

Standard Terms and Conditions

1. **DEFINITIONS:** The following terms used in this Agreement shall have the meaning specified below:

- (a) "ACH Transaction": An electronic payment transaction originated by Merchant and processed through the ACH Network in the Federal Reserve System.
- (b) "Administrator": The Merchant's employee who has been designated as Merchant's primary contact with JHA for the Services and has been appointed by Merchant to manage the administration of Services access, including passwords, and communicate authorizations to JHA.
- (c) "Bank of First Deposit": In a Check 21 Transaction, the financial institution which receives the Entry from JHA and transmits the Entry through the Federal Reserve Bank system for transmittal to the Customer's financial Institution for debit or credit to the Customer's account.
- (d) "Check 21": The Check for the 21st Century (Check 21) Act and all regulations pertaining to the Check 21 Act.
- (e) "Check 21 Transaction": An electronic payment transaction utilizing a Substitute Check image permitted by Check 21.
- (f) "Confidential Information": The Software programs and documentation used by JHA to provide the Services to Merchant and passwords and other information or materials of a confidential and proprietary nature that JHA provides to Merchant under this Agreement.
- (g) "Courseware": The end user training courseware and materials relating to the use and operation of the Services and JHA's processing system that JHA or a Reseller may provide through classroom training, online training or e-Learning delivery to Merchant.
- (h) "Customer": Merchant's customer who submits a payment to Merchant by means of a paper check or ACH transfer.
- (i) "Entry": A transaction submitted by Merchant to JHA for processing by the Services and further defined in the NACHA Rules.
- (j) "Image": The image that results from an electronic scan of a paper check by Merchant.
- (k) "NACHA Rules": The then-current rules, regulations and procedural guidelines published by the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA.
- (l) "Originating Depository Financial Institution" or "ODFI": In an ACH Transaction, the financial institution which receives the Entry from JHA and transmits the Entry to its ACH Operator for transmittal to a Receiving Depository Financial Institution for debit or credit to the Customer's account, as these terms are further defined in the NACHA Rules.
- (m) "Reseller": A third party reseller, such as an ISO reseller or Value Added Reseller, appointed and authorized by JHA to resell and/or deliver the Services and Courseware to Merchant.
- (n) "Services": The ACH processing services and/or the Check 21 processing services provided by JHA to Merchant under this Agreement.
- (o) "Settlement Account": A commercial demand deposit bank account which Merchant has established for JHA's access and use to settle financial payment transactions processed by JHA under this Agreement.
- (p) "Software": Software programs and associated documentation and materials that JHA provides to Merchant for use with the Services.
- (q) "Substitute Check": The electronic Image of a paper check, as defined in Check 21.

2. **SET-UP AND DELIVERY OF SERVICES:**

- 2.1 In conjunction with this Agreement, Merchant has completed and submitted to JHA or a Reseller (as applicable) an initial written application and supporting documentation about Merchant's business and financial status, for JHA's consideration in the account set-up and provision of the Services to Merchant. Merchant acknowledges that JHA shall be entitled to rely upon the validity, accuracy and completeness of the information provided by Merchant in its application and supporting documentation to JHA, for JHA's use in performing its due diligence review of Merchant's status and financial standing for determining (a) if JHA will enter into this Agreement with Merchant; (b) if JHA will provide all or any of the Services to Merchant under this Agreement; and (c) the credit and account processing standards and limits that JHA will apply to the processing of Merchant's Entries. Subsequent to the initial acceptance and set-up of Merchant for JHA's provision of the Services, JHA may from time to time request that Merchant provide updated information and supporting documentation to JHA to confirm Merchant's then-current business and credit status, which Merchant shall apply best efforts to deliver to JHA within three (3) business days following receipt of JHA's written request. Any failure by Merchant to provide the information and supporting documentation requested by JHA via the application or by other means within a timely manner shall be deemed to be a material breach of this Agreement by Merchant.

- 2.2 When Merchant's application has been accepted and approved by JHA, JHA, either directly or through a Reseller who has contracted for the delivery of Services with Customer, shall provide the Services selected by Merchant in its application. Merchant shall utilize and access the Services in accordance with the terms of this Agreement and the practices and procedures established by JHA for the Services which have been communicated in writing to Merchant. As part of the Merchant set-up and boarding process:

JHA will provide Merchant with an administrative and gateway user name and password ("Password") to access the Services which are hosted on JHA's processing system. Merchant will designate an Administrator who shall be the sole individual vested with the authority to determine who will be authorized to use the Services; establish separate passwords for each user; and establish limits on each user's authority to access information and conduct transactions. Merchant is responsible for the actions of its Administrator, the authority the Administrator gives others to act on Merchant's behalf, and the actions of the persons designated by the Administrator to use the Services. Merchant shall take reasonable security procedures and practices to safeguard the confidentiality of the passwords; limit access to its passwords solely to persons who have a need to know such information; closely and regularly monitor the activities of employees who access the Services; and prohibit its employees and agents from initiating entries in the Services without proper authorization and supervision and adequate security controls.

- 2.3 JHA will provide to Merchant processing Services for the Entry types indicated in the Merchant set-up and boarding documentation and/or its contract with Reseller (if applicable) which Merchant wishes to utilize. JHA reserves the right to withdraw the processing Services provided generally to its customers including Merchant for individual Entry types from general market availability and coverage under this Agreement upon ninety (90) days prior written notice to Merchant. To the extent reasonably possible, JHA will first attempt to process an Entry in the Services as an ACH Transaction, unless the Entry has clearly been designated to be processed as a Check 21 Transaction, provided that the Entry fully qualifies to be processed as an ACH Transaction according to applicable NACHA Rules and JHA has received all of the required information from the Image or paper check necessary to process the transaction as an ACH Transaction. If the Entry cannot be processed as an ACH Transaction for any reason, then JHA will process the Entry in the Services as a Check 21 Transaction.

- 2.4 Prior to submitting an Entry to JHA for processing, Merchant shall secure all authorizations and approvals from its Customer and deliver any notifications pertaining to that Entry which are required by the NACHA Rules and/or applicable laws and regulations. Merchant shall be responsible for the accuracy and propriety of all Entries submitted to JHA for processing. If Merchant utilizes a scanner to create Images which are delivered to JHA for processing, Merchant shall be solely responsible to ensure the accuracy and completeness of the Image transmitted to JHA for processing.
- 2.5 Merchant acknowledges that JHA has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and by the Bank of First Deposit for Check 21 Transactions. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the deadline will be processed the next Banking Day as defined in the NACHA Rules.
- 2.6 For Check 21 Transactions, JHA will not be responsible for printing any Substitute Checks which may be required by a financial institution in order to receive and process the Entry.
- 2.7 In the event of any conflicts in the instructions received by JHA regarding Merchant or any Entries relating to them, JHA may at its option and with or without notice, hold or interplead, comply with the legal process or other order, or otherwise limit access by Merchant or by JHA to the funds, Entries or proceeds thereof.
- 2.8 JHA or a Reseller may make available to Merchant end-user training and/or Courseware to assist Merchant in understanding and using the Services and the JHA processing system. The Courseware is a proprietary product of JHA and its licensors and is provided to Merchant for its sole internal use. JHA and its licensors reserve all ownership rights in and to the Courseware materials. For training classes performed by JHA or the Reseller at Merchant's site, Merchant shall pay the applicable onsite training class fee quoted by JHA or the Reseller and the reimbursable out-of-pocket travel expenses of the JHA or Reseller trainer who travels to and from Merchant's location to deliver the training session. For on-line classes and e-Learning modules provided by JHA or the Reseller, Merchant shall pay the training class fee specified in the online class registration site. If JHA or the Reseller offers a Courseware license which permits the Merchant to perform its own internal training classes for the personnel of Merchant and its Customers, Merchant shall pay the annual Courseware license fee quoted by JHA or the Reseller for use of the Courseware modules licensed by Merchant for this purpose.
- 3. RECOUPMENT AND SET-OFF:**
- 3.1 Merchant shall immediately reimburse JHA for any returns or shortfalls that occur in Merchant's Settlement Account. JHA reserves the right to delay the availability of funds for deposit without prior written notices to Merchant if, in its sole discretion, JHA deems itself at financial or relative risk for any and all Services performed under this Agreement.
- 3.2 Merchant hereby acknowledges and agrees that JHA shall have a right of setoff against:
- any amounts JHA would otherwise be obligated to deposit into Merchant's account, and
 - any other amounts JHA may owe Merchant under this Agreement.
- 4. USE OF REMOTE DEPOSIT CAPTURE SERVICES:** If Merchant utilizes JHA's Remote Deposit Capture Services, the following supplemental terms shall apply to those Services:
- All checks deposited electronically by Merchant through use of the Remote Deposit Capture Services shall be subject to the following requirements:
 - The original paper check will not be deposited through the Remote Deposit Capture Services more than once;
 - All checks will conform to the requirements of Merchant's deposit agreement with its financial institution; and
 - Merchant shall review and validate the accuracy and completeness of the check data being captured including but not limited to the amount of the check and the legibility of the check Image generated from use of the Remote Deposit Capture Services;
 - Merchant shall be solely responsible for the selection, use and operation of the scanner equipment used to capture the Image using the Remote Deposit Capture Services, including the quality of the Image results generated from the scanner. Any scanner used by Merchant with the Remote Deposit Capture Services must meet the technical specifications for scanners published by JHA in order to be deemed compatible with the Remote Deposit Capture Services. JHA offers scanners which it has certified are compatible for use with the Remote Deposit Capture Services for purchase or lease to customers of its Remote Deposit Capture Services. Any purchase or lease of scanners by Customer from JHA or a Reseller for its use shall be transacted between Merchant and JHA or a Reseller in a separate equipment purchase/lease agreement.
 - Merchant shall be solely liable and responsible for all damages, losses, expenses and claims arising from any of the following:
 - Duplication of Images transmitted by Merchant to JHA through the Remote Deposit Capture Services;
 - Alteration of scanned Images not caused by JHA's Services or Software;
 - Deposit of checks on accounts with insufficient funds, counterfeit checks, fraudulent checks, or checks bearing unauthorized or forged endorsements;
 - Acts of fraud, negligence or willful misconduct committed by employees of Merchant in depositing checks using the Remote Deposit Capture Services;
 - Hardware failure not caused by JHA's Services or Software; or
 - Merchant's failure to properly store original checks once the scanned Image has been captured.
- 5. PRICING AND PAYMENT:**
- 5.1 Merchant shall pay JHA or Reseller (if Merchant has contracted for the Services or Courseware to be delivered by a Reseller) the fees, penalties and charges for the Services or Courseware shown in the then-current standard published fee schedule for merchants located in the United States which has been provided to Merchant. All amounts are stated and due and payable in U.S. dollars, and are exclusive of any taxes or other charges which may be imposed by a government entity on the Services or Courseware, except for taxes due on JHA's or the Reseller's income. For Services or Courseware fees invoiced by JHA directly to Merchant, JHA reserves the right to require Merchant's payment of these fees due under this Agreement via an ACH debit made by JHA against Merchant's Settlement Account or other banking account.
- 5.2 After the initial twelve month period of the initial term of this Agreement has been completed, if Merchant has contracted directly with JHA for JHA's provision of the Services to Merchant, JHA reserves the right to increase the Services or Courseware fee rates once each twelve (12) month period during the term of this Agreement by no more than ten percent (10%) from the previous Services or Courseware fee rates by giving Merchant at least sixty (60) days prior written notice of such increase. If Merchant has contracted with a Reseller for JHA's provision of the Services to Merchant, then any price increases in the Services or Courseware fee rates will be determined and applied in accordance with the written agreement between Reseller and Merchant.
- 6. NACHA RULES AND JHA GUIDELINES:** Each party shall comply with the then-current NACHA Rules which apply to ACH Transactions processed under this Agreement. In addition, JHA may publish to Merchant and other merchants its own standard operating and implementation guidelines for the Services with

respect to specific NACHA Rules which will govern and apply to this Agreement as if set forth herein.

7. CONFIDENTIAL INFORMATION AND SECURITY PROCEDURES:

- 7.1 Merchant shall protect and maintain the confidentiality of all Confidential Information disclosed by JHA to Merchant under this Agreement and comply with the security procedures described in this Agreement and in any JHA policies and procedures communicated in writing to Merchant. Merchant acknowledges that the purpose of these security procedures is for verification of authenticity of an Entry and not to detect an error in the transmission or content of an Entry. No security procedure for the detection of any such error has been agreed upon between JHA and Merchant. Merchant is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions.
- 7.2 Merchant understands that the password and Services access and use instructions provided by JHA are confidential and agrees to assume all risks of accidental disclosure or inadvertent or wrongful use by any party whatsoever except for JHA, whether such disclosure of use are on account of Merchant's negligence or are deliberate acts. Merchant acknowledges that no person from JHA will ever ask for any password and that JHA employees do not need and should not ask for Merchant's password.
- 7.3 Merchant shall change its password periodically and whenever anyone who has had access to a password is no longer employed or authorized by Merchant to use the Services. JHA may require Merchant to change its password at any time. JHA may deny access to the Services without prior notice if it is unable to confirm to its satisfaction any person's authority to access the Services or if JHA believes such action is necessary for security reasons.
- 7.4 Merchant acknowledges that the Services and Software provided by JHA under this Agreement incorporates trade secrets of JHA and its licensors, and as such is protected by civil and criminal law. Merchant shall notify JHA immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. JHA shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining any wrongful use or possession of the trade secrets contained in the Services or Software by any party. Merchant acknowledges that irreparable harm will occur to JHA in the event of such wrongful use or possession of the trade secrets contained in the Services or Software and that other remedies are inadequate.

8 DATA PRIVACY AND SECURITY BY JHA:

- 8.1 In accordance with data privacy laws and regulations applicable to this Agreement, which may include but not be limited to the Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), JHA shall not disclose or permit access to or use of the non-public personal information of Merchant or its Customers made available by Merchant to JHA for any purposes other than those specifically required to fulfill JHA's contractual obligations with Merchant. JHA shall not sell the information regarding Merchant or its Customers for any reason. In connection with providing services to Merchant, JHA shall take all commercially reasonable steps to ensure the privacy and security of the information of Merchant and its Customers in JHA's possession and protect against anticipated threats and hazards to the security of such information. JHA shall take all commercially reasonable steps to prevent unauthorized access to or use of such information that could result in substantial harm or inconvenience to Merchant or its Customers. In the event any court or regulatory agency seeks to compel disclosure of the information, JHA shall, if legally permissible, promptly notify Merchant of the disclosure requirement and will cooperate so that Merchant may at its expense seek to legally prevent this disclosure of the information.

- 8.2 JHA has separately published its data privacy and security compliance commitment to its customers, which corresponds to a minimum to the provisions of this Section 8 as of the effective date of this Agreement. To the extent that additional commitments by JHA are reflected in future published versions of this policy, these additional commitments shall be incorporated as part of this Agreement without further actions by the parties. In no event shall a future published data privacy and security compliance statement issued by JHA lessen or eliminate any of the commitments by JHA stated in this Section 8.
- 8.3 If a breach of security results in an unauthorized intrusion into JHA's systems which directly and materially affects Merchant or its Customers, JHA will take appropriate measures to stop the intrusion; report on the intrusion to Merchant within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by JHA in response to the intrusion; and provide reasonable assistance to Merchant to support any mandatory disclosures about the intrusion by Merchant to its Customers required by law. If JHA has notified law enforcement agencies about the intrusion, JHA may delay its notification of the intrusion to Merchant until authorized to do so by the law enforcement agencies.

9 WARRANTIES:

- 9.1 JHA warrants to Merchant that its Services will be performed in a professional and timely manner consistent with ACH and Check 21 transaction processing industry standards and in accordance with the NACHA Rules and applicable laws and regulations and any written JHA policies and procedures communicated by JHA to Merchant. In the event that Merchant discovers an error in the Services or Software which has been caused by JHA, if Merchant has contracted directly with JHA for the Services, Merchant shall immediately notify JHA of the existence and details of the error; if Merchant has contracted with a Reseller for the Services, then Merchant shall provide this notification to Reseller. JHA shall apply commercially reasonable efforts to correct the error within a reasonable time after JHA's receipt of notification of the error. EXCEPT FOR THE FOREGOING WARRANTY, JHA MAKES NO OTHER WARRANTIES FOR THE SERVICES PROVIDED BY JHA AND JHA DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. JHA does not guarantee the completeness or accuracy of the information provided from a third-party database. JHA shall have no liability to Merchant for any invalid Customer information provided by Merchant or Entries returned unpaid to Merchant.
- 9.2 Merchant warrants that:
 - (a) all Entries submitted to JHA for processing will comply with applicable laws and regulations and the NACHA Rules pertaining to the Entries;
 - (b) Merchant will comply with all laws, regulations and the NACHA Rules applicable to Merchant's activities covered by this Agreement;
 - (c) all information provided by Merchant initially in its application and supporting documentation and subsequently in all updates to its application and supporting documentation provided to JHA pursuant to Section 2.1 above is valid, complete, accurate and up-to-date; and
 - (d) the individual signing and submitting this Agreement, the application for purchase of the Services from JHA, and all future updates to the application and supporting documentation has the legal authority to make and bind Merchant to the agreements, warranties and commitments stated in this Agreement and the submitted application on Merchant's behalf.
 - (e) It is JHA's corporate policy not to knowingly provide Processing Services for any person or organization whose use of the Processing Services involves or pertains to any activity which is illegal under U.S. law or involves an activity or business with which JHA declines to accept and conduct business generally ("Excluded Activity or Activities"). Merchant warrants that it will not conduct any of the

Excluded Activities, which include but are not limited to the following:

- (1) Check cashers or money services businesses (MSBs)
- (2) Credit repair services, debt consolidation and forgiveness programs
- (3) Government grant or will-writing kits
- (4) Internet gambling or accepting payments in connection with Internet gambling
- (5) Internet pharmaceutical sales
- (6) Internet tobacco or firearms sales
- (7) Magazine subscriptions
- (8) Organizations residing outside of North America or U.S. Territories
- (9) Outbound telemarketing
- (10) Payday or subprime loan business
- (11) Pornography or other sexually-oriented business
- (12) Prepaid vacation/timeshare solicitation services
- (13) Psychic or horoscope consultation services
- (14) Sweepstakes

JHA may publish to its resellers and customers from time to time a more detailed and comprehensive list of businesses and activities which JHA includes within the scope of Excluded Activities. JHA reserves the right to reject any proposed Customer account or to refuse to process a transaction for a Customer that JHA deems, in its sole discretion, may use the Processing Services in conjunction with any Excluded Activity. If JHA discovers after accepting a Customer account that the Customer is utilizing the Processing Services in conjunction with an Excluded Activity, JHA may immediately terminate its provision of Processing Services to that Customer upon written notice to the Customer.

9.3 With regard to Check 21 Transactions, the party who prints a Substitute Check shall be wholly liable for all Check 21 warranties and applicable indemnifications associated with the printed Substitute Check. JHA shall not be liable for the duplicative presentment warranty or any Substitute Check indemnity as they may arise under Check 21. JHA shall only be responsible for the legal equivalence warranty under this Agreement if JHA is the party who does the initial conversion of Merchant's Entries to a Substitute Check, and in no event shall JHA be liable for any subsequent degradation to the Substitute Check which may occur due to the handling of the Substitute Check by any third party.

10 INDEMNIFICATION:

10.1 JHA shall indemnify, defend and hold Merchant harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by Merchant arising out of a third party claim that the Services or Software owned and provided by JHA under this Agreement infringe the valid intellectual property rights of the third party, provided that JHA is promptly notified by Merchant of its receipt of notice of such claim, is given control of the defense or settlement of such claim, and is given reasonable assistance requested by JHA at JHA's cost with regard to such claim.

10.2 Merchant shall indemnify, defend and hold JHA, the ODFI and the Bank of First Deposit harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by JHA, the ODFI and/or the Bank of First Deposit arising out of (a) Merchant's breach of this Agreement, the NACHA Rules or applicable laws and regulations; (b) return of an Entry due to incorrect or incomplete data or information provided by Merchant in the submission of the Entry to JHA, a closed Customer account, or insufficient funds in the Customer account, and/or (c) fraudulent activity, wrongful or unauthorized use of the Services, or submission of fraudulent or illegal Entries by Merchant or a third party who has gained access to the Services through the use of Merchant's password.

11 LIMITATIONS OF LIABILITY: IN NO EVENT SHALL JHA, THE ODFI OR THE BANK OF FIRST DEPOSIT BE LIABLE TO MERCHANT OR ANY OTHER PARTY FOR ANY LOSS OF PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES WAS FORESEEABLE. Except

for JHA's indemnification liability stated in Section 10.1 above and actual, direct damages arising from any action or omission of action by JHA which constitutes the gross negligence or willful misconduct of JHA, JHA's aggregate, cumulative liability to the Merchant for all claims of actual direct damages relating to the Services, this Agreement, or the relationship between JHA and Merchant, including any cause of action in contract, negligence, tort, strict liability or otherwise, shall not exceed an amount equal to the total amount of all fees paid by the Merchant to JHA or a Reseller (as the case may be) for Services delivered under this Agreement during the three (3) month period preceding the origination of the claim giving rise to liability.

12 TERM AND TERMINATION:

12.1 **Term:** This Agreement shall have an initial term of **three (3) years** from and after the Effective Date. Upon expiration of the initial term, this Agreement shall automatically renew for additional consecutive twelve (12) month terms unless either party gives written notice of its election not to renew this Agreement to the other party no later than sixty (60) calendar days prior to the end of the then-current term.

12.2 Termination For Cause:

(a) **Termination Due to Material Breach:** This Agreement may be terminated by either party for cause upon giving the other party written notice of the breach of this Agreement committed by the other party and giving the other party a reasonable time to cure the breach. For the purpose of this Agreement, a reasonable time to cure the breach specified in the written notice shall be deemed to be:

(1) For any breach of Sections 2.1, 2.2, 3.1, 3.2, 5.1, 7 or 9.2 above: Five (5) business days from receipt of written notice.

(2) For all other types of breach of this Agreement, except as provided below: Thirty (30) calendar days from receipt of written notice of the breach.

Notwithstanding the foregoing, in the event either party materially breaches any provision of this Agreement by fraud, act of intent to defraud, failure to notify the other party of a material change in party's financial structure or a material change in the information originally provided to induce the other party to enter into the Agreement, the non-breaching party may immediately terminate this Agreement in writing without giving the breaching party an opportunity to cure the breach with prior written notice.

(b) **Termination Due to Changed Circumstances:** JHA reserves the right to terminate this Agreement in whole or in part at any time due to the occurrence of any of the following changed circumstances:

(1) Merchant becomes insolvent, enters into suspension of payments, moratorium, reorganization or bankruptcy, makes a general assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any other judicial or administrative proceeding that relates to insolvency or protection of creditors' rights, any of which in JHA's reasonable judgment impairs the ability of Merchant to perform its responsibilities under this Agreement;

(2) In JHA's sole judgment, there is a deterioration or other materially negative change in Merchant's financial status or structure which increases the financial risk being assumed by JHA in processing Merchant's Entries;

(3) There is a change in the laws, regulations or NACHA Rules that are applicable to this Agreement and JHA's provision of any of the Services which restricts or prohibits JHA from providing the affected Services to Merchant or significantly increases JHA's costs in providing the affected Services to its customers generally; or

(4) Merchant's business and/or assets are acquired by a competitor of JHA,

In these instances, JHA will provide written notice of the termination on this basis to Merchant, which shall become effective upon receipt by Merchant.

12.3 **Survival of Obligations:** The provisions of Sections 7, 8, 9, 10 and 12 of this Agreement and any other provisions of the other Sections of this Agreement which by their nature should reasonably be expected to continue to apply after termination of this Agreement shall survive the termination of this Agreement.

13 GENERAL PROVISIONS:

13.1 **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to its conflict of laws principles.

13.2 **Notice:** Any notice required or permitted hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight express mail, with proof of delivery retained, and addressed to the respective parties at the address set forth below. Notice of breach or termination of this Agreement sent to JHA shall be directed to the same address, attention Legal Department.

13.3 **Assignment:** This Agreement shall not be assigned or delegated in whole or in part by Merchant to any other party without the prior written consent of JHA, which shall not be unreasonably withheld.

13.4 **Legal Fees:** In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery.

13.5 **Force Majeure:** If performance by JHA, the ODFI, the Bank of First Deposit, or any of their respective affiliates, of any Services or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of acts or events beyond their reasonable control, including but not limited to labor disputes and strikes; acts of nature, fire, floods, lightning,

hurricanes, earthquakes or severe weather; utility or communications failures; failures of the ODFI, ACH or Federal Reserve Bank system network; computer-associated outages or delay in receiving electronic data; war, civil commotion or acts of terrorism; or the introduction of any new law, order or regulation which prohibits or restricts performance of this Agreement, then JHA, the ODFI, the Bank of First Deposit and their respective affiliates affected by the occurrence of such acts or events shall be excused from their performance hereunder to the extent of the prevention, restriction, delay or interference.

13.6 **Amendment:** This Agreement may be amended only by a written document signed by authorized representatives of both parties.

13.7 **Entire Agreement:** This Agreement contains the entire agreement between Merchant and JHA relating to the subject matter addressed herein, and supersedes any prior or contemporaneous understandings or agreements, whether oral or written, between the parties regarding the subject matter of this Agreement.

13.8 **Form and Delivery of Signed Agreement:** This Agreement may be executed by the parties by applying manual or electronic signatures of its authorized representatives to original documents or facsimile, scanned or other electronic copies of original documents and transmitted by physical or electronic means for this purpose. For legal evidentiary purposes, a facsimile, scanned or other electronic copy of this Agreement bearing the signatures of the authorized representatives of both parties shall be accepted as an equivalent to a signed original copy of this Agreement.

13.9 **Independent Contractors:** The parties are and shall remain independent contractors and shall have no legal right or authority to make any binding commitments on behalf of the other party.

< End of Standard Terms and Conditions >

EXHIBIT A

BILLING EXCEPTION FEES

Miscellaneous Administrative Charges	
Description	Price Ea.
Check 21 Adjustment	\$ 40.00
Authorization Review Request	\$ 50.00
Failure to Notify of Bank Account Change	\$ 40.00
Correction of Duplicate Deposits	\$ 40.00
Return Against Settlement Account	\$ 40.00
Debit Blocks	\$ 40.00
Research Charge (<i>Per hour, One Hour Minimum</i>)	\$ 75.00

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