

BANK OF AMERICA, N.A.

MERCHANT APPLICATION AND AGREEMENT

Welcome to Bank of America, N.A. (“Bank”). Please carefully complete the enclosed Application and read the attached Card Processing Agreement, Debit Card Agreement, and Equipment Agreement, as applicable to you. Execute the original copy and return it to Bank. **Keep a Copy of the entire Application and the Agreements for your records.** Your Application is subject to Bank’s underwriting review process. Bank’s acceptance of this Application will be made in a manner authorized in the attached Agreements.

Thank you for choosing Bank of America. If you have any questions, please contact Wordstock at 1 (781) 646-7700.

INSTRUCTIONS FOR COMPLETING THE APPLICATION

ALL INFORMATION INDICATED BELOW MUST BE COMPLETED BEFORE SUBMITTING THE APPLICATION.

If you decide to change any of your existing information in the future, please contact Bank for the required documentation.

APPLICATION TYPE

NEW MERCHANT— Indicate if you are a new Merchant of Bank.
ADDITIONAL LOCATION— If you decide to submit additional locations in the future, complete a new Application and return the form to Bank. If you are initially implementing up to two additional locations, please complete an Application for each location. If more than two (2) locations are initially being implemented, please complete the Multiple Locations Addendum.

MERCHANT BUSINESS INFORMATION

Include all information pertaining to the legal entity executing the Application and Agreements. Also list all "d/b/a" names used in the business.

BUSINESS OWNERSHIP AND MANAGEMENT

Include all information pertaining to the actual location where the transactions will occur, if different from the above address. If the Corporate location is the same as the business location, you will only need to indicate "Same as above". You may also use this space to provide information for a second distinct retail location operated by the exact same business entity.

OWNER/OFFICER INFORMATION— Provide all the requested Owner/Officer information. If the Merchant operates as a proprietorship, partnership or closely held corporation, then information about the Owner(s) must be supplied.

MERCHANT BANK ACCOUNT INFORMATION— Indicate the financial institution in which Bank is to settle your funds. **An imprinted, encoded, voided check (not a temporary check) or Verification of Account Letter from your deposit bank must be attached to the Application to initiate distribution of your funds.**

BUSINESS CERTIFICATION

A. Card Presented %— Indicate your anticipated percentage of cards presented, and break down Card Presented percentage into categories of Card Swiped (percentage of cards that will be swiped at the point of sale) and Hand Entered (percentage of transactions that will be hand entered).
B. Card Not Present %— Indicate your anticipated percentage of cards not presented, and break down Card Not Present percentage into categories of MO/TO% (Catalog (percentage of Mail-order or Telephone Order transactions), Internet% (percentage of Internet transactions), and Other/No Card % (percentage of credit cards not presented other than Mail Order, Telephone Order, or Internet transactions).

CURRENT PROCESSOR— Provide your current Processor name, the reason for the change, your current/previous Merchant # and submit 3-6 months current processing statements
Seasonal Business— Indicate whether your business is seasonal and the inactive months, if applicable.

AVERAGE TICKET— Provide your average ticket over a 12-month period. If the Average Ticket varies by location, make sure to note the individual location's Average Ticket on the additional locations list.

ANNUAL BANKCARD VOLUME— Indicate your anticipated Annual Bankcard Volume in dollars

TRADE REFERENCE— Provide a Trade Reference for Bank to verify credit information

CERTIFICATION OF MERCHANT'S BUSINESS

YEARS/MONTHS IN BUSINESS— Indicate the number of years in which the business has been operating

YEARS UNDER CURRENT OWNERSHIP— Indicate the number of years in which the business has been under the current ownership

BUSINESS TYPE— Indicate the type of goods sold

FORM OF OWNERSHIP— Indicate the ownership status

BUSINESS ENVIRONMENT— Indicate the business environment of the business location

EQUIPMENT AND PROCESSING SPECIFICATIONS (COMPLETE WITH SALES REPRESENTATIVE)

SHIPPING INFORMATION— Provide site address for equipment delivery if different than the address in Merchant Business Information section.

MERCHANT TYPE— Indicate processing type using options provided*

(*PURCHASING CARD - Upon receipt of your request for Purchasing Card, Bank will provide you with an additional form to be completed and returned to Bank. The requested information may qualify suppliers for federal and state government agency programs.)

TELEPHONE DIALING ACCESS -- Indicate whether type of service requested is tone or rotary (dial), or if using a non-tone or rotary solution, then select "IP"

MERCHANT TRAINING— Indicate whether you wish to receive Bank training.

EQUIPMENT SPECIFICATIONS AND PROVIDER— Please complete the information for the terminals, equipment and miscellaneous items.

ADDITIONAL INFORMATION

TO BE USED BY YOUR BANK SALES REPRESENTATIVE

MERCHANT SERVICES AND RELATED FEE

CARD TYPE— Indicate which card types you will be submitting through Bank.

Check Services: If you elect to receive Check Services, please indicate which service you are requesting. Please be advised that some Check Services require execution of a separate agreement with the provider.

Debit: If you elect to receive on-line Debit services, you will receive access to the Debit Networks that Bank makes available. On-line Debit requires a terminal, printer, and pin pad for processing.

ACCOUNT NUMBER:

American Express: If you currently have an account with American Express, please list your 10-digit account number in the space provided. Otherwise, this section should be completed by your Bank Account Manager.

Diner's Club: To be completed by Bank.

Discover Card: If you currently have an account with Discover, please list your 16-digit account number in the space provided. Otherwise, this section should be completed by your Bank Account Manager.

JCB: If you will be submitting JCB through Bank, you must provide your JCB Merchant Number for each location. Otherwise, this section should be completed by your Bank Account Manager/

Private Label: If you will be submitting Private Label through Bank, please contact your Bank Sales Representative for detailed instructions.

REPORTING— Indicate if reporting is to be daily or monthly.

PERIODIC SERVICE FEES AND SERVICE OPTIONS

A check for all applicable Membership, Application and Reprogramming fees must be included with these Agreements. Do not sign Application unless all "blocks" are completed the applicable fee or an "X" signifying that no such fee applies to your account.

MERCHANT SIGNATURE — *The Application must be fully executed and initialed where indicated. Please retain a copy of the entire Application (including the attached Agreements) for your files.*

TO RETURN YOUR APPLICATION - Please return the following items to Bank at the address indicated below. If you have questions, please contact Bank Target Marketing.

Bank's copy of the Application

If applicable, a check made payable to "BA Merchant Services, LLC" for purchased equipment and all applicable fees

If applicable, a check made payable to the leasing company for rented or leased equipment

A voided check for the bank account in which Bank is to deposit your funds

Current 3 months processing statements from your existing processor

**MAIL TO: WORDSTOCK
32 MILL STREET
ARLINGTON, MA 02476
ATTN: MARY ANN HOWARD**

Imprinted, Encoded Voided check or Verification of Account Letter from Bank must be attached. If not provided account cannot be set up.

4. BUSINESS CERTIFICATION

A. <u> 9 </u> <u> 0 </u> % Card Presented (Break out percentages below) <u> </u> % Card Swiped <u> </u> % Hand Entered	B. <u> 1 </u> <u> 0 </u> % Card Not Present (Break out percentages below) <u> </u> % MO/TO (Catalog) <u> </u> % Internet <u> </u> % Other / No Card	A. % Card Presented + B. % Card Not Present MUST EQUAL <u> 1 </u> <u> 0 </u> <u> 0 </u> % TOTAL
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Average Ticket – Primary Location \$ _____	Occasional Higher Tickets To: \$ _____	Total Annual Volume – All Locations \$ _____	Total Annual Transactions – All Locations _____
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Does merchant currently accept credit cards? YES NO

Select PCI Merchant Level 1 2 3 4

Does the business sell, issue, cash, exchange or redeem any of the following payment types in an amount greater than \$1,000 for any one customer on a single day, in one or more transactions? YES NO

If yes, check all that apply:

<input type="checkbox"/> Checks	<input type="checkbox"/> Cashier's Checks	<input type="checkbox"/> Wire Transfer Money Orders
<input type="checkbox"/> Traveler's Checks	<input type="checkbox"/> Foreign Currency	<input type="checkbox"/> Open Network Stored Value Cards

Does the business conduct money transmissions or bill payment processing for its customers (even if the Business performs this activity as an agent of another company)? YES NO

MERCHANT TYPE

TYPE: 1 1= Retail 2= Restaurant 3= Internet/Wireless 4= MO/TO 5= Supermarket 6= Car Rental 7= Small Ticket/QSR 8= Other: _____

If MOTO, provide Customer Service phone number: _____

TRADE REFERENCE

TRADE REFERENCE	CONTACT NAME/PHONE #
STREET ADDRESS	CITY
STATE	ACCOUNT NUMBER

CERTIFICATION OF MERCHANT'S BUSINESS

YEARS IN BUSINESS	MONTHS IN BUSINESS	YEARS UNDER CURRENT OWNERSHIP	BUSINESS TYPE
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FORM OF OWNERSHIP (Mandatory) <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Single Member LLC <input type="checkbox"/> Non US <input type="checkbox"/> Assoc. / Estates / Trusts <input type="checkbox"/> Multi Member LLC Company <input type="checkbox"/> Corporation (private) <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation (public) <input type="checkbox"/> Tax Exempt Organization <input type="checkbox"/> Joint Venture <input type="checkbox"/> Medical or Legal Corp. <input type="checkbox"/> Government <input type="checkbox"/> Partnership <input type="checkbox"/> Civic Association <input type="checkbox"/> Other	BUSINESS ENVIRONMENT (Check All That Apply) <input type="checkbox"/> Storefront <input type="checkbox"/> Kiosk <input type="checkbox"/> Seminar <input type="checkbox"/> Office <input type="checkbox"/> In Home <input type="checkbox"/> MO/TO <input type="checkbox"/> Door to Door <input type="checkbox"/> Trade Show/ Flea Market <input type="checkbox"/> Internet <input type="checkbox"/> Job/Service Site <input type="checkbox"/> Business to Business <input type="checkbox"/> Other _____
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If you accept and process Internet transactions, 1. provide the name of your Internet service provider _____

2. identify Gateway: Bank Other Gateway: _____

Is payment software and/or a gateway being used by the Merchant to process transactions? YES NO

If "Yes," fill out the Payment Application Compliance Information Form (required) and submit with Application.

Please describe your business so it would be very clear to one who has never seen or heard of you. Include a description of the products/services you provide.

Are you openly and actively conducting business with customers? YES NO If "No", please explain: _____

Do you maintain a quantity and type of inventory consistent with the described business, products/services? YES NO If "No", please explain: _____

Are your facilities and equipment consistent with the described business, products/services? YES NO If "No", please explain: _____

5. ADDITIONAL INFORMATION

6. EQUIPMENT AND PROCESSING SPECIFICATIONS

SHIPPING INFORMATION Provide site address for equipment delivery if different from Merchant Business Information in Section Two..

NO P. O. BOXES – MUST BE PHYSICAL ADDRESS

COMPANY _____ ATTN: _____ PHONE: _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

TERMINAL TELEPHONE LINE & MERCHANT TRAINING INFORMATION

TYPE OF SERVICE <input type="checkbox"/> Tone <input type="checkbox"/> <input type="checkbox"/> Rotary <input type="checkbox"/> IP	CALL WAITING ON TERMINAL LINE? <input type="checkbox"/> Yes <input type="checkbox"/> No	ROLL OVER LINES? <input type="checkbox"/> Yes <input type="checkbox"/> No	# / #S TO GET OUTSIDE LINE _____	MERCHANT'S TIME ZONE <input type="checkbox"/> East <input type="checkbox"/> Central <input type="checkbox"/> Mountain <input type="checkbox"/> Pacific
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BANK TO TRAIN MERCHANT? Yes No BANK TO REPROGRAM TERMINAL? Yes No

EQUIPMENT SPECIFICATIONS AND PROVIDER: Please provide complete specifications for merchant set up and for all equipment, regardless of provider.

LINE ITEM	PROVIDER CODE	QUANTITY	PAYMENT METHOD	UNIT PRICE	TOTAL PRICE	EQUIPMENT MANUFACTURER AND MODEL	PROCESSOR CODE	APPLICATION CODE	TRACK (Tranz 330 Only)	AUTO CLOSE
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TERMINALS ONLY

T1									<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> Yes
T2									<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> Yes

PRINTERS, PIN PADS, READERS, ETC.

3										
4										

MISCELLANEOUS ITEMS FROM BANK: Stackers, Imprinters, Cables, Etc.

5	BANK									
6	BANK									

All Other Fees: _____ (type)	\$	
Paid By : <input type="checkbox"/> ACH <input type="checkbox"/> Debit <input type="checkbox"/> Check	TOTAL	\$

PROVIDER CODES: BANK= BANK Platform MER= Merchant
 PAYMENT METHOD CODES: L= Lease (requires a separate check made payable to Leasing Provider) P= Purchase O= Other
 PROCESSOR CODES: BANK= BANK Platform VSN= Visanet MAP= Mapp UY= Buypass
 APPLICATION CODES: RET= Retail RST= Restaurant HOT= Hotel QSR= Quick Service Restaurant

OWNED EQUIPMENT	TERMINAL	PRINTER	OTHER
MODEL NUMBER			
SERIAL NUMBER			
CHIP VERSION			
<input type="checkbox"/> INTEGRATOR	INTEGRATOR NAME: _____ CONTACT NAME: _____	Equipment Type _____ Version _____	Telephone () _____ Fax () _____

THIS SECTION IS MANDATORY IF REQUESTING DEBIT CARD SERVICE WILL MERCHANT OFFER CASH BACK? <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ _____	SOFTWARE NAME	SOFTWARE PUBLISHER	THIS SECTION IS MANDATORY FOR PC TERMINAL SOFTWARE PLATFORM <input type="checkbox"/> WIN <input type="checkbox"/> DOS <input type="checkbox"/> MAC SOFTWARE VERSION _____
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MERCHANT INITIALS X _____

7. MERCHANT SERVICES AND RELATED FEES

The following pricing is based on the processing methodology of

AMERICAN EXPRESS INFORMATION	CHECK THE BOX FOR EACH REQUESTED SERVICE	Discount Rate (%)	Inquiry Fee	Split Dial	Is Service currently established? If "Yes" provide account number.
AMERICAN EXPRESS INFORMATION IF MERCHANT <i>DOES NOT</i> HAVE AN EXISTING AMERICAN EXPRESS ACCOUNT NUMBER, THIS SECTION <i>MUST BE COMPLETED</i> TO ACCEPT AMEX. Estimated annual AMEX Volume \$25,000.00 Estimated average AMEX Ticket \$50.00 <input type="checkbox"/> FLAT FEE (\$5.00 Monthly) OR <input type="checkbox"/> GROSS PAY (Monthly or Daily) Franchise Cap # _____	<input type="checkbox"/> <input type="checkbox"/> Visa Credit ¹	SEE RATE CHART BELOW	N/A	N/A	
	<input type="checkbox"/> <input type="checkbox"/> MasterCard Credit ¹				
	<input type="checkbox"/> <input type="checkbox"/> Visa Off-Line Debit ¹ (no PIN)	SEE RATE CHART BELOW	N/A	N/A	
	<input type="checkbox"/> <input type="checkbox"/> MasterCard Off-Line Debit ¹ (no PIN)				
	<input type="checkbox"/> <input type="checkbox"/> Diners/Carte Blanche ¹	%	\$		
	<input type="checkbox"/> <input type="checkbox"/> American Express ^{1,2}	%	\$	<input type="checkbox"/> YES	
	<input type="checkbox"/> <input type="checkbox"/> Discover ^{1,2}	%	\$		
	<input type="checkbox"/> <input type="checkbox"/> J C B ^{1,2}	%	\$	<input type="checkbox"/> YES	
	<input type="checkbox"/> <input type="checkbox"/> Check Service (identify – separate agreement required)				
	<input type="checkbox"/> <input type="checkbox"/> Online Debit (PIN)	Bank Processing Fee	N/A	\$	N/A
	Debit Network Fee	N/A	\$		
Purchasing Card <input type="checkbox"/> <input type="checkbox"/> Yes <input type="checkbox"/> <input type="checkbox"/> No To receive the optimal processing fee available, Purchasing Card transactions require additional data elements to be entered at the point of sale.	<input type="checkbox"/> <input type="checkbox"/> EBT	% \$			FCS# _____
	<input type="checkbox"/> <input type="checkbox"/> Food Stamps <input type="checkbox"/> Both				
	<input type="checkbox"/> <input type="checkbox"/> Cash Benefits				
<input type="checkbox"/> <input type="checkbox"/> Other Service		\$		<input type="checkbox"/> YES	
<input type="checkbox"/> <input type="checkbox"/> Other Service		\$		<input type="checkbox"/> YES	

¹ Possible Fee Adjustments are explained in Section 6 of the Card Processing Agreement.

² This fee is in addition to any fee, charge, or expense assessed by the applicable Association.

DISCOUNT ASSESSED Daily Monthly Additional surcharge for monthly discount %

RATE CHART FOR MASTERCARD/VISA*

Transaction Qualification Level	Processing Fees
Best Rate Transactions (includes off-line debit and credit transactions)	%
Check Card Transactions (includes off-line debit transactions)	%
Other Transactions (includes off-line debit and credit transactions)	%
Business Rate Transactions (credit transactions only)	%

8. PERIODIC SERVICE FEES AND SERVICE OPTIONS *

Voice Authorization Fee (per attempt)	Monthly Minimum	Paper Statement Fee (per statement) Yes <input type="checkbox"/> No <input type="checkbox"/> Fee: _____	Electronic Statement Fee (per month) (for fax and web) Yes <input type="checkbox"/> No <input type="checkbox"/> Fee: _____	Monthly Debit Access Fee
Small Business Advantage** N/A	Monthly Wireless Fee	Bankcard Chargeback Fee (per c/b)	Annual Fee	Training Fee
Internet Setup Fee	Internet Monthly Fee	Pin Pad Encryption Fee	Reprogramming Fee (per terminal)	Check Service Setup Fee
Application Fee N/A	Excessive Chargeback Fee (per c/b)	Retrieval Fee (per retrieval)	Other	Other
Other N/A	Other N/A	Other N/A	Other N/A	Other N/A

* MasterCard allows Issuers to collect a handling fee for specific authorization chargebacks: 07—Warning Bulletin File, 08—Requested/Required Authorization Not Obtained or Declined and 47—Fraudulent Transaction/Exceeds Floor Limit/Not Authorized. This fee is in addition to any other fees assessed by Bank or the Associations and will be processed separately from the applicable chargeback. Issuers may collect this fee on each submission of the chargeback for certain Merchant Industry types. Industry types excluded from the handling fees must be processed with the appropriate codes to avoid assessment of the handling fees.

**The Small Business Advantage Service is provided by a third party. Bank has no liability for the performance of said service and you agree to indemnify Bank against any loss, liability, damage or expense that arises out of your use of the Small Business Advantage Service.

Brick and mortar Merchants will be assessed any applicable monthly recurring charges, including but not limited to the Monthly Minimum charge stated in this Part 8 of the Application, once their terminal is capable of accepting charges; Internet Merchants will be assessed recurring monthly charges, including but not limited to the Monthly Minimum charge stated in Part 8 of the Application, upon approval of their Application regardless of the operational status of their website.

If this Agreement is terminated for any reason prior to the expiration of the then current term, you will be subject to a **\$250.00 Early Deconversion Fee** as set forth in the Agreement. You agree to pay us an Account Administration Fee of \$25.00, or our then current rate, for administrative services, including but not limited to changing your Settlement Account information or processing returned ACH items. Other non-recurring charges or additional special fees may be charged to your account as permitted within the attached Agreements.

REPORTING/CHARGEBACKS/RETRIEVALS/BILLING ALL INFORMATION WILL BE MAILED TO THE ADDRESS IN THE MERCHANT BUSINESS INFORMATION SECTION UNLESS OTHERWISE NOTED

REPORTING (please select):	<input type="checkbox"/> <input type="checkbox"/> Weekly or <input type="checkbox"/> <input type="checkbox"/> Monthly		
RETRIEVALS (please select):	<input type="checkbox"/> <input type="checkbox"/> Mailed or <input type="checkbox"/> <input type="checkbox"/> Faxed	<input type="checkbox"/> <input type="checkbox"/> Corporate or <input type="checkbox"/> <input type="checkbox"/> Each Location	Attn: _____ FAX: ()
	<input type="checkbox"/> <input type="checkbox"/> Mailed or <input type="checkbox"/> <input type="checkbox"/> Faxed	<input type="checkbox"/> <input type="checkbox"/> Corporate or <input type="checkbox"/> <input type="checkbox"/> Each Location	Attn: _____ FAX: ()

Send information to this address: Address: _____ City: _____ State: _____ ZIP: _____

MERCHANT INITIALS X _____

9. GENERAL PROVISIONS

The initial term of the Agreements is thirty-six (36) months.

The completed Application, the Card Processing Agreement, the Equipment Agreement (if applicable), and the Debit Card Agreement (if applicable) (collectively the "Agreements"), and the Manuals/Instructions constitute the entire agreement between the parties with respect to the subject matter, supersede any prior agreements or understandings, and except as provided within the Agreements may be amended only by written agreement signed by all parties. By signing below or by submitting transaction data, you affirm your understanding and acceptance of the terms and conditions of the Agreements, which are all incorporated herein by reference as if set forth verbatim at this point, and that you have received a complete copy of the Agreements. You acknowledge that: (a) no handwritten changes have been made to the printed text of the Agreements and (b) the parties may produce and rely on a copy or electronically stored image of the Agreements for all legal purposes as provided in the Agreements. Further, you expressly warrant that the information provided in the Application is true, accurate and complete, and that we may rely upon the same, without further investigation, for all purposes.

YOU REPRESENT THAT YOU CHOSE FOR YOURSELF ANY SERVICES, EQUIPMENT OR THIRD PARTY SELECTED IN CONNECTION WITH THE AGREEMENTS AND YOUR DECISION WAS SOLELY BASED ON YOUR OWN CRITERIA AND ANALYSIS. YOU NOW AND FOREVER EXPRESSLY DISCLAIM ANY RELIANCE UPON PROMISES OR REPRESENTATIONS, UNLESS SPECIFICALLY INCORPORATED HEREIN IN WRITING, MADE BY US, SALES REPRESENTATIVES OR OTHERS RESPECTING THE FUNCTIONALITY, OPERABILITY, COMPATIBILITY, ETC. OF THE EQUIPMENT OR SERVICES. YOU AGREE TO HOLD BANK HARMLESS FOR ANY ACTIVITY ARISING OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT, ACTS AND/OR OMISSIONS OF ANY THIRD PARTY ENGAGED BY YOU, INCLUDING THE EMPLOYEES AND/OR AGENTS OF SAID THIRD PARTY.

APPLICABLE ONLY IF MERCHANT ACCEPTS AMERICAN EXPRESS: I authorize American Express Travel Related Services Company, Inc (American Express") to verify the information on this Application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

APPLICABLE ONLY IF MERCHANT ACCEPTS DISCOVER: By signing below, I represent that the information I have provided on this application is complete and accurate. I hereby request that Discover Card acceptance be added to my Merchant Application. I understand that the Terms and Conditions for Discover Card Acceptance (Terms and Conditions) will be sent to the business indicated above upon approval by Discover Financial Services, Inc. for this business entity to accept the Discover Card. By accepting the Discover Card for the purchase of goods and/or services, I agree to be bound by the Terms and Conditions.

1. Person(s) who sign below or 2. person(s) returning this Application in an electronic format further unconditionally authorizes Bank, or its agents to investigate the information and references contained herein, and to obtain additional information about the Merchant, as well as individual persons and companies named in this Application, from consumer and business credit bureaus and other lawful sources. The undersigned further authorizes Bank to provide to any governmental, administrative or regulatory entity, as well as any vendor or affiliate of Bank, including the applicable referrer, Independent Sales Organization, Member Service Provider, or Associated Sales Group, any information about Merchant, whether independently obtained by Bank or provided by Merchant, that Bank deems reasonably necessary or connected to the provision of services contemplated in the Agreement, upon request from such entity, vendor or affiliate or in compliance with applicable law, including the USA PATRIOT Act.. If Merchant is a franchisee or member of a corporate association, and Merchant is receiving preferential pricing and/or other benefits as a result of Merchant's relationship with that entity, then upon the request of that entity, Bank may provide that entity any information about Merchant that Bank deems reasonably necessary or connected to the provision of services contemplated in the Agreement.

IN WITNESS WHEREOF, the parties cause the Application and applicable Agreements to be executed by their duly authorized owners and/or officers:

("MERCHANT") (Business Name - print or type)
Signature: _____
Name (print or type): _____
Title (print or type): _____
Date: _____

BANK OF AMERICA, N.A. ("BANK")
Signature: _____
Name (print or type): _____
Title (print or type): _____
Date: _____

("MERCHANT") (Business Name - print or type)
Signature: _____
Name (print or type): _____
Title (print or type): _____
Date: _____

By signing in the space provided below, the undersigned agrees to be bound by the terms and conditions of Section 47 of the Merchant Agreement, Continuing Guaranty. The undersigned acknowledge that a copy of the Agreement, including the Continuing Guaranty, was provided with this Application. The undersigned acknowledges that Bank would not make the merchant services contemplated by the Merchant Agreement to the Merchant named above in the absence of this guaranty. The undersigned authorizes Bank to obtain information about the undersigned from any lawful source, including but not limited to, credit bureaus.

GUARANTOR
Signature: _____
Name (print or type): _____
Date: _____

GUARANTOR
Signature: _____
Name (print or type): _____
Date: _____



Please Affix Copy of Imprinted, Encoded, Voided Check

MERCHANT AGREEMENT

SECTION 1. INTRODUCTION.

This Merchant Agreement (“Agreement”) is by and between the Merchant identified on the attached Application and its accompanying documentation, including the Application (which documents are incorporated herein and constitute a part of this Agreement as if fully set forth herein) and Bank of America, N.A., with its principal office in Charlotte, North Carolina (“Bank”). In this Agreement, the words “you” and “your” mean the Merchant and the words “we,” “our,” “ours” and “us,” unless the context clearly requires otherwise, refer to Bank.

This Agreement provides for processing credit and debit card transactions for Cards accepted by you and certain other services provided by us, including processing your point of sale Electronic Benefit Transfer (“EBT”) transactions. In performing this Agreement, without diminishing our obligations to you, we may use the services of our subsidiaries and affiliates. The Application, Rules, and any attached schedules and addenda are part of this Agreement and, individually and collectively, all these documents are referred to as the “Agreement.”

SECTION 2. CERTAIN DEFINITIONS.

In this Agreement, the following definitions apply:

“**Authorization**” – shall mean the process whereby a Card transaction for a specified dollar amount is approved by the Card-issuing bank or its approved agents for processing.

“**Banking Day**” or “**Business Day**” – shall mean Monday through Friday, excluding bank holidays.

“**Card**” – shall mean a credit card, debit card, charge card, EBT card, or stored value card bearing the service Marks of Visa® or MasterCard® or any other Card Organization that is designated in the Application for acceptance by you and us.

“**Cardholder**” – shall mean the person to whom the Card has been issued and the authorized users and Recipients with respect to electronic benefits programs.

“**Cardholder Data**” – shall mean information provided by or about a Cardholder in the course of a transaction or obtained through the use of a Card, including but not limited to, Card account number, Cardholder name, Card validation value or code, PIN, Card expiration date, service code, Card magnetic stripe data and any other similar information, identifying the Cardholder or the related account.

“**Card Organization**” – shall mean a card organization such as Visa or MasterCard that promulgates operating rules and operates an interchange system for exchanging charges and Credit Records with you and us. In the case of debit cards and EBT cards, “Card Organization” includes Debit Networks and EBT Networks, respectively. The Card Organizations whose Rules are applicable to this Agreement are those designated on the Application.

“**Card Organization Rules**” is defined in Section 3.

“**Chargeback**” – shall mean the return or adjustment of any Card transaction, even without notice to you or without consent from you, in accordance with the Rules of the Card Organizations. A Chargeback is initiated by a Card Issuer or us for transmittal to and payment by you under the Rules.

“**Confidential Information**” is defined in Section 12.A.

“**Credit Record**” – shall mean the evidence reflecting a refund or price adjustment by you credited to a Cardholder’s Card account in connection with a prior purchase by such Cardholder through the use of a Card, regardless of whether such evidence is in paper, electronic or some other form, but the format must be in accordance with the Rules.

“**Debit Network(s)**” – shall mean the telecommunications and processing system of shared electronic funds transfer networks.

“**Deposit Account**” – shall mean the checking account or other acceptable account you maintain with us or at another depository financial institution acceptable to us, for the credit by us of amounts

resulting from settlement of Transaction Records, and any other amounts due to you under this Agreement and the debit by us of Credit Records, Chargebacks, processing fees and any fines, assessments, penalties, losses or fees assessed by Card Organizations and any amounts due to us under this Agreement. The Deposit Account is separate from the Reserve Account. On some schedules or other documents supplied by us, the term “settlement account” may be used to refer to the Deposit Account.

“**Electronic Benefits Transfer (EBT)**” – shall mean the electronic transfer of government benefit funds to individuals through the use of Card technology with POS terminals.

“**EBT Network(s)**” – shall mean the system of each shared electronic funds transfer network that is used by network members to assist government agencies in the distribution of benefits to eligible Recipients, whether such benefits are the delivery of services or the transfer of funds or information.

“**Excess Chargeback Fees**” is defined in Section 10.C.

“**Mark**” shall mean the trade or service mark of any party or any Card Organization.

“**MasterCard**” – shall mean MasterCard Worldwide.

“**Merchant Provider(s)**” – shall mean any party, not including Bank, engaged by you to provide services to you involving access to Cardholder Data or processing, storing or transmitting transaction data.

“**PIN**” – shall mean the Personal Identification Number used by a Cardholder to complete a Card transaction.

“**Preauthorized Order**” – shall mean any transaction permitted by this Agreement and the relevant Rules for which a Cardholder provides you advance permission to charge the Cardholder’s Card for recurring sales, delayed delivery orders or other preauthorized orders.

“**Recipient**” – shall mean the recipient of United States Department of Agriculture, Food and Nutrition Services (“FNS”) food stamp benefits (“FS Benefits”) and/or Temporary Assistance to Needed Families (“TANF”) benefits and/or other government delivered cash assistance benefits

“**Reserve Account**” – shall mean the account established by you at our request pursuant to Section 19 of this Agreement to provide for the funding of certain of your liabilities.

“**Rules**” – shall mean schedules, supplements and addenda, operating rules, manuals, instructions, releases, specifications, and other requirements supplied by us or otherwise made available to you and schedules, supplements and addenda, operating rules, manuals, instructions, releases, specifications, and other requirements of any Card Organization designated on the Application, and all written amendments thereto.

“**State**” – shall mean a State participating in an EBT Project.

“**System Enhancements**” – shall mean any modifications, developments, custom reports, special files, terminal applications or related service changes that are different from or in addition to the system, services and reports we agreed to provide to you as of the effective date of this Agreement.

“**Transaction Record**” – shall mean the evidence of a Cardholder’s purchase or rental of goods or services from you or other payment to you through the use of a Card, regardless of whether such evidence is in paper, electronic or other form, in a format in accordance with the Rules. Transaction Record shall include such evidence resulting from a Preauthorized Order.

“**Valid Card**” – shall mean a Card that is (a) properly issued according to the applicable specifications of a Card Organization, (b) current according to any beginning and expiration dates on the Card, (c) signed by the Cardholder and (d) not visibly altered.

“**Visa**” – shall mean Visa, U.S.A. Inc.

SECTION 3. COMPLIANCE WITH RULES.

We or the Card Organizations may supply or otherwise make available to you, including by providing links or directions to web sites accessible to you, various manuals and instructions regarding Card transaction processing, equipment or transmission requirements, data security, Chargebacks, and other operational and compliance matters, and may from time to time otherwise advise you of requirements imposed by the Rules, including, but not limited to, requirements regarding data security which will constitute part of the Rules and your obligations. You must comply with the rules, regulations, procedures, and other membership duties and obligations of the Card Organizations ("Card Organization Rules). You acknowledge receipt and review of the Rules provided by us. You will review the Rules from time to time for changes that are made available on web sites maintained by Visa and MasterCard at their Web sites: <http://www.usa.visa.com/merchants/> and <http://www.mastercardmerchant.com>, as those links may be changed from time to time, comply with them and with the Rules of other Card Organizations in publications or web sites that we make available to you.

SECTION 4. WARRANTIES AND REPRESENTATIONS.

A. Bank Warranties

▫ We represent and warrant as follows: we validly exist, we are in good standing and are free to enter into this Agreement, and we will perform our obligations pursuant to this Agreement in accordance with the laws applicable to us.

B. Merchant Warranties

▫ In addition to the representations and warranties contained in Section 7.A, you represent and warrant, and with the submission of each Transaction Record and Credit Record reaffirm your representation and warranty, as follows: you are validly existing, in good standing and free to enter into this Agreement; you shall perform your obligations pursuant to this Agreement in accordance with the laws applicable to you; each statement made on an application or other information provided to us in support of this Agreement is true and correct; there has been no material adverse change in your financial information; you do not do business under a trade name or style not previously disclosed to us; you have not changed the nature of your business, delivery methods or product lines in a way not previously disclosed to us; and you have not filed a bankruptcy petition not previously disclosed to us.

SECTION 5. MERCHANT ELECTION OF CARD TYPES AND SERVICES.

A. Card Election

▫ You have elected and we have approved you to accept those Card types and services designated on the Application. You may change your election of Card types from time to time upon at least sixty (60) days advance notice to us. You will not seek authorization for or submit a transaction of a new Card type until you receive written notice from us that you are approved to accept such Card type. Unless otherwise directed by us, you will not seek authorization for or submit a Card transaction of a Card type you desire to discontinue accepting later than the effective date of the notice to us.

B. Access to the Service

▫ We will make the services selected by you operational and available to you through a mutually agreed upon implementation plan. You agree to cooperate with us and provide us with all necessary information and assistance required for us to successfully make the services operational and available to you.

C. Transactions Using Other than an Elected Card Type

▫ In the event you submit a Transaction Record originated other than by use of one of the Card types elected and approved, we may process or reject the transaction in our sole discretion. Any such transaction is subject to the interchange and other fees applicable to like transactions, and you may be subject to fees, assessments or fines, including but not limited to, any reclassification in charges assessed by Card Organizations and any programming and support costs for processing transactions outside the Card types elected and approved.

SECTION 6. MERCHANT DUTY TO HONOR CARDS.

Honoring Cards Generally

▫ The term "honor Cards" in this Section 6 is used to describe your act of accepting a Card for transaction processing. You will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular Card type elected by you and approved by us, in favor of any competing Card brand also elected and approved.

Cards Issued by U.S. Card Issuers

▫ You will honor all Cards within the Card types elected and approved in accordance with this Agreement. For example, if you elect and are approved to accept Visa credit Cards, you will submit payments from Visa-branded credit Card Cardholders without regard to whether the credit Card is a Visa-branded rewards credit Card or Visa-branded business purpose credit Card.

Cards Issued by Non-US Card Issuers

▫ You will honor all Cards issued by non-U.S. Card Issuers that bear the brand of a Card Organization specified on the Application. For example, even if you elect to limit your acceptance of MasterCard Cards to MasterCard credit Cards, you will accept for processing a MasterCard debit Card issued by a non-U.S. Card issuer.

SECTION 7. GENERAL REQUIREMENTS FOR CARD TRANSACTIONS.

A. Merchant Representations and Warranties

▫ For every Card transaction, you represent and warrant:

the Card transaction is genuine and arises from a bona fide transaction permissible under the Rules by the Cardholder directly with you, and not a transaction by the Cardholder with another merchant, represents a valid obligation for the amount shown on the Transaction Record, Preauthorized Order, or Credit Record, and does not involve the use of a Card for any other purpose; the Transaction Record is free of any alteration not authorized by the Cardholder; you have the title to the Transaction Record, and there are no liens or other encumbrances on it; the Transaction Record is not subject to any dispute, set-off or counterclaim; the Transaction Record is not for a transaction that has been previously submitted for processing; each statement on the Transaction Record is true, and you have no knowledge of facts that would impair its validity or collectibility, and the Transaction Record is not one that you know or should have known to be either fraudulent or not authorized by the Cardholder; you have completed only one Card transaction per sale, or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments; the Cardholder is an authorized user of the Card; you have actually delivered the goods or performed the services or the Cardholder has incurred the obligation in accordance with the Transaction Record; the Transaction Record is not the refinancing of a debt of the Cardholder that has been deemed uncollectible, nor for refinancing of a debt of the Cardholder in contravention of the Rules of the Card Organizations, nor for the collection of a dishonored check; you have complied with the Rules and all applicable federal, state and local laws; the Card is a Valid Card; the Transaction Record is not for a transaction previously charged back to you; and

(xiv) you will inform the Cardholder that you are responsible for the Card transaction including its goods and services and for related customer service, dispute resolution, and performance of the terms and conditions of the transaction.

B. Transaction Records

▫ All Transaction Records and Credit Records must include:

the Cardholder's name and account number (truncated on the Cardholder receipt and elsewhere as required by the Rules);
your name and location;
the signature of the Cardholder as it appears on the appropriate space on the Card (except for PIN debit, telephone, mail or Preauthorized Orders) as required by the operating rules of the Card Organizations;
the date of the transaction;
a description of the merchandise sold or rented, services rendered or payment made;
the total cash price of the transaction (including taxes);
and
any other applicable elements required by the Rules.

C. Merchant to Obtain Authorization

. You agree to submit only Card transactions for which you have received an Authorization. Obtaining an Authorization will not ensure payment to you for a Transaction Record. The fact that an Authorization is obtained by you will not affect our right thereafter to revoke Authorization of a Card transaction or to charge back the transaction to you. In no event will the fact that an Authorization is obtained by you be deemed to be our representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

D. Accuracy of Data Submitted

. You will be responsible for the quality and accuracy of all data provided to us. We may, at our option, return to you for correction before processing any data submitted by you which is incorrect, illegible or otherwise not in proper form. If you do not provide data in accordance with our specified format and schedule, we will use reasonable efforts to reschedule and process the data as promptly as possible, but related expenses incurred by us will be charged to you.

E. No Special Conditions for Accepting Cards

. You will not impose any special conditions not required by the Rules as a condition for accepting a Card. You will not require Cardholder to provide any personal information, such as home or business phone number, home or business address or driver's license number, as a condition to honoring Cards, unless permitted by the Rules.

You will not increase the price of goods or services for a Card transaction or impose any fee for the service of accepting a Card except as allowed by the Rules. You may charge a convenience or service fee for a card transaction only as permitted by the Rules. If clearly disclosed to the Cardholder, you may offer a discount from the standard price for payments by cash.

F. Restricted or Prohibited Products and Services

. If you sell products or services that are restricted or prohibited by us, Card Organizations, or provisions of law due to the age of purchasers or otherwise such as alcoholic beverages, tobacco products, drugs, adult-content material or adult web sites, services or entertainment, gaming transactions, weapons or any other restricted products or services, you must comply with the Rules and all local, state and federal laws governing, restricting or prohibiting sale of those products or services through Card transactions. You must also implement age or other verification procedures applicable to the sale of such products or services.

G. EBT Transactions. If elected by you on the Application, you wish to purchase from us and we wish to sell to you certain services necessary for the authorization, processing and settlement of point of sale EBT transactions submitted to the EBT Networks and which transactions are initiated through you in connection with the authorization, providing and/or issuance of United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and/or Temporary Assistance to Needed Families ("TANF") benefits and/or other government delivered cash assistance benefits ("Cash Benefits" with FS Benefits, "Benefits") to benefit recipients in the EBT Project areas ("Recipients") supported by us through the applicable gateway through the use of a State-issued Benefit Security Card ("EBT Card") issued by a state participating in the EBT Project and benefit recipients of other states not within the Project area ("Other Recipients"). You agree to

provide and/or issue Benefits at each of your locations to the Recipient as hereinafter provided and in accordance with the procedures specified by us, the applicable EBT Network or State's EBT rules and regulations as amended from time to time and all applicable laws governing the issuance and/or provision of Benefits. You will provide each Recipient a receipt for each Benefit issuance transaction undertaken by you. You will be solely responsible for your issuance of Benefits other than in accordance with authorizations received from us.

You will provide us, upon execution of this Agreement, with a complete list of all of your locations in the continental United States where you desire to accept EBT Cards, with correct and complete mailing addresses and complete telephone numbers, in location number order. You will provide an updated list at our request or as changes occur. All locations from which you accept EBT Cards will be subject to this Agreement and will be included on the lists provided from time to time by you to us.

You will honor any valid EBT Card properly tendered for use when it is presented with a valid personal identification number (PIN). You will not engage in acceptance practices or procedures that discourage the use of any valid EBT Card. You will not complete any point-of-sale EBT Card transaction that has not been authorized. You will ensure that if Recipient enters a valid PIN, you will not require another form of identification from Recipient unless you have grounds to suspect fraud.

You will provide and/or issue Benefits to Recipients, in accordance with the policies and Rules in the amount authorized through your point-of-sale terminal, with PIN Pad and printer ("Equipment"), upon presentation by Recipient of an EBT Card and Recipient entry of a valid PIN. You agree that in the event of failure of the Equipment to print Benefit issuance information as approved and validated as a legitimate transaction, you will comply with our procedures and rules for authorization of Benefits in such instance.

If you have agreed to Cash Benefits, you agree to maintain adequate cash on hand to issue and/or provide confirmed Cash Benefits and will issue and/or provide Cash Benefits to Recipients in the same manner and to the same extent cash is provided to your other customers. You will not require, and will not in the advertising suggest, that any Recipient must purchase goods or services at your facilities as a condition to the issuance and/or provision of Cash Benefits to such Recipient, unless such condition applies to other customers as well. You will not designate special checkout lanes restricted to use by Recipients, provided that if you designate special checkout lanes for electronic debit, or credit cards and/or other payment methods such as checks or other than cash, Recipients may be directed to such lanes so long as other customers are directed there as well.

If you support the issuance and/or provision of FS Benefits through manual benefit issuance procedures during the period of time when normal benefit issuance is not possible, then the following limitations will apply to manual issuance and/or provision of FS Benefits by you.

you must receive an authorization number for the amount of the purchase via telephone at the time of sale.

(ii) specified Recipient, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft form.

(iii) the manual sales draft must be submitted to the applicable EBT Network for processing within ten (10) calendar days following the date of authorization or any such earlier period of time specified in any applicable rules or regulations.

(iv) except as otherwise specifically provided by any applicable rules or laws, you will not be reimbursed and will be solely responsible for all manual transactions when you fail to obtain an authorization number at the time of sale or otherwise fail to process the manual transactions in accordance with any applicable Rules or laws.

(v) except as otherwise specifically provided by any applicable Rules or laws, you may not "resubmit" a manual sales draft for payment if insufficient funds exist at the time that the manual sales draft is presented for processing and payment.

You agree to comply with all applicable laws and Rules in the performance of your obligations under this Agreement, including

without limitation, laws pertaining to delivery of goods and services to Benefit Recipients and Benefit Recipient confidentiality, and the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture pertaining to Food Stamp Program regulation.

You agree to comply with Quest Operating Rules issued by the National Automated Clearing House Association ("NACHA") as approved by FNS or the Federal Reserve Bank and such other Rules and regulations as may be applicable to the providing and/or issuance of Benefits by you hereunder. You agree to comply with all additional procedures specified by the State or EBT Networks, regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters.

You will not accept any EBT Card for any purpose other than the providing and/or issuance of Benefits, including without limitation as security for repayment of any Recipient obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the State for any Benefits unlawfully received by either Recipient or you.

You agree to separately maintain records of EBT transactions as may be reasonably requested or required by the State or its designated agent and to promptly make such records available for audit upon request to representatives of the State or its designated agent, or other authorized State or Federal government agency during normal business hours.

To assure compliance with this Agreement, the State, its designated agent, or other authorized State or Federal governmental agency, will at all times have the right to enter, during normal business hours, your premise to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

You agree to maintain and preserve all financial records or documentation arising hereunder during the course of this Agreement and for a period of three (3) years following Benefit provision and/or issuance, or for such additional period as applicable regulations or law may require. Records involving matters in litigation will be kept for a period of not less than five (5) years following the termination of the litigation.

If you provide or issue FS Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized retailer and you are not currently disqualified or withdrawn from redeeming food stamps or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the providing and/or issuance and distribution of Benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that you will not issue Benefits at any time during which you are not in compliance with the requirements of any applicable law.

Your authority to issue Benefits may be suspended or terminated by the State or its agents or contractors, in their sole discretion, effective upon delivery of a notice or suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of our ability to provide EBT processing services, or (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of Benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, your impermissible acceptance of an EBT card, or your disqualification or withdrawal of the FS program.

SECTION 8. PRESENTMENT (DEPOSIT) OF TRANSACTIONS.

A. We will provide you with a sufficient quantity of merchant account numbers, which will be used to identify your separate locations or divisions.

B. Merchant Locations

. Upon execution of this Agreement, you will provide us with a complete list of all your locations in the United States where you

desire to accept Cards, with correct and complete mailing addresses and complete telephone numbers, in location number order. You will provide an updated list as changes occur.

C. Exclusivity/ Territory

. Unless otherwise specifically agreed to in writing by the Parties, you shall submit to us all Card transactions that are effected by you for authorization, processing and settlement in the United States and its possessions. This Agreement does not cover your transactions at locations outside the United States and its possessions, or otherwise beyond our authority to process.

D. Delivery of Transaction Records

. You will electronically deliver, or when authorized in writing by us, physically deliver to us Transaction Records and Credit Records for all Card transactions to be processed and settled under this Agreement in accordance with the Application, but in no event later than the fifth calendar day or third Banking Day (whichever is earlier) after completing a Transaction Record, except to the extent a longer time is allowed by the Card Organization Rules, or a shorter time is required such as for transactions through Debit Networks. Fees applicable to Card transactions are set forth on the Application. Faster delivery times and different authorization and delivery methods may be required by the Card Organizations to qualify for lower rates.

Any transactions submitted on any day after the applicable cut-off time specified above shall be deemed submitted on the next day.

E. Submission of Charges to Other Processors

. Upon 90 days' advance written notice to us, you may designate another party that does not have an agreement with us, but that is and remains properly registered with an appropriate Card Organization that requires a direct delivery option, as your agent for the direct delivery of data-captured Transaction Records to that Card Organization for clearing and settlement. Our obligation to reimburse you for Transaction Records submitted through your agent is limited to the amount delivered by your agent in the transaction clearing and settlement process and provided to us through the Card Organization for your account, less processing fees and other amounts due us. You are responsible for any failure by your Agent to comply with the Card Organization Rules, including, without limitation, any violation that results in a Chargeback.

SECTION 9. SETTLEMENT OF TRANSACTION RECORDS.

A. Deposit Account and Its Operation

. You will designate and maintain a Deposit Account with us or a financial institution specified on the Application and acceptable to us for the purposes of settling transactions under this Agreement. If the Deposit Account is with us, in the absence of any other written agreement with us, the standard terms and conditions that apply to our deposit accounts of the same type will apply. As amounts become payable to you or to us under this Agreement, we may, unless otherwise agreed, make payments to or receive payments from you by crediting or debiting the Deposit Account without prior notice. If you do not maintain a Deposit Account with us, payments between you and us must be made in a manner satisfactory to us. If you do not maintain sufficient balances in the Deposit Account to cover amounts owing under this Agreement, you must immediately pay all such amounts directly to us, and if you do not do so, at our discretion we may cease processing additional Card transactions until the amounts due are paid.

We will initiate a transfer of settlement funds to you as set forth in Section 9.B below. Except as specifically provided in the Application, we have no responsibility for settlement of your transactions involving Cards other than those associated with the Card Organizations covered by this Agreement. We will not be liable for any delays in receipt of settlement funds or errors in credits or debits to the Deposit Account that are caused by entities other than us, including but not limited to, delays or errors of any Card Organization or any financial institution other than us that is used by you to receive settlement funds pursuant to this Agreement.

B. All settlements to you for Transaction Records will be based upon gross sales, minus credits, refunds, adjustments, applicable fees, Chargebacks, and any other amounts then due from you to us. All credits to your Deposit Account or other payments to

you are provisional and are subject to our final audit and confirmation, to Chargeback and similar rights accorded to Card issuers by the operating rules of the Card Organizations and to any other obligations owed by you to us.

Except as otherwise set forth in this Agreement, if we receive your sales records or other transaction records by the applicable cut off time established by us, we will initiate a transfer of applicable settlement funds received from the Card Organizations, less any monies owed us, through the ACH to your Settlement Account once we receive said funds from the Card Organizations; this will generally occur by 8:00 P.M. Eastern time on the following banking day after we process the applicable transactions.

C. This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the Bankruptcy Code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to the Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

SECTION 10. PAYMENT OF FEES, FINES, ASSESSMENTS, PENALTIES AND OTHER CHARGES; DUTY TO EXAMINE STATEMENTS OF ACCOUNTS.

A. Fees and Card Organization Charges

. You will pay to us all the fees and charges for the services provided hereunder calculated pursuant to and due at the times specified by us, which may include fees related to equipment and other services related to Card transaction processing. Fees will be charged for all authorizations, whether or not approved, all Transaction Records submitted for processing, all Credit Records and all Chargebacks determined to be valid under Card Organization procedures.

B. Card Organization Fines, Assessments and Penalties

. You will pay to us all assessments, fines, penalties, fees, Card issuer reimbursements and similar charges imposed by Card Organizations on us, directly related to your Card transactions or based on your actions or failure to act.

C. Chargeback Fees and Payments of Chargebacks

. In addition to the fees described above, you will pay the Excess Chargeback fees on the Application or imposed under any Card Organization Rules in addition to any related losses incurred by us. (Excess Chargeback fees are defined as the fees assessed when your total number of Chargebacks exceeds 0.5% of your total Visa or MasterCard transactions, or the percentage of all such Transaction Records specified by any other Card Organization in any one line of business in any specified time period.) You will pay the amount of every Chargeback submitted to you. Each fee related to a Chargeback and each Chargeback is immediately payable by you.

D. Payment of Fees and Other Charges

. We may debit the Deposit Account or withhold from amounts otherwise due to you from us all amounts due under this Section 10 or otherwise owed by you to us under this Agreement. In the event there is an insufficient balance in the Deposit Account, we may, without notice or demand, withdraw such amount owed from the Reserve Account, the Deposit Account or any other account you maintain with us. In the event there are insufficient funds in your Deposit Account, Reserve Account or other accounts with us available to be debited, you agree to pay the amount of any deficiency immediately to us upon demand.

E. Changes in Amount of Fees

. You acknowledge that the fees stated on the Application provided with this Agreement are based, in part, on fees set by Card Organizations and in effect at the time the parties enter into this Agreement. The fees set by the Card Organizations may change from time to time during the term of this Agreement. We will use reasonable efforts to give you at least fifteen (15) days' advance notice of any change in such fees, and we will give you at least 15 days advance notice of any increase in fees not based in part on fees set by the Card Organizations. You will be responsible for paying any increased fees as of the effective date of any notice, Wordstock Merchant App and Agreement (10-1-08)

except if you give us notice of termination of this Agreement and cease processing Card transactions within 30 days of the notice of a fee increase. Certain fees may also be increased if you are not in compliance with data security requirements as provided in Section 13.H.

F. Duty to Review Statements

. You must promptly and carefully review our statements provided or made available to you reflecting Card transaction activity and activity in the Deposit Account and Reserve Account.

G. Duty to Notify Bank of Adjustments

If you believe any adjustments are needed with respect to any debits or credits effected by us with respect to your Deposit Account for any amounts due to or due from you, or if you have any other questions or concerns regarding your Card transactions that are processed and settled by us or regarding any statement or report provided by us, you must notify us in writing within sixty (60) days after such debit or credit is effected, such transaction is processed and settled, or such report is provided. If you fail to notify us within such time frame, we will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by us. If you notify us after such time period, we may, in our discretion and at your cost, investigate the matter addressed in your notice, but we will not have any liability to effect any related adjustment absent any willful misconduct by us.

H. **Fees for EBT Transactions.** We will charge you a fee for each EBT Card transaction as set forth on the attached Application regardless of whether said transaction is approved, declined or determined invalid.

You acknowledge that the aforesaid fees set forth on the attached Application are based upon certain EBT Network, State, gateway and access fees currently in effect and upon certain sponsorship arrangements made by us with an EBT Network for your sponsorship needed to participate in the EBT project and to certain other States not within the EBT Project area.

You agree that should any State or U.S. government entity or any of a State's or U.S. government's designated agents charge a fee or assess any charges on or in connection with EBT Card transactions then we will have the right to adjust our fees to you to reflect the increase in such fees or charges.

You agree to pay for all gateway and access fees, EBT Network fees, setup, adjustment or chargeback fees which may be imposed by us, an EBT Network or a State participating in the EBT Project.

You agree to pay any taxes imposed on us as a result of the services furnished to you on the transactions under and subject to this Agreement during the term of this Agreement and such taxes will be added to the charges owed to us and will be deducted from the settlement monies owed to us in accordance with the Agreement terms or immediately paid by you to us upon receipt of issuance. Any taxes so imposed will be exclusive of the taxes based on our net income.

We will charge you the daily/monthly fees as set forth on Application for the services to be provided pursuant to this Agreement and such other fees as set forth thereon and such amounts will be payable as provided for in Section 10. Said fees may be collected hereunder in accordance with the terms and provisions of this Section, Section 17, and the Application.

I. **Fees for Supplies and Other Services.** Pursuant to Section 26, we may amend the fees and charges for services and supplies provided under this Agreement. You will pay us any extra or special charges imposed by third parties plus our reasonable handling charge for any supplies that we provide, and, if applicable, an overnight shipping charge. You will also pay us any extra or special charges imposed by third parties, plus our handling charge, if any transactions processed or initiated hereunder are charged back, reversed or rejected (including Chargeback fees and fines and ACH reject fees). We may charge you interest at our then current rate for any amounts that are not timely paid by you.

J. At the time we investigate possible fraud or suspicious account activity involving your actions, we will charge you an investigative fee of up to fifty dollars (\$50.00).

SECTION 11. RETENTION OF RECORDS; RETRIEVAL REQUESTS.

Unless prohibited by the Rules or any applicable state or federal law or regulation, you will retain legible images (on microfilm or otherwise) or legible copies of your Transaction Records, Cardholder consents for Preauthorized Orders and Credit Records for a period of at least eighteen (18) months from the date of the transaction or such other longer period as may be required by law or the Rules. Your obligation to retain records does not provide authority for you to retain Card magnetic stripe data.

You will submit to us a legible copy of a Transaction Record, Cardholder consent for a Preauthorized Order or Credit Record if any Card issuer requests such copy. Your deadline for providing to us a legible copy of the requested Transaction Record, Cardholder consent for a Preauthorized Order or Credit Record is ten (10) days after the date of the Card issuer's retrieval request, or as specified in the notice from us.

SECTION 12. CONFIDENTIALITY.

A. Agreement, Rules and Business Information

. You and we will treat this Agreement, the Rules and any information supplied or otherwise made accessible by the other party as confidential (the "Confidential Information") and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from an entity or person other than a party to this Agreement and its agents and representatives, which entity or person was not subject to a duty of confidentiality, (b) rightfully and independently known by you or us on a non-confidential basis prior to its disclosure by the other party or a Card Organization or (c) generally available to the public other than through any disclosure by or fault of either party or their respective agents or representatives.

B. Cardholder Data

. In addition to the information security requirements below, except pursuant to a court or governmental agency request, subpoena or order, neither you nor we will use, store, disclose, sell or disseminate any Cardholder Data obtained in connection with a Card transaction except in accordance with the Rules, as is necessary for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transactions, and except that we may use any Cardholder Data for purposes associated with our role as a Card issuer if such Cardholder Data is derived from a Card Transaction in which the Card used was issued by us. You will promptly advise the State or its designated agent of all requests made to you for information described above relating to EBT Card transactions. Further, in accordance with state and federal law, we may participate in sharing Cardholder Data among our affiliates, other financial institutions, regulatory authorities, law enforcement agencies and any other entities authorized by such law. In addition, we may participate in sharing Cardholder Data with any Card Organization or its designee at the request of the Card Organization. If you provide and/or issue EBT Benefits in more than one State pursuant to this Agreement, the laws of the State in which the Benefits were issued will apply to information arising out of that transaction.

SECTION 13. INFORMATION SECURITY.

A. Data Protection

. You must, and must ensure that Merchant Providers, have proper security measures in place for the protection of Cardholder Data, and comply with the Card Organizations' Payment Card Industry ("PCI") Data Security Standard, which may be reflected in the Visa Cardholder Information Security Program ("CISP") and the MasterCard Site Data Protection Program ("SDP"), in addition to all other Cardholder Data security rules and regulations set forth by the Card Organizations now or in the future. Additional information regarding the CISP and SDP programs is available at the Visa web site, www.visa.com/cisp the MasterCard web site, www.mastercard.com/us/sdp/ and at the Payment Card Industry web site: <http://www.PCIStandards.Org>, as those links may be updated by the Card Organizations. In addition, when available you must use only services, software, and equipment, including terminals, PIN pads, Card readers, or other Card processing equipment that has been certified as PCI compliant by the Card Organizations. You must have written agreements with your Wordstock Merchant App and Agreement (10-1-08)

Merchant Providers requiring such compliance. You are responsible for demonstrating your and Merchant Providers' compliance with the CISP, SDP and PCI programs, and providing us or our designee with reasonable access to your locations and ensuring Merchant Providers provide reasonable access to their locations to verify your and Merchant Providers' ability to prevent security violations.

B. Controls

. You must, and must ensure that all Merchant Providers, have, maintain, and use at all times proper controls as specified in the Rules for secure storage of, and limited access to, and must render unreadable prior to discarding, all records containing Cardholder Data, Card imprints and Cardholder signatures. You must not retain or store magnetic stripe or PIN data after a transaction has been authorized. If you store any electronically captured Cardholder signature, you may reproduce such signature only upon our request.

C. Merchant Providers

. Before each Merchant Provider provides services related to this Agreement to you, we must register the Merchant Provider with applicable Card Organizations. You must assure that you and your Merchant Providers: (i) comply with the registration process which can involve site inspections, background investigations, provision of financial statements, and any other information required by a Card Organization; (ii) comply with the periodic and other reporting required by a Card Organization; and (iii) comply with all applicable Rules, including without limitation, those requiring security of Cardholder Data. You may allow Merchant Providers access to Cardholder Data only for purposes authorized under and in conformance with the Rules. Any registration fees and any fines, assessments and other charges imposed by Card Organizations on us for the actions or failure to act of Merchant Providers that are not paid in a timely manner by the Merchant Providers become your obligations to us under this Agreement.

D. Costs

. In addition to your obligations as set forth in Section 10 and Section 21, you must pay us promptly for all expenses or claims associated with loss, disclosure, theft and compromise of Cardholder or transaction data, including assessments, fines, losses, costs, penalties, and expenses assessed or Card issuer reimbursements required by the Rules or imposed by the Card Organizations and incurred by us as a result thereof, including but not limited to Card issuer losses and any costs charged to us by any Card Organization. For avoidance of doubt, in the event that you are determined by any Card Organization, regardless of any forensic analysis or report, to be the likely source of any data compromise, and regardless of your belief that you have complied with the Rules or any other security precautions, you shall be responsible for all the obligations set forth in this Section 13.D. To the extent that we are provided the opportunity to contest or appeal any claim of a Card issuer or any amount imposed by a Card Organization on us, which you are obligated to pay to us under this paragraph, you will be given the opportunity to advise whether you wish us to contest or appeal any such claim, assessment, penalty or fine. The decision as to whether to contest or appeal any such matter will be in our reasonable discretion. If we contest or appeal any such matter, all related costs will be paid by you.

E. Issuer Costs

. In addition to your obligations as set forth in Section 10, Section 21, and Section 13.D above, you must pay us promptly for all expenses or claims associated with loss, disclosure, theft and compromise of Cardholder Data or transaction data, made by Card issuers against us apart from any claim procedures administered by Card Organizations

F. Notice of Data Breach

. You will immediately notify us of any suspected, alleged or confirmed loss or theft of Cardholder or transaction information, regardless of the source, including any loss or theft from any Merchant Provider, and, at your expense, will engage a certified forensic vendor acceptable to us and the Card Organizations no later than 48 hours following your suspected or actual discovery of such loss or theft of Cardholder Data or transaction information. If required by a Card Organization, we will engage a forensic vendor approved by a Card Organization at your expense. You must cooperate with the forensic vendor so that it may immediately

conduct an examination of your systems, procedures and records and issue a written report of its findings. You agree that upon your suspected or actual discovery of such loss or theft of Cardholder Data or transaction information, you will not alter or destroy any records related to such event. You agree to maintain complete and accurate documentation regarding any modifications made to such records. You will share with us information related to your or any Card Organization's investigation related to any loss, theft or compromise of Cardholder Data or transaction data, including but not limited to forensic reports and systems audits and we may share that information with Card Organizations at their request.

G. System Scans

. Upon notice to you, we or our representative may conduct remote electronic scans of your systems, similar to those conducted under the PCI Data Security Standard, to confirm compliance with the requirements of the PCI Data Security Standard/CISP/SDP programs and similar requirements of other Card Organizations. You must promptly cooperate with us to allow the scans.

H. Increased Fees for Non-Compliance

. In addition to any other permitted action, if we determine that you are not in compliance with any of the data security requirements imposed by this Agreement, the fees for authorizing and processing transactions under this Agreement may be increased by 25% (in addition to your obligation to reimburse us for the fines, assessments, and charges imposed by Card Organizations on us) until such time as we are satisfied that you have adequately corrected such noncompliance or you demonstrate that you have adequately corrected the noncompliance as evidenced by an independently produced report of compliance provided in accordance with Card Organization procedures.

SECTION 14. DISPLAY OF MARKS, OWNERSHIP OF MARKS AND SYSTEMS.

A. Display of Marks

. You will display advertising and promotional materials supplied by us to inform the public that Cards are accepted for each Card type elected and approved. You will not indicate or suggest that we or the Card Organizations endorse the goods or services offered.

B. Ownership of Marks

. You and we acknowledge that neither of us will acquire any right, title or interest in or to the Marks of the other party or of any Card Organization or any company names by virtue of this Agreement, without prior written consent. Upon termination of this Agreement, the parties will discontinue all reference to and display of the other party's Marks and company names, and you also will discontinue all reference to and display of the Marks of Visa, MasterCard and any other Card Organization (except to the extent you are authorized by a new agreement with another party to use some or all of such Card Organization Marks).

C. Ownership of Systems

. To the best of our knowledge, all systems used in the provision of services by us under this Agreement are exclusively owned or properly licensed from the appropriate third parties. You acknowledge and agree that you do not have any ownership interest or other rights in such systems by reason of this Agreement. For the purposes of this Agreement, "systems" includes but is not limited to hardware, software, related documentation, technical formats and specifications, technical and business information related to inventions and present and future products and product lines, intellectual property, know-how, and any other information that is identified as our systems.

SECTION 15. EXAMINATIONS/AUDIT AND CORRECTIVE ACTION.

A. Bank Rights

. We or our designees shall have the right, during the term of this Agreement and for one (1) year thereafter, upon a reasonable advance written notice and during normal business hours, to conduct a review of the books, records, operations and your systems to determine or to verify your compliance with your obligations under this Agreement.

B. Card Organization and Investigation

. You will, upon reasonable prior written notice from us and as directed by any Card Organization pursuant to its Rules, permit an entity acceptable to the Card Organization to examine and audit the records, operations and systems maintained by you relevant to that Card Organization. The scope, standards and frequency of the examinations and audits will be determined by the Card Organizations. The results, including, but not limited to any written reports of such examinations and audits, must be made available to the Card Organization and us. All expenses related to such examinations and audits must be paid by you.

C. Remediation

. You must promptly take corrective action acceptable to us and the Card Organizations to rectify (a) any failure to comply with this Agreement or any problem identified in any report, examination and audit that could reasonably be expected to have an adverse impact on us, Card issuers, Card Organizations or Cardholders and (b) any control deficiencies identified in the report.

D. Regulatory Agencies

. Notwithstanding anything to the contrary in Section 13, you agree to provide reasonable access during normal business hours for examination purposes to any state or federal agencies with jurisdiction over us or any Card Organization, upon our prior written request.

SECTION 16. ASSIGNMENT.

You may not assign or transfer this Agreement, by operation of law or otherwise, and we are not required to continue this Agreement after your merger or consolidation without our prior written consent, which will not be unreasonably conditioned, withheld, or delayed. Any purported assignment made without our prior written consent is void. Except as provided in the following sentence, this Agreement will be binding upon successors and will inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, will have any right to continue or to assume or to assign this Agreement.

SECTION 17. TERM; EVENTS OF DEFAULT; TERMINATION.

A. This Agreement is binding upon the earlier of (i) its execution by all parties as evidenced by signatures on the Application or (ii) the settlement by us of (A) any Card transaction submitted by you to us pursuant to this Agreement if you are a new customer that does not already have an agreement with us for Card transaction services or (B) any Card transaction submitted by you thirty (30) or more days after your receipt of this Agreement if you are one of our existing customers whose current agreement with us for Card transaction services is being replaced by this Agreement. Unless otherwise agreed by the parties, the initial term of the Agreement shall be three (3) years ("Initial Term"). The Agreement shall continue in full force thereafter for successive one-year periods until terminated in writing, by notice given to the other party or parties not less than one-hundred-twenty (120) days prior to the then current expiration date, or until any earlier termination as provided below.

B. In addition, if any of the following events (each a "Default") occurs, we may terminate this Agreement immediately without advance notice and exercise all of our other rights and remedies under this Agreement and applicable law: (i) a material adverse change in your business, financial condition, business procedures, products or services, a sale of all or a substantial portion of your assets, or a change in control of your business (directly or indirectly); (ii) any information provided on the Application was false or misleading, (iii) irregular Card sales, excessive Chargebacks, illegal activity or any other circumstances which, in our discretion, may increase our potential exposure for your Chargebacks or otherwise present a financial or security risk to us; or (iv) a default by you in any material respect in the performance or observance of any term, covenant, condition or agreement in this Agreement, or in any other agreement with us or any of our affiliates, including the non-payment of any fees due to us; (v) any non-compliance by you with the terms of the Agreement or the Rules, or any reasonable belief by us, as applicable, that you may fail to comply with the terms of the Agreement, which failure would constitute a substantial risk to us, (vi)

you experience a data security compromise, (vii) you are disqualified or withdraw from the Electronic Benefit Transfer issuance program(s) indicated on the Application, (viii) there is an overdraft for five (5) consecutive days in your Settlement Account, (ix) any guaranty is revoked, (x) your business name and/or the names of your principals is listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, (xi) you have been characterized as "high risk" under the Rules of a Card Organization for reasons including, but not limited to, fraud, counterfeit transactions, prohibited Card transactions, excessive Chargebacks, highly suspect activity or non-payment of fees, or (xii) you file a voluntary petition or complaint seeking relief under any federal or state Bankruptcy or other debt relief statute, an involuntary petition under any federal or state bankruptcy or other debt relief statute is filed against you, you generally become unable to pay your debts or trade obligations as they become due, or you make a general assignment for the benefit of creditors. If an order of relief is entered against you in a case commenced under Title 11 of the United States Code and you are given the right to assume or reject this Agreement, you must do so within sixty (60) days after the entry of such order of relief; if you fail to do so, we may terminate this Agreement immediately upon written notice to you.

C. Low Processing Volumes. If, during any six (6) month period (the "Measurement Period") the average size or the total amount of your Card transactions is more than 20% lower than the amount stated in the Application for (i) your average Card transaction size or (ii) one-half of your annual Card volume, then we may terminate this Agreement by giving you at least thirty (30) days advance notice; any such notice must be sent to you within thirty (30) days after the end of the applicable Measurement Period.

D. Suspension of Payments

. Without exercising and without waiving any right of termination, establishment of reserve, or any other right or remedy contained elsewhere in this Agreement, we may, immediately without prior notice, and as an alternative or supplement to the remedies of Section 17.B, upon the occurrence of an Event of Default set forth in Section 17.B, change processing or payment terms to suspend for any reasonable period of time required credits and other payments due or to become due to you pursuant to this Agreement. Should processing or payment terms be changed, we will notify you in writing within three (3) Business Days after effecting a suspension of credits or other payments, stating our reason for such suspension. To the extent not used to pay us immediately for any amounts due caused by an Event of Default by you, the amounts withheld will be deposited into the Reserve Account. We will not be liable to you for any direct or consequential damages you may suffer as a result of the suspension of payments.

E. If any Event of Default will have occurred and be continuing, we may, exercise all of our rights and remedies under applicable law, including, without limitation, exercising our rights under Section 13 and Section 15.

F. Provisions Surviving Termination

. The provisions governing processing and settlement of Card transactions, all related adjustments, fees and other amounts due from you, the resolution of any related Chargebacks, disputes or other issues involving Card transactions, compromise or disclosure of Cardholder Data and liability arising out of your breach of this Agreement will continue to apply even after termination of this Agreement, until all Card transactions made prior to the termination are settled or resolved. In addition to the provisions of each Section that by its terms indicate survival after termination of this Agreement, the provisions of Sections 1, 7, 10, 11, 12, 13, 15, 17, 19, 21, 23, 24 and 25 of this Agreement will survive any termination. Upon termination you agree immediately to send us all the data relating to Card transactions made up to the date of termination. We will not be liable to you for any direct or consequential damages you may suffer as a result of the suspension of payments.

G. High Risk Determination

. We will not be liable to you if we report termination of this Agreement to Card Organizations for reasons required by the Card Organization Rules. If we incorrectly report the required information, we will file a correction with the relevant Card Organizations immediately upon recognition of the error and request the Card Organizations to correct their files, for example Visa's Terminated

Merchant File ("TMF") and MasterCard's Member Alert to Control High-risk (Merchants) system ("MATCH").

H. Liability Following Termination

. After any termination of this Agreement, you will continue to bear total responsibility for all Chargebacks, credits and adjustments resulting from transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to us under this Agreement, including any costs incurred by us for implementation of card processing services for you, or which may be due at such termination or thereafter to either us or any of our subsidiaries for any related equipment or related services. In connection with any termination, a Reserve Account will be established and maintained on your behalf pursuant to Section 19 of this Agreement. Notwithstanding any terms or conditions to the contrary contained elsewhere, if this Agreement is terminated prior to expiration of any term, except if you give us notice of termination and cease processing Card transactions within 30 days of the notice of a fee increase, you agree to pay us an Early Deconversion Fee for each location as set forth on the Application to cover our routine post-termination services.

I. Account Closure

. If the Deposit Account is closed, we may terminate this Agreement upon written notice unless you have opened another Deposit Account acceptable to us. You may change the Deposit Account upon our approval, which will not be unreasonably withheld.

SECTION 18. MONITORING CARD ACTIVITY.

A. We may monitor your daily Card transaction activity and may, upon reasonable grounds, divert into a Reserve Account settlement funds or temporarily suspend processing under this Agreement for your affected locations. Reasonable grounds will include, but not be limited to, the following:

- i) suspicious or unusual transaction activity;
 - ii) material variance in the nature of your business, type of product or service sold, average transaction size, monthly volume or swiped/keyed percentages, from such representations made by you or patterns established by you;
- you does not obtain authorizations for transactions;
- we receive excessive retrieval requests against your prior activity;
- excessive Chargebacks are debited against your prior activity;
- you do not deliver product or render full service on or before the transaction date; or
- suspicious foreign card transaction.

B. If your funds are diverted by us or we have temporarily suspended processing under this Agreement, such diversion or suspension will be for any reasonable period of time required by us to fully investigate your account activity and determine whether your suspicious, unusual or breaching conduct presents an unacceptable risk. To the extent permitted by the Rules, we will maintain any funds diverted in a non-interest bearing account, which may be a commingled account. we will have no liability for any losses, either direct or indirect, which you may attribute to any diversion of funds, or suspension of processing.

SECTION 19. RESERVE ACCOUNT; DEPOSIT ACCOUNT; SECURITY INTEREST.

A. Establishment of Reserve Account

. We may require you to establish and fund a Reserve Account (i) upon execution of this Agreement; (ii) from time to time throughout the term of this Agreement if so specified by us; (iii) upon an Event of Default described in Section 17.B; or (iv) in connection with any termination of this Agreement. Any such Reserve Account will be held in an account with us and will not be subject to withdrawal by you.

B. Reserve Account Funding

. In connection with termination, or an event of default described in Section 17.B, a Reserve Account will be established and maintained by or on your behalf with (or otherwise for the benefit of) us in an amount equal to:

The greater of (a) the Reserve amount designated by us in the Application or (b) our reasonable estimate of your dollar volume

of incoming Chargebacks for a nine-month period and your credits (for returns or otherwise) for a two-month period (which may be based on actual volume during the preceding 270 days for Chargebacks and 60 days for credits or nine (9) times your highest monthly dollar volume of incoming Chargebacks and two (2) times your highest monthly dollar volume of credits, as determined during the most recent twelve-month period); and

in the event of any actual or suspected data security compromise such as loss, compromise, disclosure, or theft of Cardholder Data, our estimate of all fees, assessments, fines, losses, costs, penalties, and expenses that may be imposed on us by any Card Organization and owed by you to us under this Agreement prior to or following termination of this Agreement, including any actual or reasonably probable losses from such loss, compromise, disclosure, or theft of Cardholder Data.

C. Use of Reserve Account Funds

The requirement to maintain a Reserve Account will not limit our right to debit the Deposit Account or withhold ongoing settlement payments for recoupment for Chargebacks, potential Chargebacks, adjustments, and any other charges due hereunder, including any losses, claims, costs, expenses, fines, and assessments. Your funds in the Reserve Account may be used to settle Chargebacks and adjustments (whether arising before, on or after termination), and any other amounts due us described in this Section 19 and any other obligations of you to us whenever there are not sufficient funds in the Deposit Account or settlement funds due to you to cover such obligations. We will refund any of your funds remaining in the Reserve Account to you when we reasonably believe that no further charges to such account are forthcoming, and will provide you with an accounting of any your funds debited from or credited to such account. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the your funds in such account have been released, you agree to promptly pay us the amounts not so covered upon request.

D. In connection with any termination of this Agreement or the occurrence of any event set forth in Section 17.B (and continuing thereafter until 280 days after termination of this Agreement), we may withhold any funds otherwise due to you or may debit funds from your Deposit Account, to establish and maintain (or restore/supplement the balance of your funds in) a Reserve Account containing your funds equal to the amount that may be required under this Section 19. To the extent permitted by the Rules, your Reserve funds required by this Section 19 may be held in a commingled Reserve Account for the Reserve funds of our customers.

E. In the event you fail to establish and maintain any funds required by us in a Reserve Account, such failure shall be deemed a default under Section 17.B.v and we may terminate this Agreement immediately.

F. Grant of Security Interest

To secure your performance of your obligations under this Agreement, you grant us security interests in each transaction and its proceeds, the Deposit Account, the Reserve Account, and any other depository, reserve or bank account held by you with us, the Deposit Account at any other financial institution, whether now existing or established in the future, and in the proceeds of all those accounts, any funds due you from us and any of your property held by us. We may enforce these security interests without notice or demand to the extent permitted by law. The security interests granted under this Agreement will survive the termination of this Agreement until all your obligations are irrevocably paid and performed in full. In addition, your signature on this Agreement will be considered your agreement to obtain and execute an appropriate control agreement pursuant to Article 9 of the Uniform Commercial Code among you, us and any other bank, under which agreement we, you and any other bank agree to the disposition of funds in the Deposit Account, the Reserve Account or any other deposit account subject to Section 19 of this Agreement without further consent by you, provided that such agreement will not obligate you to pay additional fees to us or to the other bank.

SECTION 20. FINANCIAL AND OTHER INFORMATION.

We will provide or make available to you statements and reports sufficient for it to review and validate the transactions processed and services provided pursuant to this Agreement. Upon request and commercially reasonable notice, we will provide to you or your representatives reasonable access to our facilities and records during normal business hours for the purpose of performing any inspection and/or copying of your data reasonably deemed appropriate by you and us in our commercially reasonable discretion.

If we are unable to obtain the appropriate then current financial information regarding your ongoing business from publicly available services (that do not require payment of a subscription), then you agree, upon our request, to timely provide us such financial statements as we will request. Such financial statements will be prepared in accordance with generally accepted accounting principles. You also will provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us to obtain from third parties financial and credit information relating to you and your principal officers/owners in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. Pursuant to requirement of law, including the USA Patriot Act, we are obtaining information and will take necessary action to verify your identity.

Upon request and commercially reasonable notice, you will provide and will ensure that your Merchant Provider(s) provide to us or our representatives prompt access to your facilities and records for the purpose of performing any inspection and copying of your books or records pertaining to the transactions contemplated under this Agreement deemed appropriate by us in our commercially reasonable discretion. You must have written agreements with Merchant Providers requiring provision of such access.

SECTION 21. INDEMNIFICATION.

You will indemnify us from and against any claim, suit, demand, action, dispute or other proceeding (including reasonable attorneys' and collection fees and expenses) brought by any third party against us ("Third Party Claim") and all losses, liabilities, damages, and expenses suffered, incurred or sustained by us or to which we become subject, arising out of any Third Party Claim, to the extent that any Third Party Claim or any losses result from or arise out of any breach of any warranty, covenant, duty, obligation or agreement or any misrepresentation by you under this Agreement, or arising out of any gross negligence or willful misconduct of you, your agents and employees in connection with your Card transactions or otherwise arising from your provision of goods and services to Cardholders. In addition, you will reimburse us for all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by us to enforce and protect our rights under this Agreement in connection with (or in anticipation of) any event described in Section 17.B. You will indemnify us for any claims, liabilities or losses, including reasonable costs and attorney's fees, resulting from our compliance with the instructions of any Card Organization.

We will indemnify you for all losses, costs, damages, including royalties and license fees, reasonable attorney's fees associated with any claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party, including appeals, negotiations, and any settlement or compromise thereof arising due to our actions.

We will indemnify you from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and expenses) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of the gross negligence or willful misconduct of us or our employees in connection with this Agreement. **IN NO EVENT WILL WE BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT YOU MAY INCUR AS A RESULT OF ENTERING INTO OR RELYING UPON THIS AGREEMENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.**

You will indemnify us for all losses, costs, and damages, including royalties and license fees and reasonable attorney's fees, associated with any claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any intellectual

property right of any third party, including appeals, negotiations and any settlement or compromise thereof arising out of your performance under this Agreement.

You will indemnify us for all losses, claims, costs and damages, including reasonable attorney's fees associated with any claim, suit or proceeding arising from or alleging Cardholder Data or transaction data compromise or disclosure, including appeals, negotiations, and any settlement or compromise thereof. Additionally, you will indemnify us for all losses, claims, costs, expenses, fines, and assessments imposed upon us by any Card Organization as a result of any act or omission of you except to the extent any such penalties arise due to our error.

In addition to your obligations set forth in Section 13.D and this Section 21 and notwithstanding any other provisions in this Agreement, the following will apply: you will indemnify us and any third party providing services hereunder and each Card Organization and the Card Organization's participants for all claims, liabilities, or losses, including reasonable costs and attorney's fees, arising or resulting from your, or your employees', agents', or representatives' (1) failure to abide by a requirement of this Agreement including the Rules, (2) violation of any applicable law or regulation or order, (3) misuse of any protected Mark of a Card Organization, (4) willful misconduct, fraud, or gross negligence, (5) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card, (6) failure to follow instructions of a Card Organization, or (7) conduct of your business.

SECTION 22. PERFORMANCE OF DUTIES.

Each party will be excused from performance under this Agreement, except for any payment obligations, for any period and to the extent that it is prevented from performing, in whole or in part, as a result of delays caused by the other party or any act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, or other cause beyond its reasonable control, including failures, fluctuations, or nonavailability of electrical power, heat, light, air conditioning, or telecommunications equipment. Such nonperformance will not be a default or a ground for termination as long as reasonable means are taken to expeditiously remedy the problem causing such nonperformance. Notwithstanding the foregoing, during any period when our performance is hindered or precluded by reason of any of the aforesaid causes, your obligations to make payments hereunder will be reduced on an equitable basis.

SECTION 23. DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY.

To the extent permitted by applicable law, we make no representations or warranties of any kind, express or implied, with respect to equipment, materials or their use by you, including, but not limited to, warranties of merchantability and fitness for a particular purpose. We are not liable to you for any special, indirect or consequential damages, including but not limited to lost profits arising out of or incurred by you in connection with such equipment or materials or their use by you whether or not supplied by us.

EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO WARRANTIES TO YOU, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Our liability relating to any Card transaction will be limited to instances of our error or failure to comply with this Agreement and will not exceed the amount of the fees payable by you for such Card transaction and the amount of any failure of settlement of funds for a valid transaction.

SECTION 24. GOVERNING LAW; MISCELLANEOUS.

A. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina without regard to conflicts of law provisions except that Section 25 will be governed by the Federal Arbitration Act. If any part of this Agreement is not enforceable, the remaining provisions still remain valid and enforceable. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it.

B. If providing any of the services to you violates, or in our reasonable opinion is likely to violate, any applicable laws or

governmental regulations, or should we receive instructions from a governmental agency having authority over your business or ours instructing us to cease providing any or all of the services or access to any Card Organization, or should you cease operations, then we may, upon oral notice to you, immediately cease providing the affected services to you.

C. A waiver by either of the parties of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach or of any other covenant, condition or agreement contained in this Agreement.

D. Throughout this Agreement, where appropriate, singular terms include the plural and the plural includes the singular.

SECTION 25. DISPUTE RESOLUTION AND ARBITRATION.

The following procedure will apply to all disputes arising under or relating to this Agreement, except for any instance where a party desires immediate resort to a civil court for injunctive relief to protect intellectual property or confidential information rights provided by this Agreement. Each party will notify the other party hereto in writing of any dispute, describing in detail the Agreement provision(s) at issue, the exact nature of the alleged breach and the dollar amount of the perceived injury, if any. The parties, through a representative authorized to negotiate and bind the party with respect to the dispute, will meet telephonically or in person as soon as possible, but no later than five (5) Business Days after delivery of the written notification, to attempt in good faith to resolve the dispute or to agree upon a written corrective action plan.

Any dispute arising out of or relating to this Agreement that is not resolved through the above resolution process will be referred to mediation, if both parties agree, or to arbitration, if the parties cannot so agree. Respecting mediation, the parties hereto agree to cooperate in good faith to select a mediator, a mediation venue and an expeditious date for the mediation hearing. At the mediation hearing, the parties agree to produce a senior member of their management, being at least the respective supervisors of the representatives involved in the initial dispute resolution process. It is agreed in advance that the parties and their witnesses need not be physically present at the mediation venue, but may at their option participate telephonically.

If the parties cannot agree to mediation or if the mediation hearing was unsuccessful, then the dispute will be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), or its successor, and judgment upon the arbitration award may be entered in any court of competent jurisdiction. Any such arbitration will be conducted in Louisville, Kentucky, or the city nearest thereto having an AAA regional office. Unless otherwise agreed, there will be a single arbitrator. The arbitrator may not make any ruling, finding or award that does not conform to the terms and conditions of this Agreement, and in no event may punitive damages be awarded by the arbitrator. Either party, before or during any arbitration, may apply to a court of competent jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitration proceedings. Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder without the prior written consent of both parties.

The parties agree that this Agreement involves interstate commerce and, notwithstanding any choice of law provisions in this Agreement, any arbitration hereunder will be governed by the Federal Arbitration Act (or any successor thereto).

SECTION 26. CHANGING THIS AGREEMENT.

We may change this Agreement, the Manuals/Instructions, or other operating procedures by giving you at least fifteen (15) days advance notice. However, in the event of changes in the Rules or due to security or risk control reasons, certain changes may become effective on shorter notice. In addition, we may from time to time notify you in writing or through other means of requirements that must be satisfied to qualify for various incentive programs. Any Card transactions made by you after the effective date of such change will constitute consent to the new terms.

Notwithstanding the foregoing, we will use reasonable efforts to notify you at least fifteen (15) days in advance of any fee changes. Following such notification by us of any amendment of the fees and

for thirty (30) days thereafter, you may terminate this Agreement upon written notice to us. However, any Card transactions made by you after thirty (30) days following such notice to you will constitute consent to the new terms.

SECTION 27. SYSTEM ENHANCEMENTS.

If, after the effective date of this Agreement, you request us to perform or provide any system enhancements, custom reports, special files, terminal applications, related service enhancements or new services that are different from or in addition to the system, services and reports as of the effective date of this Agreement (collectively, "System Enhancements"), and we subsequently agree to provide to you such System Enhancements, then we will use commercially reasonable efforts to provide such System Enhancements if you pay us the additional fees charged by us for such System Enhancements at our then current rate for such System Enhancements including, but not limited to, our then current rate for analysis, programming and testing. System Enhancements include, but are not limited to, (i) changes at your point of sale or host system, which may require a re-certification of the settlement file with us or the integrator; (ii) your adding additional card types after conversion; and (iii) your adding additional products/services after conversion. System Enhancements do not include re-certifications due to Card Organization release changes. Following our agreement to provide the System Enhancements and prior to providing the requested System Enhancements, we will provide you with a description of the System Enhancements to be made, together with an estimate of our fee for providing such System Enhancements. If we act to make such System Enhancements, you will pay the additional fees charged by us for such System Enhancements. Any subsequent changes that we must make in your System Enhancements to accommodate changes in applicable law or Rules will be at your expense.

SECTION 28. NOTICES.

A. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) will be in writing, will be sent by mail, courier, electronic mail or fax, if to you at your address appearing on the Application, the address to which your statements are delivered or other address you provide to us for receipt of notices, and if to us at Bank of America, 1231 Durrett Lane, Louisville, Kentucky 40213, Fax (502) 315-2271, Attention: Bankcard Product Manager, with a copy to Bankcard Contract Management, and will be given (1) if sent by mail, when received, (2) if sent by courier, when delivered, and (3) if sent by e-mail or fax, when transmission is confirmed. We may include a notice with or on your statement.

B. Electronic Notices. As an alternative to notices by mail, courier or fax, we may provide notices by electronic mail, and if we do so, we will also post the notice on our Internet web site with access available to you if it changes this agreement or the Rules. If we provide a notice by electronic means that changes this agreement or the Rules you may also order a paper copy with postage paid by us.

C. You agree to read all notices affecting this Agreement that we send or make available to you. Changes to the address for notification may be made by you or us by notice given to the current address for notices in the manner required by this section.

SECTION 29. SYSTEM TESTING.

Prior to implementation, we will have the ability to conduct installation testing of the system for a period of time reasonably necessary for the system to (i) meet ours, the equipment manufacturers', any third party integrators' and the Card Organizations' internal requirements for determining a successful installation and (ii) be ready to start accepting data. Throughout the term of this Agreement, if you change/modify your internal processing for any reason, including but not limited to modifications to accommodate changes in applicable law or Rules, you will immediately notify us of such changes/modifications and we will have a reasonable amount of time to conduct certification testing of the system to verify that it meets ours, any third party integrator's and the Card Organizations' internal requirements for the processing of data. The first such standard re-certification will be performed by us at no cost to you, however, subsequent re-certifications will be billed to you at our then-current hourly rate. Notwithstanding

anything to the contrary, by conducting implementation or certification testing, we do not guarantee that your transactions will qualify at the lowest possible interchange level. You assume all liability resulting from your failure to notify us of the changes/modifications or your refusal to allow us to conduct the implementation or certification testing.

SECTION 30. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and, except as provided in other Sections of this Agreement (or in any schedules, supplements or addenda), can be changed only by a written agreement signed by all parties. Except as specifically provided herein, this Agreement will not benefit, or create any right or cause of action on behalf of, any person or entity other than the parties.

SECTION 31. MEDIA AND PUBLICITY.

Except as otherwise provided herein, neither party will use the other party's name or Marks, or use language from which the connection of such name or Marks may be inferred, in any advertising, written sales promotion, press releases or other publicity matters relating to this Agreement without such party's prior written consent. In no event will either party publicly disparage the other party.

SECTION 32. CERTAIN RIGHTS OF CARD ORGANIZATIONS.

The Rules give the Card Organizations certain rights to require termination or modification of this Agreement with respect to transactions involving Cards and the Card Organizations' systems and services. your rights and duties under this Agreement are subject to those rights of the Card Organizations and to consequent amendments to this Agreement by us upon notice to you by us.

SECTION 33. ACCESS AND USE OF CARD ORGANIZATION SERVICES.

A. Availability of Terminals

. You will take all reasonable steps necessary to ensure that all point-of-sale devices and PIN pads will be available for use by the Cardholders of each Card Organization to which you are being provided access as set forth on the Application and the Application and to ensure that such devices and PIN pads will function in a reliable manner, in compliance with the Rules and will be replaced when required by the Rules.

B. Use of Services

. You assume exclusive responsibility for the consequences of any oral or written instructions you may give to us, for your failure to properly access the services in the manner prescribed by us, and for your failure to supply accurate input information. You will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying us of any errors in the foregoing after receipt of the applicable report from us. You will notify us of all incorrect reports or output within two (2) Business Days after receipt of such reports or output.

Except as otherwise provided in this Agreement, you will be responsible for the supervision, management and control of your use of our Systems, including without limitation (1) implementing sufficient procedures to satisfy your requirements for the security and accuracy of the input you provide, and (2) implementing reasonable procedures to verify reports and other output from us within the time frames required by this Agreement. You agree that you will use the services in accordance with such reasonable rules as may be established by us from time to time as set forth in any materials furnished by us to you.

Except as otherwise contemplated herein or otherwise permitted by us, you will use the services only for your own internal and proper business purposes and will not resell, directly or indirectly, any part of the services to any third party.

C. Suspension of Access

. We may immediately block your access to the services of any Card Organization that gives us verbal or written instructions to do so. We will use reasonable efforts to promptly notify you of such interruption in Card Organization access. We will have no liability to you for any

damages that you may incur as a consequence of such cessation of access to any Card Organization.

SECTION 34. ADDITIONAL EQUIPMENT PROVISIONS.

This and the following sections 35 through 46 (the "Equipment Provisions") govern the sale of certain terminals, printers, and other equipment identified in the Application or the accompanying documentation (the "Equipment"). If you are not purchasing Equipment from us these sections do not apply to your Agreement with us. All references to the Application in these Equipment Provisions mean both the Application which is part of your Agreement when it first becomes effective and any supplemental versions of such document mutually agreed upon when you open additional locations or when you otherwise request additional or different equipment. **THE EQUIPMENT IS NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE.**

A. The Equipment Provisions will become effective on the earlier of the effective date of this Agreement or the first date you are deemed to have accepted any Equipment covered by this Agreement. These Equipment Provisions will remain in effect until all of your obligations and all of our obligations under this Agreement have been satisfied. We will deliver the Equipment to the site or sites designated in the Application. You will be deemed to have accepted each piece of Equipment upon delivery. The Equipment Provisions will survive the termination or expiration of the Agreement, unless the Equipment Provisions terminate or expire before the Agreement.

B. If any debit of your Settlement Account initiated by us for charges due under the Equipment Provisions is rejected when due, or if you otherwise fail to pay us any amounts due for Equipment when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Agreement, and if the price of the Equipment is not entirely paid to us you will immediately (1) forfeit all monies paid under the equipment Provisions and (2) surrender peacefully and deliver up promptly all Equipment to us.

C. Upon the occurrence of any default of your obligations under the Equipment Provisions and in addition to the foregoing, we may at our option, effective immediately without notice, either: (i) terminate our future obligations under the Equipment Provisions and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, in which case the Equipment Provisions will terminate as soon as your obligations to us are satisfied or (ii) require the immediate payment of all remaining amounts due under this Equipment Provisions and be entitled to reimbursement for any costs of repossession and/or any amount necessary to restore the Equipment to the same condition in which it was delivered to you, ordinary wear and tear excepted. In either case, you will also be responsible for court costs and reasonable attorney's fees incurred by or on behalf of us, as well as applicable shipping, repair and refurbishing costs.

SECTION 35. PURCHASED EQUIPMENT; SUPPLIES.

We will sell to you, and you will buy from us the Equipment identified in the Application or accompanying documentation as being purchased by you (the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 36), except that any "Software" (as defined in Section 37 below) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 37 hereof. We will also sell to you and you will buy from us the supplies identified in the Application as requested by you from time to time.

SECTION 36. SITE PREPARATION.

You will prepare the installation site or sites for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site or sites available to us by the confirmed shipping date.

SECTION 37. PAYMENT OF AMOUNTS DUE FOR EQUIPMENT.

A. The purchase price specified in the Application or the accompanying documentation for purchased equipment and supplies, if applicable, will be due and payable upon execution of this Agreement. You will pay such purchase price to us prior to shipping of the equipment and supplies. All such payments will be made: (1) in a lump sum by check or by debit to the Settlement Account

through ACH or (2) in installments by debit to the Settlement Account through ACH (defined below) in each case, as specified on the Application. In the event you do not specify payment timing or method, payment will be made in a lump sum via ACH debit to the Settlement Account. We will also provide you the supplies identified in the Application or accompanying documentation, as requested by you from time to time. You will pay the purchase price for such supplies, including all applicable taxes prior to delivery of the supplies or at our option such amounts will be collected by invoice or by debits or deductions pursuant to this Section. You hereby authorize us to collect all amounts due from you under this Agreement by initiating our debit entries for such amounts to your account designated pursuant to the Agreement to be debited and credited for amounts due from and to you under the Agreement (the "Settlement Account") or by deducting (or causing Bank of America, N.A. to deduct) such amounts from settlement amounts due to you under the Agreement. All Authorizations and other provisions in your Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under the Equipment Provisions. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under the Equipment Provisions have been paid in full.

If you will make any payment hereunder by check and such check will be returned for non-sufficient funds, or if you will make any payment hereunder by debit to the Settlement Account and funds in the Settlement Account are inadequate, you agree to reimburse us immediately for any account shortfall that occurs as a result thereof together with our then current fee for handling such shortfall. Should you fail to deposit sufficient funds to cover the shortfall in within forty eight (48) hours of notice of such shortfall, you will then owe to and be charged by us a late charge of 15% of the amount past due. Any deposits made to the Settlement Account will be applied first to late charges, then to processing charges and then to Equipment charges.

B. In addition, you will pay, or reimburse us for, amounts equal to any applicable taxes or assessments, however designated, levied or based on such charges, or the Equipment and related supplies or any services, use or activities hereunder.

C. Separate charges may apply for Equipment supplies.

SECTION 38. USE OF EQUIPMENT.

A. You will cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by the manufacturer or us and in connection with the services provided under your Agreement. You will not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

B. You will comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.

C. After delivery of the equipment any loss, destruction, theft or damage to the Equipment that occurs thereafter will not relieve you from your obligation to pay the full purchase price payable hereunder.

D. You will not move the Equipment from the installation location set forth in the Application, or Additional Location Form for any reason or use whatsoever without our prior written consent.

E. Notwithstanding anything in this Agreement to the contrary, you will be solely responsible for properly maintaining all Equipment and meeting all technical standards required by this Agreement. You will at all times insure that all point-of-sale Equipment will display, print and report your name, city, state and the transaction date on all transaction receipts, as penalties may be assessed against us and must be reimbursed by you for transactions that are inaccurately transcribed.

SECTION 39. OWNERSHIP & PROTECTION OF EQUIPMENT.

During the period of time when any charges, taxes or fees for or on Equipment will be due us, and until such time as all charges, taxes and fees due will have been received by us, (1) you will not directly or indirectly create or permit to exist, and will promptly and at your own expense discharge, any lien, charge or encumbrance on the Equipment; (2) you will not alter the Equipment in any manner whatsoever; (3) you will maintain the Equipment at your expense in the same condition in which it was delivered to you, ordinary wear and tear excepted; and (4) in the event of any loss, theft, damage or destruction of the Equipment from any cause whatsoever, you will notify us immediately of such condition and we, in our sole discretion, will determine the extent of loss and the cost of repair and/or replacement, and you will bear the entire risk and promptly pay the cost of such repair and/or replacement.

SECTION 40. SECURITY INTEREST; FINANCING STATEMENTS.

You hereby grant to us a security interest in all Purchased Equipment and the related Software to secure payment of the purchase price thereof in accordance with the Uniform Commercial Code.

SECTION 41. SOFTWARE LICENSE.

Anything in this Agreement to the contrary notwithstanding, we retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know how and processes embodied in or provided in connection with the Equipment (collectively, "Software"), and you will have only a nonexclusive license to use the Software in the operation of the Equipment. You will not reverse engineer, disassemble or decompile the Software. You will not give any third party access to the Software without our prior written consent. Your obligations under this Section will survive the termination of this Agreement.

SECTION 42. LIMITED WARRANTY FOR EQUIPMENT; MAINTENANCE.

Equipment provided to you by us hereunder will be free from defects in material or workmanship at the initial date of shipment to you and, if covered by any applicable warranty, will be repaired or replaced by us free of charge within thirty (30) days therefrom. We will take appropriate steps, to the extent permitted, to assign to you any and all warranties provided by the manufacturer of the Purchased Equipment, but we will not provide any warranty with respect to the Purchased Equipment.

Equipment provided to you by us hereunder will conform to applicable specifications for the period of time specified in, and be covered by the warranty provided in, the written materials accompanying each component of Equipment, copies of which materials will be provided to you upon delivery of the specified Equipment. The exact term, conditions and coverage of each warranty will vary for each component of Equipment in accordance with such written materials. The cost incurred by you, if any, to repair or replace Equipment will be determined by us based upon the specific provisions of the warranty applicable thereto as set forth in such written materials, our applicable repair and replacement policy and the date you request such repair or replacement relative to the initial date of shipment by us.

The warranty statement in the written materials provided to you with respect to the Equipment describes the following in explicit detail, but in general, such warranty will be voided if there is: (1) alteration, installation, repair or maintenance of the Equipment performed by persons not authorized by us; (2) connection of any device to Equipment or peripherals not certified for use with the Equipment; (3) operation of the Equipment outside the published specifications; (4) negligence by you or any other person with respect to the Equipment; or (5) alteration of Equipment serial number(s).

The warranty statement in such written materials also describes the following in explicit detail, but in general, such warranty does not cover: (1) misuse, neglect or abuse of the Equipment; (2) labor involved in the removal/reinstallation of warranted Equipment or parts on site; (3) damage or malfunction as a result of acts of nature; or (4) operating supplies, including paper, ribbons, accessories and chargeable batteries.

You expressly understand and agree that, except as set forth above, we make no warranties whatsoever, express or implied, relative to

the Equipment, including, without limitation, any warranties of merchantability or fitness for any particular purpose, and you hereby expressly waive and release us from any and all warranties with respect to the Equipment, other than those specifically set forth in this Agreement.

You further expressly understand and agree that our sole liability and your sole remedy, whether in contract, tort or otherwise, with respect to any Equipment provided to you under this Agreement will be limited to the repair or replacement of defective or faulty Equipment in accordance with the terms of this Agreement, and we will not be liable for indirect or consequential damages, or damages resulting from the loss of use, data or profits, arising out of or in connection with the use of, or the inability to use, the Equipment, and you hereby expressly release us from any and all liability with respect to the Equipment, other than as expressly set forth above.

WE DISCLAIM ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT AND THE SOFTWARE, INCLUDING AS TO ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATIONS OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

We do not provide wireless communication services. If you are purchasing wireless Equipment, we will not select the wireless communications carrier for you, we exercise no control over the wireless service carriers, we do not represent that coverage will be available in your area and we will not be responsible for checking coverage or if coverage is lost in your area. If your wireless carrier ceases to provide coverage, your equipment might not work with another carrier. You and not we are responsible for determining that the wireless Equipment you select will work with the wireless communications carrier you select and with the services we provide. You will not rely on any representations to the contrary unless provided in a writing signed by our authorized representative.

SECTION 43. RETURN, REPAIR & REPLACEMENT OF EQUIPMENT.

We will assist you in obtaining repairs and replacements of any Equipment, which is malfunctioning and which cannot be made to work properly via telephone assistance provided to you by our technical support staff.

The decision to repair or replace Equipment will be at our sole discretion, and such repair or replacement will be made by a facility designated by us. We reserve the right to charge for or to refuse repairs or replacements of Equipment more than thirty (30) days after the initial date of shipment to you or which is not procured through us.

In the event that we have approved repair or replacement of specific Equipment, you will be solely responsible for properly packaging and promptly returning the defective Equipment to our designated facility, freight and insurance prepaid. In the event replacement Equipment is sent to you and you in turn fail or refuse to return the defective Equipment within thirty (30) days thereafter, we will charge the Settlement Account for the reasonable fair market value of such replacement Equipment, as determined at our sole discretion. If you will then afterward properly return said defective Equipment, we, upon verification of receipt, will credit you any amount so charged, less a handling fee for your failure to return the defective Equipment in a timely manner.

You will be liable and will pay for all non-warranty repairs, as well as all return shipping and handling fees. In the event of a valid warranty claim, you will be responsible for the cost of returning defective Equipment to our designated facility as prescribed in this Agreement, plus all repair and replacement costs, unless such return is made within thirty (30) days of the initial shipment of such Equipment to you by us, in which case, you will be responsible only for such return costs.

SECTION 44. LIMITATION OF LIABILITY FOR EQUIPMENT.

Our liability arising out of or in any way connected with this Agreement will not exceed the purchase price paid to us for the particular Equipment involved. In no event will we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Agreement will be your sole and exclusive remedies.

You warrant that you have chosen the Equipment provided under this Agreement based on your own analysis and evaluation and expressly disclaim any reliance upon statements or representations by us or others.

SECTION 45. INDEMNIFICATION FOR EQUIPMENT.

You will indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses (including attorneys' fees) resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages and expenses result from our gross negligence or willful misconduct. This indemnity will survive the termination of this Agreement.

You agree to indemnify and hold us harmless from any and all liability for any claims, actions, proceedings, expenses, damages or liabilities, including attorney's fees, arising as a result of your selection or use of the Equipment provided under this Agreement.

SECTION 46. SALES TAXES, INSTALLATION & DE-INSTALLATION, ETC.

You agree to pay any sales taxes imposed on the transactions contemplated by this Agreement, as well as any costs associated with the installation and de-installation of the Equipment, during the term of this Agreement and authorize us, or our assigns, to increase the amount of your preauthorized payment to reflect any and all increases in all applicable taxes, or other taxes imposed on the transactions, contemplated by this Agreement.

SECTION 47. CONTINUING GUARANTY.

A. Definitions. In this Continuing Guaranty ("Guaranty"):

"Guarantor" is each person or business who signed on the Guarantor signature line(s) of the Application.

"Merchant" is the person or business organization named on the Application.

"Bank" is Bank of America, N.A.

The "Agreement" is the Merchant Agreement between Bank and Merchant, as now in effect and as amended from time to time, a copy of which has been provided to Guarantor.

"Obligations" are the Obligations of Merchant under the Agreement.

Capitalized terms not otherwise defined in this Guaranty have the meanings ascribed in the Agreement.

B. Guaranty. Merchant has applied for certain services from Bank to process Card transactions and to provide other merchant services to Merchant under the Agreement ("Services"). To induce Bank to make Services available to Merchant, the Guarantor hereby unconditionally guarantees payment of, and will pay to the order of Bank on demand, the Obligations of Merchant described below.

- i) The Obligations include all obligations Merchant incurs under the Agreement: 1) at any time, past, present or future, 2) voluntarily or involuntarily, 3) directly or indirectly, and 4) individually or together with others.
- ii) The Obligations include amounts: 1) due or not yet due, 2) absolute or contingent, 3) for a determined or undetermined amount, and 4) for amounts due from Merchant.
- iii) The Guarantor expressly acknowledges and agrees that Guarantor has received adequate consideration for the execution, delivery and performance of this Guarantee.
- iv) The Guarantor understands that the maximum amount of the Obligations is related to the Services provided under the Agreement, and may be for an unlimited amount, unless a maximum amount is provided in a separate written agreement between Guarantor and Bank. Guarantor also understands that Bank may from time to time modify the amount or type of Services provided to Merchant, which may increase the Guarantor's obligations under this Guaranty.

- v) This Guaranty is unconditional. Bank may require the Guarantor to pay even if Bank does not: 1) proceed against Merchant, any other Guarantor, or any other party, 2) perfect any security interest, 3) proceed against any security, or 4) pursue any other remedy.
- vi) Bank may release or add Guarantors without releasing any other Guarantor. Bank may require the Guarantor to pay even if a statute of limitations or disability bars recovery from Merchant, or the Obligations are or become otherwise unenforceable. The Guarantor waives the benefit of any statute of limitations that would apply to the Guaranty.
- vii) The Guarantor's obligations are independent of Merchant's Obligations, and Bank may sue the Guarantor without suing Merchant.

C. Limits of the Guaranty. At any one time, the Guaranty is limited to the Obligations of the Merchant under the Agreement, which may be for amounts without a limit. Bank, however, may permit Merchant to incur Obligations to Bank exceeding the limits of this Guaranty and may apply amounts received from sources other than the Guarantor to the unguaranteed portion of Merchant's Obligations to Bank. This Guaranty is in addition to any other guaranty given by the Guarantor.

D. Bank's Rights.

- i) Bank may from time to time, without notice to or demand on the Guarantor: 1) change the interest rate on or renew any other debt of Merchant to Bank, 2) accelerate, compromise or change the repayment period of the Obligations or any other debt of Merchant to Bank, or otherwise change the terms of the Agreement, 3) receive, substitute or release collateral for the Obligations or for any other debt of Merchant to Bank, 4) sell, otherwise dispose of or apply collateral in any order, or 5) assign or sell all or a part of the Obligations and this Guaranty.
- ii) Bank may, at its option, request periodic financial statements from the Guarantor. The Guarantor will supply these statements promptly upon Bank's request. Bank may assign this Guaranty, in whole or in part, without notice, and Bank and any assignee or purchaser, or any prospective assignee or purchaser of the Obligations, may exchange financial information about the Guarantor with one another in connection with any assignment or purchase transaction. If Merchant is other than a natural person, Bank is not required to investigate the powers of anyone acting on Merchant's behalf.

E. Protecting Bank's Interest.

- i) Any amounts Merchant owes the Guarantor now or in the future are subordinated to Merchant's Obligations to Bank. If Bank so requires, the Guarantor, as a trustee for Bank, will collect amounts Merchant owes the Guarantor and pay them to Bank in reduction of the Obligations to Bank, without affecting or reducing this Guaranty.
- ii) Until the Obligations of Merchant and any other obligations of Merchant to Bank have been paid in full and the Agreement has been terminated, the Guarantor does not have any: 1) right of subrogation, reimbursement, indemnification or contribution arising from the existence or performance of this Guaranty. This includes any rights arising from contract, statutory law or otherwise, and includes any claim of subrogation under the Bankruptcy Code or any successor statute, 2) right to enforce a remedy that Bank now has or may later have against Merchant, or 3) right to participate in security now or later held by Bank.
- iii) The Guarantor does not have any right to any defense based on a claim that the responsibilities of Guarantor under this Guaranty are more burdensome than or exceed the Obligations.
- iv) The Guarantor is solely responsible for obtaining any financial or other information from Merchant the Guarantor may require. Bank is not required to give the Guarantor any information about Merchant's business operations or financial condition, or any notices or demands to Merchant of any kind, including

notices of new or additional Obligations or any other debts that may be incurred by Merchant, notices of default or notice of Bank's acceptance of this Guaranty.

F. Security Interest and Right of Set-Off.

- i) To secure all the debts covered by this Guaranty, the Guarantor assigns and grants to Bank a security interest in all of the following property of Guarantors held at Bank and all of its affiliates: 1) money, 2) securities, 3) deposit accounts and their proceeds, and 4) any other property.
- ii) If Merchant fails to fulfill any obligation under the Agreement or if any of the Guarantor's obligations to Bank are not fulfilled, Bank may immediately use any money or proceeds of the Guarantor's deposit accounts, securities or other property to reduce the Obligations.
- iii) Bank also may foreclose on any other collateral as provided in the Uniform Commercial Code and in any security agreements between Bank and Guarantor.

G. Guarantors in Community Property States. In the event Guarantor lives in a community property state and Guarantor is married, Guarantor agrees that he or she is acting on behalf of his or her marital community and that this Continuing Guaranty benefits or is expected to benefit the community, and that recourse may be had against the community property and the Guarantor's separate property.

H. Arbitration. Any dispute arising out of or relating to this Agreement that is not resolved by the parties through meetings or party representatives will be referred to mediation, if both parties agree, or to arbitration, if the parties cannot so agree. Respecting mediation, the parties hereto agree to cooperate in good faith to select a mediator, a mediation venue and an expeditious date for the mediation hearing. At the mediation hearing, the parties agree to produce a senior member of their management. It is agreed in advance that the parties and their witnesses need not be physically present at the mediation venue, but may at their option participate telephonically.

If the parties cannot agree to mediation or if the mediation hearing was unsuccessful, then the dispute will be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), or its successor, and judgment upon the arbitration award may be entered in any court of competent jurisdiction. Any such arbitration will be conducted in Louisville, Kentucky, or the city nearest thereto having an AAA regional office. Unless otherwise agreed, there will be a single arbitrator. The arbitrator may not make any ruling, finding or award that does not conform to the terms and conditions of this Agreement, and in no event may punitive damages be awarded by the arbitrator. Either party, before or during any arbitration, may apply to a court of competent jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitration proceedings. Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder without the prior written consent of both parties.

The parties agree that this Agreement involves interstate commerce and, notwithstanding any choice of law provisions in this Agreement, any arbitration hereunder will be governed by the Federal Arbitration Act (or any successor thereto).

I. Waiver of Jury Trial. This Subsection I is applicable only for Guarantors residing or domiciled in the following states: Arizona, Arkansas, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Maine, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia and Washington.

By agreeing to binding arbitration, Guarantor and Bank irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any dispute. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any dispute is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such dispute. This waiver of jury trial will remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. **WHETHER THE DISPUTE IS DECIDED BY ARBITRATION OR BY TRIAL BY A JUDGE, THE**

PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.

J. Expenses. Guarantor will pay all reasonable attorney fees, including allocated costs of Bank's in-house counsel, court costs and all other expenses Bank incurs in enforcing this Guaranty. The expenses covered by this provision include attorney fees and costs of any arbitration proceedings related to this Guaranty.

K. Revoking this Guaranty. The Guarantor may revoke this Guaranty as to future transactions or activities at any time by written notice to Bank, effective two Business Days after Bank receives the written notice revoking the Guaranty. The Guarantor is obligated on all Obligations relating to services extended by Bank to Merchant before the revocation becomes effective. Any revocation will not affect the Guarantor's obligation for any transactions or activities that preceded the effective time of the revocation, and the Guarantor will remain obligated on all Obligations related to these transactions and activities, even if those Obligations before or after the revocation have been renewed or modified. If this Guaranty is revoked and Bank later must refund or rescind a payment, or transfer an interest in property back to Merchant, relating to Obligations before the revocation, this Guaranty will be reinstated as to that payment or interest.

L. Choice of Law/Venue; Enforcing this Guaranty. North Carolina law governs this Guaranty, and Bank may sue the Guarantor in any court in North Carolina. Bank may delay or waive exercising or enforcing any of its rights, including its rights of set-off and lien, without losing them. These rights continue until Bank waives them in writing.