



## You're only a few steps away from boarding the Tuition Express

### Step 1

#### *To Enroll in Tuition Express...*

- A. Complete the Tuition Express Center Application. (If accepting Credit Cards, sign the Tuition Express Credit Card Servicing Agreement).
- B. Fax or Mail completed Documentation and voided check to Tuition Express at:

Mail To:	Fax To:
Professional Solutions	541-858-7008
3581 Excel Drive	Attn: Dan Richards
Medford, OR. 97504	

### Step 2

#### *To Accept Credit Card Payments...*

- A. Complete the ECHO Bank Card Service Application per the Instruction Cover Sheet (attached).
- B. If there are multiple locations complete the ECHO Multiple Location Form and submit with the ECHO Application.
- C. Fax or mail completed Bank Card Service Application to ECHO Inc.

Mail To:	Fax To:
ECHO, Inc.	805-419-8679
Attn: Barbara Maquinalez	Attn: Barbara Maquinalez
730 Paseo Camarillo	
Camarillo, CA. 93010	

Once your Tuition Express Center Application is received, we'll process your order and send all the materials you'll need for a successful rollout of Tuition Express. If you have any questions about the application process, please call Dan at 800-338-3884.

*Thank you for Choosing Tuition Express,  
your complete payment processing service!*



# Center Application

Must Be Returned Within 30 days



## Business Information - Please Print

Business Name (include dba if applicable)			<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation	<input type="checkbox"/> Non Profit
Authorized Contact	Title		Federal Tax ID Number or Social Security Number			
Business Phone #	Fax #		State Childcare License Number			
Address			Maximum Tuition Payment per Family			
City	State	Zip	Primary E-mail for Tuition Express Communications			
Secondary E-mail for Tuition Express Communications						

## How Would You Like to Collect Childcare Payments?

ACH (Debit from Checking Account)     Credit Card     Both (For Credit Card capability, you must also complete the Credit Card Processing Application)

## Personal Data of Owner

Name	Title	E-mail	
Address	City	State	Zip
Phone Number	Social Security Number		

## Bank Information

Bank Name	Routing Number	Account Number
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## Authorization and Acknowledgment

I have read, understood and agree to be bound by the **Professional Solutions Terms and Conditions** which are incorporated herein by reference. I agree to retain all original Parent ACH Authorization Agreements for a period of 2 years following termination of ACH services. By signing below, I hereby authorize Professional Solutions and the financial institution named to initiate entries to the account shown, including those necessary for the payment of fees due to Professional Solutions. I understand that this authorization will continue in force unless cancelled by me in writing. Cancellation shall be effective five (5) business days after written notice is received by Professional Solutions.

By signing below, I hereby certify that the information given in this application is true and complete and is submitted for the purpose of obtaining ACH Origination Services from Professional Solutions.

Signature and Title	Date	Printed Name
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• Fax this Center Application and voided check to 541-858-7008 •

# Attach Voided Check Below, Fax with Completed Application

## Deposit slips not accepted

If photocopier not available, please tape check to this form

Pay to the order of \_\_\_\_\_ \$ \_\_\_\_\_

DATE \_\_\_\_\_

ROUTING TRANSIT NUMBER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_

CHECK NUMBER \_\_\_\_\_

Routing Transit  
Number

Account  
Number

Check  
Number

## Thanks for Boarding the Tuition Express!

# Professional Solutions ACH Terms and Conditions

Client has requested that Professional Solutions-Tuition Express permit it to initiate electronic signals for paperless entries through a Financial Institution to accounts maintained at Financial Institutions, by means of the Automated Clearing House (the "ACH"). Professional Solutions has agreed to do so on the following terms and conditions.

## I. Rules

The Client agrees to comply with and be bound by the National Automated Clearing House Association (NACHA) Rules (as amended from time to time, the "Rules"). The terms of this Agreement shall in no way limit Client's obligation of complying with the Rules. The Client acknowledges that they may purchase a copy of the Rules from NACHA at [www.nacha.com](http://www.nacha.com) or any local ACH Association.

## 2. Delivery of Entries: Security Procedures

The Client will deliver all debit and credit entries to Professional Solutions. The primary delivery method is via Professional Solutions' software module incorporated within the ProCare software application. The daily processing deadline is 3:00pm Pacific Time each business day. Business Days are defined as every day except every Saturday and Sunday, and all Federal and State Holidays. The Client authorizes Professional Solutions to transmit all entries received by Professional Solutions from the Client in accordance with these terms and conditions and to credit or debit entries to the specified accounts. The Client Acknowledges that it is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized transmissions. Client warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to protect against unauthorized access to the Service through the use of physical security, passwords and codes. If the Client believes or suspects that said passwords or codes are known or have been accessed by unauthorized persons, Client shall notify Professional Solutions immediately. An entry delivered to Professional Solutions that purports to have been transmitted or authorized by Client shall be effective as Client's entry even if the entry was not in fact authorized by Client, provided Professional Solutions has accepted that entry in compliance with the security procedures with respect to such entry. If an entry received by Professional Solutions was transmitted or authorized by Client, it shall be effective as the Client's entry, whether or not Professional Solutions complied with the security procedures with respect to that entry and whether or not that entry was erroneous in any respect or that error would have been detected if Professional Solutions had complied with the procedures.

## 2a. Delivery of Entries: Processing Date

Professional Solutions offers up to fourteen (14) days advance submittal of entries in which the client can define the "Processing Date" of said entries. "Processing Date" is defined as the date at which Professional Solutions submits the entries to the bank for processing. In the event client uses this feature, the "Batch Received" date shall be defined as the date in which Professional Solutions received the entries from said client. Client asserts that entries submitted are legally permissible requests for payment and unless client withdraws processing request by means hereinto, Professional Solutions has the legal authority to process said entries on client's behalf and shall be held harmless in the event an entry or entries were found to be in error.

## 3. Processor Obligations

In a timely manner and in accordance with the Rules, Professional Solutions will process, transmit, and settle for the entries received from the Client which comply with these terms and conditions.

## 4. Warranties

The Client warrants to the Financial Institution all warranties Professional Solutions is deemed by the Rules to make with respect to entries originated by the Client. Without limiting the foregoing, the Client warrants and agrees that (a) each entry is accurate, is timely, has been authorized by the party whose account will be credited or debited and otherwise complies with the Rules; (b) each debit entry is for a sum which, on the settlement date with respect to it, will be owing to the Client from the party whose account will be debited, is for a sum specified by such party to be paid to the Client, or is a correction of a previously transmitted erroneous credit entry; (c) the Client has complied with all pre-notification requirements of the Rules; (d) the Client will comply with the terms of the Electronic Funds Transfer Act if applicable, or Uniform Commercial Code Article 4A (UCC4A) if applicable and shall otherwise perform its obligations under this Agreement in accordance with all applicable laws and regulations. The Client will retain the original or copy of the customer authorization record as required by the rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request by Professional Solutions, furnish such original or copy to Professional Solutions.

## 5. Provisional Credit

The Client acknowledges that the "Rules" make provisional any credit given for any entry until the financial institution crediting the account specified in the entry receives final settlement. If the financial institution does not receive final settlement, Professional Solutions is entitled to a refund from the credited party in the amount of the provisional credit plus the related fee as disclosed in the "Statement of Charges", and the originator of the entry shall not be deemed to have paid the party.

## 6. Settlement

The Client will maintain an account with a Financial Institution at all times while subject to these terms and conditions. The Client will deliver to Processors' Financial Institution good funds prior to the release of credit transactions. Professional Solutions will initiate an ACH credit transaction to the Client's designated account once the corresponding debit has been settled (typically within 48 hours). Professional Solutions will make every effort to expedite the credit transaction in a timely manner according to the "Rules".

## 7. Cancellation or Amendment of Entries

The Client shall have no right to cancel or amend any entry/file after its receipt by Professional Solutions. However, Professional Solutions shall use reasonable efforts to act on a request by the Client to cancel an entry/file before transmitting it to its financial institution. Professional Solutions shall have no liability if it fails to effect the cancellation. Client shall reimburse Professional Solutions for any expenses, losses, or damages Professional Solutions may incur in effecting or attempting to effect Client's request for the cancellation of an entry/file.

## 8. Rejection of Entries

Professional Solutions may reject any entry for any reason. Professional Solutions shall notify client of such rejection (either electronically, in writing, by telephone or as otherwise agreed to by Professional Solutions and Client) no later than the business day after the effective entry date. Professional Solutions shall not be liable to the client for the rejection of any entry, for Client's nonreceipt of a notice given to Client, or for the failure to give notice of rejection at an earlier time than that provided for herein. Professional Solutions shall not be required to pay Client interest on a rejected entry for the period from rejection of the entry to Client's receipt of the notice of rejection.

## 9. Notice of Returned Entries

Professional Solutions shall notify the Client of the receipt of a returned entry from its financial institution no later than one business day after the business day of such receipt. Professional Solutions shall have no obligation to retransmit or re-execute a returned entry/file. If a customer of the Client returns any transaction, then it is the Client's responsibility to collect any funds that are owed. Professional Solutions shall be entitled to a Return Item Fee as disclosed in the "Statement of Charges". Professional Solutions has no obligation to originate a transaction where authorization has been revoked.

## 10. Periodic Statement

The periodic statement issued by the Financial Institution for the Client's account will reflect entries credited and debited to the Client's account. The Client agrees to notify Professional Solutions within a reasonable time not to exceed thirty (30) days after the Client receives a periodic statement of any discrepancy between the Client's records and the information in the periodic statement.

## II. Fees

Client agrees to pay Professional Solutions for services and or materials provided in accordance with their "Schedule of Charges" unless otherwise agreed to in writing by both parties. Per item fees shall be aggregated monthly and paid to Professional Solutions on or about the first of each month for the previous month's activity. Return Items and Notifications of Change (NOC's) and their related processing fees shall be collected at the time of each occurrence. Monthly Account Maintenance Fees shall be paid on a monthly basis for the month in which they are processed. All fees shall be initiated by Professional Solutions and collected via an ACH debit of the client's account of record. Professional Solutions reserves the right to change its fee and material charges from time to time upon notice to the Client.

## 12. Liability

(a) Professional Solutions shall be responsible only for performing the services expressly provided for in this Agreement and shall be liable only for its negligence in performing those services. Professional Solutions shall not be responsible for the Client's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from the Client) or those of any other person, including without limitation any Federal Reserve Financial Institution or transmission or communications facility, any Receiver or Receiving Depository Financial Institution (including without limitation the return of an Entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed Professional Solutions' agent. Client shall defend, indemnify and hold harmless, Professional Solutions and its officers, directors, agents and employees, from and against any and all actions, costs, claims, losses, damages or expenses, including attorney's fees and expenses, resulting from or arising out of (i) any claim of any person that Professional Solutions is responsible for, (ii) any breach of any of the Agreements, representations or warranties contained in this Agreement, or (iii) any act or omission of Client or any other party acting on Client's behalf.

(b) In no event shall Professional Solutions be liable for any consequential, special, punitive or indirect loss or damage which the Client may incur or suffer in connection with Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from Professional Solutions acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, Professional Solutions shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Professional Solutions' control. In addition, Professional Solutions shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Professional Solutions having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Financial Institution guidelines or in Professional Solutions' otherwise violating any provision of any present or future risk control program of its Financial Institution or any rule or regulation of any other U.S. governmental regulatory authority.

(d) Subject to the foregoing limitations, Professional Solutions' liability for loss shall be limited to general monetary damages not to exceed the total amount paid by the Client for the affected ACH service, as performed by Professional Solutions under this Agreement for the preceding 30 calendar days.

## 13. Inconsistency of Name and Account Number

The Client acknowledges that if an entry describes the receiver inconsistently by name and account number then payment of the entry may be made on the basis of the account number even if it identifies a person different from the named receiver and that Client's obligations to pay the amount of the entry to Professional Solutions is not excused in such circumstances.

## 14. Data Retention

The Client shall retain data on file adequate to permit remarking of entries for five (5) business days following the date of their transmittal to Professional Solutions as provided herein and shall provide such data to Professional Solutions upon its request.

## 15. Credit Information

As a condition to Professional Solutions' obligations to provide services the applicant hereby authorizes Professional Solutions to gather and use, from time to time, without the undersigned's knowledge, any and all financial and/or credit information relating to the business entity that is the subject of this application that can be obtained from any source whatsoever including, but not limited to, banks, trade associates and creditors. The undersigned also hereby authorizes Professional Solutions to investigate the personal credit history of the undersigned and obtain credit bureau reports on the undersigned from time to time at Professional Solutions' sole discretion.

## 16. Termination

Professional Solutions may terminate this Agreement immediately by notice to Client, or without notice if Client breaches any of its obligations under this Agreement or the Rules. Client may terminate this Agreement at any time upon 10 business days prior notice to Professional Solutions. Professional Solutions may amend any part of this Agreement from time to time immediately upon notice to Client.

## 17. Entirety

This document (including any Schedules attached hereto), is the complete and exclusive statement of the Agreement between Professional Solutions and the Client with respect to the subject matter hereof and supersedes any prior Agreement(s) between Professional Solutions and the Client with respect to such subject matter. In the event performance of the services provided herein in accordance with these terms and conditions would result in a violation of any present or future statute, regulation, or government policy to which Professional Solutions is subject and which governs or affects the transactions contemplated by these terms and conditions, then this document shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy, and Professional Solutions shall incur no liability to the Client as a result of such violation or amendment.

## 18. Non-Assignment

The Client may not assign any of the rights or duties hereunder to any person without the prior written consent of Professional Solutions, and any purported assignment in violation of this Agreement shall be void.

## 19. Binding Agreement Benefit

These terms and conditions shall be binding upon and inure to the benefit of the Client and Professional Solutions and their respective legal representatives, successors, and assigns, and no other person shall have any right against Professional Solutions or the Client hereunder.

## 20. Headings

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

## 21. Governing Law

This document shall be construed in accordance with and governed by the laws of the State of Oregon and the NACHA rules.

## 22. Severability

If any term or provision of this Agreement is held to be void or unenforceable, that term or provision shall be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.



## Bank Card Services Application Instructions

- 1. Complete ALL sections on pages 1 and 2 of the ECHO Bank Card Service Application.**  
(Attention Multiple Location Clients: only one application is required per EIN. "ECHO Multiple Location" forms will be supplied to corporate users upon request).
- 2. Sign and date the MERCHANT, SECRETARY and GUARANTOR sections on Page 3 of the Bank Card Service Application.** Ensure that the Majority Owner(s) sign the Application and Guarantor sections. If there are two or more owners, have the two majority owners sign the application and the guarantor section. *(Non-Profit organizations are not required to sign the Guarantor Section).*
- 3. Initial each page of the Application and General Terms and Conditions where indicated.**
- 4. Complete and Sign the Merchant Profile Analysis form where indicated.**
- 5. Attach a copy of your centers' business license.**
- 6. Attach a Voided Check with the business name and address printed on the check**  
(No Starter Checks will be Accepted).

Please direct all question related to the Bank Card Service Application to:

ECHO, Inc.  
Attn. Barbara Maquinalez  
800-677-1070 / 805-419-8535  
8:00 AM – 4:00 PM PST

**Fax or Mail Completed Application to:**

Electronic Clearing House  
Attn: Barbara Maquinalez  
730 Paseo Camarillo  
Camarillo, CA 93010

**Fax # 805-419-8679**

- 7. Sign the Credit Card Servicing Agreement and Fax to Tuition Express at 541-858-7008.**  
(Only the Service Agreement is faxed to Tuition Express, all other documents are to be faxed to ECHO, Inc. for processing).

Once the application and all other required documentation is received by ECHO, a copy will be forwarded to Professional Solutions (ProCare Software) for their set-up and records. Please allow 3-5 days for approval and set-up process. You will receive a welcome package and be contacted by an ECHO customer service representative when your credit card account is ready for use.

Please Note: Business financial statements may be required for centers or corporate clients with multiple centers when credit card processing volumes are expected to exceed \$50,000 per month.



730 Paseo Camarillo  
 Camarillo, California 93010  
 1-800-262-3246

## Bank Card Services Application

### BUSINESS INFORMATION

LEGAL BUSINESS OR CORPORATE NAME:		SALES I.D.: 0859		SALES ORGANIZATION: Professional Solutions	
"DOING BUSINESS AS" NAME:		TYPE OF BUSINESS: (BE SPECIFIC)			
ADDRESS:		CITY:		STATE:	ZIP CODE:
BILLING ADDRESS:		CITY:		STATE:	ZIP CODE:
BUSINESS PHONE NUMBER: ( )	FAX NUMBER: ( )	FEDERAL TAX I.D. NUMBER:		WEBSITE URL:	
CONTACT PERSON/TITLE:		CONTACT PHONE NUMBER: ( )			
CONTACT E-MAIL ADDRESS:		PROPERTY PHONE NUMBER: ( )			
TYPE OF OWNERSHIP: (CHECK ONE) <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Tax Exempt		AGE OF BUSINESS: (YEARS)	DATE BUSINESS ACQUIRED?	NO. OF TERMINALS: NA	
NO. OF LOCATIONS: (If multiple, attach 'Additional Location Form')	SWIPED %: 0%	INTERNET %: 0%	MAIL ORDER %: 0%	PHONE ORDER %: 0%	OTHER NON-MAG %: 100%
<b>CREDIT CARDS</b>					
ESTIMATED MONTHLY MC/VISA VOLUME:	MAXIMUM MC/VISA TRANSACTION AMOUNT:	AVERAGE MC/VISA TRANSACTION AMOUNT:	CONSUMER'S MONTHLY STATEMENT DESCRIPTION: (max. 18 characters) _____		
AMERICAN EXPRESS: (Enter Merchant No.)			DISCOVER: (Enter Merchant No.)		

### OWNER/OFFICER INFORMATION

OFFICER OR OWNER'S NAME: 1.	TITLE:	% EQUITY OWNERSHIP:	SOCIAL SECURITY NUMBER:	DOB/AGE:	
RESIDENCE ADDRESS:		CITY:		STATE:	ZIP:
HOW LONG?		(Select one): OWN / RENT		HOME PHONE: ( )	
SECOND OFFICER OR CO-OWNER: 2.	TITLE:	% EQUITY OWNERSHIP:	SOCIAL SECURITY NUMBER:	DOB/AGE:	
RESIDENCE ADDRESS:		CITY:		STATE:	ZIP:
HOW LONG?		(CIRCLE ONE): OWN / RENT		HOME PHONE: ( )	

**FEE SCHEDULE FOR SERVICES**

Please <input type="checkbox"/> Services Selected		TRANSACTION FEE	DISCOUNT FEE%	CHARGEBACK / RETURN FEE	OTHER FEE	MONTHLY MINIMUM FEE
<input checked="" type="checkbox"/>	CREDIT CARD - OTHER	\$0.15	1.95%	\$5.00	0	0
MONTHLY FEES: Monthly Technical Support Fee: \$ <u>7.95</u>				SET-UP FEE: 0	VOICE AUTHORIZATION FEE: NA	
CREDIT CARD DISCOUNT FEE BILLING: select one (defaults to 'Daily' if none selected) Daily <input type="checkbox"/> <input checked="" type="checkbox"/> Other: <u>Monthly</u>		TERMINATION FEE: 0		TERM: (select one) 5 years <input type="checkbox"/> <input checked="" type="checkbox"/> Other: <u>NA</u>		

TRANSACTION SUBMISSION - NON TERMINAL PROCESSING (check applicable service)		
INTERNET API	<input checked="" type="checkbox"/>	ProCare software

**INCREMENTAL FEES FOR INDUSTRIES, CATEGORIES AND TRANSACTION CHARACTERISTICS**

Industry	Category	Transaction Characteristics	Incremental Fees
<b>MOTO (Mail Order/ Telephone Order)</b>	Qualified	Electronic authorization. Not magnetically captured (i.e., manually entered). AVS requested. Deposited same or next day. Deposit amount within 10% of authorized amount. Purchase Order number entered. AVS required for E-Commerce Recurring/Bill Payment transactions.	\$0.12
	Rewards	Same as qualified, but for cards issued with rewards to cardholders.	0.08% + \$0.12
	Partially Qualified	Same as qualified except voice authorization, or deposit amount not within 10% of authorized amount, or no AVS requested, or no Purchase Order number entered.	0.69% + \$0.12
	Non-Qualified	Transactions not meeting qualified or partially qualified requirements.	1.27% + \$0.12

*The above fees may change from time to time and may be incurred due to events not fully defined in the chart above. For information on current fee assessments and for a full explanation of what each assessment involves please contact ECHO Customer Support or refer to the reverse side of your ECHO monthly billing statement.*

MERCHANT SITE SURVEY				
TYPE OF BUILDING: (select one)				
SHOPPING CENTER		OFFICE BUILDING		RESIDENCE
RETAIL STOREFRONT				
OTHER: _____				
AREA ZONED: (select one)				
COMMERCIAL		INDUSTRIAL		RESIDENTIAL
SQUARE FOOTAGE: (select one)				
0-250		250-500		500-2,000
2,000 +				
ACCEPTED BANK CARDS BEFORE?:				
YES		NO		

**MERCHANT ACCOUNT: (select one)**

Open checking account with First Regional Bank

Voided check attached for ACH deposit

**AUTHORIZED SIGNATURES AND DATE OF EXECUTION:**

Merchant hereby subscribes to the *ECHO* Bank Card Services noted above and agrees to pay *ECHO* the applicable fees indicated, and, in the case of credit card and off-line debit card transactions, Merchant agrees to pay the pass-through fees identified. Merchant acknowledges such fees may be electronically netted from the proceeds of Merchant's sales or debited from the Merchant Account. Fees not collected within the month of billing will accrue interest at the maximum rate allowed by law per month beginning on the first day of the month following the billing month until all fees and accrued interest are paid in full.

Merchant acknowledges that he has read the general terms and conditions attached to this Application and product specific terms and conditions set forth in the product booklet for the services selected on this Application and agrees to be bound by these terms and conditions that are incorporated into this Application by this reference, and agrees that only the services selected shall be rendered under this Agreement.

Merchant further acknowledges that he is not relying on any verbal representations in subscribing to the above referenced services and in executing this Application, and if a specific section is left blank on this Application, that service is not being provided to the Merchant by *ECHO*.

IN WITNESS WHEREOF, the parties hereto have caused this Application to be executed on the date signed by Bank.



First Regional Bank  
28632 Roadside Dr., Ste. 155  
Agoura Hills, CA 91301



730 Paseo Camarillo  
Camarillo, CA 93010

MERCHANT

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, St. Zip: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTESTATION OF CORPORATE SECRETARY  
(Must be completed by all Corporations)**

It was resolved that the Officers(s) identified in this Application, have the authority to execute the *ECHO* Bank Card Services Agreement and open a DDA , if required, with First Regional Bank on behalf of the Corporation.

Date Adopted by the Board of Directors: \_\_\_\_\_

Secretary: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GUARANTOR**

By their signatures hereto the Guarantors certify that they have read and understand the terms and conditions attached to this Application, and agree to guarantee the performance of all of Merchant's duties and obligations under this Application.

Guarantor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Guarantor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Electronic Clearing House, Inc. is a registered ISO/MSP of First Regional Bank of Los Angeles, California

# Bank Card Services General Terms and Conditions

These terms and conditions (together with their addenda, attachments, schedules and Users Guides, and the Merchant Application shall be hereinafter be known as the ("Agreement"), between Electronic Clearing House, Inc., its wholly owned subsidiaries ("*ECHO*"), First Regional Bank ("Bank and/or ODFI") and the business entity indicated on the Merchant Application ("Merchant"). The Agreement shall become effective on the date executed by a duly authorized representative of *ECHO* and, if applicable, Bank. *ECHO*, Bank and Merchant shall be collectively known as the "Parties."

**WHEREAS**, Bank as a member of VISA, U.S.A., Inc. ("VISA") and MasterCard International, Inc. ("MasterCard") provides transaction processing and other services and products in relation to financial services provided by VISA, MasterCard and other financial service card organizations; and is a member of Point-of-Sale ("POS") bank merchant processing networks (i.e., Interlink and STAR) ("Networks"); and

**WHEREAS**, the Networks have established and administer a shared electronic funds transfer system (the "System"), by developing and using an on-line multi-institutional electronic funds POS transfer facility (the "Interchange") at which electronic funds transactions may be interchanged among Members of Networks, participating merchants and customers of participating merchants; and

**WHEREAS**, *ECHO*, through Bank provides credit card and debit card processing services; and

**WHEREAS**, Merchant is engaged in the business of selling goods and services and desires that *ECHO* provide one or more Services to Merchant on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

## ARTICLE 1. GENERAL PROVISIONS

1. DEFINITIONS: For purposes of this Agreement, the following definitions shall apply to this Application and General Provisions section:

- 1.1 "ACH" – The Federal Reserve Bank's Automated Clearing House.
- 1.2 "ACH Network" – funds transfer system, governed by the NACHA operating rules, that provides for the clearing of electronic entries for participating financial institutions.
- 1.3 "Application" – the document titled, Merchant *ECHO* Bank Card Services Application, executed and delivered to *ECHO* by Merchant, upon which Merchant's acceptability for Merchant Services was evaluated.
- 1.4 "Chargeback" – the procedure by which an issuer charges all of or part of the amount of a transaction back to the Merchant.
- 1.5 "Credit Voucher" – Merchant's record of return or refund to be credited to cardholder's account.
- 1.6 "Goods and Services" – those goods and/or services for which Merchant is authorized by *ECHO* to utilize *ECHO*'s services.
- 1.7 "Merchant Account" – the commercial demand deposit checking account designated by Merchant for use in conjunction with Merchant Services.
- 1.8 "Merchant Services" – the services provided to Merchant by *ECHO* under this Agreement.
- 1.9 "Monthly Minimum Fee" – the minimum amount of discount fees and transaction fees that Merchant shall pay on a monthly basis per merchant location as initially set forth in this Agreement.
- 1.10 "NACHA" – National Automated Clearing House Association.
- 1.11 "ODFI" – the Originating Depository Financial Institution designated by *ECHO* on behalf of which debit and credit transactions are submitted to the ACH Network in conjunction with Merchant Services.
- 1.12 "Original Agreement" – The PDF file of the Agreement identified by the footer information maintained by *ECHO*'s contracts administration department.
- 1.13 "POS" – means point of sale.
- 1.14 "Sales Draft" – for credit card, Merchant's record of a Cardholder purchase.
- 1.15 "Settlement" – the movement of electronic information into and out of the ACH Network that results in the debiting or crediting of funds to designated bank accounts.
- 1.16 "Transaction Fee" – the fee charged for each transmission initiated from Merchant's terminal to *ECHO*.
- 1.17 "User's Guide" – means the version of the documents issued to merchant detailing the Merchant Services and the conditions the Merchant must comply with in effect at the time this Agreement is executed and as amended and modified by *ECHO* from time to time.
- 1.18 "Visa" and "MC" – Visa U.S.A. and MasterCard International.

2. AMENDMENTS AND MODIFICATIONS TO AGREEMENT AND USER'S GUIDE: Merchant agrees that this Agreement and the User's Guide may be amended and modified by Bank and/or *ECHO* from time to time. Any material amendments and modifications shall be signed by Bank and/or *ECHO* and delivered to Merchant, in writing, and shall become effective on the day of receipt by Merchant. Submission of a credit card transaction or a debit card transaction by Merchant for determination of eligibility for approval hereunder on or after the effective date of any such amendment or modification shall constitute Merchant's acceptance of, and agreement to, such amendment or modification.

3. TERMINATION OF AGREEMENT: This agreement is for an initial term as set forth in Application, after which it will automatically renew for one (1) year periods. This agreement may be terminated by either party upon written notice to the other, such termination to become effective on the date specified by such notice. In the event that Merchant terminates this Agreement, the Merchant shall pay to *ECHO* the termination fee set forth in the Application. This termination fee shall not be applicable if Merchant terminates this Agreement by giving *ECHO* written notice of termination within thirty (30) days of the automatic renewal date of this Agreement. All of Bank's and *ECHO*'s obligations will end upon termination of the Agreement. Notwithstanding anything to the contrary contained herein, in the event of any termination of this Agreement, the obligation of Merchant under this Agreement for fees, fines, expenses or other obligations incurred prior to the effective date of termination, and the obligations of Merchant under this Agreement for expenses or other liabilities arising from or relating to acts or omissions which occurred prior to the effective date of termination, shall survive the termination of this Agreement. No usage of Merchant Services by Merchant for a sixty (60) day Period may be considered, by Bank and/or *ECHO*, as Merchant's voluntary termination of this Agreement. Merchant is then subject to requalification for continuation of Merchant Services.

3.1 All obligations of Merchant with respect to Sales Drafts accepted by Bank and or *ECHO* prior to the effective date of termination shall survive such termination. Merchant specifically agrees to maintain funds on deposit in Merchant Account for a reasonable time, based upon cardholder and Card issuer Chargeback rights following termination, an amount sufficient to cover all Chargebacks or other costs incurred by Bank and/or *ECHO* pursuant to this Agreement.

3.2 Merchant will immediately stop using all program marks and return to *ECHO* or destroy (at *ECHO*'s sole option) all materials bearing any of the program marks.

4. HEADINGS: The headings listed after each section number in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.

5. NOTICE: Any notice required or permitted hereunder shall be in writing and shall be deemed given when deposited in the United States mail, or similar private mail carrier, postage prepaid, addressed to the respective parties at the addresses set forth below, or at such other address as the receiving party may have provided by notice to the other.

6. ASSIGNMENT: This Agreement may not be assigned either voluntarily or by operation of law without the prior written consent of *ECHO*. Merchant also acknowledges and agrees that *ECHO* may assign or otherwise transfer this Agreement at its sole discretion, as it deems necessary or appropriate. Subject to the foregoing, all provisions contained in this Agreement shall extend to and be binding upon the parties hereto or their respective successors and permitted assigns.

7. NO WAIVER: Any waiver, permit, consent or approval by Bank and/or *ECHO* of any breach of any provision, condition, or covenant of this Agreement or the User's Guide must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach or default shall be deemed a waiver of

any later breach or default of the same or any other provision of this Agreement or the User's Guide. Any failure or delay on the part of Bank and/or *ECHO* in exercising any power, right or privilege under this Agreement or the User's Guide shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

8. JURISDICTION: This agreement will be governed by and interpreted in accordance with the laws of the State of California and, to the extent applicable, the laws of the United States of America. The parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in the County of Ventura, Camarillo, California, and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of California. In event of any disputes under this Agreement, merchant or guarantor(s) hereby consent to and will be subject to the jurisdiction of the courts of the State of California, County of Ventura.
9. ENTIRE AGREEMENT: This Agreement, including the fee structure and any exhibits, constitutes a fully integrated agreement and sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and all prior or contemporaneous negotiations, conversations, discussions, correspondence, memorandums and agreements between the parties concerning the subject matter are merged herein.
10. JURY WAIVER: In the event any controversy or claim between or among the parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each party hereby waives its respective right to trial by jury of such controversy or claim. In addition, any party may elect to have all decisions of fact and law determined by a referee appointed by the court in accordance with applicable state reference procedures. Judgment upon any award rendered shall be entered in the court in which any such reference proceeding was commenced.
11. NO WARRANTY: BANK AND *ECHO* MAKE AND MERCHANT RECEIVES, NO REPRESENTATIONS OR WARRANTY, EXPRESSED OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BANK AND *ECHO* SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, SPECIAL, DIRECT, EXEMPLARY, OR INCIDENTAL DAMAGES TO MERCHANT OR THIRD PARTIES DEALING WITH MERCHANT EVEN IF BANK OR *ECHO* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF BANK OR *ECHO* FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SERVICES PURSUANT TO THIS AGREEMENT.
12. DUE ORGANIZATION: Merchant is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on the business.
13. AUTHORIZATION, VALIDITY and ENFORCEABILITY: The execution, delivery and performance of this Agreement executed by Merchant is within Merchant's powers, has been duly authorized and constitutes a valid and binding obligation of the Merchant, enforceable in accordance with its terms.
14. COMPLIANCE WITH APPLICABLE LAWS: Merchant has complied with all licensing, permit and fictitious name requirements necessary to lawfully conduct the business to which it is engaged and with all laws and regulations applicable to the sales of the Goods and Services described in the type of business therein.
15. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION, PROPRIETARY INFORMATION, OR TRADE SECRETS: Merchant agrees that this Agreement, the appropriate User's Guide(s), the process utilized by *ECHO* for providing Merchant Services, and all written communications concerning Merchant Services hereunder are confidential, the proprietary information of *ECHO*, and trade secrets of *ECHO*. Merchant agrees that neither it nor any of its employees, agents, representatives, or independent contractors will disclose any of *ECHO*'s confidential, proprietary information or trade secrets to any person or entity that is not a party to this Agreement without the express written consent of *ECHO*.
16. COMPLIANCE: *ECHO* agrees to comply with NACHA, all card association, debit network, state and federal rules and regulations and shall be responsible for timely and accurate implementation of all regulatory changes applicable to Merchant Services. *ECHO* agrees it will strictly comply with all requirements set forth in this agreement.
17. MERCHANT COMPLIANCE WITH AGREEMENT AND USER'S GUIDES: Merchant agrees that it will strictly comply with requirements set forth in this Agreement and the User's Guides which are incorporated herein by this reference.
18. FORCE MAJEURE: If performance by *ECHO*, ODFI or their affiliates, of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of, inter alia, labor disputes, strikes, acts of God, fire, floods, lightning, earthquakes, severe weather, utility or communications failures, failures of the ODFI or the ACH network, computer associated outages or delay in receiving electronic data, war, civil commotion, or any law, order or regulation, etc. having legal effect, then *ECHO*, ODFI and their affiliates shall be excused from its performance hereunder to the extent of the prevention, restriction, delay or interference.
19. FURTHER ASSURANCES: At any time or from time to time upon the request of Bank or *ECHO*, Merchant will execute and deliver such further documents and do such other acts as Bank or *ECHO* may reasonably request in order to effectuate fully the purposes of this Agreement.
20. JOINT AND SEVERAL: Should more than one person sign this Agreement as Merchant, the obligations of each signer shall be joint and several.
21. GOVERNING LAW: This Agreement and appropriate User's Guides shall be governed by and construed in accordance with the laws of the State of California. Any action at law or in equity to interpret or enforce any provisions of this Agreement shall be brought only in a court of competent jurisdiction in the County of Ventura, State of California. Merchant hereby agrees and consents to personal jurisdiction and exclusive venue within Ventura County.
22. SEVERABILITY: Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule or regulation, such determination will not affect the validity or enforceability of any other provision of this Agreement.
23. INCONSISTENT LANGUAGE: The parties agree that this Agreement is an exact copy of the Original Agreement. In the event that there is an inconsistency in the language in the final executed Agreement and Original Agreement, the duties and obligations of the parties shall be determined by the language set forth in the Original Agreement.
24. RIGHTS CUMULATIVE: All rights and remedies existing in this Agreement and the User's Guide are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.
25. POS EQUIPMENT REQUIREMENT: For POS services, Merchant agrees to utilize only equipment approved by *ECHO* for use in conjunction with Services.
26. FAILURE OF POS EQUIPMENT: Merchant agrees that Bank or *ECHO* shall not be responsible for damages incurred by Merchant or any third party as a result of mechanical failure of POS equipment or as a result of a third party's failure to provide POS equipment to Merchant in a timely manner.
27. WARRANTY OF APPLICATION: In connection with this Agreement, Merchant has executed and delivered an Application to Bank and/or *ECHO* containing, among other things, information describing the nature of Merchant's business and the individuals who are the principal owners of Merchant. Merchant warrants to Bank and/or *ECHO* that all information accompanying financial data (personal or business) and statements contained in such Application are true, correct and complete. Merchant further agrees to notify Bank and/or *ECHO* promptly of any and all changes which may occur from time to time regarding any information in such Application, including but not limited to, the identity of principal owners, types of Goods and Services provided, how sales are completed (i.e. by telephone, mail order, via the Internet or in person at the Merchant's place of business), or change in geographical location. Bank and/or *ECHO* reserve the right to immediately terminate this Agreement based upon the nature of changes reported by Merchant or discovered by Bank or *ECHO*. Merchant and principal owner(s) identified on approved application shall be jointly and severally liable to Bank and *ECHO* for any and all loss, costs and expense suffered or incurred by Bank or *ECHO*, resulting from incorrect or incomplete information contained in Application or Merchant's failure to report changes to Bank or *ECHO* in accordance herewith. If, in Bank's or *ECHO*'s judgment, a significant discrepancy exists between Merchant's actual business activity and the business activity described in Merchant's Application, Bank or *ECHO* may immediately and without notice freeze all funds in Merchant Account, chargeback all Returns to the Merchant, and/or suspend Services until Bank or *ECHO*, in its sole opinion, feels confident in releasing funds and/or allowing subsequent Services. Bank or *ECHO* may impose a monthly administration fee on such frozen accounts.
28. RIGHT TO INFORMATION/AUDIT: From time to time, Bank or *ECHO* may (a) obtain credit information and/or credit reports on Merchant and/or principals from others (such as lenders and credit reporting agencies); (b) request financial statements and tax returns from Merchant and/or principals; (c) furnish information on Bank's or *ECHO*'s experience with Merchant to others seeking such information, and (d) examine and verify, at any reasonable time, all the records of Merchant pertaining to Sales Drafts and Credit Vouchers transmitted to and processed by Bank or *ECHO*. Merchant further agrees that Bank and *ECHO* can share Merchant Account information with its agents, and third parties engaged in the performance of this agreement.
29. ON-GOING RESPONSIBILITY: In instances where Merchant acquires a business currently processing with Bank or *ECHO*, Merchant agrees to assume responsibility for previous owner's billing, Chargebacks and other Merchant Services related obligations to Bank and *ECHO*.
30. RESERVE ACCOUNT: As a condition of providing continued Services, Bank or *ECHO* may require Merchant to fund and maintain an interest bearing account (hereinafter called "Reserve Account") with Bank as security against any costs, losses or expenses incurred by Bank or *ECHO* in connection with the

provision of Services to Merchant. Merchant hereby grants Bank or ECHO a security interest in such Reserve Account and the proceeds thereof, to secure the obligation of Merchant to Bank or ECHO hereunder. Bank or ECHO may enforce such security interest without notice or demand. Merchant's obligation to maintain such Reserve Account shall survive the termination of this Agreement by a period of one hundred, eighty (180) days (or longer depending on Merchant's product and business practices) during which time Bank's or ECHO's security interest shall continue.

31. GUARANTORS: Any individual(s), by execution as guarantor, hereby unconditionally and irrevocably guarantees the full and faithful performance of Merchant of each and all its duties and obligations herein set forth, whether prior or subsequent to termination of this Agreement.
32. INDEMNIFICATION: Merchant shall indemnify and hold Bank and ECHO, its affiliates, officers, directors and employees, harmless from and against all claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards, and expenses (including reasonable attorneys' fees, expenses, arbitration costs and court costs) incurred by Bank, ECHO, ODFI, VISA, MasterCard, any other financial service card organizations, Networks, or its affiliates, officers, directors and employees, arising out of, related to or in connection with a) any breach by Merchant of any of its duties or obligations under this Agreement, or b) credit Card or debit Card transaction occurring at the Merchant's location (including any Chargebacks), c) any act or omission by Merchant or any of Merchant's employees in connection with any credit Card or debit Card transaction at the Merchant's location (including, but not limited to fraudulent activity), d) Merchant's violation of the MasterCard merchant rules manual, as amended from time to time (fully incorporated herein by reference), the VISA rules for VISA merchants, as amended from time to time (fully incorporated herein by reference), the payment card industry data security standard (PCI) and CISP (fully incorporated herein by reference), NACHA rules (fully incorporated herein by reference), any other VISA, MasterCard or Network rules and regulations as amended from time to time, or any applicable state, federal and/or municipal laws or ordinances, and e) any return of goods, price adjustments or other disputes with, or claims by a customer (whether or not such dispute or claim is valid). Merchant is responsible for its actions in honoring or refusing credit Cards or debit Cards and in retaining credit Cards and debit Cards and all information contained therein in accordance with this Agreement and all of the laws, rules and regulations set forth above and agrees to indemnify Bank and ECHO harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof. Merchant agrees to indemnify Bank and ECHO against all reasonable attorney's fees, expenses and court costs incurred in enforcing this Agreement or in defending any claim brought by Merchant against Bank and/or ECHO (unless Merchant prevails on said claim after the exhaustion of all appellate remedies). This indemnification shall survive the termination of this Agreement.
33. ODFI INDEMNIFICATION: ECHO and Merchant hereby acknowledge and agree that ODFI's role, in providing the services contemplated herein, is limited to providing access to the ACH Network and, in certain circumstances, serving as a depository financial institution and that ODFI has no control over the origination of any ACH entry nor is ODFI responsible for providing the other services set forth in this Agreement. ECHO and Merchant hereby agree to indemnify and hold harmless ODFI from and against all claims, actions, losses and expenses, including attorneys' fees and costs arising from, related to, or in connection with, any error or omission or alleged error or omission of ECHO and/or Merchant or for any breach by ECHO and/or Merchant of any of the terms of this Agreement. These indemnifications shall survive the termination of this Agreement.
34. RIGHT TO SETOFF: Merchant hereby acknowledges that ECHO shall have a right of setoff against any and all fees or other funds owed ECHO by Merchant under this agreement.
35. MERCHANT ACCOUNT: Merchant agrees to immediately reimburse ECHO for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by Bank. Merchant also agrees to authorize Bank or ECHO to freeze all funds in Merchant Account, without prior notice to Merchant, if either Bank or ECHO in its sole opinion deems itself at risk relative to any ECHO service performed under this Agreement. Merchant agrees to execute any document required by Bank or ECHO and/or Merchant's depository bank in order to effectuate the ACH credits and debits contemplated hereunder. This authorization to initiate ACH credits and debits shall survive termination of this Agreement for a period of one hundred eighty (180) days.
36. COSTS AND EXPENSES: Merchant shall reimburse, upon demand, Bank and ECHO for all costs and expenses, including attorneys' fees expended or incurred by Bank or ECHO in any arbitration, mediation, judicial reference, legal action, or otherwise in connection with (a) the negotiation, preparation, amendment, interpretation and enforcement of this Agreement and/or the User's Guide, (b) collecting any sum which becomes due Bank or ECHO hereunder, (c) any proceeding for declaratory relief, any counterclaim to any proceeding, or any appeal, or (d) the protection, preservation or enforcement of any rights of Bank or ECHO.
37. COMPENSATION PAYABLE TO ECHO: Merchant agrees (i) to compensate ECHO, as set forth in this Agreement, (ii) that ECHO may collect its fees by netting against the proceeds of Merchant's processing activity, (iii) that any unfulfilled Monthly Minimum Fee obligation will be debited from Merchant Account before the fifth day of the following month, and (iv) the fees set forth in this Agreement are subject to modification by Amendment.
38. CONFIDENTIALITY.
  - 38.1 ECHO'S OBLIGATION: ECHO shall not disclose confidential information relating to Merchant's sales other than to financial institutions, Networks and third parties that need the information for a purpose relating to the Agreement. ECHO shall have no obligation, however, to keep confidential information, which becomes public other than as a result of its disclosure by ECHO. The obligations of this Section 38.1 shall survive termination of the Agreement.
  - 38.2 MERCHANT'S OBLIGATION: Except to the extent specifically required by the operating rules of VISA, MasterCard or NACHA or this Agreement and with prior written consent of ECHO, Merchant shall not disclose any information relating to ECHO, any Network, any financial institution, any POS Transaction or any Cardholder to any person or entity other than ECHO, ECHO's employees, agents and independent contractors, and those of Merchant's employees who have a specific need to know such information for a purpose relating to this Agreement (such as responding to a Cardholder inquiry, resolving a Cardholder dispute, or investigating a possible processing error), or as otherwise specifically required by law. Merchant shall treat all documents provided by ECHO, any financial institution or any Network relating to this Agreement as confidential and proprietary and protect them with the same degree of care as Merchant would protect its own confidential and proprietary information, and not less than reasonable care. The obligations of this Section 38.2 will survive termination of this Agreement.
39. BREACH OF SECURITY: Merchant agrees that any loss incurred as a result of any party gaining access to Merchant's bank account or ECHO's website using information which that party was not authorized to obtain or using such information in a manner not permitted by this Agreement (including but not limited to improper or unauthorized use of the Merchant's ID number and PIN) shall be the responsibility of Merchant and Merchant shall indemnify Bank and ECHO for any loss Bank or ECHO sustains unless the party obtained the information through a breach of security of ECHO's website without the participation in any way of Merchant.
40. PRESS RELEASE: Merchant acknowledges that ECHO may issue a press release upon execution of this Agreement.
41. TAXES: Merchant shall promptly pay when due and shall hold Bank and ECHO harmless from, any and all liability or expense relating to the payment of federal, state, and local taxes (other than taxes based in whole or in part upon income attributable to ECHO).
42. MERCHANT DISPUTE DEADLINE: Merchant is responsible for the timely reconciliation of all issues related to Services provided under this Agreement. Merchant must submit any dispute to ECHO, in writing within sixty (60) days of the initial posting of the disputed item to the Merchant Account or appearance of the disputed item on the Merchant's statement.
43. PCI/CISP COMPLIANCE: Merchant is required to implement and maintain compliance with the provisions of the payment card industry data security standard (PCI) which is also known as the cardholder information security program (CISP).
44. ALTERATIONS: Any alteration, strikeover, modification or addenda to the preprinted text or line entries of this Merchant Bank Card Services Application shall be of no effect whatsoever, Bank and/or ECHO, at its sole discretion, may render this Application invalid.
45. COUNTERPARTS: This Agreement may be executed and delivered in several counterparts and transmitted by facsimile, a copy of which will constitute an original and all of which taken together will constitute a single agreement.



## Merchant Profile Analysis

*Please answer the questions as completely as possible. An incomplete profile will delay the processing of your application.*

Name of Business: \_\_\_\_\_

1. Describe **in detail** the products or services you are selling:

\_\_\_\_\_  
\_\_\_\_\_

2. Explain how and where you advertise your products or services (Please supply examples of any brochures, catalogs, web pages or any other item used for marketing):

\_\_\_\_\_  
\_\_\_\_\_

3. Describe where inventory is stored and how you fill your orders (if applicable):

N/A

\_\_\_\_\_  
\_\_\_\_\_

4. If your product is drop-shipped, please provide the **name**, **address** and **telephone number** for the company that will be drop-shipping for you:

N/A

\_\_\_\_\_  
\_\_\_\_\_

5. Please explain, in detail, exactly what you will be charging the customer for:

\_\_\_\_\_  
\_\_\_\_\_

6. For those providing a service, please explain billing policies (i.e. **one time fee or monthly**):

\_\_\_\_\_  
\_\_\_\_\_

7. How far in advance will charges be made prior to services rendered?:

\_\_\_\_\_  
\_\_\_\_\_

8. What is your cancellation policy and how do you advise a customer of your policy?

\_\_\_\_\_  
\_\_\_\_\_

9. What is your refund policy, how long do your customers have to receive a refund and how should refunds be requested (written, verbal, 30-day etc.)

\_\_\_\_\_  
\_\_\_\_\_

**I/We acknowledge that regardless of the refund/return policy used, My/Our merchant account will be handled in accordance with VISA and MasterCard regulations regarding returns and chargebacks as outlined in Paragraphs 8 and 11 of the Merchant BankCard Agreement.**

Customer Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Customer Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Should we have a question on any of your answers, what number should we use to contact you? ( ) - \_\_\_\_\_

**Thank you!**



## Credit Card Servicing Agreement

This Servicing Agreement ("Agreement") dated as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ is entered into by and between Blum Investment Group, Inc. d.b.a. Professional Solutions ("Professional Solutions") with offices located at 3581 Excel Drive, Medford, Oregon, 97504 and the party identified below as "Center".

WHEREAS, Professional Solution's Software package is commonly known as "ProCare Software".

WHEREAS The credit card processing Service feature incorporated within ProCare Software and used to facilitate credit card transactions is commonly known as "Tuition Express".

WHEREAS, Professional Solutions is engaged in the business of, among other business operations, facilitation of financial transactions which is exclusively limited to the "pass through" of data required to complete a credit card transaction by and between cardholder and Center which represent purchases of goods and/or services made with bankcards. Professional Solutions provides these accounts with necessary service and support systems.

WHEREAS, Professional Solutions has entered into an agreement to be a Master Merchant with TransFirst ePayment Services, 12120 Shamrock Plaza Suite 100 Omaha, Nebraska commonly known as Transfirst ePayment Services.

WHEREAS, Professional Solutions provides certain services to its clients who pay a monthly account maintenance fee for the benefit of such services.

### **Definitions:**

**Association**-An entity formed to administer and promote Cards, including without limitation MasterCard International, Incorporated, VISA U.S.A. Inc. and VISA International.

**Cardholder**-Means the individual whose name is embossed on the card and any authorized user of such card.

**Center**-Means the entity whether it's an individual, sole proprietorship, corporation, LLC or other form of business that is engaged in business operations incorporating the care of children.

**Chargebacks**-The procedure by which a Sales Draft or other indicia of a card transaction (or disputed portion thereof) is returned to bank or the issuing bank, for failing to comply with Association Rules, the liability of which is between the Center and Cardholder.

**Discount Rate**-An amount charged a merchant for processing its daily credit card transactions.

**Domain**-Sphere of influence, Range of control, Realm.

**Facilitation**-To make easy, to lessen the difficulty of.

**Full Sensitive Information**- Cardholder information including but not limited to account number, expiration date, CVC/CVC2 number billing address.

**Good Faith**-That state of mind denoting honesty of purpose, freedom from intention to defraud, and in general, means being faithful to one's duty or obligation.

**Indemnify**-To restore the victim of a loss, in whole or in part, by payment, repair, or replacement. To save harmless; to secure against loss or damage. To make good, to compensate.

**Perfect**-Complete, Finish, Executed, enforceable, without defect. Brought to the state of perfection.

**Processor**-The entity identified on this agreement which provides certain services under this agreement.

### **Professional Solutions and Center hereby agree to the following terms and conditions:**

#### **Terms and Conditions**

Center agrees to conform to all terms and conditions set forth in this agreement and the terms and conditions set forth in the Transfirst ePayment Services Account Application along with any other agreements related to credit card processing and transactions. Center agrees to conform to all rules set forth by the card Associations (VISA, MasterCard, American Express and Discover) and to indemnify and hold harmless Professional Solutions from any violations of said rules and regulations.

Center agrees to perfect a Credit Card Authorization Form for each cardholder by and between the cardholder and Center as a condition of processing recurring credit card transactions utilizing ProCare Software and the Tuition Express services offered therein. Center agrees to maintain said agreement within Centers records for a period not less than 18 months from the date of termination of said agreement between cardholder and Center. Center agrees to provide to Professional Solutions the original agreement or a similar legible copy thereof immediately upon request. In no event shall the Center exceed 5 business days to submit said originals or legible copies. Any omissions of the information required on the Credit Card Authorization Form may constitute an invalid agreement between Center and cardholder. In such an event the center assumes all legal obligations arising out of said omissions. Professional Solutions shall be indemnified by the Center, and held harmless in such an event.

Center agrees to utilize all reasonable means to protect the cardholders "Full Sensitive Information". Center further agrees to destroy the CVC/CCV2 number located on the bottom portion of the Credit Card Authorization Form after said information is entered into ProCare. Center understands that it is the centers exclusive obligation to protect said cardholders data within its domain with the exception of data that has been successfully transmitted to Professional Solutions. Professional Solutions will properly manage and secure all cardholder data utilizing accepted security protocols.

Center agrees that cardholders will only be charged when payments are Due and Payable. Due and Payable is defined based on the agreements in place by and between center and cardholder. Professional Solutions has no claim as to the establishment or legal validity of said agreement. Center understands that Professional Solutions will transact all requests that are transmitted with the assumption that all items submitted are deemed due and payable under said agreement. In the event that center has transmitted payment request(s) to Professional Solutions that are contested by cardholder in any form or substance, center assumes all responsibility, including but not limited to chargebacks, reversals and re-submittals.

Professional Solutions will negotiate in good faith for the best possible "discount rate" on a regular basis. Center understands and agrees that the Discount Rate offered is that Discount Rate Professional Solutions has negotiated with bank in its entirety.

**FEES, PAYMENT AND TERM OF SERVICE.** As consideration for the services Center has signed up for with Professional Solutions, Center agrees to pay Professional Solutions the applicable service(s) fees set forth in the fee schedule. Per item fees shall be aggregated monthly and paid to Professional Solutions on or about the first of each month for the previous month's activity, except as otherwise expressly noted. Fee will be collected by means of an ACH debit from centers designated bank account. Center agrees to maintain an open transaction bank account while this agreement is in effect. Set up fees, if any, will become payable on the date Professional Solutions services are established. In the event that center exclusively collects payments via credit card the monthly maintenance fee for maintaining a Tuition Express account still apply. Professional Solutions reserves the right to update or change the fee schedule and structure given a thirty (30) day notice has been submitted to center. Notice of changes may be given by e-mail notification or by U.S. Postal Service. All payments of fees for Professional Solutions services shall be made in U.S. dollars. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5% per month or the maximum amount allowed by law, whichever is greater.

# Credit Card Servicing Agreement

**REFUND POLICY.** All credit card refunds shall be at the discretion of Professional Solutions. To facilitate credit card refunds the following must apply; (a) the refund must be for a cardholder that has been charged through Professional Solutions Tuition Express service, (b) The amount of the refund must be for the exact dollar amount of a previous transaction, (c) under no circumstances will Professional Solutions perfect a credit card refund for previous cash, check or any other non credit card transactions. Professional Solutions assumes no responsibility for verifying any credits or refunds. **CLIENT IS RESPONSIBLE TO SECURE PROCARE MANAGEMENT SYSTEM AND TO INSTITUTE APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING REFUNDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

**SOFTWARE REVISIONS AND UPDATE.** Center agrees that it is centers responsibility to update their working version of ProCare Software in a timely manner in order to not disrupt Centers ability to transact credit card processing. That Center will review from time to time, Professional Solution's web site located at [www.procaresoftware.com](http://www.procaresoftware.com) for updates. Professional Solutions will make all reasonable attempts to notify Center of updates in an attempt to avoid any disruption in service.

**MODIFICATIONS TO AGREEMENT.** Except as otherwise provided in this Agreement, Center agrees, during the term of this Agreement, that Professional Solutions may: (1) revise the Terms and Conditions of this Agreement; and/or (2) change any part of the services provided under this Agreement at any time. Any such revision or change will be binding and effective 30 days after posting of the revised Agreement or change to the service(s) on Professional Solutions' web site ([www.procaresoftware.com](http://www.procaresoftware.com)), or upon notification to Center by e-mail or United States Postal Service. You agree to periodically review our Web site, including the current version of this Agreement available on our Web site, to remain informed of any such revisions. If you do not agree with revisions to the Agreement, you may terminate this Agreement at any time by providing Professional Solutions with written notice. Notice of your termination will be effective upon receipt and processing of said request by Professional Solutions. Any fees paid by Center are nonrefundable. By Center maintaining continuity of services after said revisions are deemed to be "in effect", Center agrees to said revisions, shall abide by and be bound by any such revisions or changes in services.

**TERM.** Any Professional Solutions Agreement document signed by the parties relating to these Terms and Conditions will remain in effect until it terminates or expires in accordance with its terms.

Expiration. Due to the regularity and recurring nature of the services provided by Professional Solutions to Center, an expiration of said Agreement is not practical. Therefore no expiration of this agreement will be incorporated herein.

**TERMINATION.** Either party may terminate the Agreement by written notice if the other party materially breaches a term thereof and fails to cure said breach within thirty (30) days following written notice. Furthermore, either party may terminate said agreement without cause provided thirty (30) days notice is given.

**RIGHTS AND DUTIES UPON TERMINATION.** Termination of Agreement will not limit either party from pursuing any other remedies available to it, including but not limited to injunctive relief, nor will such termination relieve Centers obligation to pay all fees that accrued prior to such termination. Upon termination of Agreement; Center will (a) fully comply with all terms and conditions in the Agreement regarding termination; (b) cease any and all use of Professional Solutions Tuition Express services, and all Confidential Information (as defined herein) of Professional Solutions; and (c) by this Agreement certify to Professional Solutions, within thirty (30) days that Center has ceased all uses of Tuition Express and use of Confidential Information of Professional Solutions.

**FORCE MAJEURE.** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, or any form of disruption in electrical transmission or technology related disruptions of any kind that are out of the direct control of the parties. Both parties agree to notify the other of said disruptions in a manner and timeframe that is reasonable. In the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, Professional Solutions may immediately terminate this Agreement.

Center agrees that the responsibilities of Professional Solutions is only that which is required to manage and pass through data received from Center to Processor for transacting the collection of payments due to the Center from the cardholder. That Professional Solutions will manage and maintain said data in a manner as to fully protect said data including but not limited to encryption. Professional Solutions shall be required to conform to all rules and regulations governing its participation in the arrangement of processing data on behalf of cardholders and centers, including but not limited to the rules and regulations set forth by Associations and Processors.

IN NO EVENT SHALL PROFESSIONAL SOLUTIONS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR EITHER PARTY WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. PROFESSIONAL SOLUTIONS WARRANTS THAT IT WILL EXERCISE REASONABLE CARE IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. EXCEPT AS STATED IN THIS AGREEMENT, PROFESSIONAL SOLUTIONS SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY TO IT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROFESSIONAL SOLUTIONS DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

**RELATIONSHIP OF PARTIES:** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, or by any third party, to create the relationship of principal and agent or of partnership or joint venture between the Parties hereto, it being understood and agreed that any other provision contained in this Agreement, nor any acts of the Parties hereto shall be deemed to create any relationship between the Parties hereto other than the relationship of independent contractors contracting for services. Neither Party to this Agreement has, and shall not hold itself out as having any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other Party to this Agreement.

Professional Solutions shall have no responsibility and shall not be liable for any obligations of Center pursuant to any other contractual arrangement or as to cardholders, including, without limitation losses related to Paper transactions, chargebacks, credits or returns.

Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective when received, and shall be sufficient if given in writing, hand delivered or deposited in United States mail, postage prepaid, addressed to the appropriate party at the address set forth below:

**Professional Solutions, 3581 Excel Drive, Medford, OR. 97504**

I, the undersigned, being an authorized signatory on behalf of Center, hereby agree to the Terms and Conditions set forth in this agreement. I understand that this agreement pertains exclusively to the facilitation of credit card processing and excludes any Terms and Conditions associated with the processing of electronic payments conducted under NACHA regulations.

## Center Information (required)

Center Name

Center Address

City/State/Zip

Authorized Signature

Date

**Initial Page 1, sign Page 2, then fax to Professional Solutions  
before Credit Card Processing can be initiated. FAX # 541-858-7008**