

RESOLUTION NO. 2002-136

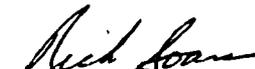
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY TO ENTER INTO A MERCHANT SERVICES AGREEMENT
WITH RIVER CITY BANK**

WHEREAS, the City of Elk Grove, a municipal corporation ("City"), is authorized to enter into a written agreement for the purpose of conducting financial transactions as described in the River City Bank Merchant Services Agreement, a copy of which is attached; and

WHEREAS, the Director of Administrative Services of the City of Elk Grove is authorized to sign and enter into said agreement with River City Bank on behalf of the City; and

BE IT FURTHER RESOLVED, that the City ratifies and confirms the acts performed of its signing officer in conducting financial transactions relating to the Merchant Services Agreement with River City Bank.

PASSED AND ADOPTED by the City Council of the City of Elk Grove, California on this 7th day of August 2002.



RICK SOARES, Mayor of the
City of Elk Grove

ATTEST:



PEGGY JACKSON
City Clerk

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI
City Attorney

AYES: Leary, Cooper,
Briggs, Soares
NOES: None
ABSTAIN: None
ABSENT: Scherman



River City Bank

In consideration of the mutual covenants herein, River City Bank ("Bank") and the undersigned merchant ("Merchant") have agreed as follows as of the date of acceptance by Bank's authorized representative noted below:

ARTICLE I - CARD TRANSACTIONS

1.01 Honoring Cards.

(a) Merchant shall honor all valid cards ("Cards") of the point-of-sale ("POS") networks checked below (each, a "Network") when properly presented as payment by cardholders in connection with bona fide, legitimate business transactions. Merchant shall not engage in acceptance practices or procedures that discriminate against, or discourage the use of, any particular brand of Card. If Merchant does not deal with the public at large (such as in the case of a private club), Merchant shall be deemed to have complied with this non-discrimination rule if it honors all valid Cards of cardholders who have purchasing privileges or memberships with Merchant.

(b) Except as required by Network rules, Merchant shall not establish minimum or maximum transaction amounts. With respect to Maestro, Merchant may not require a minimum transaction amount of more than \$1.00 below which Merchant can refuse to honor otherwise valid Maestro Cards.

1.02 Terminal and PIN Pad Availability. Merchant shall ensure that its system, all terminals and all personal identification number ("PIN") pads operated at Merchant's premises:

(a) are available for use by holders of all Cards;

(b) function with a minimum of error and in a reliable manner during all scheduled hours of the retail establishment in which the terminals are located;

(c) function according to the applicable standards, including minimum response time and minimum time out requirements, contained in the technical specifications of the Networks ("Technical Specifications");

(d) are capable of displaying to the cardholder or printing the responses listed in the Technical Specifications, provided, however, that the PIN keyed in by the cardholder must not be displayed;

(e) record separately on an audit record any surcharge or rebate imposed at such terminals; and

(f) are utilized in compliance with the applicable Network's operating rules.

1.03 Authorization.

(a) Merchant shall not complete any transaction that has not been authorized through the applicable Network except as provided in Section 1.16 ("Exception Processing"). Merchant shall be liable for any transaction that Merchant attempts to complete that is denied by, or on behalf of, the Card issuer.

(b) Merchant shall request on-line authorization of a transaction if the Card used to initiate the transaction is past its expiration date. Merchant, however, is not required to honor any Card that is past its expiration date if the transaction is to be performed while Merchant is in Exception Processing mode.

(c) Merchant shall not complete a transaction that it knows or should have known to be fraudulent or not authorized by the cardholder. With respect to this subsection, Merchant shall be responsible for the actions of its employees while acting in its employ.

(d) Once a transaction has been authorized, any correction of the authorized amount must be initiated by the cardholder by entry of his PIN and swiping of his Card through the magnetic stripe reading terminal.

1.04 Receipt/Signage.

(a) At the time of any transaction involving a transfer of funds, including transactions performed at scrip terminals, Merchant shall make available to each cardholder a written receipt that complies fully with all applicable state and federal laws and regulations, including but not limited to Regulation E (12 C.F.R. Part 205), and includes, without limitation, the following information:

(i) the amount of the transaction (the amount of any transaction fee levied by Merchant may be included in this amount, provided the amount of the fee is disclosed on the receipt and the amount or percentage of the fee is disclosed on a sign posted on or at the terminal. The sign must indicate the entity charging the fee and disclose any other conditions pertaining to the fee or its method of calculation);

(ii) The transaction date;

(iii) The type of transaction (e.g., payment from primary account) and, if more than one type of account may be accessed at the point-of-sale terminal by the cardholder, the type of account (e.g., checking, savings, etc.) and, if more than one account of the same type may be accessed at the point-of-sale terminal by the cardholder, a unique identification number or code for the specific account accessed;

(iv) the Card number;

(v) the location of the terminal at which the transaction was initiated;

(vi) the name of the retailer providing the goods, services or money to the cardholder;

(vii) the trace number;

(viii) the transaction time (if the terminal has the capability of so doing);

(ix) the amount of any surcharge levied by Merchant;

(x) any other information required under applicable federal, state or local laws, rules or regulations; and

(xi) with respect to scrip transactions, (A) redemption restrictions, if any, (B) notice that the cardholder's account has been charged upon receipt of scrip and (C) should national automated teller machines marks appear on a scrip terminal and a Card, indication of the mark under which such transaction will be routed.

(b) The requirements of Subsection (a) shall not apply to transactions not involving the transfer of funds, such as balance inquiries or preauthorization requests. With respect to Maestro Cards, balance inquiries shall make available to the cardholder either a receipt containing account balance information or a display of the same, both as specified in the Technical Specifications.

(c) Merchant shall ensure that balance information received from Card issuers is printed on a receipt or displayed for each transaction at a cardholder-operated terminal; provided, however, that balance information shall not be printed on a receipt or displayed at any Merchant-operated terminal or printed on any scrip subject to redemption.

(d) Provided federal, state and local laws, rules and regulations permit, the terminal may allow cardholders the option of not receiving the receipt required under this Section.

1.05 Requirement of PIN/Cardholder Signature.

Merchant shall require that the cardholder enter his PIN at, or in proximity to, the point of sale when initiating a transaction, except as provided for paper sales drafts (Section 1.16(b) below) and for preauthorization completions (Section 1.09(b) below). Merchant may not require or request the cardholder's signature or any other means of verifying the cardholder's identity unless technical problems have prevented the cardholder from entering his PIN. If the PIN cannot be entered or validated due to system failure, Merchant may allow the cardholder to initiate a paper sales draft transaction as set forth in Section 1.16(b) below.

1.06 Compliance with Network Rules.

Merchant acknowledges that it has received and thoroughly examined copies of the Networks' operating rules and Merchant agrees to comply with, be subject to, and conduct its debit card activities in accordance with all applicable Network rules and regulations, as amended from time to time, including those rules pursuant to which a Network may impose penalties and fines in connection with Merchant's debit card activities. Merchant acknowledges that each Network has the right to conduct an audit or investigation of Merchant at any time. Merchant shall pay, or reimburse Bank for its payment of, any fines or assessments imposed by any Network that relate to the debit card activities of Merchant.

1.07 Magnetic Stripe Reading Terminals.

(a) Merchant shall have at, or in proximity to, the point of sale where a Card is accepted, an operating Track 2 magnetic stripe reader that meets all applicable Network specifications.

(b) Merchant shall have at, or in proximity to, any point of sale where a Card is accepted, an operating PIN pad with an alpha-numeric keyboard that meets all applicable Network Technical Specifications. Each PIN pad must allow entry of PINs having from four to 12 characters. Each keyboard must be capable of performing actions, functions and data entry.

(c) Merchant shall ensure that the magnetic stripe on the back of the Card is read by the magnetic stripe reader prior to initiation of any transaction other than a preauthorization completion (Section 1.09) or a paper sales draft transaction (Section 1.16(b)). If the magnetic stripe reader is inoperative or the magnetic stripe cannot be read, Merchant may, at its option, key enter the Card number embossed on the face of the Card provided that the cardholder and the Card must be physically present at the location and time of the transaction and the cardholder must enter a PIN to effect the transaction.

(d) Terminals must be able to lock the keyboard and prevent additional transactions, other than cancellations, from being entered into the system while the transaction is being processed.

(e) Terminal keyboards must have enter and cancel keys. The enter key is required to indicate the completion of a variable length PIN. The clear key is utilized by the cardholder to clear the PIN entry when an error has been made.

(f) Terminal keyboards may have a cancel function available in order to cancel a transaction when an error has been made or the cardholder wishes to stop the transaction. If the cancel function is not supported, the terminal must be capable of clearing all previous information when reaching the timeout limitation in order to be available for a new transaction.

(g) Merchant shall utilize a journal printer or other appropriate recording device. The journal content must include, at a minimum, the same information provided on the cardholder transaction receipt (specified in Section 1.04), with the exception of the transaction code description. When an attempted transaction is rejected, an indication or reason for the rejection must be included with the transaction information.

(h) Merchant must use a receipt printer having the capability to print a receipt in conformance with Section 1.04.

1.08 Reversals/Voids.

(a) A transaction may be reversed or voided electronically, but only if such reversal or void is entered prior to midnight of the calendar day on which the original transaction was initiated.

(b) To effect a void or reversal, the cardholder must re-enter his PIN, the Card must be read by the magnetic stripe reader and the Merchant must transmit the trace number and the exact dollar amount of the transaction to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the receipt at which the original transaction was initiated, but need not be initiated at the same terminal.

(c) Merchant must provide for reversals of the full amount of any transaction authorized by or on behalf of a Card issuer whenever the system is unable as a result of technical problems to communicate the authorization to the terminal.

(d) Any on-line reversal must include as a part of the on-line reversal a reversal of any surcharge or rebate associated with such Transaction.

1.09 Preauthorizations.

(a) Preauthorization requests may be initiated at or in proximity to the point of sale. All requests must be initiated through use of a PIN and a magnetic stripe reader and shall be for a specified dollar amount. The transaction shall not be completed until a completion message is received for the actual dollar amount of the transaction. The Card authorization system is not required to authorize the transaction unless the actual dollar amount of the transaction is less than or equal to the amount specified in the preauthorization request. (b) All preauthorized transactions must be completed within twenty minutes of the original preauthorization request. If a final completion message is not received within twenty minutes of the preauthorization requests, the preauthorization request approval shall be void. To complete a preauthorized transaction, use of the PIN and/or magnetic stripe reader is not required.

(c) If Merchant initiates preauthorized transactions, it shall support the processing of preauthorizations for amounts less than that specified in the preauthorization request sent by Merchant.

1.10 Display of Names and Symbols.

- (a) On behalf of Bank, Merchant shall prominently display the Networks' proprietary names and symbols on signs or decals at or near its point-of-sale terminals and at or near all major public access points solely to inform the public that Cards will be honored at Merchant's place of business.
- (b) All displays of Network proprietary names and symbols by way of decals, signs, printed and broadcast materials or otherwise must comply with the Networks' applicable specifications and operating rules and with all applicable laws, rules and regulations.
- (c) Merchant may use the Networks' proprietary names and symbols on promotional, printed or broadcast materials only to indicate that Cards are accepted for payment, and Merchant shall not indicate, directly or indirectly, that any Network endorses Merchant's products or services.
- (d) Merchant may not refer to any Network in stating eligibility for its products, services, or membership.
- (e) Merchant shall prominently display the Networks' proprietary names and symbols on all signs or decals on which a shared regional or national POS service is promoted at the Merchant's location. Merchant shall ensure that all proprietary names and symbols associated with the Networks displayed on such signs or decals are printed in a size whose surface area is no smaller than the size of the largest mark(s) of any other shared regional or national POS network displayed on such sign or decal.
- (f) Upon termination of this Agreement for any reason, Merchant shall cease to display the Networks' proprietary names and symbols within 30 days after the termination, shall not in any way use such proprietary names and symbols, and shall promptly either return to the Bank or destroy any materials displaying such proprietary names and symbols.
- (g) Merchant shall obtain no interest in the Networks' proprietary names and symbols except the right to use them in accordance with this Agreement and the Networks' operating rules.

1.11 Confidentiality.

- (a) Merchant shall not disclose to any of Merchant's agents, the Networks, or any of the Networks' members, any information related to transactions (including, but not limited to, cardholder account information) in the form of transaction receipts, carbon copies of transaction receipts, mailing lists, tapes or other media obtained by reason of a transaction without the prior written consent of the cardholder and the Card issuer, except: (i) to the agent, Network or Network member involved in or necessary for the purpose of assisting Merchant in completing the transaction or for the purposes of collection on paper sales drafts, (ii) to the agent, Network or Network member involved in or necessary to comply with error resolution procedures, or (iii) as otherwise specifically required by federal, state, or local laws, rules or regulations, or government requests, or the Networks' operating rules.
- (b) Merchant shall treat all documents received from Bank or any Network, including but not limited to Technical Specifications, as confidential and proprietary information, and shall protect them with the same degree of care as Merchant would protect its own confidential and proprietary information. Such documents shall be disclosed only to employees of Merchant with a specific need to know and shall be disclosed only to the extent specifically required by the Networks' operating rules.

1.12 Types of Transactions.

- (a) Merchant shall ensure that each terminal is capable of electronically processing POS transactions involving the purchase of goods and services and reversals of such transactions. (b) Merchant may also offer, at its option, the following transactions:
- (i) cash back with the purchase of goods and services in an amount not to exceed \$200.00;
 - (ii) balance inquiries, provided that the terminal is cardholder activated;
 - (iii) preauthorizations and preauthorization completions, provided that no preauthorized completion amount may exceed the authorized amount;
 - (iv) cash only without the purchase of goods or services, in an amount not to exceed \$200.00;
 - (v) cancellation of transactions following the initiation of the transaction by the cardholder but prior to the authorization being received by the system; and
 - (vi) effective October 1, 1994, credit for a return of merchandise originally purchased ("Merchandise Credit Transaction").

1.13 Interlink Cashback Transactions.

- (a) If Merchant allows cardholders to initiate Interlink cashback transactions, Merchant shall transmit in its transaction message for each such cashback transaction initiated at that Merchant's location the amount of cashback given to the cardholder pursuant to the transaction.
- (b) If Merchant allows cardholders to initiate Interlink scrip transactions, Merchant shall transmit in its transaction message whether the transaction involved the issuance of scrip. For purposes of cashback reporting pursuant to this Section, the full amount debited from a cardholder's account during a debit transaction initiated at a terminal that issues scrip shall be reported as the cashback amount, regardless of the amount used to purchase goods or services at the Merchant location.
- (c) If Merchant allows cardholders to initiate Interlink transactions at automated dispensing machines, Merchant shall transmit in its transaction message whether the transaction involved the issuance of scrip. For purposes of cashback reporting pursuant to this Section, only the scrip amount debited from a cardholder's account during the debit transaction initiated at an automated dispensing machine that issues scrip shall be reported as the cashback amount. The amount of merchandise dispensed shall be reported as the purchase amount.
- (d) A Merchant that receives, in response to a request for authorization for an Interlink cashback transaction that involves the purchase of goods and/or services, the denial code which indicates that a cashback transaction has been denied solely because the cashback portion of the transaction would cause the cardholder to exceed a limit on cash withdrawals imposed on the cardholder by the Card issuer, shall inform the cardholder that the transaction was denied because it would cause the cardholder to exceed such limit on cash withdrawal, but that a new transaction in the amount of the purchase alone may be approved.

1.14 Interlink Merchandise Credit Transactions.

- (a) Effective October 1, 1994, a Merchandise Credit Transaction may be processed only to the same Interlink Card as was used in the original Interlink transaction within one year following the original transaction date.

(b) Effective October 1, 1994, all requests (i) must be initiated through use of a PIN and a magnetic stripe reader, (ii) must include the original transaction date, (iii) may not be for an amount that exceeds the original transaction and (iv) must be initiated from the same Merchant as the original transaction although not the same terminal or store location.

1.15 Exception Processing.

(a) Store and Forward Transactions.

(i) Original Submission. Merchant may store transactions, including preauthorized requests, in the system only when the terminal cannot receive an authorization or denial for a transaction as a result of technical problems between the terminal, the system and the switch. Merchant shall forward all store and forward transactions as soon as the technical problem resulting in the transaction being stored has been resolved. When forwarded by Merchant, such store and forward transactions shall be treated as financial request messages by the system. Merchant shall bear all liability for store and forward transactions, which, when forwarded, are denied by Bank; provided, however, that Merchant shall not be liable for preauthorized completions that must be stored and forwarded for up to twenty (20) minutes as a result of the technical problems listed above. The switch shall neither authorize nor decline store and forward transactions on behalf of the Card issuer. If the Card issuer is unavailable to authorize or decline a store and forward transaction, or if the transaction is declined for key sync error, the switch shall return the transaction to Merchant. Such returned transactions may be submitted again as an original submission by Merchant to the switch once every 30 minutes. A Merchant may require a cardholder to provide a signature or identification prior to initiation of a store and forward transaction.

(ii) Resubmissions. If a transaction that is stored and forwarded utilizing X9.2 message format is initially declined due to insufficient funds or exceeding the daily purchase limit, key sync error or an invalid PIN, Merchant may electronically store and resubmit that transaction as a PIN-less transaction. If a transaction that is stored and forwarded in ISO 8583 message format is initially declined due to insufficient funds or exceeding the daily purchase limit, Merchant may electronically store and resubmit that transaction as a resubmission transaction.

(iii) Time Limits.

(A) A Merchant using the X9.2 message format must transmit the original submission of a store and forward transaction no later than 13 calendar days after the transaction date. A Merchant using the X9.2 message format may resubmit a denied store and forward transaction for 13 calendar days after the date on which the original submission of the store and forward transaction is denied by the Card issuer. The resubmission may be transmitted to the switch no more than once per calendar day.

(B) A Merchant using the ISO 8583 message format must transmit the original submission of a store and forward transaction, and any resubmissions of such transaction no later than 20 calendar days after the transaction date.

(C) The switch will monitor the time periods set forth in paragraphs (A) and (B), and will reject any original submission or resubmission which exceeds the applicable limit.

(iv) Fees. A Merchant using the ISO 8583 message format shall pay the POS switch fee as set forth in the applicable Network's operating rules for the original submission and any resubmissions of a store and forward transaction.

(b) Paper Sales Drafts.

(i) Merchant shall utilize paper sales drafts only when the system, the switch, the terminal, the magnetic stripe reader or the PIN pad is inoperative or the magnetic stripe is unreadable, and Merchant elects not to store and forward the transaction electronically. With respect only to Interlink transactions, Merchant shall inform the cardholder that technical problems have prevented verification of the transaction electronically and, as a result, the cardholder's signature will be required for verification.

(ii) The form and content of the paper sales draft shall conform to the specifications provided by Bank to Merchant; provided, however, that such sales draft must:

(A) fully comply with all applicable federal, state and local laws and regulations;

(B) contain all information required to be listed pursuant to Section 1.04(a); and

(C) be signed by the cardholder.

(iii) When the cardholder presents a Card for a transaction and Merchant is utilizing a paper sales draft, Merchant shall proceed with the transaction only if the signature on the paper sales draft appears to be the signature on the Card or another valid piece of identification presented by the cardholder. Merchant shall deliver to the cardholder a true and complete copy of the paper sales draft, which copy shall satisfy Merchant's obligation to deliver a receipt under Section 1.04. Merchant shall deliver all sales drafts to Bank within _____ () calendar days of the transaction date. Merchant shall bear all liability for transactions which, when received by the Card issuer authorization system, are denied.

(iv) Merchant shall pay the point of sale direct debit fee for the original submission and any resubmissions of a paper sales draft transaction.

(v) Resubmissions. If a paper sales draft transaction that is submitted for authorization by a Merchant is initially declined due to insufficient funds or exceeding the daily purchase limit, Merchant may electronically store and make resubmissions of that transaction as a PIN-less transaction.

(vi) Fees. Merchant shall pay the POS direct debit fee for the original submission and any resubmission of a paper sales draft transaction.

(c) Other Resubmissions. A transaction that is declined at any time for a reason other than insufficient funds, exceeding the daily purchase limit, key sync error, invalid PIN or switch decline --issuer down, may not be resubmitted pursuant to Subsections (a)(ii) or (b)(v) above.

1.16 Adjustments.

A transaction may be adjusted if an error is discovered during Merchant's end-of-day balancing by request of Merchant through the Bank. The adjustment must reference a settled original transaction which is partially or completely erroneous or a denied preauthorized completion message for which the preauthorization request was approved. The adjustment must be completed with forty-five (45) calendar days from the original transaction date.

1.17 Cardholder Error Resolution Procedures.

- (a) Merchant shall fully cooperate with each Network and all other Network members, affiliates or processors in the resolution of all cardholder disputes.
- (b) With respect to Explore transactions, Merchant shall use electronic means to initiate dispute inquiries and adjustments sent to members, affiliates and processors electronically.
- (c) If Merchant fails to send an adjustment for a terminal error or processing error to a Card issuer within 10 calendar days after the transaction date, Merchant shall be fined according to applicable Network rules.

1.18 Explore Affiliated Retailer Performance.

Except where otherwise specifically provided in the Explore operating rules, Merchant shall ensure that each of its Affiliated Retailers (as such term is defined in the Explore operating rules) agrees to comply and complies with the Explore operating rules to the same extent as if such Affiliated Retailer were the Merchant.

1.19 Merchandise Returns.

Merchandise returns are not currently supported as a separate transaction and Merchant shall not attempt to process such returns through the system unless the requirements of Section 1.08 are met.

1.20 Transaction Chaining.

Merchant shall ensure that in instances where a cardholder can request more than one transaction after inserting his or her Card, either (a) the Card must be retained by the terminal until after the final transaction has been initiated, or (b) a separate PIN entry must be made for each transaction. Additionally, a cardholder cannot initiate multiple transactions following a single PIN entry except at a cardholder operated terminal as specified in the Technical Specifications. For purposes of this Section, cash back together with the purchase of goods or services or a preauthorization together with the purchase of goods or services shall be considered a single transaction.

1.21 Termination for Failure to Comply.

Merchant acknowledges that it may be terminated for failure to comply with this Agreement.

1.22 Record Retention.

Merchant shall maintain a record of each transaction communicated to or by it for a minimum of two years or for such longer period as may be required by applicable, federal, state or local law, rule or regulation.

1.23 Foreign POS Terminals.

No Explore POS terminal may be located outside of the United States of America.

1.24 Return/Capture of Cards.

Cards that are inadvertently left at a Merchant location may be returned to the cardholder by the Merchant on the same day if the cardholder provides positive identification. The capture of Cards at terminals is prohibited.

ARTICLE II - PAYMENT AND CHARGEBACK

2.01 Prohibited Transactions; Factoring.

- (a) Merchant shall not permit the initiation of any transaction:
 - (i) that is not the result of a transaction between the cardholder and Merchant, that Merchant knows or should have known to be fraudulent or not authorized by the cardholder, that represents a transaction outside Merchant's normal course of business, or that contains the account number of a Card issued to Merchant;
 - (ii) representing a transaction that previously has been charged back to Bank and returned to Merchant, whether such presentment is made with or without the cardholder's permission;
 - (iii) representing the refinancing or transfer of an existing cardholder obligation that is deemed to be uncollectible; or
 - (iv) representing a transaction arising from the dishonor of a cardholder's personal check.
- (b) For purposes of the above prohibitions, Merchant shall be responsible for the actions of all its employees acting within the scope of their employment.

2.02 Acceptance and Discount.

Subject to the provisions of any warranty of Merchant hereunder and of any chargeback rights, Bank agrees to process valid transaction records from Merchant during the term of this Agreement and to pay Merchant the total amount represented by the transaction records less any percentage discount or fees agreed to by the parties. Any payment made by Bank to Merchant in connection with a transaction shall not become final until the expiration of the period during which the transaction could be charged back under the applicable Network rules.

2.03 Reserve to Cover Chargebacks.

At the sole option of Bank, Bank may withhold payment to Merchant of amounts otherwise payable under Section 2.02 that are reasonably determined by Bank to be necessary to cover future chargebacks, credits, and other charges that may result from Merchant's debit card activities. If Bank determines that the proceeds of Merchant's future POS sales are unlikely to cover anticipated chargebacks and credits (whether because this Agreement has been terminated or for any other reason), Bank may also prohibit the withdrawal by Merchant of some or all of Merchant's funds then held on deposit with Bank.

2.04 Prohibited Payments.

Merchant agrees that Bank has the sole right to receive payments on any accepted transaction as long as (a) Bank has paid Merchant the amount represented by the transaction less the discount therefore and (b) Bank has not charged such transaction back to Merchant. Unless specifically authorized in writing by Bank, Merchant agrees not to make or attempt to make any collections on any transaction. Merchant agrees to hold in trust for Bank any payment Merchant receives of all or part of the amount of any accepted transaction, and promptly to deliver the same in kind to Bank as soon as received, together with the cardholder's name and account number and any correspondence accompanying the payment.

2.05 Chargeback.

(a) Under any one or more of the following circumstances, Bank may charge back to Merchant any transaction record that Bank has accepted, and Merchant shall repay Bank the amount represented by the transaction record:

- (i) The transaction was processed by a Merchant which has been classified by Interlink as a Special Merchant or by Explore as a Special Retailer;
- (ii) The transaction was one for which Bank has received a notice of error from the cardholder and Bank has satisfactory evidence that a processing error occurred (including, but not limited to, Merchant incorrectly keying in the transaction information and/or the system or the switch transmitting incorrect transaction information, or cardholder alleging payment made by cash, check or credit card); provided, however, that chargeback under this Subsection is limited to the amount of the transaction in dispute and that chargeback may be exercised for a period not exceeding one hundred (100) calendar days after the last posting of the transaction;
- (iii) Except for authorized on-line transactions or for transactions presented pursuant to Section 1.16(a) or Section 1.16(b) that Bank has authorized, transactions for which Bank has received written cardholder notification signed by the cardholder stating that neither the cardholder nor anyone authorized by the cardholder initiated the transaction; provided, however, that chargeback may be exercised for a period not exceeding one hundred (100) calendar days after the last posting of the transaction;
- (iv) Any adjustment for which there is invalid data contained in the message or for posting to a closed account or "NSF" account; provided, however, that chargeback may be exercised for a period not exceeding ten (10) calendar days after the adjustment transaction date;
- (v) The transaction is a duplicate of an item previously processed; provided, however, that chargeback under this Subsection may be exercised for a period not exceeding one hundred (100) calendar days from the last posting of the transaction;
- (vi) Merchant has not delivered a legible and complete copy of the transaction record within the period specified in Section 1.18;
- (vii) The transaction was not presented to the Card issuer in the time period specified in Section 1.16;
- (viii) Effective October 1, 1994, the transaction was one for which the Card issuer received notification from the cardholder that a merchandise credit was not received and the cardholder has the written receipt to evidence the Merchandise Credit Transaction; provided, however, that chargeback under this Subsection may be exercised only for a period beginning ten days after the transaction date of the Merchandise Credit Transaction and ending one hundred (100) calendar days from the transaction date of the Merchandise Credit Transaction;
- (ix) Effective October 1, 1994, the transaction was one for which the Card issuer received notification from the cardholder that a merchandise credit was not received and the cardholder does not have the written receipt to evidence the Merchandise Credit Transaction; provided, however, that chargeback under this Subsection may be exercised only for a period beginning ten days after the transaction date of the Merchandise Credit Transaction and ending one hundred (100) calendar days from the transaction date of the Merchandise Credit Transaction; and
- (x) In any other situation in which a transaction has been charged back to Bank in accordance with the chargeback rules established by Explore, Interlink and/or Maestro.

(b) Bank may charge back a transaction in accordance with Section 2.05(a) above even if an authorization was obtained in connection with the transaction (this Subsection does not apply in the case of chargebacks that are based solely on the Merchant's failure to obtain an authorization).

(c) Bank shall, within a reasonable time following notice of chargeback of a transaction to Merchant, return to Merchant a copy of any documentation relating to the transaction or chargeback. If Merchant disputes the chargeback, Merchant shall notify Bank that Merchant is disputing the chargeback within five (5) bank business days of its receipt of documentation relating to the transaction or chargeback.

(d) In the situation in which there is a chargeback for an amount less than the transaction amount, Bank shall include the partial amount special chargeback indication.

(e) Merchant must re-credit the Card issuer with the full amount of any charged back transaction within ten (10) business days of receipt of the chargeback. Credit for any such chargeback shall be considered effective upon dispatch by Merchant. If Merchant disagrees with a chargeback, it may re-present such chargeback in accordance with the applicable Network's operating rules.

(f) For any Interlink transaction containing a merchant transaction fee in which the entire amount of the transaction is charged back, the fee shall be included in the amount of the chargeback. For a partial chargeback of a transaction including a fixed merchant transaction fee, only the amount of the transaction in dispute, not including the merchant transaction fee, shall be charged back. For a partial chargeback of a transaction including a merchant transaction fee based on a percentage of the transaction amount, the merchant transaction fee must be adjusted by the Bank to be proportionate to the remainder of the transaction amount not charged back.

(g) With respect to Interlink transactions, Merchant agrees that exception item transactions will not exceed 0.15% of the total settled transactions processed through the switch by an Bank. For the purposes of this Section, exception items include the total of: (i) credit and debit adjustments submitted by the Bank and (ii) chargebacks received by the Bank that are not represented.

ARTICLE III - MISCELLANEOUS

3.01 Fees and Charges.

Merchant shall pay Bank all of the fees, charges, and other compensation specified on attached Schedule 1. Schedule 1 may be amended by Bank, from time to time, in accordance with Section 3.08 below.

3.02 Imprinters and Terminals.

Merchant shall keep any imprinter(s) and terminal(s) used to process Card transactions in good working order and shall notify Bank prior to any change of the imprinted or programmed information.

3.03 Forms.

Merchant shall use only such forms or modes of transmission of sales data and credit data as are provided or approved in advance by Bank, and Merchant shall not use forms or equipment provided by Bank other than in connection with Card transactions completed hereunder.

3.04 Requests for Copies.

Within five (5) days of receipt of any request therefor by Bank, Merchant shall provide to Bank transaction records, and any other documentary evidence available to Merchant and reasonably requested by Bank to meet its obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning cardholder accounts.

3.05 Compliance with Law.

Merchant shall comply with all laws applicable to Merchant, Merchant's business, and any Card transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.

3.06 Indemnification.

Merchant agrees to hold Bank harmless from, and indemnify Bank against, all claims, losses, damages, and liabilities, including attorneys' fees, allocated costs of in-house legal services, and other costs of defense, that relate to or result from any alleged violation by Merchant of any applicable law or regulation or any action of Merchant in connection with a Card transaction subject to this Agreement.

3.07 Modification.

This Agreement is subject to such modifications, changes, and additions as may be required, or deemed by Bank to be required, by reason of any state or federal statute, judicial decision, Network rule or regulation, or the regulation or ruling of any federal agency having jurisdiction over Bank or Merchant.

3.08 Amendment.

Bank may amend this Agreement at any time by mailing written notice to Merchant of any amendment at least ten (10) days prior to the effective date of the amendment, and the amendment shall become effective on the date specified unless Bank receives Merchant's notice of termination of this Agreement before such effective date.

3.09 Liability.

Bank's liability to Merchant with respect to any Card transaction shall not exceed the amount represented by the transaction record in connection with that transaction less any applicable discount, and Bank shall in no event be liable for any incidental or consequential damages whatsoever.

3.10 Termination.

This Agreement may be terminated without cause by either party upon prior written notice to the other party. Bank may terminate this Agreement without prior notice in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due, or if Bank reasonably determines that Merchant has violated any term, condition, covenant, or warranty of this Agreement, or if Bank determines in its sole discretion that Merchant has abused its privileges under this Agreement. Upon the effective date of any such termination, Merchant's rights hereunder to make Card transactions, to deposit transaction records with Bank, and to use sales slip forms, credit slip forms, promotional material, and any other items provided by Bank hereunder shall cease, but Merchant's obligations in connection with any transaction record accepted by Bank (whether before or after such termination), including without limitation Merchant's chargeback obligations, shall survive such termination.

3.11 Right of Setoff.

Bank has the right of setoff against any deposit account that Merchant maintains with Bank to satisfy any obligations of Merchant to Bank.

3.12 Security Interest.

Merchant hereby grants a security interest in any deposit account that Merchant now or hereafter has with Bank, in all funds in any such account, all writings evidencing any such account, and all proceeds of the foregoing, to secure Merchant's existing and future obligations to Bank under this Agreement. Merchant agrees to take such actions as may be required, from time to time, to establish and maintain such security interest as a perfected first lien security interest. For purposes of this provision, any failure by Merchant to pay Bank the amount of any transaction that Bank has charged back to Merchant or any other amount owed by Merchant to Bank under this Agreement shall constitute a default by Merchant. Upon any such default, Bank shall have all rights and remedies provided by law, including the right to enforce its security interest by applying all funds in any account held by Bank to any and all of Merchant's indebtedness to Bank.

3.13 Credit and Financial Information.

Merchant authorizes Bank to obtain, from time to time, credit, financial, and other information regarding Merchant from other persons or entities, such as credit reporting agencies. Merchant also authorizes Bank to respond to requests from others for information regarding Merchant.

3.14 Notices.

All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, certified, registered, or first-class mail, and addressed to:

River City Bank at

Merchant at

Attn: _____

Attn: _____

Notice of change of address shall be effective only when given in accordance with this Section. All notices complying with this Section shall be deemed to have been received on the date of delivery or on the third (3rd) business day after mailing.

3.15 Supplementary Documents.

Reference to "this Agreement" includes any valid schedules, addenda, and amendments hereto.

3.16 Entire Agreement.

The parties intend that the terms of this Agreement, including any attached schedules and addenda, shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceedings involving this Agreement.

3.17 Waiver.

No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by either party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

3.18 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Notwithstanding the foregoing, Merchant shall not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under this Agreement without the written consent of Bank. Any purported assignment, sale, transfer, delegation, or other disposition in violation of this Section shall be null and void.

3.19 Choice of Law.

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of California.

IN WITNESS WHEREOF, Bank and Merchant have caused their duly authorized representatives to execute this Agreement as of the date set forth below the signature of each.

Cards subject to this Agreement ("Cards")

- _____ Explore Cards
- _____ Interlink Cards
- _____ Maestro Cards
- _____ Other Cards as follows:

RIVER CITY BANK:

MERCHANT:

Name

Name

Address

Address

City, State and Zip Code

City, State and Zip Code

By:

By:

Title

Title

Date

Date