



OPENEDGE CHECK SERVICES MERCHANT APPLICATION

Merchant's DBA Name/Outlet Name: City of Foley Sanitation		Merchant's Legal Name: City of Foley	
Contact Name at this Address: Jamie Smith		Contact Name at this Address: Jamie Smith	
Email: jlsmith@cityoffoley.org		Email: jlsmith@cityoffoley.org	
Physical Street Address (No Po Box): 407 East Laurel Avenue		Legal Address: PO Box 1750	
City, State, Zip: Foley, AL, 36535		City, State, Zip: Foley, AL, 36536	
DBA Phone: (251) 943-1545	Fax: (251) 952-4014	Corp Phone: (251) 943-1545	Fax: (251) 952-4014
Company Stock Ticker (If Publicly Traded):		Website Address (Required for Internet Merchants): https://cityoffoley.org/sanitation/	
Customer Service Phone (Required for Moto and Internet Merchants Only): (251) 943-1545		Federal Tax ID #: 6 3 6 0 0 1 2 6 3	Years in Business (Current Owner): 106
Merchant Profile			
Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Professional Assoc <input type="checkbox"/> Other <input type="checkbox"/> Tax Exempt Org (510c)			SIC/MCC Code: 9 3 9 9
Description of Products or Services Sold: Sanitation, misc - civic center payments, local liquor licenses, sales tax, etc			

Account Deposit and Funds Information									
Transaction Funding Bank Routing/Transit Number: 0 6 2 2 0 6 5 1 2					Transaction - Bank Account Number: 1000631281			Transaction Type of Account: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	
Billing Bank Routing/Transit Number (If different from Funding Account): 					Billing Bank - Bank Account Number: 			Billing Type of Account: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	

Requested Activity Transaction Processing Information									
Annual Check Sales 120,000					Average Transaction 300				
Please provide accurate estimates of your expected ACH and/or Check21 activity. This information will be used during underwriting as a guide to establish your transaction limits. Requested amounts below are subject to approval by OpenEdge Risk Management									
Highest Single Monthly Amount \$ 10,000					Highest Single Transaction Amount \$ 5,000				

OpenEdge Check Services Requested - Please select all that apply. Estimate usage % for each selection (Must total 100%)									
Paper Check Conversion - Remote Deposit Capture: Please Note: Hardware is required for these Transaction Types									
<input type="checkbox"/>	I receive paper checks through the mail or in a lockbox.						ARC	0%	
<input type="checkbox"/>	I receive paper checks at the time of the sale. I later process and convert them to an electronic payment.						BOC	0%	
<input type="checkbox"/>	I receive paper checks at the time of the sale and I process and convert them at the same time to an electronic payment.						POP	0%	
Electronic Check (a paper check is not presented)									
<input type="checkbox"/>	I have written pre-arranged agreements with my consumers to debit or credit their personal bank account for the goods or service I sell.						PPD	0%	
<input type="checkbox"/>	I take transactions on a phone call from my consumers.						TEL	0%	
<input checked="" type="checkbox"/>	Payments are submitted to me via a website, shopping cart or similar method.						WEB	100%	
<input type="checkbox"/>	We have pre-arranged written agreements with our Corporate Partner authorizing us to debit or credit their bank accounts.						CCD	0%	

Additional Services Available									
<input type="checkbox"/>	Check Verification Services				<input type="checkbox"/>	Check 21 (AIR)			

EMAIL NOTIFICATION

Please send email notifications of returned items

Primary Email Address jlsmith@cityoffoley.orgSecondary Email Address jlsmith@cityoffoley.org

AUTO RE-PRESENTMENT

Would you like OpenEdge to automatically re-present ACH and/or Check21 NFS returns?

Yes No If yes, please complete Re-Presentment Options below.

ACH RE-PRESENTMENT OPTIONS

Face Amount - Maximum Number of Re-Presentments (select one): 2 1

Timing of Re-Presentment: of Days (0=immediately)

CHECK21 RE-PRESENTMENT OPTIONS

Face Amount - Maximum Number of Re-Presentments (select one): 1

Timing of Re-Presentment: of Days (0=immediately)

Corporate Officers or Principal (A Principal is an Owner; or, If a Public Corporation Senior Officers Starting With CFO, CEO or President.)

Name of Principal:	Title of Principal:	% Owned:	Phone Number:	Residential Address, City, State, Zip:
Jamie Smith	Revenue Officer	0%	(251) 943-1545	407 East Laurel Avenue, Foley, AL, 36535
		%		, , ,
		%		, , ,

Personal Guarantee

As a primary inducement to OpenEdge Payments LLC ("OpenEdge") to enter into this Agreement, the persons indicated and signing below (the "Guarantor(s)") do jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to OpenEdge pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands that OpenEdge may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by OpenEdge or Merchant. This guarantee will not be discharged or affected by the death of Guarantor(s), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of OpenEdge. Guarantor(s) understand that the inducement to OpenEdge to enter into this Agreement is consideration for the guarantee, and that this guarantee remains in full force and affect even if the Guarantor(s) receive no additional benefit from the guarantee. This guarantee shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variations of terms of this Agreement. Guarantor(s) agree to promptly provide to OpenEdge or its agents any information requested by any of them from time to time concerning its financial conditions(s), business relationships, business history, and employment information. Guarantor(s) have read, understand, and agree to be bound by the terms and conditions set forth in this Merchant Application as well as the OpenEdge Check Services Agreement, and certifies that all information provided in these applications is true and correct and complete. Guarantor(s) authorize OpenEdge or any credit reporting agency employed by OpenEdge or any agent of OpenEdge, to make whatever inquiries OpenEdge deems appropriate to investigate, verify or research references, statements or data obtained for the purpose of this Merchant Application.

Print Name:	Social Security #:	Date of Birth:
Street Address:	City/State/Zip:	Years at Address:
, ,		
Home Phone:	Email Address:	
Signature:	Date:	
Print Name:	Social Security #:	Date of Birth:
Street Address:	City/State/Zip:	Years at Address:
, ,		
Home Phone:	Email Address:	
Signature:	Date:	

Signature

The undersigned is duly authorized to sign on behalf of the Merchant and to bind the Merchant to the terms and conditions set forth in this Merchant Application and the OpenEdge Check Services Agreement ("Agreement"), which terms and conditions are acknowledged and agreed to by the Merchant, and certifies that all information provided in this Merchant Application is true, correct and complete. The undersigned signing on behalf of the Merchant is a legal resident of the United States of America, is at least 18 years of age, and authorizes OpenEdge or any credit reporting agency employed by OpenEdge or any agent of OpenEdge, to make whatever inquiries OpenEdge deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this Merchant Application. The undersigned, on behalf of the Merchant, authorizes OpenEdge to initiate automated deposit or debit (ACH) entries to the Merchant's bank account as indicated on this Merchant Application or subsequently provided by Merchant.

Print Name of Authorized Signer:	Title of Authorized Signer:
Signature:	Date:



Integrated

OPENEDGE CHECK SERVICES AGREEMENT

The OpenEdge Check Services Agreement (the “**Agreement**”) consists of these Check Services Terms and Conditions and the Merchant Application and is made by and among Merchant (or “**you**”) and OpenEdge Payments LLC (“**OpenEdge**”). The Agreement governs Merchant’s use of OpenEdge Payments LLC’s (“**OpenEdge**”) OpenEdge Check services. By submitting a Merchant Application, in the form acceptable to OpenEdge, or by using or attempting to use the OpenEdge check services, Merchant acknowledges its receipt of this Agreement and agrees to be bound by these terms.

1. OPENEDGE RESPONSIBILITIES

1.1. The Services. OpenEdge will make available to Merchant electronic check processing and related services (“**Services**”) which shall include the following:

(a) **Intelligent Routing Services.** OpenEdge will utilize its Intelligent Routing Services in processing Merchant’s check-present transactions. Intelligent routing services will first attempt to route the transaction using the ACH Services, and if that fails, OpenEdge will then attempt to route the transaction using the Check21 Services providing that an image of the check is presented for processing.

(b) **ACH Services.** OpenEdge will process and settle the automated clearing house("ACH") transactions presented by Merchant as the originator, including, but not limited to: (i) processing checks via ACH (categorized as POP, ARC, BOC, TEL, WEB, PPD, and CCD under the NACHA Rules; (iv) customer activation and approval, (v) security and recovery; (vi) customer and other “back office” services; (vii) check return services; and (viii) transmission of files to the Originating Depository Financial Institution (“**ODFI**”). OpenEdge will provide Merchant with software which provides the capability to process recurring transactions for WEB, PPD and CCD transaction types.

(c) **Check21 Services.** OpenEdge will deliver to Merchant software which provides the capability to interface with hardware that scans checks and associated paper-remittances to: (i) create an electronic image of the front and back of the check and any associated paper remittance items; (ii) provide the ability to validate the CAR/LAR payment amount and other information on the items; (iii) create an account receivable interface output file; (iv) create a transmission file that will ultimately be converted into ACH and/or x9 file format or its successors, and transmit such file to the ODFI; (v) create image archives of all items scanned; (vi) provide intranet and internet-based archive access; and (vii) provide a web-based gateway portal that allows for other capabilities such as electronic checks.

(d) **Check Verification Services.** OpenEdge will match checks provided by Merchant’s customers to the customer’s checking account and compare the account to a database of accounts that have a history of returns.

1.2. Software and Support. OpenEdge will provide Merchant software used in connection with the Services to enable remote capture, deposits and check verification through the ACH and other methods (“**Software**”). OpenEdge will make available to Merchant an adequate amount of initial materials and supplies necessary for Merchant to complete initial customer transactions. OpenEdge will train Merchant on the procedures and rules applicable to the Services and the operation of appropriate terminals. OpenEdge will receive and respond to Merchant’s inquiries regarding the Services via email and telephone. Merchant may obtain support by using the appropriate number(s) and email addresses found at <https://www.globalpaymentsintegrated.com/en-us/company/contact>.

1.3. Merchant Data. OpenEdge may provide its third party service providers with information about Merchant (“**Merchant Data**”) in order to enable Merchant to access the Services. Merchant authorizes OpenEdge to provide the data derived pursuant to Merchant’s use of the Services and Merchant Data to OpenEdge’s third party service providers.

1.4. Optional Additional Service. From time to time, OpenEdge may make available to Merchant additional services and any such services accepted by Merchant shall be described in addenda to this Agreement reflecting the details of and any fees associated with such service.

1.5. Disclaimer of Warranties. OpenEdge does not make, and hereby expressly disclaims, any express or implied warranties or conditions with respect to the Software, its intellectual property or the Services, or any authorization provided under this Agreement, including but not limited to the implied warranties of merchantability, suitability, satisfactory quality, non-infringement, or fitness for a particular purpose. Further, OpenEdge does not warrant: (a) the Software will be error-free or uninterrupted; (b) the Software will be compatible with any hardware except the hardware supplied by or otherwise approved by OpenEdge; or (c) the Software will integrate with any other computer system. All Services and deliverables described in this Agreement are on an “as is” basis.

2. MERCHANT RESPONSIBILITIES

2.1. Hardware and Software. Merchant will provide and maintain all computer hardware, peripherals, device drivers, third party operating systems, and other third party software which may be required to operate the Software and/or receive the Services. Merchant will ensure the compatibility of Merchant’s computer hardware, peripherals, device drivers, third party operating systems, and other third party software with the Software. Merchant will provide a safe and suitable location for installation, use, and operation of the Software in accordance with any instructions that may be reasonably specified by OpenEdge. Merchant shall be responsible for (a) ensuring that only authorized users of such systems or portals access the same; (b) keeping all logins, user names, and passwords confidential; and (c) promptly notifying OpenEdge of any unauthorized access of such logins, user names, or passwords; and (d) all actions taken by anyone using such access, logins, user names, or passwords, even if such actions were not authorized by Merchant.

2.2. Cooperation. Merchant will cooperate with OpenEdge by providing access to Merchant’s information, resources and personnel as reasonably requested. OpenEdge shall have the right from time to time, upon reasonable prior notice, to review Merchant’s use of the Software to verify compliance with this Agreement. Merchant shall allow OpenEdge to perform a site survey at Merchant’s location within 5 days of its request. Merchant will provide OpenEdge financial statements and other financial information as requested from time to time. If requested, Merchant will furnish to OpenEdge upon request a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

2.3. Software Restrictions. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with OpenEdge. Merchant will not use the Software except as specifically provided in this Agreement. Merchant shall not copy, decompile, disassemble or otherwise reverse-engineer or reproduce, or knowingly allow others, including without limitation, customers, resellers or others, to perform such reverse-engineering of the Software.

2.4. Representations and Warranties. Merchant represents and warrants to OpenEdge that: (a) Merchant is (i) a legal resident of the United States of America of at least 18 years of age, or (ii) a corporation or a limited liability company authorized, validly existing and in good standing under the laws of the United States and the State set forth on the Merchant Application; (b) Merchant has full authority and corporate power to enter into this Agreement and to perform the obligations of this Agreement; (c) Merchant’s performance of the terms of this Agreement will not violate any applicable law or regulation or any agreement to which Merchant may now or hereafter be bound; (d) this Agreement represents a valid obligation of Merchant and is fully enforceable against Merchant; (e) Merchant will comply with the terms of this Agreement and will ensure that its third party service providers do the same, and (f) all transactions submitted by Merchant to OpenEdge will be for bona fide transactions with Merchant’s customers.

2.5. Compliance With Laws. Merchant agrees to comply with all policies and procedures provided by OpenEdge, all payment network rules and regulations and all applicable state, federal and local laws, rules and regulations, further described below in section 4.2. Merchant will assist OpenEdge in complying with all laws which are applicable to any transaction or this Agreement. Merchant understands that Merchant may not rely on, and OpenEdge will not be liable for, any advice OpenEdge may provide to Merchant about compliance with various laws.

2.6. Returns and Chargebacks. Merchant is fully liable for all transactions returned for whatever reason. Merchant will pay on demand the value of all ACH rejections (“Returns”) all transactions which a bank account holder claims it did not authorize (“Chargebacks”). Merchant authorizes OpenEdge to recoup from incoming transactions and to debit Merchant’s Bank Settlement Account and the Reserve Account for the amount of all Returns and Chargebacks.

2.7. Merchant Application. Merchant represents and warrants to OpenEdge that all information in the Merchant Application is correct and complete. Merchant must notify OpenEdge in writing of any changes to the information in the Merchant Application, including but not limited to,

new locations change to the type of goods or services provided and changes to the manner in which sales are conducted (i.e. by telephone, mail, or in person). OpenEdge must receive the notice within 10 business days of the change. Merchant is liable to OpenEdge for all losses and expenses OpenEdge incurs arising out of Merchant's failure to report changes to OpenEdge. OpenEdge may immediately terminate this Agreement upon notification by Merchant of a change to the information in the Merchant Application.

2.8. Exclusivity. During the term of this Agreement, Merchant will not enter into an agreement with any other entity that provides services similar to the Services without OpenEdge's written consent.

2.9. Authorizations. Merchant authorizes OpenEdge to audit Merchant's records, systems, processes or procedures to confirm compliance with this Agreement. Merchant will obtain, and will submit a copy of, an audit of Merchant's business when requested by OpenEdge. Merchant authorizes OpenEdge to make any credit inquiries OpenEdge considers necessary to review the acceptance and continuation of this Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to OpenEdge.

3. FEES, SETTLEMENT, SECURITY INTEREST AND RECOUPMENT

3.1. Authorization. Merchant authorizes OpenEdge to present ACH debits and credits to Merchant's settlement account ("Settlement Account") in the amount of fees and other payments due by Merchant under the Agreement. This ACH authorization will remain in effect after termination of this Agreement, and until such time as OpenEdge has received written notice terminating this authorization and all Merchant's obligations to OpenEdge have been paid in full. Merchant is solely liable for all fees and charges assessed by its financial institution, including all overdraft and non-sufficient fund charges, and Merchant irrevocably releases OpenEdge and holds OpenEdge harmless from the same fees and charges, regardless of cause. OpenEdge is not liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to, a clearing house or Merchant's financial institution.

3.2. Fees. Merchant will pay OpenEdge fees ("Fees") for the Services and equipment in accordance with the rates set forth in the Merchant Application. OpenEdge reserves the right to adjust the Fees at any time. Merchant's continued use of the applicable Services beyond the effective date of the price change will be deemed Merchant's consent to such price change. Merchant will pay all taxes and other charges imposed by any governmental authority.

3.3. Other Amounts Owed. Merchant will immediately pay to OpenEdge any amount incurred by OpenEdge attributable to this Agreement including but not limited to Returns, Chargebacks, non-sufficient fund charges, and ACH debits that overdraw the Settlement Account, Reserve Account or are otherwise dishonored. OpenEdge will debit via ACH the Settlement Account, Reserve Account, or any other account Merchant has at any financial institution, for any amount Merchant owes OpenEdge under this Agreement or under any other contract, note, or guaranty, now existing or later entered into between Merchant and OpenEdge, whether Merchant's obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. If such debit does not fully reimburse OpenEdge for the amount owed, Merchant will immediately pay OpenEdge such amount.

3.4. Charges and Settlement Procedures, Settlement Account.

(a) **Settlement.** Merchant will designate and maintain a Settlement Account with a balance of available funds sufficient to cover Merchant's obligations under this Agreement. OpenEdge will debit the Fees from the Settlement Account once each business day for the previous business day's activity, once each month for the previous month's activity, or will set off the Fees from the funds due to Merchant attributable to transactions presented to OpenEdge, in its discretion.

(b) **Authorization.** Merchant irrevocably authorizes OpenEdge to credit and debit the amounts Merchant owes OpenEdge for Fees and the amounts OpenEdge owes Merchant from and to the Settlement Account. This authority will remain in full force and effect for at least 2 years after termination of this Agreement whether or not Merchant has notified OpenEdge of a change to the Settlement Account. Merchant must obtain its prior written consent to change the Settlement Account. If Merchant changes the Settlement Account without OpenEdge's consent, OpenEdge may immediately terminate this Agreement and may take other action OpenEdge deems necessary, in its sole discretion. Merchant

also authorizes the financial institution(s) at which Merchant maintains its Settlement Account to act in accordance with instructions from OpenEdge regarding funds in the Settlement Account, including transferring funds in the Settlement Account to OpenEdge. Merchant will indemnify and hold harmless the financial institution(s) at which Merchant maintains Merchant's Settlement Account.

(c) **Withholding.** Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. OpenEdge will deposit into the Settlement Account funds processed by Merchant and will provide Merchant provisional credit for such funds (less recoupment of any credits, adjustments, fines, Returns, Chargebacks, Fees or other costs). Final credit for those provisional funds will be granted in OpenEdge's sole discretion. OpenEdge, and not Merchant, owns all provisional funds, and title to such funds does not pass to Merchant until all amounts owed to OpenEdge are paid or recouped and OpenEdge deems such provisional credit final, in its reasonable discretion. Merchant understands and agrees that OpenEdge may withhold deposit and payment to Merchant without notice if OpenEdge determines, in its sole discretion, that a transaction or batch of transactions poses a risk of loss. OpenEdge is not responsible for any losses Merchant may incur, including but not limited to non-sufficient fund fees, due to such delayed deposit of funds. Merchant acknowledges that Merchant's obligation to OpenEdge for all amounts owed under this Agreement arises out of the same transactions as its obligation to deposit funds into the Settlement Account.

(d) **Deposits.** OpenEdge will initiate a deposit to the Settlement Account upon receipt of funds. The deposit will be initiated the next business day following the funding hold period. The funding hold is determined during the underwriting process. Business days shall include any Monday through Friday, excluding holidays observed by the Federal Reserve. Merchant authorizes OpenEdge to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry.

(e) **Reports and Asserted Errors.** A statement detailing the Fees will be made available to Merchant at www.myxcheckonline.com. Merchant must promptly examine all statements, and immediately notify OpenEdge in writing of any errors. Merchant's written notice must include: (a) Merchant's name and account number; (b) the dollar amount of the asserted error; (c) a description of the asserted error; and (d) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by OpenEdge within 30 calendar days after the applicable statement containing the asserted error was made available to Merchant. Merchant waives all rights to make any claim against OpenEdge or any other party for any loss or expense relating to any asserted error after such 30-day period.

3.5. Security Interests, Reserve Account, Recoupment and Set-Off.

(a) **Security Interests.** This Agreement is a security agreement under the Uniform Commercial Code. Merchant grants to OpenEdge a security interest in and lien upon: (a) all funds at any time in the Settlement Account, regardless of the source of such funds; (b) all funds at any time in the Reserve Account, regardless of the source of such funds; and (c) any and all amounts which may be due to Merchant under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "**Secured Assets**"). Merchant agrees to provide other collateral or security to OpenEdge to secure Merchant's obligations under this Agreement upon its request. These security interests and liens will secure all of Merchant's obligations under this Agreement and any other agreements now existing or later entered into between Merchant and OpenEdge. This security interest may be exercised by OpenEdge without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

(b) **Perfection.** Upon request by OpenEdge, Merchant will execute one or more financing statements, security agreements, account control agreements, or other documents to evidence this security interest. Merchant represents and warrants that no other person or entity has a security interest in the Secured Assets. Merchant will obtain OpenEdge's written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and OpenEdge is not required to file a motion for relief from a bankruptcy automatic stay in order for OpenEdge to foreclose on, collect or sell any of the collateral (including any Settlement Account and/or Reserve Account). Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by OpenEdge. Merchant authorizes OpenEdge and appoints OpenEdge as Merchant's attorney in fact to sign Merchant's name to any financing statement used for the perfection of any security interest or lien granted hereunder.

(c) **Reserve Account.** OpenEdge may establish and maintain a non-interest bearing deposit account on Merchant's behalf ("**Reserve Account**") at a financial institution OpenEdge chooses, initially or at any time in the future, and may fund the Reserve Account with sums

sufficient to satisfy Merchant's current and future obligations as determined by OpenEdge. Merchant authorizes OpenEdge to debit the Settlement Account or any other account Merchant has at any financial institution in order to establish or maintain funds in the Reserve Account. OpenEdge may deposit into the OpenEdge may, without notice Reserve Account funds OpenEdge would otherwise be obligated to pay Merchant for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section if OpenEdge determines such action is reasonably necessary to protect its interests. Merchant, apply deposits in the Reserve Account against any outstanding amounts Merchant owes under this Agreement or any other agreement between Merchant and OpenEdge. Also, OpenEdge may exercise its rights under this Agreement against the Reserve Account to collect any amounts due to OpenEdge including, without limitation, rights of set-off and recoupment.

(d) **Funds in the Reserve Account.** Merchant agrees that Merchant will not use any funds in the Reserve Account for any purpose, including but not limited to paying Chargebacks, Fees, fines or other amounts Merchant owes OpenEdge under this Agreement. OpenEdge controls all funds in the Reserve Account, and OpenEdge (and not Merchant) shall have sole control of the Reserve Account. Merchant shall have no ownership interest or property rights in the Reserve Account or the funds therein, will not receive any interest on funds being held in a Reserve Account, and Merchant has no right to access the funds being held in the Reserve Account or otherwise transfer, pledge or use these funds for its own purposes.

(e) **Risk-Exposing Activity.** In addition to any of the other rights granted to OpenEdge hereunder, in the event that OpenEdge, at any time during the term of this Agreement, determines in its commercially reasonable discretion that it may be prudent or necessary to do so as a result of any unusual, suspicious, or risk-exposing activity (including, without limitation, money laundering, invalid sales transactions, counterfeit transactions, altered or duplicate transactions, activity related to a suspected data compromise event or other breach of security standards, or excessive chargebacks), then OpenEdge may, without notice, hold funds otherwise payable to Merchant for such period as OpenEdge, in its commercially reasonable discretion, deems necessary, to provide security against liability for such activity, plus other costs or liabilities reasonably anticipated to be due to OpenEdge related to the same. To the extent (i) the investigation conducted by OpenEdge with respect to the unusual, suspicious, or risk-exposing activity determines that such activity is reasonably likely to result in amounts being due from Merchant to OpenEdge, and (ii) OpenEdge requires the establishment, replenishment, or increase of a Reserve Account in connection therewith, then the funds held may be used to fund such Reserve Account.

(f) **Recoupment and Set Off.** OpenEdge has the right of recoupment and set-off. This means that OpenEdge may offset or recoup any outstanding/uncollected amounts owed by Merchant from: (a) any amounts OpenEdge would otherwise be obligated to deposit into the Settlement Account or Reserve Account; (b) any other amounts OpenEdge may owe Merchant under this Agreement or any other agreement; and (c) any funds in the Settlement Account or Reserve Account. Merchant acknowledges that in the event of a bankruptcy proceeding, in order for Merchant to provide adequate protection under Bankruptcy Code § 362 and/or 365 to OpenEdge, Merchant must create or maintain the Reserve Account as required by OpenEdge, and OpenEdge must have the right to offset and recoup against the Reserve Account for any and all obligations which Merchant may owe to OpenEdge, without regard to whether the obligations relate to transactions initiated or created before or after the filing of the bankruptcy petition.

(g) **Remedies Cumulative.** The rights and remedies conferred upon OpenEdge in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of ours under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

4. THIRD PARTY REQUIREMENTS.

4.1. NACHA Requirements. Merchant authorizes OpenEdge, as a third party sender (as defined in the National Automated Clearing House Association rules ("NACHA Rules")), to act as Merchant's agent in processing ACH entries or check image deposits for Merchant, and acknowledges its understanding that OpenEdge will establish one or more clearing accounts with, and submit ACH entries or deposits on Merchant's behalf, to, an ODFI selected by OpenEdge.

4.2. Originator Rules. Merchant: (a) assumes the responsibilities of and makes the warranties of an Originator (as defined in the NACHA Rules) and agrees to reimburse OpenEdge and the ODFI for returns, reversals, adjustments, reclamations and warranty claims and responsibilities related to Merchant's ACH entries or check image deposits; (b) agrees to comply with the NACHA Rules, including but not limited to the requirements of Article Three (Obligations of Originators), Article Five (Obligations of Third-Party Senders) and if international ACH entries are

initiated by Merchant, the NACHA Rules applicable to IAT ACH entries, all of which are available at www.nacha.org; (c) agrees to comply with all applicable state and federal laws, rules and regulations, including but not limited to sanction laws administered by the Office of Foreign Assets Control (OFAC), rules and orders administered by the Financial Crimes Enforcement Network (FinCEN) the Electronic Funds Transfer Act(EFTA), the Unlawful Internet Gambling Enforcement Act, the Check Clearing for the 21st Century Act, and Federal Reserve Board Regulation E (the foregoing along with the NACHA Rules are, collectively, the “**Applicable Laws and Rules**”); and (d) acknowledges that ACH entries may not be initiated or deposits made that violate the Applicable Laws and Rules.

4.3. Entries and Authorizations. Merchant represents and warrants as to each ACH entry that Merchant has obtained the necessary authorizations under the Applicable Laws and Rules and that Merchant shall not initiate any funds transfer after the authorization for the same has been revoked (or the agreement between Merchant and OpenEdge has been terminated). With respect to each entry OpenEdge sends to the ODFI on Merchant’s behalf, Merchant represents and warrants to OpenEdge and the ODFI that such entry is in compliance with the Applicable Laws and Rules, that no such entry violates United States law, and that such entry complies with the laws and payment system rules of the receiving country. Merchant acknowledges that OpenEdge, the ODFI and other parties must comply with the Applicable Laws and Rules. The performance by each of these parties, including the ODFI, of obligations with respect to such entries may cause delays in processing, settlement and/or availability of the entries. Merchant waives and releases OpenEdge and the ODFI from any liability or obligation, including, but not limited to, funds availability obligations, caused by or arising out of any such delay associated with such entries.

4.4. Review. Merchant understands that OpenEdge and the ODFI have the right to: (a) review, monitor and audit Merchant’s ACH transactions, processes and procedures for compliance with this Agreement and the Applicable Laws and Rules; (b) limit the amount of ACH entries processed for Merchant; and (c) suspend, discontinue or terminate processing based on their assessment of the risk posed to OpenEdge, the ODFI and/or the breach or termination of Merchant’s agreements with OpenEdge.

4.5. Accuracy of Information and Errors. Merchant is responsible for the accuracy and adequacy of the data Merchant or OpenEdge provides to the ODFI. Merchant authorizes the ODFI to act on any instruction which has been or reasonably appears to have been sent by OpenEdge or Merchant, including but not limited to funds transfer instructions. The ODFI is not obliged to take any further steps to confirm or authenticate such instructions and will act on them without getting further confirmation. Merchant understands that if Merchant or OpenEdge provides the ODFI with incorrect information or if there is any error in the instruction Merchant accepts full responsibility for losses resulting from any of the errors, duplication, ambiguities or fraud in the information that was provided to the ODFI. Neither OpenEdge nor the ODFI is responsible to third parties (including, but not limited to, third party service providers and the third parties to whom wire or ACH debit or credits are transmitted. Merchant shall defend, indemnify and hold the ODFI harmless from, the actions or omissions of OpenEdge, and Merchant shall defend, indemnify and hold both OpenEdge and the ODFI harmless from any claim made against OpenEdge or the ODFI arising out of Merchant’s use of the Services, breach of this Agreement, or breach of the Applicable Laws and Rules. **IN NO EVENT WILL OPENEDGE OR THE ODFI BE LIABLE OR RESPONSIBLE FOR, AND MERCHANT BEARS ALL RISK ASSOCIATED WITH, FOREIGN EXCHANGE CONVERSION AND ANY GAINS AND LOSSES RESULTING FROM THE CONVERSION OF CURRENCIES IN CONNECTION WITH ANY ENTRY.**

4.6. Survival of Section 4. This section 4 shall survive the termination of the agreement between OpenEdge and the ODFI. Notwithstanding anything to the contrary elsewhere in the Agreement, the ODFI shall be considered an intended beneficiary of this section 4 and is entitled to enforce its terms. This section 4 is agreed to in consideration of the ODFI’s agreement to serve as the ODFI. Merchant waives notice of the ODFI’s acceptance of this section 4.

5. CONFIDENTIAL INFORMATION

5.1. Information. For purposes of this Agreement “**Confidential Information**” means information belonging or relating to OpenEdge’s business, including without limitation, the Software, its technology, the method of processing transactions, computer programs, software, message formats, procedures, forms, related materials, this Agreement, client lists, client information and pricing information. Merchant acknowledges that the Confidential Information has been developed through the expenditure of a significant amount of effort and resources. Merchant will not use for Merchant’s own purposes, will not disclose to any third party, and will retain in strictest confidence all Confidential Information. Merchant will

safeguard the Confidential Information by using the same degree of care and discretion that Merchant uses to protect Merchant's own confidential information.

5.2. Remedy. Merchant agrees that the Confidential Information constitutes trade secrets and that disclosures to others may result in loss or irreparable damage. Thus, if Merchant breaches this section 5, OpenEdge will be entitled to injunctive relief in addition to any other rights to which OpenEdge may be entitled, without the necessity of proof of actual damages.

6. TERM AND TERMINATION

6.1. Term. This Agreement will have an initial term of 1 year. After the initial term of this Agreement, this Agreement will be automatically extended for successive 1 year periods on the same terms, unless Merchant gives OpenEdge written notice of termination at least 60 days prior to the expiration of the then-current term.

6.2. Termination. The parties will have the following rights:

(a) Termination by OpenEdge. OpenEdge may terminate this Agreement for any reason without prior notice at any time, which termination shall be effective immediately.

(b) Termination by Merchant. Merchant has no right to terminate this Agreement except as provided in this subsection. If OpenEdge fails to perform its obligations under this Agreement, and Merchant desires to terminate or suspend performance of this Agreement, then Merchant must give written notice to OpenEdge stating such intent, identifying the nonperformance, and giving OpenEdge the opportunity to remedy such nonperformance for a period of 60 days following the date notice is given. Upon expiration of such 60-day cure period, if the performance has not been remedied, Merchant may terminate or suspend performance of this Agreement.

6.3. Early Termination. If Merchant terminates this Agreement before the end of the initial term or any renewal term in violation of this Agreement, Merchant will immediately pay OpenEdge, as a deconversion cost, an early termination fee equal to \$99.00. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Other remedies OpenEdge may have under this Agreement still apply.

6.4 Effect of Termination. All of Merchant's obligations regarding transactions OpenEdge processes under this Agreement will survive termination. Merchant must maintain in the Settlement Account and Reserve Account enough funds to cover all Chargebacks, deposit charges, obligations, refunds and fees incurred by Merchant for at least 2 years after termination of this Agreement. Merchant authorizes OpenEdge to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Settlement Account or Reserve Account is not adequate, Merchant will pay OpenEdge the amount Merchant owes OpenEdge upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. After the expiration of such 2-year period Merchant must provide OpenEdge with written notification indicating Merchant desires a release of any funds remaining in the Reserve Account in order to receive such funds.

7. INDEMNIFICATION AND LIMITATION OF LIABILITY.

7.1. Indemnification. Merchant will hold harmless and indemnify OpenEdge, its employees and agents against: (a) all claims by third parties arising out of this Agreement; (b) all attorneys' fees, collection costs, and other costs and expenses paid or incurred by OpenEdge in the enforcement of this Agreement, including but not limited to those resulting from any breach by Merchant of this Agreement and those related to any bankruptcy proceeding; (c) any action OpenEdge takes against the Settlement Account, Reserve Account, or any other account, pursuant to this Agreement; (d) any failure by Merchant or Merchant's employees, agents, or affiliates to comply with the terms of this Agreement; and (e) any damage due to equipment or software not purchased or leased from OpenEdge. This indemnification shall survive termination of this Agreement. Merchant is responsible and liable for the acts and omissions of Merchant's employees, agents and representatives (whether or not acting within the scope of their duties).

7.2. Limitation of Liability. To the maximum extent not prohibited by law, any liability of OpenEdge under this Agreement, whether to Merchant or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (a) the amount of Fees paid by Merchant to OpenEdge during the month in which the transaction out of which the liability arose occurred; and (b) assessments, Chargebacks, and offsets against such Fees which arose during such month. In the event more than one month is involved, the aggregate amount of its liability shall not exceed the lowest amount determined in accordance with the foregoing calculation for any one month involved. Neither OpenEdge, nor any of its agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages, even if advised of the possibility of such damages.

8. GENERAL

8.1. Assignment. Merchant may not assign this Agreement or the rights under this Agreement without OpenEdge's prior written consent and any purported assignment without such consent shall be void. This Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties. OpenEdge may use third parties to deliver the Services to Merchant. OpenEdge may assign this Agreement to any third party upon giving notice to Merchant.

8.2. Governing Law and Jurisdiction. This Agreement shall be exclusively governed by and construed according to the laws of the State of Delaware. The parties irrevocably submit to the exclusive jurisdiction of any state court in State of Georgia (and any federal court having jurisdiction in Fulton County, Georgia), in any action, suit or proceeding brought under this Agreement and waive, to the fullest extent it may do so, the defense of *forum non conveniens*.

8.3. Waiver of Trial by Jury. The parties irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement

8.4. Relationship of the Parties. Merchant designates OpenEdge as its agent to receive payments for transactions processed pursuant to this Agreement. OpenEdge shall not be considered a partner or fiduciary to Merchant, and nothing in this Agreement or the rendition of services related to this Agreement shall be deemed to create a joint venture, partnership, or fiduciary relationship between or among the parties. Rather, the relationship among the parties to this Agreement is an arm's length commercial relationship.

8.5. Entire Agreement. The terms of the Merchant Application, are incorporated into the Agreement by reference. The terms of the Merchant Application and this Agreement set forth the entire understanding between OpenEdge and Merchant relating to its subject matter, and all other understandings, written or oral, are superseded.

8.6. No Waiver of Rights. No failure or delay by OpenEdge in exercising any power, right or remedy under this Agreement shall operate as a waiver. All waivers by OpenEdge must be in writing and signed by OpenEdge.

8.7. Voidness. If for any reason any court of competent jurisdiction finds any provision of this Agreement to be void or voidable, OpenEdge and Merchant agree that the court may reform such provision(s) to render the provision(s) enforceable ensuring that the restrictions and prohibitions contained in this Agreement shall be effective to the fullest extent allowed under applicable law.

8.8. Construction of Terms. The captions used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Section 1.3, sections 2.2 through 2.8, section 3, section 4, section 5, sections 6.3 and 6.4, section 7, and section 8 of this Agreement shall survive its termination.

8.9. Copies. A facsimile of the Merchant Application or this Agreement bearing a party's signature or a printed copy of the original, signed document scanned in .pdf or .tiff format shall have the same legal force and effect as an original of such signature and shall be treated as an original document for evidentiary purposes.

8.10. Force Majeure. The parties shall be released from liability under this Agreement for failure to perform any of the obligations where such failure to perform occurs by reason of any force majeure event, including, without limitation, act of God, fire, flood, storm, earthquake, tidal wave, communication failure, sabotage, war, military or terrorist operation, national emergency, mechanical or electronic breakdown, civil commotion, or the order requisition, request or recommendation of any government agency or acting governmental authority or either party's compliance therewith, or governmental regulation or priority or any other cause beyond either party's reasonable control whether similar or dissimilar to such causes.

8.11. Notice. Any notice required to be provided to Merchant by this Agreement will be effective when OpenEdge sends it to the email address Merchant provided in the Merchant Application, to the physical address Merchant provided in the Merchant Application, or the most recent address OpenEdge has in its records, by registered or certified mail or a nationally recognized overnight courier, at its option. Any notice required to be provided to OpenEdge by this Agreement will be effective when sent by registered or certified mail or a nationally recognized overnight courier to the following address: OpenEdge Payments LLC 2675 West 600 North Lindon, Utah 84042 Attention: General Counsel.

8.12. Amendments to this Agreement and Merchant Application. OpenEdge shall have the right to modify or amend this Agreement, including, without limitation, the right to modify, amend, or supplement applicable fees, charges, and/or discounts. Modifications and amendments related to changes to the NACHA Rules, changes to the fees charged by third parties, or in response to changes in the Applicable Laws and Rules (collectively, a "**Third Party Change**") may be made effective immediately, with or without notice. Modifications or amendments unrelated to a Third Party Change shall be effective upon the date specified in a notice to the Merchant (the "**Change Notice**"), provided that the date shall not be fewer than 5 business days after the date of such Change Notice. Following the effective date of the Agreement, in the event of any modification or amendment not related to a Third Party Change, Merchant shall have the right to terminate this Agreement, without liability for premature termination pursuant to section 6.3, by providing written notice thereof to OpenEdge; provided that such notice must be given within 5 business days following the date of the Change Notice. Other than the amendments set forth above, this Agreement may be amended only in writing signed by OpenEdge and Merchant.

EXHIBIT B

Fees

Summary of Fees				
Check Not Present (WEB, TEL, PPD, CCD)		Discount Fee	Per Item Fee	
<i>Monthly Volume</i>				
Tier 1	\$.01 - 5,000	0.00%		\$ 1.25
Tier 2	\$ 5,001 - 20,000	0.00%		\$ 1.25
Tier 3	\$ 20,001 - 50,000	0.00%		\$ 1.25
Tier 4	> \$50,001	0.00%		\$ 1.25
<i>Miscellaneous Fees</i>				
<i>Per Account</i>				
Account on File Fee				\$ 0.00
Monthly Minimum Fee				\$ 10.00
Application Fee				\$ 0.00
<i>ACH Return Transaction Fees</i>				
<i>Per Item Fee</i>				
Returns (Administrative)		each		\$ 6.00
Unauthorized Return Transaction Fee (Chargeback)		each		\$ 25.00
Verification		each		\$ 0.10

Initial: _____
