USE OF TRADEMARKS; CONFIDENTIALITY; PASSWORDS.

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

b) Confidentiality.

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

ii) Bankruptcy. In the event of failure or other suspension of your business operations, including bankruptcy or insolvency, you must not sell, transfer, or disclose any materials that contain Cardholder or Transaction information to third parties. You must:
   (1) Return this information to NOVA, or
   (2) Provide acceptable proof of destruction of this information to NOVA.

iii) NOVA or Member Confidential Information. You shall at all times protect NOVA’s and Member’s Confidential Information. You will not disclose any of NOVA’s or Member’s Confidential Information to any third party except as required by Laws.

c) Password. If you receive a password from NOVA to access any of NOVA’s databases or services you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to NOVA’s databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify NOVA if you believe NOVA’s databases or services or your information has been compromised by use of the password. If you receive passwords from a third party, you must protect such passwords in the manner required by such third party and indemnify, defend, and hold NOVA and Member harmless from any losses, costs, or expenses that arise from your use or misuse of such third party passwords.

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

18) MISCELLANEOUS PROVISIONS.

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

b) Governing Law. The Agreement will be governed by and construed in accordance with the Laws of the State of Georgia, except that Section (B)(18)(f) shall be governed by the Federal Arbitration Act. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the State of Georgia and that Merchant’s entry into and performance of the Agreement will be deemed to be the transaction of business within the State of Georgia.

c) Exclusivity. During the Initial Term and any Renewal Term of the Agreement, you will not
enter into an agreement with any other entity that provides processing services similar to those provided by NOVA and Member as contemplated by the Agreement without NOVA’s written consent.

d) **Construction.** Any alteration or strikeover in the text of this preprinted TOS will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

e) **Assignability.** The Agreement may be assigned by Member or NOVA, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of NOVA. If you, nevertheless, assign the Agreement without NOVA’s consent, the Agreement will be binding on the assignee as well as you. If you sell your business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.

f) **Arbitration.** All claims or controversies, or other matters in question, between the parties arising out of or related to the Agreement or the relationship between the parties that are not otherwise settled by agreement of parties will be submitted to and decided by arbitration held in Atlanta, Georgia in accordance with the rules of the American Arbitration Association. The arbitration proceeding shall be conducted before one (1) neutral arbitrator, who shall be a member of the bar of the State of Georgia, actively engaged in the practice of law for at least ten (10) years. The arbitrator will have the authority to award any remedy or relief that a court in Georgia could order or grant, including, without limitation, specific performance, issuance of an injunction or imposition of sanctions for abuse or frustration of the arbitration process. There shall be no authority for any claims to be arbitrated on a class action basis. An arbitration can only decide our or your claim and may not consolidate or join the claims of other persons who may have similar claims. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of the arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential. The parties agree that the underlying agreement between the parties involves interstate commerce and that, notwithstanding the choice of law provision in Section (B)(18)(b), any arbitration shall be governed by the Federal Arbitration Act.

g) **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in the United States mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of NOVA. Any written notice to NOVA, shall be sent by U.S. mail or a nationally recognized overnight carrier to: 7300 Chapman Highway, Knoxville, TN 37920, and shall be deemed received only upon actual receipt.

h) **Bankruptcy.** You will immediately notify NOVA of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. You will include NOVA on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to NOVA under applicable Payment Network Regulations or Laws. You acknowledge that the Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to, or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

i) **Attorneys’ Fees.** Merchant will be liable for and will indemnify and reimburse Member and NOVA for all reasonable attorneys’ fees and other costs and expenses paid or incurred by Member or NOVA: (i) in the enforcement of the Agreement; (ii) in collecting any amounts
due from Merchant to Member or NOVA; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim or cause of action brought by you against NOVA or Member arising out of the Agreement.

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

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

l) **Information Sharing.** You understand and agree that NOVA may disclose any information gathered by NOVA to (i) NOVA’s “affiliates” (i.e., companies related to us by common control or ownership) that offer financial products or services, including those identified in the Agreement and to NOVA’s administrative or service units that perform such functions; (ii) NOVA’s “financial partners,” which are companies with which NOVA has joint marketing arrangements to offer financial products or services, or with which NOVA has agreements to provide marketing services on NOVA’s behalf; (iii) non-affiliated companies to assist NOVA in providing the products and services Merchant has requested; (iv) to credit rating agencies; and (v) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).

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

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

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

p) **Independent Contractors.** NOVA, Member, and you will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein.

q) **Privacy Laws.** In addition to Section (B)(18)(b) above, Merchants must take all commercially reasonable steps to protect the confidentiality of Cardholder and Transaction information (Confidential Information) and shall establish and maintain physical, technical and administrative safeguards to prevent unauthorized access by third parties to such Confidential Information, using a standard of care at least equal to the standard required of NOVA to protect such information pursuant to applicable Laws, including without limitation the federal Health Insurance Portability and Accountability Act (HIPAA), the federal Gramm-Leach-Bliley Act or other applicable privacy laws. Further, a Merchant that is a “covered
entity” or “business associate”, as defined under HIPAA, must not use any product to store, transmit, or otherwise maintain “protected health information” as defined by HIPAA. NOVA is not a “business associate” as defined by HIPAA and it is not NOVA’s practice to store or accept any information that would cause it to be a “business associate” under HIPAA.

r) Survival. All or your obligations to NOVA and Member shall survive termination of the Agreement, including, without limitation, Sections (B)(4)(a)-(c), (B)(5)(a)-(f), (B)(6)(a)-(d), (B)(7)(a)-(c), (B)(8)(a)-(d), (B)(11), (B)(14), (B)(15), (B17)(a)-(d), (B)(18)(b), (B)(18)(f), and (B)(18)(i) of the TOS.

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

Section C - Acceptance of Visa and MasterCard

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

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

21) HONORING CREDIT CARDS.

a) Honoring Cards. Effective January 1, 2004, Merchant may choose to accept: (i) only the credit/business products of Visa and/or MasterCard; (ii) only the consumer debit/prepaid products of Visa and/or MasterCard; or (iii) both the credit/business products and consumer debit/prepaid products of Visa and/or MasterCard. If you are a Merchant currently using the services of NOVA and Member and you wish to discontinue acceptance of either category of products, you must provide NOVA with thirty (30) days advance written notice. If you are a new Merchant, you must indicate your decision to accept a limited category of products on the Merchant Application. If you choose to accept only one of the categories of products but later submit a Transaction outside of the selected category, NOVA and Member are not required to reject the Transaction and you will be charged our standard fees and expenses for that category of products. Further, if you choose a limited acceptance option, you must still
honor all international cards presented for payment. Merchants who have decided to implement a limited acceptance policy are required to display appropriate signage to communicate that policy to Cardholders.

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

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

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

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

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

i. A Convenience Fee cannot be assessed in a face-to-face merchant environment.

ii. A Convenience Fee cannot be assessed for recurring payments. The Convenience Fee is designed for one-time payments not for payments in which a Cardholder allows their Credit Card to be periodically charged for recurring goods or services. Examples of recurring charges include, but are not limited to, insurance premiums, subscriptions, Internet service provider monthly fees, membership fees, tuition or utility charges.

iii. You must provide a true “convenience” in the form of an alternative payment channel outside the Merchant's customary face-to-face payment channels, and the Convenience Fee must be disclosed by you to the Cardholder as a charge for the alternative payment channel convenience that is provided.

iv. The Convenience Fee must be disclosed prior to the completion of the Transaction, and the Cardholder must be given the option to cancel the
Transaction if they do not want to pay the fee.

v. The Convenience Fee must be included in the total amount of the Transaction; it cannot be "split" out from the Transaction amount. The only exception is for card acceptance programs involving only MasterCard Credit Cards where Visa Credit Cards are not accepted.

vi. If a Convenience Fee is assessed it must be for all payments (Visa, MasterCard, Discover, AMEX, ACH, and Check) within a particular payment channel (mail, telephone, and internet).

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

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

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

x. While many states have passed legislation that requires Convenience Fee assessment by state government agencies as a component of card acceptance, the rules defined by NOVA and the Credit Card Associations will apply and supercede any state or local laws for the purposes of the TOS.

xi. In no event is a Convenience Fee to be referred to as a surcharge and further, the Convenience Fee cannot be advertised as an offset to processing fees.

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

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

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

22) AUTHORIZATION.

a) Required on all Transactions. You must obtain an Authorization Code before completing any sales Transaction. An Authorization Code verifies the Credit Card number is valid, the
Credit Card has not been reported lost or stolen at the time of the sales Transaction, and confirms the amount of credit or funds requested for the sales Transaction is available. You will follow any instructions received during Authorization. Upon receipt of an Authorization Code, you may consummate only the sales Transaction authorized and must note the Authorization Code on the Transaction Receipt. In any case in which a sales Transaction is completed without imprinting the Credit Card, the Merchant, whether or not an Authorization Code is obtained, shall be deemed to warrant the true identity of the customer as the Cardholder. For all Card Not Present sales Transactions, you must obtain the Credit Card expiration date, Cardholder address and telephone number, and CVV2/CVC2 number and forward them as part of the Authorization.

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

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

23) **PRESENTMENT OF TRANSACTION RECEIPTS.**

a) **Transaction Receipts.**

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

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

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

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

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

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

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

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

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

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

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

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

b) Chargebacks. You are fully liable to NOVA and Member for all Transactions returned to NOVA or Member for whatever reason including, but not limited to, Chargebacks. You
agree to accept for Chargeback and will be liable to Member and NOVA in the amount of any sale for which the Cardholder or Issuer disputes the validity of the sale for any reason. You will pay NOVA and Member on demand the value of all Chargebacks. You authorize NOVA and Member to offset from incoming Transactions and to debit the DDA, the Reserve Account, or any other account held at Member or at another financial institution the amount of all Chargebacks. You will fully cooperate with NOVA and Member in complying with the Credit Card Rules regarding Chargebacks. Guarantors are personally liable for all Chargebacks. The following is not to be considered a complete listing of the reasons for which you may incur a Chargeback. It is intended only to provide the most commonly encountered situations where a Chargeback may occur.

i) Failure to respond to a Retrieval Request or failure to provide a legible, complete, or proper copy of a Transaction Receipt in response to a Retrieval Request,
ii) Unauthorized use of a Credit Card as alleged by the Cardholder,
iii) Dispute by the Cardholder over the quality of goods or services,
iv) Failure by Merchant to provide goods or services,
v) The Transaction Receipt does not bear the Cardholder’s signature,
vi) The Transaction Receipt represents a sales Transaction for which Authorization was initially declined and was subsequently obtained by means of multiple Authorization attempts or other means not permitted hereunder,
vii) The Transaction Receipt fails to comply with the terms and conditions of the Agreement or fails to comply with the Credit Card Rules,
viii) The sales Transaction was completed under circumstances constituting a breach of the Agreement.

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

d) Credits.

i) Credit Transaction Receipt. You will issue a Credit Transaction Receipt, instead of issuing cash or a check, as a refund for any previous sales Transaction. Member will debit the DDA for the total face amount of each Credit Transaction Receipt submitted to NOVA. You will not submit a Credit Transaction Receipt relating to any Transaction Receipt not originally submitted to NOVA, nor will you submit a Credit Transaction Receipt that exceeds the amount of the original Transaction Receipt. You will, within the time period specified by applicable Laws or the Credit Card Rules, whichever time period is shorter, provide NOVA with a Credit Transaction Receipt for every return of goods or forgiveness of debt for services that was the subject of a previous sales Transaction in accordance with the Credit Card Rules.

ii) Revocation of Credit. Member or NOVA may, in their sole discretion, refuse to accept any Credit Transaction Receipt for processing.

iii) Reprocessing. You will not resubmit or reprocess any Transaction that has been charged back.

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

25) OTHER TYPES OF TRANSACTIONS.

a) Mail Order/Telephone Order (MO/TO). You may not solicit or accept MO/TO sales Transactions unless you have disclosed such method of sale to NOVA previously in writing. If you complete a MO/TO sales Transaction without having disclosed such method of sale previously in writing, you will be in breach of the Agreement and NOVA may immediately terminate the Agreement in addition to any other remedies available under the Agreement, Laws, and Credit Card Rules, and you may have to pay a surcharge on each such Transaction. You understand that Transactions processed via MO/TO are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to MO/TO sales Transactions. You may be required to use an address verification service (“AVS”) on MO/TO sales Transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent Transaction. You will obtain the expiration date of the Credit Card for a MO/TO sales Transaction and submit the expiration date when requesting Authorization of the sales Transaction. For MO/TO sales Transactions, you will type or print legibly on the signature line of the Transaction Receipt the following applicable words or letters: telephone order or “TO,” or mail order or “MO,” as appropriate. NOVA recommends that you obtain a signed Transaction Receipt or other proof of delivery signed by Cardholder for MO/TO sales Transactions.

b) Recurring Transactions.

i) Requirements. For recurring sales Transactions (e.g., payment of insurance premiums or subscriptions), you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder’s account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring sales Transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) a notice from NOVA or Member that authority to accept recurring sales Transactions has been revoked; or (iii) a response that the Credit Card is not to be honored. You must provide a subsequent order form to the Cardholder when a Recurring Transaction is renewed by the Cardholder.

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

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

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

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

c) **Multiple Transaction Receipts.** You will include a description and total amount of goods and services purchased in a single sales Transaction on a single Transaction Receipt unless: (i) partial payment is entered on the Transaction Receipt and the balance of the Transaction amount is paid in cash or by check at the time of the sales Transaction; or (ii) a Transaction Receipt represents an advance deposit in a sales Transaction completed in accordance with the Agreement and the Credit Card Rules.

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

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

f) **Electronic Commerce.**

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this TOS as of ____________, 20__.

MERCHANDT
By:
Name:  
Title:  

NOVA INFORMATION SYSTEMS, INC.
By:
Name:  
Title:  

U.S. BANK NATIONAL ASSOCIATION
By:
Name:  
Title:  

Approved As To Form

Det Norte County Counsel
SCHEDULE A
SCHEDULE OF FEES
SCHEDULE B
SCHEDULE OF ENTITIES

This Schedule B to the Terms of Service is dated as of this ___ day of __________, 20__.

MERCHANT
By:
Name: PRINT
Title:

NOVA INFORMATION SYSTEMS, INC.
By:
Name: PRINT
Title:

U.S. BANK NATIONAL ASSOCIATION
By:
Name: PRINT
Title:

Approved as To Form

Del Norte County Counsel

Approved as To Form
### New Merchant Application

**Merchant Information**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBA Name</td>
<td>County of Del Norte</td>
</tr>
<tr>
<td>Contact Name</td>
<td>Dawn Langston</td>
</tr>
<tr>
<td>DBA Address 1 (no PO Box)</td>
<td>981 H Street #150</td>
</tr>
<tr>
<td>City</td>
<td>Crescent City</td>
</tr>
<tr>
<td>State</td>
<td>CA</td>
</tr>
<tr>
<td>Zip Code</td>
<td>95531</td>
</tr>
<tr>
<td>DBA Address 2</td>
<td></td>
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<tr>
<td>Previous Processor</td>
<td>N/A</td>
</tr>
<tr>
<td>Federal Tax ID</td>
<td>94-2254126</td>
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<tr>
<td>Legal/Corporate Name</td>
<td>County of Del Norte</td>
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<tr>
<td>Legal/Corporate Contact Name</td>
<td>Dawn Langston</td>
</tr>
<tr>
<td>Legal/Corporate Address</td>
<td>981 H Street #150</td>
</tr>
<tr>
<td>Business Type</td>
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<tr>
<td>Principal Information 1</td>
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<tr>
<td>DBA Name</td>
<td>County of Del Norte</td>
</tr>
<tr>
<td>Contact Name</td>
<td>Dawn Langston</td>
</tr>
<tr>
<td>DBA Address</td>
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<td>City</td>
<td>Crescent City</td>
</tr>
<tr>
<td>State</td>
<td>CA</td>
</tr>
<tr>
<td>Zip Code</td>
<td>95531</td>
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<tr>
<td>Average Sale Amount</td>
<td>$25.00</td>
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<td>Description of services</td>
<td>Government Services</td>
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<tr>
<td>Percent of ownership</td>
<td></td>
</tr>
<tr>
<td>Officer</td>
<td>Treasurer/Tax Collector</td>
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</table>

**Bank Account**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit Bank Name</td>
<td>Union Bank of California</td>
</tr>
<tr>
<td>Billing Bank Name</td>
<td></td>
</tr>
</tbody>
</table>

**Other Merchant Information**

- Card Present (swiped): 95%
- Card Present (not swiped): 5%
- Mail Order: %
- Telephone Order: %
- Internet: %
- Total: 100%
- Do you operate seasonally? Yes ☐ No ☐
- If yes, please check months closed:
  - January ☐ February ☐
  - March ☐ April ☐
  - May ☐ June ☐
  - July ☐ August ☐
  - September ☐ October ☐
  - November ☐ December ☐

**Other Information**

- Tax Exempt Organization: Yes ☒ No ☐
- MOA: 95531
- Government: Yes ☒ No ☐
- MCC: 9399
LADCO Leasing Agreement

X ________ THIS IS A NON-CANCELLABLE LEASE FOR THE FULL TERM OF M.O.S. TOTAL MONTHLY PAYMENT OF $ __________ plus taxes, if applicable.

LADCO Leasing together with its successors and assigns, "Lessor," hereby leases to Merchant identified in the Merchant Information Section above ("Lessee"), and Lessee hereby leases from Lessor, the point-of-sale equipment ("Equipment") and/or software and related license agreement(s) collectively, "Software") described in the Point of Sale (Equipment or Software) Section above together with all replacement parts, repairs, additions and accessories respecting the foregoing. The "Property," on the terms and conditions set forth herein and in the Equipment Finance Lease Agreement (collectively, the "Lease Agreement") provided by Lessor upon Lessor's acceptance of the Lease Agreement.

The monthly lease payment is due and payable on the same day of each successive month of the lease term. Lessee agrees to pay Lessor a late charge of 15% of the amount past due (but at least $5.00) for failure to pay any lease payment within five days of when due. Lessee shall pay, or reimburse Lessor, for amounts equal to any taxes or assessments. Including without limitation, state or local sales, use, personal property, excise, stamp, documentary, ad valorem, gross receipt, occupation and other taxes, license and registration fees, assessments, fines, penalties and other charges imposed on the ownership, possession or use of the Equipment during the term of this Lease (except net income taxes imposed on Lessor). Lessee agrees to pay Lessor an annual fee of up to $25 for the administration, billing and tracking of said taxes and charges. Lessee agrees to keep the Equipment adequately insured against loss by fire, theft, and all other hazards, and shall provide proof of insurance. If Lessee fails to provide proof of insurance, Lessor may invoke a Loss or Destruction Waiver and charge a monthly fee at current rates.

Card Acceptance

Please check each card you wish to accept.

Note: acceptance of card types not selected will result in discount downgrades.

☐ All Visa/MasterCard/Discover Cards
☐ Visa Credit
☐ Visa Debit
☐ MasterCard Credit
☐ MasterCard Debit
☐ Discover

Priming Information

☐ TIERED Rate Per Item

- Rewards-Qual 1.95% $0.20
- Mid-Qual 2.82% $0.30
- Non-Qual 3.72% $0.30

Opt. Tier ☐ Debit ☐ Supermarket ☐ Quick Pay/Small Tkt

Opt. Commercial Card Tier 1.95% $0.20

☐ INT PLUS % $

☐ INT Differential

- VISA - Qual % $
- MasterCard - Qual % $
- Discover - Qual % $
- INT Differential Plus % $

IDP Pricing Program:

Rates are for all card acceptance types selected above.

Purchase or Lease

<table>
<thead>
<tr>
<th>Qty</th>
<th>POS Description</th>
<th>Item Code</th>
<th>Price per Unit</th>
<th>Lease Term: Mos.</th>
<th>Monthly Rate per Unit</th>
<th>Mon. Fee per Unit</th>
<th>Per Auth Fee</th>
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<td>RDM Synergy</td>
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<td>6</td>
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Merchant Owing

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<th>POS Description</th>
<th>Item Code</th>
<th>Reprogram Fee per Unit</th>
<th>Pin Pad Encryption</th>
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</thead>
<tbody>
<tr>
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<td>$</td>
<td>$</td>
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</tbody>
</table>

Special Programs

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<th>Qty</th>
<th>POS Description</th>
<th>Item Code</th>
<th>Price per Unit</th>
<th>Equipment Back from Merchant</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

*Please note that all leases MUST complete the LADCO-Lease Agreement section below. Signatures are required. All applicable state and local taxes will be applied.
AUTHORIZATION FOR AUTOMATIC WITHDRAWAL OF MONTHLY PAYMENTS

The undersigned hereby authorizes Lessor to automatically withdraw the undersigned’s monthly lease payment and any amounts, including any and all taxes or other charges, owed in accordance with the above referenced Lease Agreement, as applicable, by initiating debit entries to the undersigned’s account at the financial Institution (‘Bank’) indicated herein or such other financial Institution used by the undersigned from time to time. A lease payment (whether paid by debit or other means) that is not honored by Bank for any reason will be subject to a returned item service fee imposed by Lessor. This authorization shall remain in effect until Lessor has received written notice from the undersigned of its termination.

Bank Name: __________________________
ABA Routing #: _________________________
DDA Account #: _________________________

AGREEMENT ACCEPTANCE

The undersigned acknowledges that such party’s signature below serves as a signature page to the applicable Lease Agreement referenced herein and indicates the undersigned’s acceptance of and agreement to, all of the terms and conditions hereof and of such agreement. The undersigned further acknowledges that the Lease Agreement, together with the undersigned’s signature below, constitutes the full agreement between Lessor and Lessee concerning the Property and that Lessor may freely assign the Lease Agreement as a stand-alone agreement apart from the NOVA Merchant Application. The undersigned certifies that the Property shall be used solely for business purposes. The person signing this agreement affirms that such person is either a sole proprietor who is the within named Merchant or a duly authorized corporate officer, member or partner of the within-named Merchant.

Lessee (Authorized Signer)
Signature: ___________ Print Name: ___________ Date: ___________

PERSONAL GUARANTEE

The undersigned unconditionally guarantees payment and performance of all obligations of Lessee, as applicable, hereunder and under or in respect of the related Lease Agreement, hereby waiving notice of any modification, amendment or extension and notice of any event of default thereunder. The undersigned agrees to pay all attorneys’ fees and other expenses incurred by Lessor by reason of default by Lessee. This is a continuing guaranty and shall not be discharged or affected by death of the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned. The undersigned hereby directs any consumer reporting agency to furnish a consumer credit report that relates personally to the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned. The undersigned hereby directs any consumer reporting agency to furnish a consumer credit report that relates personally to the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned and shall bind the heirs, administrators, representatives, successors and assigns of the undersigned.

Signature: ___________ Print Name: ___________ Date: ___________

Debit
☐ Debit – includes INLK (Interlink), Misto (Mistos), ACCL (Accell), AFFN, ALAS (Alaska), CU24, ITS (Shazam), NETS, NYCE, PULSE and STAR

DCC
☐ DOC
Rebate % Set Up Fee $
☐ Money Manager Vendor:
☐ Working Capital Vendor:

Report Tools
☐ MCP # Users Monthly Fee $ Set Up Fee $ (check one) MID CHN ENT
☐ ACS Remote ID Set Up Fee $ Monthly Fee $

ECS Processing Options:
☐ POP (Point of Purchase) ☐ ARC (Accounts Receivable Conversion) ☐ ECS Only


ECS Product Selection
☐ Conversion with Guarantee Guarantee Rate: % Per Transaction: ___________
☐ Conversion with Verification Collections Per Transaction: ___________
☐ Conversion Only Collections Per Transaction: ___________

ECS Price
Card Style Card Quantity Price $ ☐ Monthly Pricing: $ _________ per month
☐ Basic ___________ (Includes _________ transactions per location annually. Additional transaction billed $0.29 per transaction)
☐ Standard ___________
☐ Custom ___________
Max Card Value $ (Default $500)

Other Card Types
Amex: ___________ SE # (10 digits) ___________ Auth Fee ___________ American Express:
Amex Rate: %
Amex Flat Fee Option: ___________ Monthly Volume: ___________

Diners Club: ___________ (5 digits) ___________ JCB Rate: %
CHN

JCB: ___________ (10 digits) ___________ JCB: JCB Rate: %

Working Capital Vendor:

Money Manager Vendor:

DCC Monthly Minimum: ___________

EnQuire Reporting Access:
☐ Turn off return memo advises

Additional Service Options
☐ NSF Service Fee Processing @ $2.00 per NSF item

Please check box for each additional service option

Not applicable for POP Guarantee and all ARC products

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<thead>
<tr>
<th>Card Style</th>
<th>Card Quantity</th>
<th>Price $</th>
<th>Monthly Pricing: $ _________ per month</th>
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<tr>
<td>Basic</td>
<td>_________</td>
<td>$</td>
<td>(Includes _________ transactions per location annually. Additional transaction billed $0.29 per transaction)</td>
</tr>
<tr>
<td>Standard</td>
<td>_________</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Custom</td>
<td>_________</td>
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Max Card Value $ (Default $500)
<table>
<thead>
<tr>
<th>EGCCIPL</th>
<th>EGCG</th>
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<tbody>
<tr>
<td>Pile Stand (Kit #1)</td>
<td>Posters (2) Buttons (10) (Kit #2)</td>
<td>Card Badges (25) (Kit #3)</td>
<td>Card Carriers (enter total cards)</td>
<td>Monthly Online Admin - # Users</td>
<td>Graphic Design Service</td>
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<tr>
<td>Logo (ELECTRONIC artwork must be submitted to avoid delay)</td>
<td>Text (if entered below)</td>
<td>Font (if entered below)</td>
<td>Case (if entered below)</td>
<td>Times New Roman</td>
<td>UPPER CASE</td>
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<tr>
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<td>As submitted</td>
<td>As submitted</td>
<td>As submitted</td>
<td>As submitted</td>
<td>As submitted</td>
</tr>
</tbody>
</table>

**EGC Options**

- Service Fees (Cardholder charged on unused balances)
  - Custom Cards are required
  - Service Fee per Transaction
  - Apply same to all states? Y N (if no, complete for each state)

**EGC Network**

- NOVA (Direct)
- GiveX (Indirect)
- VAR

**Other Details**

- Monthly Online Admin - # Users
- Cards Carriers (enter total cards)

**Locked Balances**

- Months of non-use (default 72 months)

**Imprint**

- Logo (ELECTRONIC artwork must be submitted to avoid delay)
- Text (if entered below)
- Font (if entered below)
- Case (if entered below)
- Times New Roman
- UPPER CASE
- lower case
- As submitted
Merchant Application

Merchant Representations and Certifications. By signing below, the applicant merchant ('Merchant') and its representative(s) represent and warrant to NOVA Information Systems, Inc. ('NOVA'), with offices at 7300 Chapman Highway, Knoxville, TN 37930, and First Financial Services Member, (collectively, "NOVA"), that all information provided in this merchant application ('Merchant Application') is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant; and (ii) the persons signing this Merchant Application are duly authorized to bind Merchant to all provisions of this Merchant Application and the Agreement. The signature by an authorized representative of Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction to us, shall be the Merchant's acceptance of all conditions contained in the Agreement including, without limitation, this Merchant Application and the Terms of Service ('TOS'). If Merchant does not receive the TOS, please contact our customer service center. Notwithstanding the receipt or non-receipt of the TOS, Merchant agrees to comply with the Agreement, and all applicable laws, rules, and regulations including the rules and regulations of the Payment Networks, and understands that failure to comply will result in termination of processing services. Capitalized terms shall, unless otherwise defined in this Merchant Application, have the same meaning assigned to them in the TOS.

Merchant agrees to establish and maintain sufficient funds in an account to accommodate all transactions including, but not limited to, Chargebacks, returns, adjustments, fees, fines, penalties and any other payments due under the Agreement. Merchant authorizes us to credit/debit that account as necessary. In addition to the fees set forth in the Merchant Application, you will pay NOVA all the then current rates for account maintenance (e.g., minimum charges), special processing, retaining, equipment swaps and research including, but not limited to, research required to respond to any third party or government subpoena and any other payments due under the Agreement. Merchant authorizes unto credit/debit that account as necessary.

Merchant understands that we may take any of the following actions if necessary to protect ourselves from financial loss: establish and maintain a reserve account; impose a processing limit or cap on the dollar amount of sales transactions that we will process for Merchant, which may be changed from time to time by us with or without notice to Merchant; and/or suspend the processing of transaction receipts for as long as necessary to investigate suspicious, unusual or excessive activity.

Merchant must obtain an Authorization Code via electronic terminal or similar device before completing any transaction. Merchant understands that an AUTHORIZATION CODE IS NOT A GUARANTEE OF ACCEPTANCE OR PAYMENT OF A TRANSACTION. RECEIPT OF AN AUTHORIZATION CODE DOES NOT MEAN THAT MERCHANT WILL NOT RECEIVE A CHARGEBACK FOR THAT TRANSACTION.

If Merchant terminates its Account within one year of the date set forth below, Merchant will immediately pay NOVA, as liquidated damages, an early termination fee equal to $250, an additional $100 for any change to the service rates, and in addition to all other amounts owed. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. NOVA will use best efforts to debit the Merchant's account in the amount of the applicable termination fee within sixty (60) days of receipt of Merchant's written notice of termination.

Merchant and its representative(s) authorize us prior to our acceptance of this Merchant Application and from time to time thereafter, to investigate the individual and business history and background of Merchant, each such representative and any other officers, partners, proprietors, and/or owners of Merchant, and to obtain credit reports or other background investigation reports on each of them that we consider necessary to review the acceptance and continuation of this Merchant Application. Merchant also authorizes anyone or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to us.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. This means we will ask for certain information and identifying documents to allow us to identify you. Merchant further acknowledges and agrees that any information provided in connection with this Merchant Application and all other relevant information may be supplied by us to our affiliates. This Merchant Application may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same Merchant Application.

Delivery of executed counterparts of this Merchant Application may be accomplished by a facsimile transmission, and a signed facsimile or copy of this Merchant Application shall constitute a signed original.

Merchant DBA Name: County of Del Norte

Signature: X

Printed Name: Dawn Langston

Title: Treasurer/Tax Collector

Date: 4/25/2007

As a primary inducement to us to accept this Merchant Application, the undersigned Guarantor(s), by signing the Merchant Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to us (including, without limitation, Chargebacks) pursuant to the Merchant Application and Agreement, as may be amended from time to time, with or without notice. Guarantor(s) understand further that we may proceed directly against Guarantor(s) without first exhausting our remedies against any other person or entity responsible therefor to them or any security held by us or Merchant. This guarantee will not be discharged or affected by the death of the Guarantor, will bind all heirs, administrators, representatives and assigns and may be enforced by the beneficiary of any of our successors. Guarantor(s) understand that the Inducement to us to accept this Merchant Application is consideration for the guaranty and that this guaranty remains in full force and effect even if the guarantor(s) receive no additional benefit from the guaranty.

Signature: X

Printed Name: Dawn Langston

Date: 4/25/2007

I certify that I hold the office indicated below of Merchant and am the keeper of the records of that entity as indicated below of Merchant and am the keeper of the records of that company.

Signature: X

Printed Name: Dawn Langston

Date: 4/25/2007

I certify that I hold the office indicated below of Merchant and am the keeper of the records of that company held on the day of (month), (year):

1. Resolved, that any one of the following officers of the company: 

   Signature: X

   Printed Name: Dawn Langston

   Title: Treasurer/Tax Collector

   Date: 4/25/2007

   is authorized to:

   A) execute on behalf of this company a Merchant Application and any agreements or other necessary documents including any amendments;

   B) execute any document requested from time to time be executed in furtherance of the Merchant Application or relationship resulting therefrom;

   C) perform all acts that may be necessary to carry out the intent of the Merchant Application and this Corporate Resolution.

2. Resolved, that the Merchant Application and the resulting relationship is ratified and approved.

3. Resolved, that the entity receiving this Merchant Application is authorized to rely upon this Corporate Resolution until advised in writing by a like certification of any changes and is authorized to accept such changes on its behalf, such changes being made as provided in the Corporate Resolution.

Secretary / Officer / Non-Member Manager (LLC) / Member (LLC) / General Partner/Owner [circle one] State in which Merchant is organized

Signature: X

Printed Name: Dawn Langston

Date: 4/25/2007

To the best of my knowledge, I certify that the information provided in this Merchant Application was provided by the Merchant and is true, complete and accurate. I further certify that the signatures were provided by the Merchant's owners(s) or officer(s), as appropriate.

Sales Rep Signature: X

Printed Name: Emmett Templeton

Rep ID #: 17251

Date: 4/25/2007

Accepted by NOVA Information Systems, Inc.:
What Happens Next?

Thank you for choosing us as your payment processor. We look forward to providing you with the best customer service in the industry.

Below are the steps that will be taken to get you up and running quickly.

1. **Application and Credit Underwriting**
   Your application will be sent to our Operations center for processing. It will be checked for completeness and accuracy. Our credit underwriting specialists will review the information provided, perform the necessary analysis, and approve or decline the application. We will contact you within 24-72 hours if we need you to provide additional information.

2. **Deployment**
   Once your application is approved and entered into our systems, our deployment team will prepare any equipment or software for shipment. You should receive your package within two-five days, depending on the method of shipping selected. Look inside the box for your Getting Started Kit — it contains a packing list, your Merchant Identification Number (MID), support materials, and information about training and service.

3. **Training**
   Once you receive your package, please call the training number located in your Getting Started Kit to speak with one of our representatives. If we don't hear from you, we will contact you to schedule a session. The session will cover information about credit card processing, how to set up use your processing terminal or software solution, and where to find helpful information.

4. **Communications**
   You will receive an email from “The NOVA Network” that contains helpful information about processing with us, as well as a quick link to MerchantConnect, our free online support tool. You will also receive a survey that will ask you to score us on a number of factors. We value your feedback, and ask that you kindly take two minutes to rate the sales process, training process, and overall level of service. We will periodically send you information to keep you informed about things that impact your business.

5. **Service**
   Help is always just a phone call away — we operate a 24/7 call center. For free online access to your account, go to www.merchantconnect.com. You can display recent deposits, view chargeback and retrieval requests, access customer support, and much more.

Thank you for your business. We look forward to providing you the very best in service.