



# EQUITY COMMERCE, L.P. MERCHANT APPLICATION AND AGREEMENT

INTERNAL USE ONLY

Merchant # \_\_\_\_\_  
Hierarchy \_\_\_\_\_

MERCHANT NAME (DBA OR TRADE NAME)			CORPORATE / LEGAL NAME		
LOCATION ADDRESS			CORPORATE ADDRESS		
CITY	STATE	ZIP	CITY	STATE	ZIP
CONTACT TELEPHONE		CONTACT EMAIL ADDRESS		CONTACT TELEPHONE	FAX NUMBER
CONTACT TELEPHONE		CONTACT EMAIL ADDRESS		FEDERAL TAX ID#	
YEARS IN BUSINESS _____	DOES THIS LOCATION CURRENTLY TAKE VISA/MASTERCARD/DISCOVER@NETWORK? <input type="checkbox"/> NO <input type="checkbox"/> YES		MERCHANT EXPECTED AVERAGE TICKET \$ _____ MONTHLY MC/VISA VOLUME \$ _____		TYPE OF GOODS OR SERVICES:  _____
WEBSITE ADDRESS WWW. _____	CURRENT PROCESSOR _____		PLEASE CHOOSE MAILING ADDRESS: <input type="checkbox"/> DBA ADDRESS <input type="checkbox"/> LEGAL ADDRESS		MCC/SIC CODE: _____
# OF LOCATIONS _____	PLEASE PROVIDE 1 MONTH PREVIOUS PROCESSOR STMT				

**PAYMENT CARD INDUSTRY DATA SECURITY STANDARD: MUST PROVIDE COPY OF SELF ASSESSMENT QUESTIONNAIRE. IF APPLICABLE, MUST PROVIDE CERTIFICATE OF COMPLIANCE**

<b>OWNERSHIP: MUST PROVIDE DOCUMENTATION</b> <input type="checkbox"/> INDIVIDUAL / SOLE PROPRIETOR <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> COPORATION <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> LLC <input type="checkbox"/> NON-PROFIT (MUST PROVIDE 501C3 LETTER) <input type="checkbox"/> PUBLICLY TRADED <input type="checkbox"/> PA/PC	<b>LOCATION:</b> BUILDING TYPE: <input type="checkbox"/> SHOPPING CENTER <input type="checkbox"/> OFFICE BUILDING <input type="checkbox"/> INDUSTRIAL BUILDING <input type="checkbox"/> RESIDENCE MERCHANT: <input type="checkbox"/> OWNS <input type="checkbox"/> RENTS AREA ZONED: <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> RESIDENTIAL SQUARE FOOTAGE: <input type="checkbox"/> 0-500 <input type="checkbox"/> 501-2500 <input type="checkbox"/> 2501-5000 <input type="checkbox"/> 5000-10,000 <input type="checkbox"/> 10,000+
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**PRINCIPALS: (Please provide copy of driver's license for each signing principal)**

1.PRINCIPAL NAME: FIRST	MIDDLE	LAST	SSN:	% OWNERSHIP:	TITLE:
HOME ADDRESS:		CITY:	STATE:	ZIP:	HOME PHONE:
DRIVERS LICENSE NUMBER AND EXP DATE:		DATE OF BIRTH:			
2.PRINCIPAL NAME: FIRST	MIDDLE	LAST	SSN:	% OWNERSHIP:	TITLE:
HOME ADDRESS:		CITY:	STATE:	ZIP:	HOME PHONE:
DRIVERS LICENSE NUMBER AND EXP DATE:		DATE OF BIRTH:			

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER FILED:  
 BUSINESS BANKRUPTCY     PERSONAL BANKRUPTCY     NEVER FILED  
 (If yes, please explain): \_\_\_\_\_

HAVE MERCHANT OR OWNERS / PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING  
 BANKCARDS FOR THIS BUSINESS OR ANY OTHER BUSINESSES?  
 NO     YES (If yes, please explain): \_\_\_\_\_

BANK REFERENCE	ACCOUNT #:	CONTACT:	TELEPHONE NUMBER:	FAX NUMBER:
TRADE REFERENCE	ACCOUNT #:	CONTACT:	TELEPHONE NUMBER:	FAX NUMBER:
TRADE REFERENCE	ACCOUNT #:	CONTACT:	TELEPHONE NUMBER:	FAX NUMBER:

<b>SALES METHOD: (MUST EQUAL 100%)</b>  RETAIL SWIPED _____%    KEYED WITH SIGNATURE AND IMPRINT _____%  MAIL/PHONE _____% (KEYED WITHOUT SIGNATURE AND IMPRINT) (INBOUND CALLS _____% / OUTBOUND CALLS _____%)  INTERNET _____%    ACH _____%	<b>BANK ACCOUNT INFORMATION:</b> <b>ATTACH VOIDED CHECK FOR THE CHECKING ACCOUNT WHERE FUNDS ARE TO BE DEPOSITED:</b>  ROUTING NUMBER _____  ACCOUNT NUMBER _____
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**ADDITIONAL CARD TYPES:**

➤ **AMERICAN EXPRESS:**

**IF CURRENTLY ACCEPTING AMERICAN EXPRESS, PLEASE PROVIDE YOUR AMERICAN EXPRESS MERCHANT ID:** \_\_\_\_\_

BY SIGNING BELOW, I REPRESENT THAT I HAVE READ AND AM AUTHORIZED TO SIGN AND SUBMIT THIS APPLICATION ON BEHALF OF THE ENTITY ABOVE AND ALL INFORMATION I HAVE PROVIDED HEREIN IS TRUE, COMPLETE, AND ACCURATE. I AUTHORIZE AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY INC (AMERICAN EXPRESS) TO VERIFY THE INFORMATION IN THIS APPLICATION AND RECEIVE AND EXCHANGE INFORMATION ABOUT ME PERSONALLY, INCLUDING BY REQUESTING REPORTS FROM CONSUMER REPORTING AGENCIES. I AUTHORIZE AMERICAN EXPRESS TO INFORM ME DIRECTLY OR THROUGH THE ENTITY ABOVE OF REPORTS ABOUT ME THAT AMERICAN EXPRESS HAS REQUESTED FROM CONSUMER REPORTING AGENCIES. SUCH INFORMATION WILL INCLUDE THE NAME AND ADDRESS OF THE AGENCY FURNISHING THE REPORT. I UNDERSTAND THAT UPON AMERICAN EXPRESS' APPROVAL OF THE 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 ENTITY ALONG WITH A WELCOME LETTER. BY ACCEPTING THE AMERICAN EXPRESS CARD FOR THE PURCHASE OF GOODS AND/OR SERVICES OR OTHERWISE INDICATING ITS INTENTION TO BE BOUND THE ENTITY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS.

**SIGNATURE** \_\_\_\_\_

➤ **DISCOVER:**

**IF CURRENTLY ACCEPTING DISCOVER, PLEASE PROVIDE YOUR DISCOVER MERCHANT ID:** \_\_\_\_\_

BY SIGNING BELOW, I REPRESENT THAT I HAVE READ AND AM AUTHORIZED TO SIGN AND SUBMIT THIS APPLICATION ON BEHALF OF THE ENTITY ABOVE AND ALL INFORMATION I HAVE PROVIDED HEREIN IS TRUE, COMPLETE, AND ACCURATE. I AUTHORIZE DISCOVER TO VERIFY THE INFORMATION IN THIS APPLICATION AND RECEIVE AND EXCHANGE INFORMATION ABOUT ME PERSONALLY, INCLUDING BY REQUESTING REPORTS FROM CONSUMER REPORTING AGENCIES. I AUTHORIZE DISCOVER TO INFORM ME DIRECTLY OR THROUGH THE ENTITY ABOVE OF REPORTS ABOUT ME THAT DISCOVER HAS REQUESTED FROM CONSUMER REPORTING AGENCIES. SUCH INFORMATION WILL INCLUDE THE NAME AND ADDRESS OF THE AGENCY FURNISHING THE REPORT. BY ACCEPTING THE DISCOVER CARD FOR THE PURCHASE OF GOODS AND/OR SERVICES OR OTHERWISE INDICATING ITS INTENTION TO BE BOUND THE ENTITY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS.

**SIGNATURE** \_\_\_\_\_

**FEE SCHEDULE**

<b>VS/MC CREDIT CARD DISCOUNT RATE</b> _____ %	<b>or PASS THRU I/C PLUS</b> ____ BP	<b>AVS TRANSACTION FEE</b> _____
<b>VS/MC CHECK CARD DISCOUNT RATE</b> _____ %	<b>or PASS THRU I/C PLUS</b> ____ BP	<b>EARLY TERMINATION FEE</b> _____
<b>VS/MC AUTHORIZATION FEE</b> _____		<b>EBT TRANSACTION FEE</b> _____
<b>AMEX/DISCOVER AUTHORIZATION FEE</b> _____		<b>EBT STATEMENT FEE</b> _____
<b>MONTHLY MANAGEMENT FEE</b> _____		<b>OTHER (please specify):</b> _____
<b>ONLINE SERVICE</b> _____		
<b>MONTHLY MINIMUM</b> _____		
<b>ANNUAL FEE</b> _____		<b>FOR 3 – TIER PRICING:</b>
<b>PIN DEBIT TRANSACTION FEE</b> _____ (Plus Network Fees)		<b>VS/MC MID QUAL</b> _____ %
<b>BATCH FEE</b> _____		<b>VS/MC NON QUAL</b> _____ %
<b>CHARGEBACK FEE</b> _____		
<b>ACH REJECT FEE</b> _____ \$25.00		<b>MONTHLY PCI FEE</b> _____
<b>RETRIEVAL FEE</b> _____ \$5.00		<b>PCI NON-COMPLIANT FEE</b> <u>\$19.99/MONTH</u>
<b>VOICE AUTHORIZATION FEE</b> _____ \$0.95		
<b>OPERATED ASSISTED VOICE AUTH FEE</b> _____ \$1.50		

\*I/WE UNDERSTAND AND AGREE TO THE FOLLOWING: THAT MY/OUR DISCOUNT RATE AS STATED ABOVE WILL BE CHARGED ON ALL ELECTRONICALLY AUTHORIZED PAYMENT CARD TRANSACTIONS THAT ARE IN BATCHES CLOSED DAILY AND THAT ALL PAYMENT CARD TRANSACTIONS THAT DO NOT MEET THE QUALIFIED TRANSACTION REQUIREMENTS MAY BE CHARGED UP TO 2.19% + \$0.10 HIGHER THAN MY/OUR DISCOUNT RATE.

**Merchant Acceptance and Agreement**

By executing this Merchant Application on behalf of the merchant described above (the "Merchant"), the undersigned individual(s): (i) represent(s) and warrant(s) that all information contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application, and that such individual(s) have the requisite corporate power and authority to complete and submit this Merchant Application and make and provide the acknowledgements, authorizations and agreements set forth below, both on behalf of the Merchant and individually; (ii) acknowledge(s) that the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining a merchant account with Bank on behalf of the Merchant; (iii) authorize Bank to investigate the credit of the Merchant and each person listed on this Merchant Application; (iv) agree, on behalf of the Merchant and in the event this Merchant Application is accepted and executed by Bank, to the Fee Schedule set forth above and to the Terms and Conditions included with and incorporated into this Merchant Agreement. **Merchant understands that this Agreement shall not take effect until Merchant has been approved by Bank and a merchant number is issued.**

**Merchant:** \_\_\_\_\_

**Print Legal Name of Merchant Business**

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

**Principal 1:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(Signature of Principal/Owner)**

**Principal 2:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(Signature of Principal/Owner)**

**Meridian Bank:**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name and Title)**

**Equity Commerce, L.P.:**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name and Title)**

**Personal Guarantee**

In consideration of Bank's acceptance of this Agreement, the undersigned Guarantor (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Bank under the Agreement, and payment of all sums due there under, and in the event of default, hereby waives notice of default and agrees to indemnify Bank for all funds due from Merchant pursuant to the terms of the Agreement. Guarantor waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant, and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the Agreement whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance there under is due, and / or any change in any interest or discount rate or fee there under. Guarantor confirms that Guarantor, collectively or individually, is a party to the Agreement, and unconditionally and specifically authorizes Bank or their authorized agents, to debit any overdue fees, costs, chargebacks, fines, fees, penalties, expenses or obligations under the Agreement and / or any contractual relationship with Bank from any personal checking account or other account owned or controlled by Guarantor, and further to report any default hereunder on Guarantor's personal Credit Bureau Report. Guarantor agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of Bank in connection with the enforcement of this Guaranty.

**Guarantor #1:** \_\_\_\_\_

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

**Guarantor #2:** \_\_\_\_\_

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

**INTERNAL USE ONLY**

SITE INSPECTION SURVEY: Inventory maintained: on site warehouse off site fulfillment center, provide name & address \_\_\_\_\_

Was the off site location visited? yes no, provide explanation \_\_\_\_\_ Does the amount of inventory on shelves, floor and in warehouse appear consistent with this type of business and credit card volume? Yes No If no, explain: \_\_\_\_\_ Does location have sufficient staff, telephone lines and other equipment to meet anticipated sales volume? Yes No If no, explain: \_\_\_\_\_

Type of Building Office Bldg. Suite Separate Bldg Shopping Center/Mall Residence-home or Apt. Other - \_\_\_\_\_

Zoning: Comm'l Industrial Residential Sq. Footage of Business: 0-500 501-1000 1001-2000 2001-4000 Other \_\_\_\_\_ (est. sq. ft.)

Merchant: Owns Leases Name & address Landlord/ Mgt. Co: \_\_\_\_\_ ATTACH MINIMUM OF ONE INSIDE PICTURE, ONE OUTSIDE PICTURE

I hereby verify that I have inspected the business premises of the merchant at this address and the information stated above is correct to the best of my knowledge and belief.

Inspected By (Print Name): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CHECKLIST:**

- Did the merchant complete the entire application?
- Did the merchant provide all requested supporting documentation?
- Personal tax return if in business less than 1 year, copy of drivers license of each principal, Articles of Incorporation or business license, three months of merchant statements, voided check , picture of front of business **(Missing information will delay the approval process.)**
- Please explain why any of the supporting documentation is missing:** \_\_\_\_\_
- Were the rates/additional fees filled in on the application?
- Did the appropriate principals sign and date the application?
- Was the resolution filled out correctly and signed?
- Was the site inspection survey filled out? Was a picture of the merchant location provided?

**UNDERWRITING**

APPROVED  DECLINED REVIEWED BY: \_\_\_\_\_ DATE SUBMITTED TO BANK: \_\_\_\_\_ MC CODE: \_\_\_\_\_ SALES REP: \_\_\_\_\_

Initials \_\_\_\_\_

## **Bank Disclosure**

### **Member Bank Information**

Meridian Bank  
92 Lancaster Ave  
Devon, PA 19333  
484-568-5000

### **Important Bank Responsibilities**

1. Meridian Bank is the **only entity** approved to extend acceptance of VISA products directly to a Merchant.
2. Meridian Bank must be a principal (signor) to the Merchant Agreement.
3. Meridian Bank is responsible for educating Merchants on pertinent VISA Operating Regulations with which Merchants must comply.
4. Meridian Bank is responsible for and must provide settlement funds to the Merchant.
5. Meridian Bank is responsible for all funds held in reserve that are derived from settlement.

### **Important Merchant Responsibilities**

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with VISA Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the VISA Member – Meridian Bank - is the ultimate authority should the Merchant have any problems.

\_\_\_\_\_  
**Merchant's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Merchant's Printed Name & Title**



## Terms and Conditions

The parties to this Merchant Agreement (the "Agreement") are Meridian Bank ("Bank") whose address is 92 Lancaster Avenue, Devon, PA 19333, Equity Commerce, L.P. ("ISO") whose address is 18223 Shawley Dr, Ste 200, Hagerstown, MD 21740, and the party as specified in the Merchant Application and Agreement to which these Terms and Conditions are incorporated ("Merchant").

Subject to the applicable Association Rules (as defined herein), Bank and ISO may divide their respective responsibilities under the Agreement in their sole discretion and either ISO or Bank may jointly or individually exercise or assert the rights or remedies provided to Bank hereunder, therefore Bank and ISO shall be jointly referred to as "Bank" hereunder. The parties agree as follows:

1. Definitions. For the purposes of this Agreement, the Application, and any Schedules referred to herein, the following definitions apply unless the context otherwise requires:

1.1. "Address Verification" shall mean a service which allows Merchant to verify Cardholder's billing address with Issuer.

1.2. "Application" shall mean the merchant application that has been filled out and submitted to Bank by Merchant.

1.3. "Association(s)" shall mean VISA, Inc. and MasterCard International, Inc.

1.4. "Authorization" shall mean an affirmative response by or on behalf of an Issuer, to Merchant's request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.

1.5. "Business Day" shall mean any day other than:  
i. Saturday or Sunday;  
ii. A day on which banking institutions in Pennsylvania are authorized by law or executive order to be closed (and on which Bank is in fact closed); or  
iii. A day on which the Federal Reserve Bank is closed.

1.6. "Card(s)" shall mean either a Visa or MasterCard credit card or debit card.

1.7. "Cardholder" shall mean a person authorized to use a Card.

1.8. "Card-Not-Present" shall mean mail order, telephone order, e-commerce (Internet) order, or other transactions that are not Card-Present Transactions.

1.9. "Card-Present Transaction" shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the magnetic strip.

1.10. "Chargeback" shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.

1.11. "CVV" shall mean a service which allows Merchant to verify Cardholder's possession of Card through the identification of unique digits on Card.

1.12. "Forced Sale" shall mean a sales Transaction processed without an approved electronic authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.

1.13. "Issuer" shall mean an Association member that issued a Card to a Cardholder.

1.14. "IVR" shall mean interactive voice response unit used for an Authorization.

1.15. "Merchant Servicer" shall mean non-members other than the Merchant that receive, pass, or store transaction data on their internal systems on behalf of the Merchant. This includes third party servicers, Web hosting companies, shopping cart providers, and media back-up companies. Merchant Servicers must be registered with Visa by Bank.

1.16. "Merchant Statement" shall mean an itemized daily and monthly statement of all charges and credits to the Operating Account.

1.17. "Operating Account" shall mean a demand deposit account at Bank, or other approved financial institution through which fees, charges and credits due in accordance with this Agreement may be processed.

1.18. "Pre-Authorized Recurring Order Transactions" shall mean Transactions which have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.

1.19. "Reserve Account" shall mean an account at Bank for all future liabilities of Merchant to Bank which may arise out of this Agreement.

1.20. "Services" shall mean the transaction processing services provided by Bank under this Agreement.

1.21. "Transaction" shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the transaction is approved, declined, or processed as a Forced Sale. "Transaction" also includes credits and voids.

## 2. Merchant Obligations and Requirements.

2.1. Merchant Card Processing. Merchant is in the business of selling and/or leasing goods and/or providing services to its customers as described in the Application. Merchant has requested and Bank has agreed to permit Merchant's participation in the card processing programs and services. Merchant agrees that it will not materially change its business or the method in which it markets or sells its goods and services without notifying Bank. Without the prior written consent of Bank, Merchant is not authorized to process Transactions for payment for any other type of goods or services other than as set forth in the Application. Bank reserves the right to establish certain limits on volume of daily, weekly, and monthly transactions and dollar limits per Transaction which Merchant may process.

2.2. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish the Operating Account at a financial institution of Merchant's choice. Merchant authorizes Bank to debit all fees and charges from the Operating Account, whether maintained at Bank or another financial institution, daily, monthly or at times

Initials \_\_\_\_\_

deemed appropriate by Bank through the ACH Banking Network or by a manual debit of the account. Merchant shall maintain this Operating Account throughout the term of this Agreement and any extensions or renewals thereof. Merchant shall, at all times, maintain sufficient funds in this Operating Account to ensure that all fees, charges and costs provided for under this Agreement are paid, including any reserve requirements set by Bank in accordance with Section 2.3 below. Merchant agrees to deposit funds into the Operating Account as required in order to ensure that sufficient funds are maintained in the Operating Account. Merchant authorizes Bank to make deposits to, or withdrawals from, the Operating Account. Only the person(s) signing this Agreement on behalf of Merchant shall be authorized to make any changes to the Operating Account. Any changes shall be in writing and must be approved in writing by Bank. If required by Bank or any other financial institution where the Operating Account is maintained, Merchant agrees to sign any other additional documents to authorize ACH transactions. Merchant agrees to be bound by the operating rules of the National Automated Clearing House Association ("NACHA"). Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against any other designated financial institution where the account is maintained. Merchant hereby grants a security interest and lien upon the Operating Account and/or any substitute account now and in the future and all proceeds thereof to Bank to secure all fees, costs and charges due in accordance with this Agreement.

2.3. Reserve Account. Upon execution of this Agreement, or at any time during the term of this Agreement, Bank may establish a Reserve Account for all future indebtedness of Merchant to Bank which may arise out of this Agreement including, but not limited to, Chargebacks and fees on Transactions and penalties which may be imposed by any Card Issuer for failure to comply with Card Issuer's requirements in accordance with Section 4.1 below. Bank may fund the Reserve Account by deduction from payments due Merchant, a charge against Merchant's Operating Account, or against any of Merchant's accounts at Bank or the financial institution at which Merchant maintains its Operating Account. The amount required to be maintained in the Reserve Account and the terms and conditions for maintaining the account shall be established by Bank, in its reasonable discretion. Upon termination of this Agreement, Bank may require an additional reserve to cover possible indebtedness to Bank for Transactions initiated prior to termination. This Reserve Account will be maintained for a minimum of six months from the termination date or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, commercially reasonable and Merchant's account with Bank is fully resolved. Upon expiration of this period, any balance remaining in the Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Reserve Account during this period. Merchant hereby grants a security interest in the Reserve Account and/or any substitute account now and in the future and all proceeds thereof to Bank to secure all fees, costs and charges due in accordance with this Agreement. In addition to any regularly required reserve, Bank may, at its sole discretion, direct processing funds to the Reserve Account and withhold payment to Merchant at any time that Bank becomes concerned about any aspect of Merchant's business including, but not limited to concerns about the operation, management and/or financial performance of Merchant and/or concerns about the goods or services being offered for sale or lease by Merchant. Bank may, at its sole discretion at any time, require, as a condition of this Agreement or the continuance of this Agreement, that Merchant provide satisfactory security to Bank to secure all payments due to Bank under this Agreement, including, but not limited to, requiring a surety bond in a form and amount satisfactory to Bank.

2.4. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. In the event that goods are returned, or any services are terminated or cancelled, or any price is adjusted on a Transaction, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of sales drafts transmitted that day. In the event the amount of credit or return Transactions exceeded the amount of sales draft Transactions, Bank shall charge Merchant's Operating Account for the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section. Sales drafts for any Transaction for which no refund or return will be given must be conspicuously marked as a "final sale" and "no returns" on the customer's copy of the sales draft at the time of the Transaction. If Merchant has a no-cash refund policy, in store credit only, that policy must appear on the sales draft. All Merchants must follow Visa and MasterCard reservation/no-show policy. All Merchants must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified of the exact number of days required for reservation deposit refunds. A Merchant not following Visa and MasterCard reservation/no-show policy may receive a charge back to its Operating Account for lodging regulation violations.

2.5. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. Bank reserves the right to charge Merchant reasonable fees and reimbursement, in addition to any applicable Association fees or charges, on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- i. The Cardholder's name;
- ii. A unique confirmation number (transaction sequence number, or other identifier) that the Merchant can use to reference the transaction in subsequent communications with Bank;
- iii. The date and time the Cardholder asserted the claim or defense;
- iv. The nature of the claim or defense; and
- v. The action which Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

2.6. Auditing and Credit Investigation. Merchant authorizes Bank or its agents to investigate the background and personal credit history of any of the principals and employees associated with Merchant's business from time to time, and to obtain a business report on Merchant's business from Dunn & Bradstreet or any company providing a similar service. Bank may terminate this Agreement if the information received in any investigation is unsatisfactory in Bank's reasonable discretion. Bank may also audit from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank necessary to complete the audit. Upon Bank's request, Merchant shall provide financial statements for Merchant and personal financial statements for all guarantors.

2.7. Exclusivity. Merchant shall submit all Card Transactions during the term hereof solely to Bank for processing. If Merchant fails to comply with this provision, Merchant agrees to pay Bank, a liquidated damages sum within 10 days of the date of non-compliance. The amount shall equal the greater of:

- i. \$250; or

- ii. 80% of the product of:
  1. The average net monthly fees; and
  2. The number of months, including any pro rata portion of a month, then remaining in the term of the Agreement.

Merchant agrees that the damages suffered as a result of such non-compliance would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above. Any exceptions to this exclusive arrangement must be approved by Bank in advance and in writing.

2.8. Retention of Sales Information. Merchant shall store all sales drafts and Transaction records in a limited access area for at least one year after the date of sales. Merchant shall retain all original sales drafts or legible microfilm copies of all sales drafts and Transaction records for at least three years. Merchant is responsible for maintaining complete backup records of all information relating to its customers' orders, inquiries, purchases, sales and any other customer information.

2.9. Confidentiality. Merchant shall treat all information received in connection with this Agreement, including but not limited to this Agreement, cardholder account or other personal information, and other transactional information as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to Merchant Servicers, to affected Cardholders, to Bank and to Issuers. See Sections 4.3 and 8.4 below for further requirements regarding the protection of cardholder data.

2.10. Third Party Servicers. Merchant understands and agrees that Merchant shall be responsible for any Merchant Servicers or other third party service providers with which Merchant has contracted to provide services related to Merchant's processing of Transactions hereunder (collectively "Third Party Servicers") and Merchant shall ensure that such Third Party Servicers comply with the requirements of Bank, the Associations and any applicable Rules, laws and regulations. Merchant shall indemnify and hold Bank harmless from the actions or inactions of any Third Party Servicer.

### 3. Bank Obligations and Requirements.

3.1. Bank to Provide Services to Merchant. Bank agrees to sponsor Merchant's acceptance of Cards for Transactions. Bank agrees to provide Merchant with the Services indicated on the Application, as amended from time to time by Bank, during the term of this Agreement, subject to the terms and conditions of this Agreement.

#### 3.2. Reconciliation of Transactions.

i. Electronically Transmitted Transactions. Bank shall deliver payment to Merchant by a credit to the Operating Account equal to the reconciled summary of Merchant's total summary Transactions since the previous credit. This credit will be net of following charges:

1. The sum of all Cardholder charges denied, refused or charged back;
2. All refunds processed on account of Cardholders during said time period;
3. All taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and
4. Fees, including but not limited to an amount equal to a specified percentage of the total cash price of each draft ("Merchant Discount Rate"), a specified amount per Transaction ("Transaction Fee") and additional fees such as a

monthly terminal fee, monthly statement fee, installation fees and any other fees identified on the Application.

ii. Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to chargeback by the Issuer, Cardholder or Associations.

3.3. Merchant Statement. Bank shall make available a Merchant Statement or similar information on no less than a monthly basis. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 60 days of the date of the Merchant Statement. Delivery of the Merchant Statement may be in written or electronic form.

3.4. Chargebacks. Merchant understands and agrees that Bank is in no way financially responsible for chargebacks. Bank shall be authorized to charge back to Merchant any Transactions as specified throughout this Agreement and for reasons including, but not limited to, the following:

1. No specific prior authorization for the Transaction was obtained;
2. The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been cancelled and Merchant was so notified prior to the Transaction;
3. The Card giving rise to the Transaction was cancelled and prior to, or at the time of, the Transaction, Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
4. The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
5. The information required in Sections 8.1 (Documenting Transactions) and 8.2iii(Card-Not-Present Transactions) was not submitted to Bank;
6. Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
7. The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
8. A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
9. The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
10. The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
11. A Transaction is charged back by an Issuer; or
12. Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In the event a Transaction is charged back or eligible for charge back as set forth above, Bank shall not be obligated to accept such Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Bank shall recover the amount of the Transaction from either aforementioned account. Merchant agrees that Bank, without prior notice to Merchant, may:

1. Charge the amount of the Transaction to the Operating Account or Reserve Account;
2. Recoup the amount of the Transaction by adjustment of the credits due to Merchant; or
3. Set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant.

#### 4. Compliance.

4.1. Associations' and Issuers' Requirements. Merchant and Bank shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement (collectively the "Rules"). Summaries of the Association Rules are available for merchants at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com). The parties agree that this Agreement shall be governed by the Association Rules and that any portion of this Agreement which conflicts with the Association Rules (as they may be amended from time to time) shall be superseded thereby.

4.2. Use of Marks. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.

4.3. Payment Card Industry Security Requirements. Merchant agrees to be compliant with the standards set forth by the Payment Card Industry ("PCI") Security Standards Council, as amended by the PCI from time to time.

i. Visa, MasterCard and other card issuers have implemented a program to ensure the protection of cardholder data, whether processed or stored, through a program of validation and compliance. Known as PCI, information about the program and specific requirements can be obtained at [www.visa.com/cisp](http://www.visa.com/cisp) and [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org). The program is comprised of 12 major requirements:

1. Install and maintain a firewall configuration to protect data
2. Do not use vendor-supplied defaults for system passwords and other security parameters
3. Protect stored data
4. Encrypt transmission of cardholder data and sensitive information across public networks
5. Use and regularly update anti-virus software
6. Develop and maintain secure systems and applications
7. Restrict access to data by business need-to-know
8. Assign a unique ID to each person with computer access
9. Restrict physical access to cardholder data
10. Track and monitor all access to network resources and cardholder data
11. Regularly test security systems and processes
12. Maintain a policy that addresses information security

ii. In the event of a security intrusion, Merchant agrees to notify Bank immediately and to fully cooperate with a third party approved PCI assessor and/or representative to conduct a thorough security review and validate compliance with the PCI Data Security Standards ("PCIDSS") for protecting Cardholder data;

iii. Merchant is responsible for the security of Cardholder data in its possession;

iv. Bank, Merchant and each payment card brand have ownership of Cardholder data and may use such data ONLY for assisting these parties in the completion of Transactions, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law;

v. In the event this Agreement is terminated by any of the parties, each party agrees to continue to treat account holder data as confidential;

vi. Immediately notify Visa USA Risk Management, through its acquirer, of the use of a Merchant Servicer; and

vii. Ensure the Merchant Servicer implements and maintains all of the security requirements, as specified in the PCI program.

4.4. Compliance with Applicable Law. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any services it intends to offer and that it is in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, as applicable.

4.5. Web Site Requirements for E-Commerce Merchants. A web site operated by the Merchant that accepts Card Transactions must contain all of the following information:

- i. Complete description of the services offered;
- ii. Return merchandise and refund policy; which includes the communication of the return policy during the order process and the requirement that the cardholder must be allowed to select a "click to accept" option of other affirmative button to acknowledge the policy;
- iii. Transaction currency;
- iv. Export or legal restrictions;
- v. Delivery policy;
- vi. Consumer data privacy policy;
- vii. The security method offered for transmission of payment data such as Secure Sockets Layer or 3-D Secure; and
- viii. Address of the Merchant outlet's permanent establishment, including the Merchant outlet country;
- ix. Any other terms and conditions applicable to the purchase.

The above information must be provided either (i) on the same screen view as the checkout screen used to present the total purchase amount; or (ii) within the sequence of web pages the Cardholder accesses during the checkout process.

#### 5. Term.

5.1. Term. This Agreement shall become effective when signed by all parties and, unless sooner terminated in accordance with this Agreement, shall remain in effect for a term of three years. This Agreement shall renew automatically for successive terms of one year each, unless any party provides written notice of termination to the other parties at least 120 days prior to the end of the then current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.

5.2. Termination of Agreement by Bank. Bank may terminate this Agreement at any time effective upon 30 days prior written notice to Merchant.

In order to protect the Associations and the Bank, Bank may terminate this Agreement immediately in the following circumstances:

- i. Any information obtained by Bank through a credit investigation is unsatisfactory to Bank;

- ii. Any criminal act or act of fraud or dishonesty is committed by Merchant, its employees, licensees, successors, agents, and/or assigns;
- iii. Chargebacks in excess of Association monitoring guidelines;
- iv. Breach of this Agreement by Merchant;
- v. Bankruptcy, insolvency or receivership proceedings are started by or against Merchant or any guarantor;
- vi. Merchant fails to pay all amounts due to Bank in accordance with this Agreement within 30 days;
- vii. Merchant fails to maintain sufficient funds in Merchant's Operating Account and/or Reserve Account to cover all amounts owed by Merchant under this Agreement;
- viii. Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank;
- ix. There is a material adverse change in the financial condition of Merchant in the determination of Bank;
- x. Merchant exceeds the volume limitations established by Bank as part of this Agreement;
- xi. Merchant changes the types of goods or services provided to its customers without the prior consent of Bank;
- xii. There is a change in the volume, character or method of Merchant's transactions or chargebacks that is not satisfactory to Bank;
- xiii. There is a change in structure or ownership of Merchant by any means or manner, including, but not limited to, a change in stock ownership, member interest, partnership interest, a change by merger or reorganization or a change of name;
- xiv. Merchant appears on the Association Terminated Merchant File.

Bank may selectively terminate one or more of Merchant's approved locations without terminating this Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of the card Transaction.

5.3. Termination of Agreement by Merchant. Merchant may terminate this Agreement upon at least 30 days prior written notice to the Bank if Bank breaches a material provision of this Agreement and fails to cure such breach within such 30-day period. Merchant may also terminate this Agreement upon 30 days prior written notice to Bank if Bank amends the Agreement as provided in Section 9.14ii below, to increase any non-pass through rate or charge by a total of more than 5% within any one calendar year (a "Rate Increase Termination"). Merchant must provide notice of a Rate Increase Termination within 30 days of receiving notice of the related rate increase. In the event that this Agreement is terminated by Merchant without cause or for a rate increase, or as a result of account dormancy as determined by Bank, Merchant will be charged an early termination fee equal to the greater of; (i) \$250; or (ii) 80% of the product of the average net monthly fees and the number of months, including any pro rata portion of a month, then remaining in the term of the Agreement. Merchant agrees that the damages suffered as a result of early termination of the Agreement would be extremely difficult to calculate with precision. For that reason, the parties hereto agree that the liquidated damages should be computed as set forth above.

5.4. Deconversion Fees. If this Agreement is terminated and Merchant requires assistance from Bank with moving to a new processor, Merchant agrees to pay Bank for the fees associated with such deconversion services as provided by Bank.

## 6. Merchant Billing.

6.1. Fees. Merchant agrees to pay all fees, including, but not limited to monthly service fees, Chargebacks and set-up fees as specified on and in accordance with the Application and this Agreement as may be amended from time to time. Merchant also agrees to pay Bank the amount of any fees, charges or penalties assessed against Bank by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties.

6.2. Late Fees. If Merchant does not pay sums due within 30 days of notice by Bank, Bank will charge and Merchant agrees to pay, a late fee of 1.5% per month on the balance outstanding, or the highest amount allowed by law.

6.3. Collection Charges. Should Bank take any action against Merchant to collect sums due hereunder, Merchant agrees to pay all costs associated with such collection efforts, including but not limited to reasonable attorney's fees.

6.4. Taxes. Merchant agrees to pay all federal, state, and local state, use, property and excise taxes which may be assessed in connection with the services and related products provided under this Agreement.

## 7. Liability and Indemnification.

7.1. Limitation of Liability. Bank shall not be liable to Merchant or Merchant's customers or any other person for any of the following:

- i. Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
- ii. Any loss caused by a Transaction downgrade resulting from defective or faulty software or equipment;
- iii. Any loss or liability resulting from the product or service of a third party.

7.2. Limitation on Damages. BANK SHALL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK PURSUANT TO THIS AGREEMENT. In no case shall Merchant be entitled to recover damages from Bank which exceed the fees retained by Bank pursuant to this Agreement during the one month period immediately prior to the event giving rise to the claim for damages.

7.3. Indemnification. Merchant agrees to indemnify and hold Bank harmless from any and all losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees and costs (whether or not an attorney is an employee of or affiliates, Bank or Bank's affiliates) arising out of any of the following:

- i. Merchant's misrepresentation or breach of this Agreement;
- ii. Any act or omission of Merchant;
- iii. The act or omission of any Third Party Servicer;
- iv. Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
- v. Merchant's failure to comply with any applicable law, rule or regulation;
- vi. Any Cardholder dispute concerning the quality, condition or delivery of any Merchant merchandise or the quality of performance of any Merchant service;

- vii. The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
- viii. Merchant's selection of an Internet service provider or other telecommunication services provider;
- ix. Card-Not-Present Transactions, unauthorized Transactions or prohibited Transactions.

MERCHANT ACKNOWLEDGES THAT BANK HAS NOT PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE WITH RESPECT TO THE SERVICES IT PROVIDES HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE.

8. Collection and Use of Transaction Information.

8.1. Documenting Transactions. Merchant shall submit the following information to Bank in connection with Transaction processing:

- i. The DBA name of Merchant, name of Merchant and Merchant's address;
- ii. Merchant customer service telephone number;
- iii. Merchant Internet address;
- iv. Merchant Number assigned by Bank;
- v. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
- vi. Name, address and telephone number of Cardholder;

and  
vii. Such additional information as may be required by Bank and/or the Associations, from time to time.

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant must not transmit a Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction which effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

8.2. Authorization for Transactions. Merchant shall obtain Authorization of Transactions as follows:

- i. Electronically Transmitted Transaction. Merchant shall submit each Transaction for Authorization to Bank's designated authorization center. Bank's designated authorization center shall respond with the Issuer's authorize or decline to a Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Transaction.
- ii. Card-Present Transactions. The following additional requirement applies to Card-Present Transactions: If a terminal or software application is inoperable at the time of an Authorization request, the Transaction may be manually authorized. In that case, the Transaction shall be entered as a Forced Sale, provided the approval number is also entered, and Merchant shall be subject to an additional IVR authorization fee as outlined in the Application.

Card-Not-Present Transactions. The following additional requirements apply to Card-Not-Present Transactions:

1. All Card-Not-Present Transactions are at Merchant's risk. As to each, Card-Not-Present Transactions Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant, Merchant shall pay Bank the amount of the Transaction, a Chargeback fee, plus any Association fine or assessment. Bank may charge the Transaction to the Operating Account or Reserve Account without prior notice to Merchant;

2. All Card-Not-Present Transactions must be electronically authorized and, in addition to the information required in Section 8.1 (Documenting Transactions), also shall indicate: an authorization code, if required; customer address and address verification; CVV (card verification value) and in lieu of Cardholder's signature, a notation of (a) mail order, (b) telephone order, (c) e-commerce order, or (d) pre-authorized order, on the signature line;

3. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once a year. Merchant shall not deliver goods or perform services covered by a Pre-Authorized Recurring Order Transaction after receiving notification from the Cardholder that the pre-authorization is cancelled or from Bank that the Card covering the Pre-Authorized Recurring Order Transaction is not to be honored; and

4. Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall perform Address Verification, CVV and only accept as approved those Transactions receiving at least a partial match or system unavailable response.

8.3. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction:

- i. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- ii. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- iii. Establish a minimum or maximum dollar Transaction amount;
- iv. Obtain multiple authorizations for amounts less than the total credit sale amount;
- v. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- vi. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- vii. Transmit or accept for payment any Transaction which was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in Merchant's application for card processing services initially submitted to and approved by Bank;
- viii. Honor or accept a Card as payment for any legal services or expenses arising out of or related to (1) the defense of any crime other than a traffic violation; (2) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (3) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- ix. Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- x. Redeposit a previously charged Transaction, regardless of whether Cardholder consents;
- xi. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;

xii. Use a Merchant Servicer's payment processing platform and any data received thereon for any other purpose except for determining whether or not Merchant should accept Cards in connection with a current sale or lease of goods or services;

xiii. Use a Merchant Servicer's payment processing platform and data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;

xiv. Draw or convey any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card is processed as non-accepted;

xv. Disclose any information obtained through the Merchant Servicer's payment processing platform to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;

xvi. Add any tax to Transactions unless applicable law expressly requires that Merchant collect such a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;

xvii. Disburse funds in the form of traveler's checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;

xviii. Disburse funds in the form of cash, except:

1. If Merchant is approved by Bank for cashback Transactions and in such Transaction the cashback portion of the Transaction is the only portion disbursed as cash; or

2. Merchant is dispensing funds in the form of traveler's checks, Visa TravelMoney Cards or foreign currency. In this case, the Transaction amount is limited to the value of said form of dispensation plus any fee or commission charged to the Merchant.

xix. Accept a Card to collect or refinance an existing debt;

xx. Issue a Transaction credit for return goods or services acquired in a cash transaction;

xxi. Make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits will be issued to the same Card account number as the sale;

xxii. Require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed; or

xxiii. Accept Visa Card or Visa Electron Card for the purchase of scrip.

#### 8.4. Disclosure and Storage of Transaction Information.

i. A Merchant must not disclose a Card account number, personal information, or other Transaction information to third parties other than to Merchant Servicers or Bank for the sole purpose of:

1. Assisting the Merchant in completing the transaction; or

2. As specifically required by law.

3. Merchant may only disclose Transaction information to approved third parties for the sole purpose of:

a. Supporting a loyalty program; or

b. Providing fraud control services.

ii. A Merchant must store all material containing Card account numbers or imprints (such as transaction receipts, car rental agreements and carbons) in an area limited to selected personnel and:

1. Render all data unreadable prior to discarding;

2. The Merchant must not retain or store full contents of any track on the magnetic stripe subsequent to a Transaction;

3. The Merchant must not retain or store CVV data subsequent to Authorization of a Transaction;

4. The Merchant must not request the CVV data on any paper form.

iii. The sale or disclosure of databases containing cardholder account numbers, personal information, or other Card transaction information to third parties is prohibited.

8.5. Use and Disclosure of BIN Information. A Merchant that receives BIN information from Bank must not use such information for any reason other than to identify Visa debit category products at the point of sale, unless authorized by Visa.

#### 9. General Provisions.

9.1. Independent Contractor. In the performance of its duties herein, each party shall be an independent contractor, not an employee or agent of another party.

9.2. Cooperation. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the matters contemplated by this Agreement.

9.3. Entire Agreement. This Agreement, together with the Application and any Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

9.4. Assignment. This Agreement may not be assigned by Merchant without the prior written consent of Bank. Bank may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve such party of any further obligations under this Agreement.

9.5. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

9.6. Governing Law, Jurisdiction and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Pennsylvania, without regard to internal principles of conflict of laws. Each of the parties hereto hereby irrevocably submits to the exclusive jurisdiction of the federal or state courts of Pennsylvania in any action or proceeding arising out of or relating to this Agreement and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in the federal or state courts in Philadelphia, Pennsylvania.

9.7. Power of Attorney. Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. The appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank.

9.8. Attorney's Fees. If Bank takes legal action against Merchant for any amounts due Bank herein, Merchant shall pay the costs and attorneys' fees incurred by Bank, whether suit is commenced or not.

9.9. Setoff. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank may set off any amounts due to Bank under this Agreement against (i) any amounts which Bank would otherwise deposit to Merchant's Operating account, (ii) any other amounts Bank may owe Merchant

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under this agreement, or (iii) against any property of Merchant in the possession or control of Bank.

9.10. No Waiver. Any delay, waiver or omission by a party to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

9.11. Bankruptcy. Merchant shall notify Bank within five days upon filing of voluntary or involuntary bankruptcy proceedings by or against Merchant. The parties acknowledge that this Agreement constitutes an extension of financial accommodations by Bank to Merchant within the meaning of Section 365 of the Bankruptcy Code. The right of Merchant to receive any amounts due from Bank hereunder is expressly subject and subordinate to chargebacks, recoupment, lien, set-off and security interest rights of Bank regardless of whether such chargebacks, recoupment, lien, set-off and security interest rights are claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

9.12. Force Majeure. Bank shall be excused from performing any of its obligations under this Agreement which are prevented or delayed by any occurrence not within Bank's control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

9.13. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall, in fact, be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

9.14. Amendments to this Agreement. From time to time Bank may amend this Agreement as follows:

i. Amendment to Cards and/or Services. Bank may amend or delete Cards or Services listed in the Application by notifying Merchant in writing of any amendment with a minimum of 30 days prior written notice if reasonably practicable. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for

processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

ii. Amendment to Fees and Charges. Pass-through charges, including Association assessments and interchange, are outside the control of Bank and may be changed by other parties from time to time. Bank will provide Merchant with as much notice as is reasonably possible in the event of any such changes in pass-through charges. From time to time, Bank may change all non-pass through rates, fees and charges set forth in the Application. Bank will provide a minimum of 30 days written notice to Merchant of all amendments to non-pass through rates, fees and charges. Notice may be given on the Merchant Statement. All non-pass through rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Section 5.3 ("Termination of Agreement by Merchant").

iii. Volume Adjustments. Bank may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Application.

9.15. Notices. Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party herein shall be in writing and each shall be deemed to have been properly given i) three business days after being sent by certified mail, return receipt requested, or ii) upon delivery by a nationally recognized overnight delivery service to the addresses listed herein for the respective parties. Notices shall be addressed as follows:

If to Bank:

**Meridian Bank**

92 Lancaster Avenue

Devon, PA 19333

Attn: Card Programs

If to ISO:

**Equity Commerce, L.P.**

18223 Shawley Dr, Ste 200

Hagerstown, MD 21740 If

to Merchant:

**At the business address listed on the Application**

Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforementioned.

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