



1052 KAVENAUUGH LANE ♦ LEXINGTON, KY 40509 ♦ PHONE (859) 309-0596 ♦ FAX (866) 624-7678

Congratulations on completing your VITAL Dealer Registration! VITAL has filled out most of the information on these forms for you based on the information you supplied in your online dealer registration. Print out this document and complete and sign the forms and return the original signed documents to the IFG Processing Center:

IFG Processing Center  
1427 Sterling Court  
West Fargo, ND 58078-4250

Infinite Financial Group will submit the forms on your behalf to our lenders and vendor partners to get your dealership setup to participate on VITAL. You will be notified once your applications have been accepted and approved.

We thank you for your business!

Sincerely,

Jimmy Ward  
President & CEO – Infinite Financial Group

## Dealer Checklist

Thank you for completing the dealer registration process. Your access to the VITAL system will commence upon IFG's receipt of the following items:

- Signed Dealer Application
- Signed IFG Dealer Agreement
- Copy of dealer's license
- Copy of dealer's principals' driver's licenses
- Copy of current inventory
- Copy of voided check from dealer's account for ACH purposes
- Photos of dealership
- Copy of business/entity documents (i.e., Articles of Incorporation, Articles of Organization, Partnership Agreement, etc.)
- Copy of current financial statement



1052 Kavanaugh Lane ♦ Lexington, KY 40509 ♦ Phone: (859) 309-0596 ♦ Fax: (866) 624-7678

## DEALER AGREEMENT

This Agreement is made \_\_\_\_\_, 2008, between \_\_\_\_\_  
("Dealer") and **Infinite Financial Group, Inc.** ("Infinite").

### Recitals

Dealer wishes to sell, inventory, and finance vehicles and ancillary services as defined by Infinite's VITAL Dealer Management System ("VITAL") to its customers.

Dealer recognizes that Infinite has expertise in administering VITAL.

Infinite desires to assist Dealer in installing, maintaining, and administering VITAL at Dealer's place of business for Dealer's benefit.

The parties agree as follows:

### Article 1: Basic Provisions

1. This Agreement takes effect when signed by both Dealer and Infinite, and continues indefinitely, unless terminated as provided elsewhere in this Agreement.
2. This Agreement shall bind the successors, assigns, and personal representatives of Dealer and Infinite.
3. Dealer shall pay Infinite **ONE THOUSAND ONE HUNDRED NINETY-FIVE DOLLARS (\$1,195.00)** per month, due on the first business day of each month, for use of VITAL and access to all of its features. Infinite may increase this fee upon 90 days written notice to Dealer. However, no fee increase shall be effective sooner than one (1) year after either the signing of this Agreement or any previous fee increase, whichever occurs later.
4. Dealer shall appoint Infinite as administrator of VITAL at Dealer's place of business. Dealer shall allow Infinite full and free access during normal business hours to inspect all Dealer records related to the business covered by VITAL.
5. Infinite shall install, maintain, and administer VITAL at Dealer's place of business.
6. Infinite assumes liability solely for services it provides to Dealer and not for services provided by its vendors or for any dealings between Dealer and lenders.
7. Dealer shall provide Infinite the information and documents as listed on the attached ACH form and allow Infinite Automated Clearing House (ACH) access to Dealer's bank account to withdraw funds from that business account for the following transactions:
  - (a) All monthly fees owed by Dealer to Infinite,
  - (b) All insurance purchased by retail customers for services ancillary to the vehicle purchase, such as service contracts, and
  - (c) Any rebates owed to Infinite, as well as charge backs or refunds owed to Infinite or its representatives.
8. Dealer shall follow all procedures required by lenders for the processing of credit applications for customer vehicle sales.
9. Dealer shall have no authority to:
  - (a) Make, alter, modify, waive, or discharge any terms, conditions, or performance of VITAL,
  - (b) Incur any liability on behalf of Infinite, or
  - (c) Make representations regarding VITAL.

10. Infinite shall provide Dealer all forms and supplies required for implementing VITAL. These forms and supplies remain the property of Infinite, and Dealer agrees that this material cannot be reproduced and is proprietary information owned solely by Infinite. Dealer shall return all such forms and supplies to Infinite upon termination of the Agreement or at the demand of Infinite.
11. Dealer agrees to process all customer sales through VITAL to ensure that all reports generated for the Dealer from VITAL reflect accurate and valid dealership activities. Failure to process all customer sales through VITAL will result in inaccurate reports that will not illustrate a true picture of the dealership's activities.

### **Article 2: Issues related to service contracts**

1. Infinite assumes no obligation for any item not specifically provided for in any service contract sold by Dealer.
2. If Dealer does not now conduct a repair business, or ceases to offer such business at any future time, Dealer shall refer all existing service contract holders to Infinite on all matters covered under that contract.
3. Dealer agrees to be bound by Infinite's determination of whether a claim under a service contract sold by Dealer is valid. Dealer is solely responsible for any payments it makes on a claim deemed invalid by Infinite.

### **Article 3: Indemnification**

1. Dealer agrees to defend any demand, claim, or action, and to indemnify Infinite and its contractors, agents, employees, successors, and assigns from all liability resulting from any of the following:
  - (a) Any act or failure to act by Dealer or its agents, contractors, or employees that causes harm or damage to any individual,
  - (b) Any claim in strict liability concerning any product that Dealer sells, leases, or otherwise distributes, or
  - (c) Any act related to the conduct of Dealer's business that is beyond the control of Infinite.

Dealer shall reimburse Infinite for all expenses Infinite incurs regarding any of these acts or actions. This reimbursement shall include all court costs, witness expenses, and reasonable attorney's fees in preparation for trial, during trial, after trial, or during appeal.

2. Dealer shall be responsible for all claims under its service contracts, to be covered under Dealer's contractual liability insurance.

### **Article 4: Termination**

1. Either Dealer or Infinite may cancel this Agreement at any time upon giving 90 days written notice to the other.
2. Either party may terminate this Agreement immediately upon the discovery of fraud or material breach of this Agreement (including material incorporated by reference) by the other party or its agents or employees. Termination for fraud or material breach shall be effective once the other party receives written notice of such breach.
3. This Agreement automatically terminates, without notice from Infinite, upon any of the following events:
  - (a) A petition of bankruptcy, or petition for reorganization under the Bankruptcy Code, is filed by or against Dealer,
  - (b) Dealer makes an assignment for the benefit of creditors,
  - (c) A court of competent jurisdiction declares Dealer to be bankrupt,
  - (d) An arrangement with creditors is filed by or against Dealer,
  - (e) A receiver has been appointed for all or a substantial part of Dealer's business,
  - (f) Dealer has permitted or suffered any attachment, levy, or execution to be made against any of Dealer's inventory of covered equipment and/or parts, or

- (g) Dealer fails to pay add-on insurance coverage on the vehicles in its inventory.

**Article 5: Default**

- 1. Dealer shall be in Default if Dealer fails at any time to do any of the following:
  - (a) Pay money when due to Infinite for use of VITAL, even though such delay may subject Dealer to late payment fees under this Agreement, or
  - (b) Reply truthfully to inquiries in the use of VITAL.
- 2. Infinite may terminate this Agreement immediately upon default by Dealer by giving written notice.
- 3. If Infinite chooses not to terminate this Agreement due to default by Dealer, it is not to be construed as a waiver of Infinite's right of termination upon a future default.

**Article 6: Communication**

- 1. All notices, demands, or communications regarding this Agreement shall be in writing, signed by the party serving the same, and sent postage prepaid via certified or registered mail to the address provided in the Memorandum of Dealer Agreement, which is incorporated by reference.
- 2. Either party may change its address for communications at any time by notice in writing to the other party, sent by certified or registered mail.

**Article 7: Choice of Law**

This Agreement is governed by the law of the Commonwealth of Kentucky, as applied to contracts that are executed and performed entirely in Kentucky.

**Article 8: Choice of Venue**

The venue for all actions under this Agreement shall be Fayette County, Kentucky or Laurel County, Kentucky.

**Article 9: Complete Agreement**

This Agreement, together with all Exhibits and any Addenda incorporated by reference, constitutes the final written expression of all of the terms of the Agreement and is a complete and exclusive statement of those terms. This Agreement may be modified only in writing signed by both Dealer and Infinite.

\_\_\_\_\_ (“Dealer”)

**Infinite Financial Group, Inc. (“Infinite”)**

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

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

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

Name: Jimmy Ward

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

Title: President and CEO



# Auto Services Company, Inc.™

## DEALER-ADMINISTRATOR AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Auto Services Company, Inc.™, hereinafter referred to as "Administrator", and \_\_\_\_\_ hereinafter referred to as "Dealer". The Dealer desires to be authorized to provide the Auto Services Vehicle Protection Plan Service Agreements to its customers.

(Dealership Name)

The Dealer and the Administrator agree as follows:

### The Dealer:

1. Agrees to make every reasonable effort to offer the Auto Services Vehicle Protection Plan ("Service Agreements") to its customers on all eligible vehicles.
2. Agrees that eligible vehicles include not only those vehicles that follow the Administrator's guidelines but are in sound mechanical condition at the time of sale. Dealer further agrees that any pre-existing conditions are the sole responsibility of the Dealer and are not covered under the Service Agreement.
3. In the event of Service Agreement cancellation, the Dealer agrees to return to the Customer or Lender, if applicable, his retained portion of the total charge for the Agreement in the amount calculated by the Administrator pursuant to the terms of the Service Agreement.
4. Agrees to use only the forms furnished by the Administrator and to completely fill in all blanks correctly on the Service Agreement. Dealer will hold Administrator harmless from any loss or expenses caused by unauthorized acts or omission by Dealer or their representative in the sale of the Service Agreement.
5. Agrees to remit to the Administrator the appropriate copies of the Service Agreements and the correct monies within ten (10) days of vehicle sale date. **Failure to submit the Service Agreement and monies in a timely manner will result in denial of services and coverage.**

### The Administrator:

1. Agrees to furnish Dealer with all necessary supplies and sales materials needed to sell Service Agreements. In the event of cancellation of this Dealer-Administrator Agreement, all supplies shall be returned to the Administrator, as they are proprietary and cannot be reproduced.
2. Agrees in the event of an "unwind" or failure of a finance entity to fund the Dealer for the Service Agreement, the Administrator will refund the full amount received for the Service Agreement within two (2) days of notification.
3. Agrees to arrange for payment of all authorized claims as set forth in the Service Agreement issued to the customer. All authorized claims will have an authorization number, which has been issued prior to commencement of repair.
4. Agrees to arrange for the issuance of a Mechanical Breakdown Reimbursement Insurance policy from a qualified insurance company. such policy will reimburse the Dealer for all covered losses arising out of the issuance of the Service Agreements, issued within the Administrator's guidelines, and as set out by the terms, conditions and limitations of the plan selected by individual agreement purchasers. This Dealer-Administrator Agreement may be amended from time to time based upon written notice by the Administrator and acknowledgement by the Dealer.

### GENERAL PROVISIONS

1. Either party upon written notice may cancel this Dealer-Administrator Agreement at any time. Unless so cancelled, this shall be a continuing Agreement. Upon termination all obligations cease, except that the Dealer and Administrator shall remain responsible for all Service Agreements issued prior to termination in accordance with this Dealer-Administrator Agreement.
2. Administrator reserves the right to decline any Service Agreement submitted by Dealer that does not qualify under Administrator's guidelines. In such event, all monies received by Administrator will be refunded.
3. Administrator and Dealer agree that no agency relationship shall exist and no oral representation will be binding on the Service Agreement.
4. This Agreement shall be construed under and in accordance with the laws of the State of Arkansas, and be subject to exclusive jurisdiction and venue in Baxter County, Arkansas.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.**

**AUTO SERVICES COMPANY, INC.™**  
**P.O. BOX 2400**  
**MOUNTAIN HOME, AR 72654-2400**  
**www.ascwarranty.com**

1. \_\_\_\_\_ 4. \_\_\_\_\_  
2. \_\_\_\_\_ 5. \_\_\_\_\_  
3. \_\_\_\_\_  
ASC # \_\_\_\_\_  
PC# \_\_\_\_\_ Rep. Initials \_\_\_\_\_

ASC Representative  
08 INS DLR ADMIN AGMT

Sole Proprietorship     Corporation     Partnership  
Fed ID # / SS #: \_\_\_\_\_  
Dealership Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City – State – Zip: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
By: \_\_\_\_\_  
Dealer Representative – Printed Name  
By: \_\_\_\_\_  
Dealer Representative – Signature

## QUESTIONS TO ASK DEALER

- 1) Years in business? \_\_\_\_\_
- 2) On average how many vehicles are in your inventory? \_\_\_\_\_
- 3) On average how many vehicles do you sell per month? \_\_\_\_\_
- 4) Average year, model, & mileage? \_\_\_\_\_
- 5) What warranty companies have you used? \_\_\_\_\_
- 6) Recommended Repair Facilities:

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

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

City/St.: \_\_\_\_\_

Phone #: \_\_\_\_\_ Labor Rate \_\_\_\_\_

Contact: \_\_\_\_\_ Labor Guide \_\_\_\_\_

F.I.N. # \_\_\_\_\_

Comment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

City/St.: \_\_\_\_\_

Phone #: \_\_\_\_\_ Labor Rate \_\_\_\_\_

Contact: \_\_\_\_\_ Labor Guide \_\_\_\_\_

F.I.N. # \_\_\_\_\_

Comment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## DEALER DATA REPORT

This form must be completed to process the A.U.L. Corp. Dealer Agreement  
 Toll-Free: (800) 826-3207 Fax: (707) 259-1867

DATE SIGNED

/	/	
Month	Day	Year

DEALERSHIP ID # AUL USE ONLY

AGENT ID # AGENCY USE ONLY

PRICING CODE (USED) AGENCY USE ONLY

TL=	
-----	--

PRICING CODE (NEW) AGENCY USE ONLY

TL=	
-----	--

### DEALERSHIP INFORMATION

DEALERSHIP NAME / DBA		
LOCATION ADDRESS		
CITY	STATE	ZIP CODE
MAILING ADDRESS		
CITY	STATE	ZIP CODE
E-MAIL ADDRESS / WEBSITE		
( ) TELEPHONE NUMBER	( ) FACSIMILE NUMBER	

### PERSONNEL INFORMATION

DEALER PRINCIPAL	FINANCE MANAGER
GENERAL MANAGER	OFFICE MANAGER
SERVICE MANAGER	KEY CONTACT

### QUESTIONNAIRE

AVG VEHICLES SOLD PER MONTH _____	PROJECTED VSC SALES/MONTH _____	PLEASE CHECK DEALERSHIP TYPE: <input type="checkbox"/> NEW / FRANCHISE <input type="checkbox"/> USED / INDEPENDENT
AVG VEHICLES INVENTORY _____	AVG VEHICLE MILEAGE _____	SERVICE DEPT INFO: <small>IF APPLICABLE</small> RETAIL RATE <small>PER HOUR</small> _____ LABOR BOOK <small>SERVICE MANUAL</small> _____

### FOR AGENCY USE ONLY

CONTRACT FORMS: _____	
AGENCY NAME: _____	INITIAL SUPPLIES DELIVERED? <input type="checkbox"/> YES <input type="checkbox"/> NO
COMMENTS: _____	

PLEASE MAIL THIS FORM TO:  
**A.U.L. CORP., 1325 IMOLA AVENUE WEST, PMB 318, NAPA, CA 94559**

## DEALER AGREEMENT

This Dealer Agreement (hereafter "Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between A.U.L. Corp., Wisconsin A.U.L., Inc., and AUL Insurance Agency, Inc. (hereinafter collectively referred to as "Administrator") and \_\_\_\_\_ (hereinafter referred to as "Dealer") with respect to the following:

WHEREAS, Administrator has entered into a Program Agreement relating to the establishment and administration of a Vehicle Service Contract Program (hereinafter referred to as the "Program") pursuant to which certain Vehicle Service Contract(s) (hereinafter referred to as "Contract(s)") are to be sold by Dealer on all eligible vehicles;

WHEREAS, Dealer wishes to act as an independent agent for Administrator pursuant to the terms of this Agreement;

WHEREAS, Dealer, pursuant to the terms set forth herein, agrees to remit to Administrator a contract cost (hereafter referred to as "Contract Cost") as set forth in the Dealer Net Price Schedule;

WHEREAS, Dealer agrees to perform the requirements set forth herein and in the Contracts in furtherance of the Program;

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### I. INDEPENDENT AGENT

Administrator retains Dealer as an independent agent to sell Contracts issued pursuant to the Program and Dealer agrees to act as an independent agent pursuant to the terms set forth herein. Nothing in this Agreement shall be construed as creating a relationship of partners, joint ventures, employer or agent and employee for any purpose whatsoever between Dealer and Administrator.

### II. COMMISSIONS

In consideration of the services rendered by Dealer, Administrator agrees to pay Dealer a commission equal to the retail price of the Contract less the Contract Cost, as set forth in the Dealer Net Price Schedule. Dealer may retain its commissions from each sale before remitting the Contract Cost to Administrator. Commissions shall be payable only one time per Contract.

### III. THE DEALER

- A. Agrees to offer Contracts to its retail customers only (hereinafter referred to as "Purchasers") on all eligible vehicles during the term of this Agreement.
- B. Agrees to follow the underwriting and claims guidelines (hereafter referred as the "Guidelines"), issued by the Administrator from time to time on forms supplied by the Administrator. Such Guidelines will determine which vehicles are eligible for use in the Program. Any violation of the Guidelines by the Dealer will result in the denial of coverage for the ineligible vehicle. Denied coverage shall be the sole responsibility of the Dealer.
- C. Agrees to transmit monthly to the Administrator on forms supplied by the Administrator, transmittal forms, completed applications, and appropriate monies which are due the Administrator. Failure to submit the above to the Administrator within thirty (30) days of the Contract application's inception date may result in denial of coverage.
- D. Agrees that eligible vehicles include only those vehicles that qualify per the Guidelines and are in sound mechanical condition at time of sale. Dealer further agrees that any preexisting condition(s), as determined by the Administrator, are the sole responsibility of the Dealer and are not covered under the Program. Dealer agrees, when necessary, to change engine oil and oil filter and replenish all fluid levels prior to delivering a covered vehicle to a Purchaser. Any misrepresentation or concealment of a material fact by the Dealer for the purpose of securing a Contract shall constitute a material breach of this Agreement.
- E. Agrees to refund to any lender which has financed the purchase price of any Contract (hereafter referred to as "Lender"), the Dealer's retained portion of the charge financed by the Lender, on a prorated basis, in the event of a cancellation of a Contract at the Lender's request due to a total loss or repossession of the vehicle covered under the Contract or default by the Purchaser in repayment obligations to the Lender. In the event the Contract was not financed, the Dealer agrees to return to the Purchaser the Dealer's retained portion of the total charge for the Contract in the amount calculated by the Administrator pursuant to the terms of the Contract.
- F. Agrees to contact the Administrator for prior approval before servicing any mechanical failure covered under any Contract.
- G. Agrees to retain all records relating to the Contracts on the subject matter of this Agreement until one (1) year following the expiration of such Contracts for the purpose of review and audit by Administrator. Dealer further agrees to permit Administrator or its authorized representatives to enter Dealer's place of business to inspect and examine these records during normal business hours and upon reasonable notice.
- H. Acknowledges and agrees that during the performance of its duties under this Agreement, Administrator may disclose to Dealer certain confidential and proprietary information concerning the Program, including without limitation, administrative, agent, and insurance fees, reserve amounts, and other information which would impart a competitive advantage to others in this industry who do not know it (hereafter referred to as "Confidential Information"). Dealer agrees to hold all such Confidential Information in confidence, and to refrain from disclosing it to any third parties without the prior consent of Administrator. Dealer also agrees to refrain from using the Confidential Information for any purpose outside of the performance of its duties under this Agreement.

Dealer's obligation to protect the Confidential Information, and to refrain from using it for any purpose outside of the performance of its duties under this Agreement, shall survive the termination of this Agreement. Dealer acknowledges and agrees that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Administrator irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Administrator shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach. Dealer expressly waives the defense that a remedy in damages will be adequate, and any requirement in such an action for the posting of a bond by Administrator.

- I. Agrees to certify that all eligible vehicles sold with a Contract have been inspected and reconditioned BEFORE delivery. Failures occurring in the first thirty (30) days of coverage may, at the Administrator's discretion, require a copy of your reconditioning repair for claims consideration. Denied claims shall be the sole responsibility of the Dealer. Reconditioning includes, but not limited to, the following:
  1. Engine Oil – Inspect and change oil and filter if needed.
  2. Automatic Transmission – Check shift pattern and inspect the fluid. Change fluid and service if needed.
  3. Correct any malfunction before delivery.

#### IV. THE ADMINISTRATOR

- A. Agrees to install, maintain, and administer the Program.
- B. Agrees to supply to the Dealer: Contract applications, Guidelines, Dealer Net Price Schedules, forms, transmittals, rate charts, advertising materials and other such forms as the Administrator may hereafter supply for use in the Program in the quantities needed from time to time by the Dealer.
- C. Agrees to assist the Purchaser in receiving benefits provided under a Contract, in accordance with Administrator's current service department guidelines.
- D. Dealer acknowledges that Administrator assumes no obligation for the workmanship, quality of repairs or replacement of parts; nor for any bodily injury or property damage caused directly or indirectly by mechanical failure or malfunction, or any other cause, of a vehicle or any part thereof.
- E. In association with the right to promote and market the Contracts, and subject to any and all quality controls or trademark usage guidelines which Administrator currently imposes or may in the future impose, Administrator grants Dealer a non-exclusive and non-transferable license to use the AUL Names, Marks, and Artwork ("AUL Names, Marks, and Artwork" means AUL's tradenames, trademarks, service marks, slogans, designs, websites, and logos, including AUL, AUL ADMINISTRATORS, ANY YEAR AND ANY MILEAGE, ANY YEAR ANY MILEAGE, ANY MAKE AND ANY MODEL, THE ORIGINAL ANY YEAR AND ANY MILEAGE #1 SERVICE CONTRACT IN AMERICA, WE WROTE THE BOOK ON USED VEHICLE SERVICE CONTRACT PROGRAMS, IT'S WHAT WE DO, FACTORY COMPANION, POWERTRAIN SELECT, and any other intellectual property, which AUL may from time to time license the Dealer to use in marketing the Contracts), subject to the following restrictions:
  1. The AUL Names, Marks, and Artwork may be used only in connection with the promotion and marketing of the Contracts pursuant to the terms of this Agreement; and
  2. The right to use the AUL Names, Marks, and Artwork will immediately cease upon termination of this Agreement, regardless of the reason for or manner of termination.

#### V. DEALER'S OBLIGATIONS RE VALID CONTRACT CLAIMS

"Valid Contract Claims" are defined as those claims which have been approved by the Administrator prior to the repair being completed, on Contracts that are in force and have been received and accepted by the Administrator, and fully paid for by the Dealer.

Dealer agrees to the following additional obligations upon receiving a Valid Contract Claim from a Purchaser:

- A. In its capacity as a qualified repair facility, to repair or replace any covered part(s) due to mechanical failure, or to arrange to provide for covered repairs in accordance with any Contract issued.
- B. To inform Administrator before initiating any covered repair or replacement of all circumstances or conditions including, but not limited to, Purchaser's neglect, abuse, failure to perform required services, alteration of vehicle, etc., that would exclude coverage under the Contract.
- C. To submit each claim to Administrator for payment within ten (10) days after completion of the corresponding repair.
- D. That the labor manual used for calculating repair times and hourly rates charged shall be any then-current, nationally-recognized flat rate guide, approved in advance by Administrator. Parts pricing shall not exceed the manufacturer's suggested list price. Sublet repairs shall be reimbursed at actual Dealer cost.
- E. That breakdowns occurring within the first fifteen (15) days of a Contract's effective date will, at the Administrator's discretion, qualify for claims consideration by the Administrator. Denied claims shall be the sole responsibility of the Dealer.
- F. To unconditionally guarantee all services and materials as supplied by Dealer against faulty workmanship and/or defective materials under normal use for a minimum of ninety (90) days or four thousand (4,000) miles, whichever shall occur first, from the date repairs are completed and the vehicle returned to Purchaser.

VI. HOLD HARMLESS

Dealer agrees to indemnify and hold Administrator harmless against any and all actions, demands, claims or any liabilities arising from claims, founded and unfounded, which may be asserted by third parties against Administrator arising from this Agreement. This indemnification and hold harmless includes, but is not limited to, all actions arising from: misrepresentation or nondisclosure of the Program's terms and conditions; misleading, deceiving, or unethical Dealer's selling practices; forced placement of policy; non-remittal by Dealer; any illegal acts engaged by the Dealer; or any legitimate claim denial by the Administrator.

VII. ASSIGNMENT AND NOTICES

This Agreement shall have no force or effect unless and until such time as it is accepted by the Administrator in the State of California. This Agreement shall be deemed to be a California contract and construed in accordance with laws of the State of California. All controversies arising under, or in connection with, this Agreement shall be finally determined by arbitration in the City and County of Napa, California, in accordance with the rules of the American Arbitration Association then obtaining, by three (3) arbitrators appointed in accordance with such rules, and judgment may be entered on any award in any court of competent jurisdiction. Notwithstanding the above, nothing herein shall be construed to limit Administrator's right to seek injunctive relief immediately from any court of competent jurisdiction in the event that Administrator reasonably believes that such relief is warranted to maintain the status quo, or to avoid injury, pending the arbitration.

VIII. TERMINATION

- A. This Agreement may be terminated at any time by either party upon giving thirty (30) days written notice to the other party. This Agreement shall terminate automatically without notice should Dealer fail to submit a Contract to Administrator during any consecutive three (3) month period. Unless so terminated, this Agreement shall continue indefinitely.
- B. This Agreement will immediately terminate, at the Administrator's discretion, if Dealer's Earned Loss Ratio (defined as the total amount of claims paid on Contracts in force against the total amount of earned Reserves on Contracts in force) exceeds 100%.
- C. All supplies and Confidential Information furnished by the Administrator shall be returned to the Administrator on termination of this Agreement.
- D. Upon termination, all obligations of either party, with the exception of Dealer's obligations under Section III(H) above, shall cease, provided however, that the Dealer and the Administrator shall remain responsible in accordance with the provisions of this Agreement for all Contracts issued and paid prior to the date of termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date above first written.

**DEALER:**

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

Printed Name: \_\_\_\_\_

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

**ADMINISTRATOR:**

1325 Imola Avenue West, PMB 318  
Napa, CA 94559

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

Printed Name: \_\_\_\_\_

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



## Instant Merge® Enrollment Process

### Dear Prospective Customer,

Thank you for your interest in accessing Instant Merge credit reports. You can depend on First Advantage CREDCO for the information you need to close deals faster and with confidence.

### Enrollment Procedure

The Federal Fair Credit Reporting Act (FCRA), applicable state laws, and the national bureaus strictly regulate access to consumer credit reports. For this reason, certain information is required to process your request for enrollment. The following pages include information about our services and the documents required to activate your account.

1. **Agreement for Service (pages 3-5):** this document must be completed and signed by an authorized individual (GM, owner, corporate officer, partner).
2. **Customer Profile (pages 6-7):** this document must also be completed and signed by an authorized individual (GM, owner, corporate officer, partner).
3. **Dealer or Business License:** a copy of this document must be included with the application.
4. **Business Bank Account Statement & Business Phone Bill:** If provided, these documents will expedite the processing of your application. This is optional, but may be required if unable to verify by phone or fax. The documents must be dated within the last 45 days and must be in the company's name.

**Fax the above-mentioned documents to: 1.619.938.7007**

### Compliance Review

Once we receive and accept your signed enrollment documents, our compliance department will proceed with the following steps:

1. **Review & Verification:** Review and verification of your enrollment documents may take up to 3 business days. *A refundable deposit of \$250 may be required\*.*
2. **Physical Inspection:** To assure FCRA compliance, companies accessing consumer credit reports are required to pass a physical inspection of their premises in order to verify their business is legitimate. First Advantage CREDCO utilizes a third party organization to conduct these inspections. The charge for the inspection is \$99, and will be included on your first monthly invoice.
3. **Customer Notification:** Once compliance review is complete, a member of our support team will contact you via e-mail or phone to notify you that your account has been activated.

*\*Refundable after 12 months of good payment history.*

### CREDCO Pricing

The cost of a CREDCO credit report is based upon the number of bureaus accessed per applicant, per report. You have the ability to access any combination of the three national credit bureaus (Experian®, Equifax®, TransUnion). Merged two or three bureau reports combine data from the bureaus into a single format and eliminate duplicate data. This generates a credit report that is comprehensive, streamlined and easy-to-read.

Access Type	Single Experian Report	Single TransUnion Report	Single Equifax Report	Two Bureau Merged Report Experian & TransUnion	Two Bureau Merged Report Experian & Equifax	Two Bureau Merged Report TransUnion & Equifax	Three Bureau Merged Report
Individual	\$ 2.65	\$ 2.90	\$ 3.75	\$ 7.25	\$ 8.10	\$ 8.35	\$ 10.85
Joint	\$ 5.15	\$ 5.65	\$ 7.35	\$ 11.50	\$ 13.20	\$ 13.70	\$ 18.70

- Note:
- A fee of \$2.25 is charged for a duplicate report pulled on the same customer using the exact input information within five days of the original inquiry.
  - Applicable sales tax may apply to Activation Fee.
  - A \$0.13 FACT Act surcharge will apply to all credit reports ordered on all consumers.
  - A \$0.75 surcharge will apply to all credit reports ordered on consumers with current Colorado addresses.

### Add-on Products

Add-on products for CREDCO reports include all Fair, Isaac® (FICO) credit scores, bankruptcy scores, fraud alerts, and other decision-making data. These add-on products cannot be merged and are always delivered as calculated by the bureau. Pricing for add-on products is per applicant, per bureau accessed.

Equifax		TransUnion		Experian	
<b>SCORES (STANDARD FICO AND BANKRUPTCY SCORES AVAILABLE)</b>					
BEACON 5.0	\$.25	FICO CLASSIC 04	\$.25	FICO III	\$.25
BEACON 5.0 AUTO	\$.25	FICO CLASSIC AU 04	\$.25	FICO III AUTO	\$.25
<b>NEXT GEN SCORES</b>					
PINNACLE	\$.50	FICO NEXT GEN 00	\$.50	ADVANCED RISK	\$.50
<b>FRAUD CHECKS &amp; IDENTITY VERIFICATION</b>					
OFAC SCREENING	\$.50				
BUYERID ALERT	\$.25	BUYERID INDEX	\$.25	BUYERID ADVANCED	\$.60

### Our Most Valuable Service – Customer Support

We’re known as the industry’s leader in customer care and technical support. Every employee is FCRA certified. Our credit specialists are assigned to your account and are available by phone, fax and email. They will advise you on how to use our credit information products to your best business advantage. If you have any questions, please feel free to contact us at: **800.694.1414**.

**Effective 12/27/07**

## AGREEMENT FOR SERVICE

In order to receive various information services ("Information Service(s)") from First Advantage CREDCO, LLC ("FAC"), the undersigned Client ("Client") agrees to the terms and conditions set forth in this agreement and the exhibits attached hereto (together, this/the "Agreement"). If there is a conflict between the general terms and conditions of this Agreement and any exhibit, the provisions of the exhibit will govern and control. This Agreement applies to every kind of information, software or service provided by FAC to Client, even if a given type of service or information is not specifically referred to in this Agreement or is not currently provided by FAC, unless the service is furnished pursuant to a separate written agreement with FAC, executed and effective after the date this Agreement becomes effective, and containing an "entire agreement" or merger" clause. **THIS AGREEMENT DOES NOT ESTABLISH ANY OBLIGATION ON THE PART OF FAC TO PROVIDE ANY INFORMATION SERVICES TO CLIENT UNTIL FAC HAS NOTIFIED CLIENT THAT ACCOUNT SET-UP HAS BEEN COMPLETED AND FAC HAS ISSUED ACCESS CODES TO CLIENT.**

1. FAC will provide its Information Services, as available, to Client during the term of this Agreement.
2. Client certifies and agrees that it will order Information Services only as an end-user of such Information Services. Client further certifies and agrees that it will order Information Services that are consumer reports ("Basic Reports") credit risk scores ("Scores") and other enhancements to the Basic Report solely for the permissible purposes Client has specified in Section 20 below and no other purpose. For purposes of this Agreement, the term "Credit Reports" includes Basic Reports, Scores, and other enhancement to Basic Reports, individually or collectively, as the context requires. Client agrees to obtain a signed written authorization from each consumer prior to ordering a Credit Report on such person, will maintain all authorizations on file for at least five (5) years, and will provide FAC with copies (or originals) on request.
3. **Client agrees that it will not order Credit Reports for employment purposes or transactions not initiated by the consumer (prescreening) unless approved beforehand in writing by FAC.** *Client agrees not to resell or otherwise disclose Credit Reports (or any part thereof), except in connection with the sale of a loan to which the Credit Report relates, to the consumer if adverse action has been taken based on the report, or as otherwise required by law.* Client agrees to refer consumers to FAC for all substantive inquiries regarding Credit Reports, to obtain the written permission of the consumer to obtain the Credit Report where required under applicable state laws in the form required under such laws, and to provide all notices and disclosures required under federal and state laws. Client acknowledges that it understands its obligations under the Federal Fair Credit Reporting Act and applicable state laws in ordering and using Credit Reports, and Client agrees that it will comply with all such obligations and will be responsible for its own regulatory compliance.
4. Client represents that it is not a private detective, detective agency, investigative company, bail bondsman, attorney, law firm, credit or financial counseling firm, "credit repair clinic," news agency or journalist, law enforcement agency, dating service, asset location service, or a person that will not be an end-user of the Information Services, and Client agrees to notify FAC **PRIOR** to any change in any of the foregoing. Except as provided elsewhere in this Agreement, Client agrees not to sell, re-sell, transfer or otherwise distribute the Information Services (or any information contained therein) without first obtaining the written permission of FAC.
5. Client has received a copy of the FTC's "**Notice to Users of Consumer Reports: Obligations Under the FCRA.**" Client will comply with all requirements under the Fair Credit Reporting Act and applicable state laws in ordering and using Credit Reports, and Client is solely responsible for its compliance. Client has received a copy of FAC's **Access Security Requirements**, and Client agrees to comply with such requirements as modified by FAC from time to time.
6. Section 1785.14(a) of the California Civil Code imposes special requirements with respect to transactions in which a "retail seller" (as defined in Section 1802.3 of the California Civil Code) intends to issue credit to a California resident who appears in person on the basis of an application for credit submitted in person ("point of sale transactions"). **Client certifies that these requirements do not apply to it** because (a) Client is **NOT** a "retail seller" (as defined in Section 1802.3 of the California Civil Code), and/or (b) Client does **NOT** issue credit to California residents who appear in person on the basis of applications for credit submitted in person. **Client further certifies that it will notify FAC in writing 30 days PRIOR to becoming a retail seller or engaging in point of sale transactions with respect to California residents.**
7. The following provisions are applicable to Scores provided under this Agreement:
  - a. If **Client Orders Any Score**. If Client orders any Score, Client acknowledges and agrees as follows:
    - (i) Client acknowledges that the Scores and the factors on which the Scores are based are proprietary to the providers of the Scores, and Client agrees to hold all Scores received from FAC pursuant to this Agreement in strict confidence and not to disclose any Score to the consumer or to any third party, except for disclosure to the subject of the Score where Client has taken "adverse action" against such subject based in whole or part on the Score or the Basic Report with which the Score was delivered or as otherwise required under applicable law. For purposes of this Agreement, "adverse action" has the meaning assigned to such term under Regulation B (12 CFR Section 202 *et seq.*) ("Regulation B") promulgated under the federal Equal Credit Opportunity Act, 15 USC, Section 1691 *et seq.* ("ECOA").
    - (ii) Client may provide the principal factors contributing to a Score to the subject of the Score when those principal factors are the basis of Client's adverse action against the subject or as otherwise required under applicable law. Where such principal factors are provided to the subject, Client must describe such factors in a manner that complies with the ECOA and Regulation B. Client agrees not to use any Score as the basis for an adverse action unless the Score factor codes have been delivered to Client together with the Score, and Client agrees periodically to revalidate the Score as required under Regulation B. Client recognizes that all Scores (i) are statistical and may not be predictive as to any particular individual, (ii) are not intended to characterize any individual as to credit capability, and (iii) other factors must be considered in making a credit decision. No Score is intended to characterize any of Client's applicants or customers as to credit capability, and neither FAC nor any Score provider guarantees the predictive value of any Score with respect to any of Client's applicants or customers. Scores represent an estimate of credit risk relative to other individuals used by the Score provider to develop the Score and any predictive value of the Score only represents the provider's opinion based on its point-scorable prediction algorithms, risk models, and/ or other methodology. **IN ORDERING A SCORE, CLIENT HAS MADE ITS OWN ANALYSIS OF THE STATISTICAL RELIABILITY AND UTILITY OF USING THE SCORE.** Client agrees that it will not use any Score for account management or prescreening.
    - (iii) Client understands that the providers of the Scores impose specific requirements for Client to use their Scores (as set forth in Exhibit "A", attached hereto and incorporated by reference), and Client agrees to comply with such requirements as in effect from time to time as a condition to ordering such Scores. In the event of a direct conflict between the terms of any specific requirements of a Score provider and the general provisions of Section 7 of this Agreement or any other provision of the Agreement, the specific requirements of the Score provider shall govern, but only with respect to the provision that is in conflict. In the event that any Score provider adds or otherwise modifies its requirements for Client's use of its Score, Client agrees that such terms will automatically be incorporated into this Agreement and become part hereof, and that by ordering any such Score or Scores hereunder, Client agrees that such requirements will be binding on Client. The terms of this Agreement shall be applicable to all Scores Client orders hereunder, except for terms that are in direct conflict with the requirements of the Score provider, in which case, such requirements shall govern as provided above. From time to time, FAC may make additional credit risk scores available to Client. In such case, each such additional score Client decides to purchase will be a "Score" for all purposes of this Agreement, and Client's use of such Score and related obligations will be governed by the applicable provisions of this Agreement and any additional terms and requirements imposed by FAC and/or the provider of the Score.

8. In the event that FAC provides its software to Client in connection with this Agreement ("Software Product"), Client agrees to be bound by the terms under which the Software Product is provided to Client, whether contained in a shrinkwrap agreement, clickwrap agreement, or otherwise (each, a "Software Product Agreement"). In addition to, and not in lieu of, the specific terms of the applicable Software Product Agreement, Client agrees that THE SOFTWARE PRODUCT IS PROVIDED TO CLIENT "AS-IS," WITHOUT ANY WARRANTY OF ANY NATURE. FAC DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT CLIENT WILL BE ABLE TO ACCESS INFORMATION SERVICES THROUGH IT ON AN UNINTERRUPTED BASIS OR FREE FROM COMPUTER VIRUSES OR SIMILAR DEVICES THAT MAY CAUSE LOSS OF INFORMATION OR DISABLE CLIENT'S COMPUTER SOFTWARE OR EQUIPMENT (COLLECTIVELY, "DISABLING DEVICES."); CLIENT ASSUMES ALL RISK AS TO THE SUITABILITY, QUALITY, PERFORMANCE, AND RESULTS OF THE SOFTWARE PRODUCT.

9. The Information Services (including Credit Reports) are provided "AS IS." **FAC MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR A COURSE OF PERFORMANCE, WITH RESPECT TO THE ACCURACY, VALIDITY, OR COMPLETENESS OF ANY INFORMATION SERVICE, THAT IT WILL MEET CLIENT'S NEEDS, OR THAT IT WILL BE PROVIDED ON AN UNINTERRUPTED BASIS OR FREE FROM DISABLING DEVICES, AND FAC EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES. ALL REPRESENTATIONS AND WARRANTIES REGARDING ANY SCORE, IF ANY, ARE MADE SOLELY BY THE PROVIDERS OF THE SCORE, AND CLIENT RELEASES FAC FROM ALL LIABILITIES AND CLAIMS IN CONNECTION WITH RESPECT TO ALL SCORES.**

10. At Client's request, FAC will accept orders for Information Services transmitted to either FAC's website on the Internet or FAC's web servers via the Internet. FAC will transmit Information Services ordered through either such website or servers in such manner that they are accessible only pursuant to the subscriber number and password assigned to Client by FAC. FAC has provided a copy of FAC's Internet security requirements as currently in effect to Client, and Client agrees that FAC may change such requirements from time to time effective upon written notice, including by posting such changes at FAC's website. **Client agrees to monitor such website periodically to obtain notice of such changes, and to comply with FAC's Internet security requirements as in effect from time to time, which are part of this Agreement with respect to all accesses of Information Services through the FAC website or any FAC server.** Client agrees that each time it places an order for an Information Service via the Internet, Client is, and will continue to be, in compliance with these requirements. **CLIENT AGREES THAT NOTHING IN THIS SECTION 10 PERMITS CLIENT TO TRANSMIT INFORMATION SERVICES (OR ANY INFORMATION THEREIN) THROUGH THE INTERNET, AND CLIENT AGREES THAT IT WILL NOT DO SO WITHOUT SPECIFIC WRITTEN PERMISSION FROM FAC. Client agrees that FAC may immediately upon notice to Client suspend or terminate orders and deliveries of Information Services via FAC website and/or servers if Client is in breach of any requirement under this Agreement or if FAC otherwise determines such action is advisable.** FAC DOES NOT WARRANT THAT INFORMATION SERVICES WILL BE PROVIDED THROUGH THE INTERNET UNINTERRUPTED OR FREE FROM DISABLING DEVICES, AND IN NO EVENT WILL FAC HAVE ANY LIABILITY FOR EVENTS OR CAUSES BEYOND ITS REASONABLE CONTROL.

11. In no event will FAC, any score provider or any other provider of information used by FAC in preparing Information Services, any of their respective affiliates, or any of their respective officers, directors, employees, or agents, have any liability to Client for any special, incidental, or consequential damages, including, without limitation, lost profits, business interruption, transmission of Disabling Devices, loss or corruption of data, and the like, arising out of any transactions in connection with this Agreement, including, without limitation in connection with any Information Service or Client's use or inability to use any Software Product, whether incurred as a result of negligence or otherwise, even if such persons or any of them have been advised of the possibility of such damages. **SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THAT SUCH LIMITATIONS MAY NOT APPLY TO CLIENT.** The maximum liability of FAC in connection with an Information Service will not exceed an amount equal to the price paid by Client for such Information Service. **If Client is dissatisfied with any Software Product, Client's sole and exclusive remedy is to discontinue use of the Software Product.**

12. Client agrees that upon reasonable notice, FAC may (but has no obligation to), directly or through a third party, audit Client's procedures related to this Agreement (including, without limitation, your network, security systems, facilities, practices, and procedures) in order to confirm that they adequately protect against the improper use of Information Services and that Client is in compliance with FAC's Internet security requirements then in effect and all of the other requirements under this Agreement. You agree to fully cooperate in connection with such audits and to make all changes requested by FAC required to assure against unauthorized access of Information Services and for Client to comply with the other requirements of this Agreement.

13. Client agrees to pay in full according to FAC's fee schedule as in effect from time to time. Fees may be changed, effective upon written notice. An account is delinquent if the Client has not paid FAC's invoice to Client in full within 35 days after the date of the invoice. FAC will impose a late charge of 1.0 percent per month on any delinquent account until paid in full and/or suspend providing Information Services hereunder until all delinquent amounts owed have been paid in full. Client agrees to pay all attorney fees and collection costs incurred by FAC in collecting any delinquent account, whether or not litigation is instituted. In the event of any litigation or other action involving this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs including at trial, on any appeal, and/or in a bankruptcy or similar proceeding, in addition to any other recovery to which it is entitled.

14. Client agrees to indemnify, defend, and hold harmless, FAC, all Score providers, and all other providers of information used in Information Services provided to Client hereunder, their respective affiliates, and the respective officers, directors, employees, agents, and suppliers and other third party contractors of all such persons from and against any and all actions, lawsuits, investigations, proceedings, costs, expenses (including, without limitation, attorney fees and court costs), and other claims or damages arising out of or in connection with any use or disclosure by Client or Client's employees, agents, or contractors of any Information Service (or any information therein or provided in connection therewith), any breach by Client of any of its obligations, representations, or warranties under this Agreement, Client's use of the Software Product contrary to any requirement under the applicable Software Product Agreement or under applicable law, and any claim by the subject of an Information Service or other person based on Client's order or use of any Information Service.

15. **EITHER PARTY MAY TERMINATE THIS AGREEMENT WITHOUT CAUSE OR PENALTY OR (EXCEPT FOR THE SURVIVING OBLIGATIONS DEFINED IN SECTION 17) FURTHER LIABILITY, EFFECTIVE UPON FIVE (5) BUSINESS DAYS PRIOR WRITTEN NOTICE TO THE OTHER PARTY.** In addition, FAC may suspend providing Information Services to Client without notice if FAC believes that Client has breached any of its obligations hereunder until the breach has been fully cured to FAC's satisfaction and FAC has received satisfactory assurances that such breach will not reoccur and Client will fully perform its obligations under this Agreement.

16. Client's failure to pay FAC any delinquent amounts in full within five (5) business days after written notice from FAC to Client will constitute a Client default and material breach of this Agreement, whereupon this Agreement will automatically and irrevocably terminate without further notice to Client or liability to FAC.

17. If FAC terminates this Agreement under either Section 15 or Section 16 of this Agreement, FAC's termination of this Agreement will not: (a) release or otherwise affect Client's obligation to pay FAC in full for any fees per FAC's fee schedule, late charges, attorney fees and collection costs incurred to and including the date of termination; (b) terminate or otherwise affect the disclaimers and limitations of liability contained in this Agreement, which will survive FAC's termination of this Agreement; and/or (c) waive or otherwise affect Client's obligation to indemnify and defend under Section 14 of this Agreement, which will survive FAC's termination of this Agreement.

18. This Agreement, constitutes the entire agreement of the parties with respect to its subject matter, and supersedes any contemporaneous or prior written or oral agreements or other communications regarding such subject matter. No change may be made to this Agreement except by in writing executed by Client and the Compliance Officer or other authorized officer of FAC. This Agreement shall be interpreted in accordance with the laws of the state of California, without reference to its principles of conflict of laws. Client irrevocably consent to the exclusive jurisdiction and venue of the federal and state courts in San Diego County, California, with respect to all disputes in connection with this Agreement. If any court or other tribunal of competent jurisdiction declares any provision of this Agreement to be illegal or invalid or unenforceable, the legality and validity and enforceability of the remaining parts, terms, or provisions will not be affected thereby and the illegal or invalid or unenforceable part, term, or provision will be deemed not to be a part of, and severable from, the remaining portions of this Agreement.

19. If Client orders OFAC Screening Service, FAC Screening Services, Identity Verification or Fraud Prevention Products, Client acknowledges and agrees to comply with and abide by the additional terms and requirements set forth in Exhibit "B", attached hereto and incorporated herein by reference.

20. Client certifies that it will order Credit Reports solely for one or more of the following purposes and for no other purpose *(Client must check only those that apply, and, below Client's signature to this Agreement, declare all intended uses of Credit Reports):*

<input type="checkbox"/>	<b>a.</b> in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer
<input type="checkbox"/>	<b>b.</b> in connection with underwriting of insurance involving the consumer
<input type="checkbox"/>	<b>c.</b> as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation

21. *The person signing below represents and warrants that he or she (1) has the necessary authority to bind the principal(s) set forth below, and (2) is authorized and hereby consents for Client to receive faxes, including, but not limited to fax advertisements, sent by or on behalf of FAC and its affiliates to the fax number(s) indicated below.*

Company Name (please print): \_\_\_\_\_

Street Address (no P.O. Boxes): \_\_\_\_\_ Suite: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

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

Fax No: \_\_\_\_\_

**Intended Use of Credit Reports (identify all uses):** \_\_\_\_\_

Additional locations covered by this Agreement: \_\_\_\_\_  
*(List each physical address or attach a separate listing on company letterhead)*

**CUSTOMER PROFILE – Please fill out completely – missing information will delay your application**

Company Name (Legal): \_\_\_\_\_

DBA Name: \_\_\_\_\_

Street Address: \_\_\_\_\_ Suite: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: ( ) - \_\_\_\_\_ Fax: ( ) - \_\_\_\_\_

(Note: Credit reports may not be transmitted via third party facsimile service providers)

Primary Contact Name: \_\_\_\_\_

Primary Contact Title: \_\_\_\_\_

Web Site Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

Billing Contact: \_\_\_\_\_

Multiple Branches:  Yes  No Bill Separately:  Yes  No

Billing Address: \_\_\_\_\_ Billing City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Length of time in Business: \_\_\_\_\_ Yrs \_\_\_\_\_ Mos Length of time at current location: \_\_\_\_\_ Yrs \_\_\_\_\_ Mos

Type of business/office location:  Commercial Office  Residence/Home Based Office

**TYPE OF BUSINESS – Please attach a copy of business license – include DBA and/or Proof of Affiliation if applicable.**

<input type="checkbox"/> Corporation State: _____	<input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Bank FDIC No: _____
Date of Incorporation: _____	Business License No: _____	<input type="checkbox"/> Credit Union Charter No: _____
<input type="checkbox"/> LLC State: _____	State: _____	Expiration Date: _____
Date of Organization: _____	Date of Organization: _____	

Business Tax ID: \_\_\_\_\_ No. of Employees: \_\_\_\_\_ Annual Revenue: \_\_\_\_\_

**Is the company licensed to and/or provide service as any of the following? (please check all that apply)**

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> Adult Entertainment Service, any type                     | <input type="checkbox"/> Asset Location Services                  | <input type="checkbox"/> Attorney of Law Office, any type   | <input type="checkbox"/> Law Enforcement Agency                               |
| <input type="checkbox"/> Bail Bondsman   | <input type="checkbox"/> Check Cashing                            | <input type="checkbox"/> Company of individual in spiritual counseling  | <input type="checkbox"/> Company seeking info. in connection with time shares |
| <input type="checkbox"/> Massage Service   | <input type="checkbox"/> Company that locates missing children    | <input type="checkbox"/> Credit Counseling  | <input type="checkbox"/> Credit Repair Clinic                                 |
| <input type="checkbox"/> Dating Service  | <input type="checkbox"/> Financial Counseling                     | <input type="checkbox"/> Genealogical or Heir Research Firm   | <input type="checkbox"/> Individual seeking information for their Private Use |
| <input type="checkbox"/> Insurance Claims  | <input type="checkbox"/> Investigative Company                    | <input type="checkbox"/> Law Firm   | <input type="checkbox"/> Company that handles third party repossession        |
| <input type="checkbox"/> News Agency or Journalist                                 | <input type="checkbox"/> Pawn Shop                                | <input type="checkbox"/> Business that operates out of an apartment or unrestricted location within a residence |   |
| <input type="checkbox"/> Subscriptions (Magazines, book clubs, record clubs, etc.) | <input type="checkbox"/> Private Detectives or Detective Agencies | <input type="checkbox"/> Tattoo Service   | <input type="checkbox"/> Health Club <input type="checkbox"/> Continuity Club |
| <input type="checkbox"/> Security Services   |   |   |   |

**BUSINESS BANK REFERENCE – If a current business bank account statement is provided, you may omit this information**

Name: \_\_\_\_\_ Branch: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Account #: \_\_\_\_\_ Name of Contact: \_\_\_\_\_

Phone #: ( ) - \_\_\_\_\_ Fax #: ( ) - \_\_\_\_\_

**BUSINESS REFERENCES – (Do not list financial institutions or auctions)**

**Reference One** – Acct #: \_\_\_\_\_

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone #: ( ) - Fax: ( ) -

Contact: \_\_\_\_\_

**Reference Two** – Acct #: \_\_\_\_\_

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone #: ( ) - Fax: ( ) -

Contact: \_\_\_\_\_

**Reference Three** – Acct #: \_\_\_\_\_

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone #: ( ) - Fax: ( ) -

Contact: \_\_\_\_\_

**LANDLORD INFORMATION – If applicable (may be used as a reference)**

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

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

Phone: \_\_\_\_\_ Contact Name: \_\_\_\_\_

**OFFICERS, OWNERS, PARTNERS, MEMBERS OR MANAGING PARTNERS**

**Principal listed below must be company officer/owner, (i.e.; CEO, President, Vice President, CFO, etc.) who has signature authority to bind/contractually obligate the company and extend contract coverage to any locations added in the future. If company is limited liability company, managers may sign. Please include additional principal names and titles if applicable.**

*NAMES OF OFFICERS, OWNERS and/or PARTNERS*

*TITLE*

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_

4) \_\_\_\_\_

**(This section must be signed by principal/owner as listed above)**

I certify the above information to be correct and authorize First Advantage to check credit of applicant. I further authorize my creditors to treat a photocopy or facsimile of my signature as if it was an original, and accept such as my authorization to release credit information to First Advantage **telephonically**.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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

## EXHIBIT A

**1. If Client Orders Experian/Fair, Isaac Advanced Risk Score(s).** If Client orders any Experian/Fair, Isaac Advanced Risk Score(s) ("Advanced Risk Score(s)"), Client acknowledges and agrees to the following: (i) the Advanced Score(s) are applications of a risk model developed by Experian Information Solutions, Inc. ("Experian") and Fair, Isaac (collectively, "Experian/Fair, Isaac"), which employs a proprietary algorithm and which, when applied to credit information relating to individuals with whom Client has a credit relationship or with whom Client contemplates entering into a credit relationship, will result in a numerical score; the purpose of the model being to rank said individuals in order of the risk of unsatisfactory payment, (ii) Client releases Fair, Isaac and Experian and their respective officers, directors, employees, agents, sister or affiliated companies, and any third party contractors of Fair, Isaac or Experian, from liability for any damages, losses, costs, or expenses, whether direct or indirect, suffered or incurred by Client resulting from any failure of any Advanced Risk Score(s) to accurately predict that a United States consumer will repay its existing or future obligations satisfactorily, (iii) Experian/Fair, Isaac warrant that Advanced Risk Score(s) are empirically derived and statistically sound predictors of consumer credit risk on the data from which they were developed when applied to the population for which they were developed, and Experian/Fair, Isaac further warrant that so long as it provides the Advanced Risk Score(s), the Advanced risk Score(s) will not contain or use any prohibited basis as defined by the ECOA and Regulation B, (iv) Client agrees that THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES EXPERIAN/FAIR, ISAAC HAVE GIVEN WITH RESPECT TO THE ADVANCED RISK SCORE(S), AND SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXPERIAN/FAIR, ISAAC MIGHT HAVE GIVEN WITH RESPECT THERETO, INCLUDING, FOR EXAMPLE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (v) Client agrees that its rights with respect to the warranty in the preceding clause (iv) are expressly conditioned upon Client's periodic revalidation of the Advanced Risk Score(s) in compliance with the requirements of Regulation B, as it may be amended from time to time, (vi) Experian/Fair, Isaac will indemnify, defend, and hold Client harmless from and against all liabilities, damages, losses, claims, costs, and expenses (including attorneys' fees) arising out of or resulting from any nonperformance by Experian/Fair, Isaac of any obligations to be performed by Experian/Fair, with respect to the Advanced Score(s), provided that Client has given Experian/Fair, Isaac prompt notice of, and the opportunity and authority (but not the duty) to defend or settle any such claim, (vii) Client agrees that UNDER NO CIRCUMSTANCES WILL EXPERIAN OR FAIR, ISAAC HAVE ANY OBLIGATION OR LIABILITY TO CLIENT FOR ANY INCIDENTAL, DIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY CLIENT, REGARDLESS OF HOW SUCH DAMAGES ARISE AND WHETHER OR NOT EXPERIAN OR FAIR, ISAAC WAS ADVISED THAT SUCH DAMAGES MIGHT ARISE, (viii) Client agrees THAT THE MAXIMUM COMBINED LIABILITY OF EXPERIAN AND FAIR, ISAAC IN CONNECTION WITH ANY ADVANCED RISK SCORE(S) WILL NOT EXCEED THE FEES RECEIVED FROM CLIENT FOR THE ADVANCED RISK SCORE(S) DURING THE PRIOR 12 MONTHS, (ix) Client certifies that it has a permissible purpose under the FCRA and other applicable laws for obtaining the Advanced Risk Score(s), (x) Client certifies that any use by Client of the Advanced Risk Score(s) for purposes of evaluating the credit risk associated with applicants, prospects, or existing customers will be in a manner consistent with the provisions of applicable law, including, without limitation, the ECOA, Regulation B, and the Fair Credit Reporting Act, (xi) Client certifies that it will not use the Advance Risk Score(s) for any adverse action unless adverse action reason codes have been delivered to Client along with the Advanced Risk Score(s), (xii) Client acknowledges that the Advanced Risk Score(s) and all associated intellectual property rights in its output are the property of Fair, Isaac and that Client will not provide the Advanced Risk Score(s) to any other party without Fair, Isaac's and Experian's prior written consent, except (a) to credit applicants in connection with approval/disapproval decisions in the context of a bona fide credit extension transaction when accompanied with Client's corresponding score reason codes, or (b) as clearly required by law, (xiii) Client certifies that it will not publicly disseminate any results of the validations or other reports derived from any Advanced Risk Score(s) without Fair, Isaac's and Experian's express written permission, (xiv) Client agrees that before delivering or directing Experian/Fair, Isaac or FAC to deliver Advanced Risk Score(s) to any third party (including any third party agent acting on behalf of Client for the purpose of receiving Advanced Risk Score(s) for the sole benefit of Client ("Third Party Processor")), Client will enter into a contract with such third party that (a) limits the use of the Advanced Risk Score(s) by the third party only to the use permitted to Client, and (b) identifies Experian and Fair, Isaac as the express third party beneficiary of such contract, (xv) Experian/Fair, Isaac will have the right to audit the use of the Advanced Risk Score(s) by Client and any Third Party Processor, and Client will cooperate, and will cause any Third Party Processor to cooperate, fully with Experian/Fair, Isaac in connection with such audits and Client will cause any Third Party Processor to provide, Experian/Fair, Isaac with access to such properties, records, and personnel of such parties as may be required for such purpose, and (xvi) Client agrees that Experian and Fair Isaac is each an express third party beneficiary of the foregoing provisions and each is entitled to directly enforce Client's obligations under such provisions as if a direct party to this Agreement.

**2. If Client Orders BEACON<sup>SM</sup> and/or Pinnacle<sup>SM</sup> Scores.** If Client orders BEACON and/or Pinnacle Scores, Client acknowledges the following: these Scores consist of point-scorable prediction algorithms developed by The Fair, Isaac Companies ("Fair, Isaac"). Each is based on the computerized consumer credit information in the Equifax Information Services LLC ("EQUIFAX") automated consumer reporting system. Beacon is designed to predict the risk of an individual not paying accounts as agreed. Pinnacle is designed to provide an estimated rank ordering relative to other consumers in the EQUIFAX automated consumer reporting system of the likelihood that consumers will repay, as agreed, their existing and future credit obligations. BEACON and/or Pinnacle Scores will be applied to those inquires as Client may request. Pursuant to such inquiry and request for BEACON and/or Pinnacle information, FAC will, as available, provide Client with the BEACON and/or Pinnacle Score, up to four of the principal factors contributing to such Score or Scores, and the Basic Report.

**3. If Client Orders Delphi, Empirica, and/or Horizon Scores.** If Client orders Delphi, Empirica, and/or Horizon Scores, Client acknowledges that these Scores are provided by Trans Union LLC and Fair, Isaac, and Client agrees to be bound by any specific requirements that such providers may impose from time to time.

**4. If Client Orders Precision Credit Risk Score Services.** If Client orders Precision Credit Risk Score Services, Client acknowledges and agrees to the following: (i) the Precision Credit Risk Score Service is jointly offered by Trans Union and Fair, Isaac which evaluates certain information in the credit reports of individual consumers from Trans Union's data base ("Precision") and provides a score which rank orders consumers with respect to the relative likelihood that United States consumers will repay their existing or future credit obligations satisfactorily over the twenty four (24) month period following scoring (the "Precision Score"), (ii) Client, from time to time, may desire to obtain Precision Scores from Trans Union via an on-line mode in connection with consumer credit reports, (iii) Client certifies that it will request Precision Scores only for the permissible purpose(s) certified in the Agreement, and will use the Precision Scores obtained for no other purpose, (iv) Client agrees that it shall use each Precision Score only for a one-time use only and only in accordance with its permissible purpose under the FCRA, (v) Client recognizes that factors other than the Precision Score may be considered in making a credit decision. Such other factors include, but are not limited to, the credit report, the individual account history, and economic factors, (vi) Trans Union and Fair, Isaac shall be deemed third party beneficiaries of the provisions set forth in this Section 4 of this Exhibit A as if a direct party to this Agreement, (vii) Up to four score reason codes, or if applicable, exclusion reasons, are provided to Client with Precision Scores. These score reasons codes are designed to indicate the reasons why the individual did not have a higher Precision Score, and may be disclosed to consumers as the reasons for taking adverse action, as required by the ECOA and its implementing Regulation ("Reg. B"). However, the Precision Score itself is proprietary to Fair, Isaac, may not be used as the reason for adverse action under Reg. B and, accordingly, shall not be disclosed to credit applicants or any other

third party, except: (1) to credit applicants in connection with approval/disapproval decisions in the context of bona fide credit extension transactions when accompanied with its corresponding score reason codes; or (2) as clearly required by law. Client will not publicly disseminate any results of the validations or other reports derived from the Precision Scores without Fair, Isaac and Trans Union's prior written consent, (viii) In the event Client intends to provide Precision Scores to any agent, Client may do so provided, however, that Client first enters into a written agreement with such agent that is consistent with Client's obligations under this Agreement; moreover, such agreement between Client and such agent shall contain the following obligations and acknowledgments of the agent: (1) Such agent shall utilize the Precision Scores for the sole benefit of Client and shall not utilize the Precision Scores for any other purpose including for such agent's own purposes or benefit; (2) That the Precision Score is proprietary to Fair, Isaac and, accordingly, shall not be disclosed to the credit applicant or any third party without Trans Union and Fair, Isaac's prior written consent except (a) to credit applicants in connection with approval/disapproval decisions in the context of bona fide credit extension transactions when accompanied with its corresponding score reason codes; or (b) as clearly required by law; (3) Such Agent shall not use the Precision Scores for model development, model validation, model benchmarking, reverse engineering, or model calibration; (4) Such agent shall not resell the Precision Scores; and (5) Such agent shall not use the Precision Scores to create or maintain a database for itself or otherwise, (ix) Client acknowledges that the Precision Scores provided under this Agreement which utilize an individual's consumer credit information will result in an inquiry being added to the consumer's credit file, (x) Client shall be responsible for compliance with all applicable federal or state legislation, regulations and judicial actions, as now or as may become effective including, but not limited to, the FCRA, the ECOA, and Reg. B, to which it is subject, (xi) The information including, without limitation, the consumer credit data, used in providing Precision Scores under this Agreement were obtained from sources considered to be reliable. However, due to the possibilities of errors inherent in the procurement and compilation of data involving a large number of individuals, neither the accuracy nor completeness of such information is guaranteed. Moreover, in no event shall Trans Union, Fair, Isaac, FAC nor their officers, employees, affiliated companies or bureaus, independent contractors or agents be liable to Client for any claim, injury or damage suffered directly or indirectly by Client as a result of the inaccuracy or incompleteness of such information used in providing Precision Scores under this Agreement and/or as a result of Client's use of Precision Scores and/or any other information or serviced provided under this Section 4 of Exhibit A, (xii) Fair, Isaac, the developer of Precision, warrants that the scoring algorithms as delivered to Trans Union and used in the computation of the Precision Score ("Models") are empirically derived from Trans Union's credit data and are a demonstrably and statistically sound method of rank-ordering candidate records with respect to the relative likelihood that United States consumers will repay their existing or future credit obligations satisfactorily over the twenty four (24) month period following scoring when applied to the population for which they were developed, and that no scoring algorithm used by Precision uses a "prohibited basis" as that term is defined in the ECOA and Regulation B promulgated thereunder. Precision provides a statistical evaluation of certain information in Trans Union's files on a particular individual, and the Precision Score indicates the relative likelihood that the consumer will repay their existing or future credit obligations satisfactorily over the twenty four (24) month period following scoring relative to other individuals in Trans Union's database. The score may appear on a credit report for convenience only, but is not a part of the credit report nor does it add to the information in the report on which it is based, (xiii) THE WARRANTIES SET FORTH IN SUB-SECTION (XII) ABOVE ARE THE SOLE WARRANTIES MADE UNDER THIS SECTION 4 CONCERNING THE PRECISION SCORES AND ANY OTHER DOCUMENTATION OR OTHER DELIVERABLES AND SERVICES PROVIDED UNDER THIS SECTION 4; AND NEITHER FAIR, ISAAC NOR TRANS UNION MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS AND SERVICES TO BE PROVIDED UNDER THIS SECTION 4. THE WARRANTIES AND REMEDIES SET FORTH IN SUB-SECTION (XII) ABOVE ARE IN LIEU OF ALL OTHERS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT MIGHT BE IMPLIED FROM A COURSE OF PERFORMANCE OR DEALING OR TRADE USAGE). THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (xiv) IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTIES AND ARISING OUT OF THE PERFORMANCE OF THIS SECTION 4, INCLUDING BUT NOT LIMITED TO LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, (xv) THE FOREGOING NOTWITHSTANDING, WITH RESPECT TO CLIENT, IN NO EVENT SHALL THE AFORESTATED LIMITATIONS OF LIABILITY, SET FORTH ABOVE IN SUB-SECTION (XIV), APPLY TO DAMAGES INCURRED BY TRANS UNION AND/OR FAIR, ISAAC OR FAC AS A RESULT OF: (A) GOVERNMENTAL, REGULATORY OR JUDICIAL ACTION(S) PERTAINING TO VIOLATIONS OF THE FCRA AND/OR OTHER LAWS, REGULATIONS AND/OR JUDICIAL ACTIONS TO THE EXTENT SUCH DAMAGES RESULT FROM CLIENT'S BREACH, DIRECTLY OR THROUGH CLIENT'S AGENT(S), OF ITS OBLIGATIONS UNDER THIS SECTION 4, (xvi) ADDITIONALLY, NEITHER TRANS UNION NOR FAIR, ISAAC SHALL BE LIABLE FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 4 BROUGHT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. IN NO EVENT SHALL TRANS UNION'S AND FAIR, ISAAC'S AGGREGATE TOTAL LIABILITY, IF ANY, UNDER THIS SECTION 4, EXCEED THE AGGREGATE AMOUNT PAID, UNDER THIS SECTION 4, BY CLIENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING ANY SUCH CLAIM, OR TEN THOUSAND DOLLARS (\$10,000.00), WHICHEVER AMOUNT IS LESS, (xvii) CLIENT AGREES THAT (1) ALL REPRESENTATIONS, WARRANTIES, RIGHTS, AND REMEDIES REGARDING THE PRECISION SCORE, IF ANY, COME EXCLUSIVELY FROM TRANS UNION AND FAIR ISAAC, (2) FAC MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRECISION SCORE, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT MIGHT BE IMPLIED FROM A COURSE OF PERFORMANCE OR DEALING OR TRADE USAGE), AND (3) THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Accordingly, neither FAC nor its affiliates, nor any of their officers, employees, independent contractors or agents shall have any liability to Client in connection with the Precision Score even if specifically advised of the possibility of such damages, and Client unconditionally releases all of such persons from all liability whatsoever, whether known or unknown, fixed or contingent, direct or indirect, of whatever nature in connection with the Precision Score, and agrees to look solely to Trans Union and/or Fair Isaac, for any and all rights and remedies it may have, and all damages, losses, costs, or expenses it may incur in connection with the Precision Score.

**5. If Client Orders Bankruptcy Navigator Index 3.0™.** If Client orders Bankruptcy Navigator Index 3.0, Client acknowledges the following: Bankruptcy Navigator Index 3.0 is a credit scoring service that ranks-orders and segments accounts according to the likelihood of bankruptcy over a 24-month period, based on information in the Equifax Information Services, LLC. ("Equifax") consumer credit database. The scores returned by the Bankruptcy Navigator Index 3.0 service only represent a prediction of bankruptcy filing relative to other individuals in the Equifax credit database and are not intended to characterize any individual as to credit risk or credit capacity. Client certifies that it will order this Service only when client intends to use the information for the permissible purpose set forth in Section 604(a) of the Fair Credit Reporting Act. Client will not order the Service for employment purposes.

## EXHIBIT B

**This Exhibit contains additional Information Services that may be provided under the Agreement and additional terms and requirements that apply to those Information Services. Client and Client Affiliates agree to abide by the additional terms and requirements that apply to those Information Services.**

1. OFAC Screening Service

a. **OFAC Screening Service.** In response to an inquiry by Client for the OFAC Screening Service, FAC will submit the inquiry to a company ("Match Provider") that matches consumer names to a file that the Match Provider maintains containing limited identifying information of consumers listed by the United States Treasury Department, Office of Foreign Asset Control ("OFAC") of Specially Designated Nationals whose property is blocked, to assist the public in complying with the various sanctions programs administered by OFAC. Based upon the inquiry, the Match Provider will perform a match and FAC will transmit and return to Client the match results provided by the Match Provider. FAC does not manage the matching algorithm of the Match Provider for this service.

b. **Disclaimer of Warranty.** The Match Provider updates its OFAC files periodically. However, neither FAC nor the Match Provider can or will, for the fees charged for the OFAC Screening Service, be an insurer or guarantor of the accuracy or reliability of the OFAC Screening Service nor the data contained in the Match Provider's file. **Client acknowledges that the existence of a match based on very limited identifying information provided by OFAC does not necessarily indicate that the consumer for whom the Client inquired is the same consumer referenced by OFAC.** *The use of the OFAC Screening Service does not attempt to, nor does it, satisfy any of Client's legal obligations that may be administered by OFAC or any other governmental agency.* NEITHER FAC NOR THE MATCH PROVIDER MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE OFAC SCREENING SERVICE, INCLUDING, FOR EXAMPLE WITHOUT LIMITATION, WARRANTIES OF CURRENTNESS, COMPLETENESS, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In no event will FAC or the Match Provider have any liability in connection with the OFAC Screening Service or any information provided or not provided in connection therewith, for indirect, special, or consequential damages or loss profits, however caused, whether by negligence or otherwise, even if such persons have been advised of the possibility of such damages. The maximum aggregate liability of such persons will not exceed the charge to Client for the inquiry to which such damage relates. In addition, FAC makes no representation that the Match Provider will provide the matching functions on an uninterrupted basis and FAC shall have no liability for delay or interruptions caused by the Match Provider to provide such functions on a timely basis.

c. **Client Warranty.** Client warrants that it will request and use the OFAC Screening Service received from FAC hereunder solely in connection with transactions involving the consumer as to whom such information is sought, and will not request or use such information for purposes prohibited by law. Without limiting the generality of the foregoing, Client further warrants **that it will not use the OFAC Screening Service or any information therein, in whole or in part, for the purpose of serving as a factor in establishing the subject consumer's eligibility for credit, insurance, employment or any other purpose authorized under section 604 of the Fair Credit Reporting Act, and in no event will use such information, in whole or in part, as a basis for any adverse action against such consumer.** *Client understands that FAC is providing the OFAC Screening Service to Client in reliance on this warranty.*

d. **Compliance.** "Customer Identification Program ("CIP") means a risk-based program that includes policies, procedures and controls to (i) verify the identity of the person (consumer or entity) seeking to open an account, (ii) maintain records of the information used to verify identity and (iii) consult government lists of known or suspected terrorists or terrorist organizations to confirm that the person is not on any list. Client certifies that it maintains a CIP, which includes, without limitation, a designated Compliance Officer, procedures for resolving whether any person matched in the OFAC Screening Service is in fact subject to regulation by the Department of the Treasury's Office of Foreign Asset Control or another government agency, ongoing employee training, and an independent audit function to test the program. Client agrees to allow FAC to audit Client's compliance with the obligations of this Addendum governing the use of the OFAC Screening Service. Client will cooperate fully and promptly in the conduct of such audits.

2. FAC Screening Services

a. **Screening Services.** FAC offers Screening Services pursuant to this section that screen against databases that contain name and other limited identifying information on individuals and entities (together, "persons") supplied by a government agency or other organization.

b. **Inquiries.** Client can order any Screening Service for an inquiry on a person. In response to Client's inquiry, FAC will check the name of the person against the names and other limited identifying information contained in the databases used in the Screening Service selected by Client for the inquiry. After checking the person against the databases used in the Screening Service chosen by Client, FAC will inform Client as to whether or not there was a match. **Client acknowledges that the existence of a match based on very limited identifying information contained in a database does not necessarily indicate that the person for whom Client inquired is the same person matched in the database.** *The use of any Screening Service by itself does not satisfy any of Client's legal obligations under any governmental agency regulation or other applicable law, and Client is solely responsible for its own compliance.*

c. **Disclaimer of Warranties.** For the fees charged, FAC is not, and cannot be, an insurer or guarantor of the accuracy or reliability of any Screening Service nor the data contained in databases used in any Screening Service. NEITHER FAC NOR ANY OF ITS DATA PROVIDERS, SUPPLIERS, OR OTHER VENDORS USED IN CONNECTION WITH THE SCREENING SERVICES ("SERVICE VENDORS") MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SCREENING SERVICE, THE QUALITY OF THE INFORMATION CONTAINED IN THE DATABASES USED IN ANY SCREENING SERVICE, OR THE RESULTS OF ANY SCREENING SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF CURRENTNESS, COMPLETENESS, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

d. **Limitation of Liabilities.** To the maximum extent permitted under applicable law, in no event will FAC or any Service Vendor have any liability in connection with any Screening Service or any information provided or not provided to Client in connection therewith for indirect, special, or consequential damages or loss profits, however caused, whether by negligence or otherwise, even if such persons have been advised of the possibility of such damages, and the entire risk of using the Screening Services remains with Client. To the maximum extent permitted under applicable law, the maximum aggregate liability of all such persons in connection with any inquiry for any Screening Service will not exceed the Screening Service Charge paid by Client for the inquiry to which such damage relates. In addition, FAC makes no representation that any Screening Service will be provided on a timely or uninterrupted basis, and FAC shall have no liability for delays, interruptions, or failures resulting from any cause if such cause is beyond its reasonable control including, without limitation, equipment failure, transmission failure, or failure of any Service Vendor to perform.

e. **Restrictions on Use.** Client warrants that it will request and use the Screening Services received solely in connection with transactions involving the persons as to whom such information is sought, and Client will not request or use such information for purposes prohibited by law. Without limiting the generality of the foregoing, Client further warrants **that it will not use any Screening Service or any information therein, in whole or in part, for the purpose of serving as a factor in establishing any individual's eligibility for credit, insurance, employment, or any other purpose authorized under section 604 of the Fair Credit Reporting Act, and in no event will Client use such information, in whole or in part, as a basis for any adverse action against any individual.** *Client understands that FAC is providing the Screening Services to Client in reliance on this warranty.* FAC may audit Client's compliance with its obligations under this section, and Client will cooperate fully and promptly in the conduct of such audits.

f. **Customer Identification Program.** "Customer Identification Program" or "CIP" means a risk-based program that includes policies, procedures, and controls to (i) verify the identity of the person seeking to open an account or engage in another transaction with Client, (ii) maintain records of the information used to verify identity, and (iii) consult government lists of known or suspected terrorists or terrorist organizations to confirm that the person is not on any list, to the extent required under applicable law or regulation. Client certifies that it now maintains, and throughout the term of the Agreement will continue to maintain, a CIP, which includes, without limitation, a designated Compliance Officer, procedures for resolving whether any person matched any Screening Service is in fact subject to regulation by the Department of the Treasury's Office of Foreign Asset Control or another applicable regulatory agency, and ongoing employee training, and an independent audit function to test the program.

3. **Identity Verification and Fraud Prevention Products (the "Products")**

a. Client certifies to FAC that Client has determined that Client's use of the Products is pursuant to an exception under the federal Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et seq. ("GLB Act"). Additionally, Client certifies to FAC that Client will order and use one or more of the Products only in connection with the following purpose and for no other purpose: to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. Client further certifies that it will not use the Products, in whole or in part, (a) for the purpose of serving as a factor in establishing the consumer subject's eligibility for credit, insurance, employment or any other purpose authorized under section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.) or (b) as a basis for any adverse action against the consumer subject.

b. Client agrees that it shall use the Products only for its exclusive use, and to hold the information in strict confidence and not to disclose it to any third parties, except to the extent that disclosure is required by law. The Products will be requested only by the Client's designated and authorized representatives. Employees will be forbidden to attempt to obtain any of the Products on themselves, associates, or any other person except in the exercise of their official duties. Client acknowledges that no credit information shall be supplied in response to an inquiry for any of the Products. Client agrees to comply with all pertinent requirements of the GLB Act and all other applicable state and federal laws in ordering and use of the Products and Client agrees that it will comply with all such obligations and will be responsible for its own regulatory compliance.

## INTERNET SECURITY REQUIREMENTS

These Internet Security Requirements ("Internet Security Requirements") are made with reference to the Agreement for Service between FAC and Client. Capitalized terms used, but not otherwise defined, herein are used with the meanings assigned to such terms in the Agreement for Service. Client agrees to comply with the following requirements in connection with ordering and receiving Information Services through the Internet:

**1. General.**

- a. FAC will provide Client subscriber codes, security digits, access codes, telephone access numbers and other proprietary information to enable Client to access the Information Services through the Internet (together, "FAC Access Information"). FAC reserves the right to change the FAC Access Information (or any item or items thereof) periodically and/or at any time, effective upon notice to Client.
- b. For purposes of these Internet Security Requirements, the information in the Information Services and the FAC Access Information are sometimes referred to, together, as "FAC Information."

**2. Data Security.**

- a. All FAC Information and consumer identifying information must be encrypted as it is delivered through the Internet. 128-bit SSL/TLS or higher strength encryption is required.
- b. All FAC Information must be protected when stored on servers, subject to at least the following requirements:
  - (i) Servers storing FAC Information must be separated by a firewall or other comparable method from publicly accessible web-servers;
  - (ii) FAC Information must not be on a server that can be accessed by TCP services directly from the Internet and must not be referenced in domain name services (DNS) tables;
  - (iii) All security access to these servers, both physical and network, must include authentication and, in the case of network security, passwords that are changed at least once every 90 days; and
  - (iv) All servers must be kept current with all operating system patches, as they become available.
- c. FAC Information may not be shared with, or accessed by any person other than an Authorized Employee (as defined in paragraph e. below). All transmission and/or storage of FAC Information is subject to all the terms and conditions contained in these Internet Security Requirements.
- d. When displaying any nonpublic information in HTML, no FAC Information can be stored on the presentation server(s). Client will use the presentation server(s) only to receive the HTTP services. All HTML shall be dynamically created or interpreted by the application server. The presentation server(s) shall only receive the data and process it back and forth to the application server. Data transmitted between Client's browser and the application server must not be cached, in any form, on the presentation server(s).
- e. Only Authorized Employees shall have computer network or terminal or any other access to any FAC Information. Authorized Employees are employees of Client who have a need to access FAC Information in order to carry out their official duties with Client for the purposes specified in the Agreement for Service. Prior to providing an Authorized Employee with access to any FAC Information, Client will provide the Authorized Employee with adequate training regarding the Internet Security Requirements and the Fair Credit Reporting Act ("FCRA") and other applicable laws, and will require the Authorized Employee to agree to comply with all such requirements and laws (together, "Employee Requirements"). Without limiting the generality of the foregoing, Client will inform all Authorized Employees **that unauthorized access to information in Credit Reports may subject them to civil and criminal liability under the FCRA and other applicable laws, punishable by fines, imprisonment, or both.** Client will not add any employee as an Authorized Employee unless the employee has received the required training and has agreed to comply with the Employee Requirements.
- f. Client shall implement adequate security measures in order to prevent use or access of FAC Information by persons other than Authorized Employees, including, without limitation, the following: (i) assigning each Authorized Employee a unique Internet identification and password (together, "Operator Passwords"), (ii) changing the Operator Passwords at least once every ninety (90) days or sooner if a specific Authorized Employee is no longer responsible for accessing FAC Information or Client has learned or suspects that there has been unauthorized access to an Operator Password, (iii) limiting knowledge of the FAC Access Information and Operator Passwords to Authorized Employees and strictly prohibiting the sharing, disclosure, or public display of any such information, (iv) using all security features in the software and hardware used to access FAC Information, (v) not transferring any hardware or software between locations without deletion of all FAC Access Information and Operator Passwords, and (vi) if unauthorized access to FAC Access Information is discovered or suspected, immediately notifying FAC and further undertaking all remedial efforts within its power and control to cure such unauthorized access or use.

**3. Network Topology.**

- a. Client's Internet connection must be protected with dedicated, industry-recognized firewalls that are configured and managed to adhere to industry best practices.
- b. FAC Information may be held only on a secure application server that can be accessed only by a secure presentation server, through one of the following methods:
  - (i) Dual or multiple firewall protection (**preferred**): This method consists of a firewall between the Internet and the presentation server(s) and another firewall between the presentation server(s) and the application server holding the FAC Information. The network firewall should ensure that only the presentation server(s) is/are allowed to access the application server holding the FAC Information.
  - (ii) Single firewall method (**acceptable**): When a dual firewall method is not feasible, a single firewall will provide acceptable levels of protection. The firewall should be installed between the Internet and the presentation server(s). Multiple interfaces to the separate presentation server (s) and the application server holding the FAC Information are required. The firewall should be configured to allow only the presentation server(s) access to the application server holding FAC Information.

- c. All administrative access to the firewalls and servers should be through a secure internal network. Remote access must be configured so that the administrator dials into a LAN, is authenticated and verified, and then is granted access to the firewalls and servers from inside the network. No direct modem access should be available to the firewalls or servers.
- d. No internal Internet Protocol (IP) addresses should be publicly available or natively routed to the Internet.
- e. The network should not provide any access to any firewall or servers without proper strong authentication or through the firewalls.
- f. Any exceptions or alerts must be logged and reviewed by Client and maintained for at least one (1) year for review by FAC.

**4. Client Authentication.**

- a. FAC will not provide any FAC Information to Client unless FAC is able to authenticate Client through a strong authentication methodology.
- b. Client will log each access of Information Services and the identity of the specific Authorized Employee that made the access, and shall maintain such information for at least one (1) year for review by FAC.

**5. Client Verification.**

- a. Once Client has been authenticated as describe above, FAC will verify the identity of Client through authentication and verification procedures that provide an acceptable level of security for access to Information Services.
- b. At the present time, FAC requires verification through issuance by FAC, and use by Client, of a Client User ID and password. The initial password will be issued by FAC and not created by Client. Passwords will have a minimum of six characters in an alphanumeric combination and will be changed at least once every ninety (90). Passwords and User IDs will be encrypted with 128-bit encryption.
- c. The User IDs and passwords must be stored on a server protected by the security measures applicable to the FAC Information.
- d. Client must ensure that all IDs of Authorized Employees who are no longer authorized to obtain FAC Information are disabled or revoked immediately.
- e. Client must have procedures in place that create appropriate audit trails for all transactions.
- f. FAC will protect Client access by timing out Client after a period of inactivity not to exceed thirty (30) minutes.

**6. Change of Requirements.**

FAC may, from time to time, change any of the requirements herein (including by imposing new requirements or procedures or modifying existing ones) by giving Client written notice of the change. Client will conform its systems, applications, processes, and procedures to comply with the change not later than the effective date specified by FAC in the notice, or if none is specified, thirty (30) days after receipt of the notice.

**7. Prohibition of Oral Modification of Requirements.**

No oral modification of these requirements will be permitted, and FAC must approve in writing any variance by Client.

**8. Client Responsibility.**

Compliance by Client with these requirements shall not relieve Client from the obligation to observe any other or further contractual, legal or regulatory requirements, nor shall FAC's review or approval of any of Client's systems, applications, processes, or procedures constitute or be deemed to constitute the assumption by FAC of any responsibility or liability for compliance by Client with any of the same. Client shall remain solely responsible for the security of its systems and the security of all FAC Information received by it from FAC and for any breach of that security. FAC retains the right, in its sole discretion, to withhold approval of Internet access to Information Services for any reason. FAC may suspend or terminate access to the FAC Information at any time if FAC has reason to believe that Client has violated any of these Internet Security Requirements or any contractual, legal, or regulatory requirements, rules or terms. **Client reaffirms that it will not transmit any Information Services (or information therein) through the Internet without express written permission of FAC.**

## ACCESS SECURITY REQUIREMENTS

**It is a requirement that all end users take precautions to secure any system or device used to access Information Services. To that end, the following requirements have been established:**

1. Your account number and password must be protected in such a way that this sensitive information is known only to key personnel. Under no circumstances should unauthorized persons have knowledge of your password. The information should not be posted in any manner within your facility.
2. Any system access software you may use, whether developed by your company or purchased from a third party vendor, must have your account number and password "hidden" or embedded so that the password is known only to supervisory personnel. Password files must be encrypted. Each user of your system access software must then be assigned unique log-on passwords.
3. User Ids and passwords must be deactivated immediately upon termination or change of job assignment.
4. Password management should conform to the following best practices:
  - Minimum 6 characters in length
  - Mix of alpha, numeric, and special characters
  - Passwords should expire every 45 days
  - No re-use of a password for 6 months
  - No automatic scripting of passwords
5. Your account number and passwords are not to be discussed by telephone to any unknown caller, even if the caller claims to be an employee.
6. The ability to obtain Information Services must be restricted to a few key personnel.
7. Any terminal devices used to obtain Information Services should be placed in a secure location within your facility. Access to the devices should be difficult for unauthorized persons.
8. Any devices/systems used to obtain Information Services should be turned off and locked after normal business hours, when unattended by your key personnel.
9. Hard copies and electronic files of Information Services are to be secured within your facility and protected against release or disclosure to unauthorized persons.
10. Hard copy Information Services are to be shredded or destroyed, rendered unreadable, when no longer needed and when it is permitted to do so by applicable regulation(s).
11. Electronic files containing Information Services will be completely erased or rendered unreadable when no longer needed and when destruction is permitted by applicable regulation(s).
12. Software cannot be copied. Software is issued explicitly to you solely to access Information Services.
13. Your employees will be forbidden to attempt to obtain Information Services on themselves, associates or any other persons, except in the exercise of their official duties.
14. Credit Reports will not be ordered for employment purposes.
15. The only acceptable media for receiving and/or transmitting Information Services or any part thereof, are as follows:
  - private networks;
  - secure internet connections (if approved by FAC in writing);
  - via traditional facsimile.
16. Information Services may not be received and/or transmitted through the following:
  - via internet e-mail;
  - via non-traditional facsimile (e.g., third party facsimile service providers);
17. Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses, shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

## NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FAIR CREDIT REPORTING ACT

The Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Federal Trade Commission's Website at [www.ftc.gov/credit](http://www.ftc.gov/credit). At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Commission's Web site. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

### I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

#### A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1),
- As instructed by the consumer in writing. Section 604(a)(2),
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A),
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b),
- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C),
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i),
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii),
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D),
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E),
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5).

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. The particular obligations of users of "prescreened" information are described in Section VII below.

#### B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

#### C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA -- such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

##### 1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report,
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made,
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer requests the report within 60 days,
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

## 2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

## 3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

### D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

### E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Federal Trade Commission and the banking and credit union regulators. The Federal Trade Commission's regulations will be available at [www.ftc.gov/credit](http://www.ftc.gov/credit).

### F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Federal Trade Commission, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Federal Trade Commission's regulations may be found at [www.ftc.gov/credit](http://www.ftc.gov/credit).

## II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations to be jointly prescribed by the Federal Trade Commission and the Federal Reserve Board.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

## III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

### A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained,
- Obtain prior written authorization from the consumer. Authorization to access reports during the term of employment may be obtained at the time of employment,
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer,
- Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA). A Section 615(a) adverse action notice should be sent after the adverse action is taken. An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2),
- The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

## B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

## IV. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below,
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

## V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

## VI. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 604(g) of the FCRA limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes—or in connection with a credit transaction (except as provided in regulations issued by the banking and credit union regulators)—the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

## VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(l), 604(c), 604(e), and 615(d) This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain pre-established criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction,
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer,
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral,
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, once the Federal Trade Commission by rule has established the format, type size, and manner of the disclosure required by Section 615(d), users must be in compliance with the rule. The FTC's regulations will be at [www.ftc.gov/credit](http://www.ftc.gov/credit).

## VIII. OBLIGATIONS OF RESELLERS

### A. Disclosure and Certification Requirements

Section 607(e) of the FCRA requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA,
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user,
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  - (1) the identity of all end-users,

- (2) certifications from all users of each purpose for which reports will be used and
- (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

#### B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

#### C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include in their reports.

#### IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619

The FTC's Web site, [www.ftc.gov/credit](http://www.ftc.gov/credit), has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. Section 1681 et seq.:

Section 602	15 USC 1681
Section 603	15 USC 1681a
Section 604	15 USC 1681b
Section 605	15 USC 1681c
Section 605A	15 USC 1681cA
Section 605B	15 USC 1681cB
Section 606	15 USC 1681d
Section 607	15 USC 1681e
Section 608	15 USC 1681f
Section 609	15 USC 1681g
Section 610	15 USC 1681h
Section 611	15 USC 1681i
Section 612	15 USC 1681j
Section 613	15 USC 1681k
Section 614	15 USC 1681l
Section 615	15 USC 1681m
Section 616	15 USC 1681n
Section 617	15 USC 1681o
Section 618	15 USC 1681p
Section 619	15 USC 1681q
Section 620	15 USC 1681r
Section 621	15 USC 1681s
Section 622	15 USC 1681s-1
Section 623	15 USC 1681s-2
Section 624	15 USC 1681t
Section 625	15 USC 1681u
Section 626	15 USC 1681v
Section 627	15 USC 1681w
Section 628	15 USC 1681x
Section 629	15 USC 1681y



## Fax Cover Sheet

To: First Advantage CREDCO  
Automotive and Specialty Markets  
(619) 938-7007 fax

From: Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Contact Fax: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Contact for the physical inspection: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**Compliance Documents Enclosed:**

Agreement for Service (*pages 3-5*)

Customer Profile (*pages 6-7*)

Business/Broker license (*copy*)

*To expedite processing request:*

**Enclose these additional documents:**

Copy of recent business bank account statement (*copy*)

Copy of recent business telephone bill (*copy*)

## MERCHANT AGREEMENT

THIS MERCHANT AGREEMENT (the "Agreement"), which includes the attached Merchant Application (the "Application"), is made and entered into by and among First Place Bank, a federally chartered savings association or KeyBank National Association, a national banking association or Merrick Bank, a national banking association depending upon which such institution is settling Transactions for Merchant ("Bank"), Francis David Corporation, an Ohio corporation doing business as Electronic Merchant Systems ("EMS"), and the undersigned Merchant ("Merchant").

WHEREAS, Bank is engaged in the business of providing settlement services to Merchants that accept a valid credit card or valid off-line debit card (hereinafter, each a "Card") of Visa, U.S.A., Inc. ("Visa"), MasterCard International, Inc. ("MasterCard") or other credit card associations (hereinafter, each an "Association", and, collectively, the "Associations") for payment for goods and/or services sold, rented or rendered by Merchant; and

WHEREAS, EMS is registered with Visa as an Independent Sales Organization and with MasterCard as a Member Service Provider, and has agreed with the Bank to provide credit card processing, authorization and related services for Merchants that use Bank's settlement services for Card transactions (individually, a "Transaction", and, collectively, "Transactions"); and

WHEREAS, Merchant desires to use the services of Bank and EMS to authorize, process and settle Transactions undertaken by any authorized user of a Card (collectively, the "Services") on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the representations, covenants and agreements set forth in this Agreement, and intending to be legally bound by the terms of this Agreement, the parties hereto do hereby agree as follows:

**1. Honoring/Acceptance of Cards.** Merchant agrees to honor and accept, without discrimination, all valid Cards when properly presented as payment by a cardholder or authorized user and upon obtaining authorization for each Transaction in advance from the authorization center in accordance with the terms and conditions of this Agreement. Merchant will submit all authorized Transactions for its business exclusively to Bank and EMS. Merchant agrees to fully comply with and abide by all rules, regulations, procedures and requirements imposed or adopted by Visa, MasterCard or other Association as the same may be amended from time to time (the "Rules"). Merchant acknowledges that the following Rules are requirements that are strictly enforced by Visa and MasterCard and agrees, without limitation thereto, to fully comply with and abide by the following requirements: (a) to adequately display the Visa or MasterCard service marks, and, if applicable, on promotional materials to inform the public which Cards are to be honored at Merchant's place of business; (b) not establish or implement procedures that discourage, favor, or discriminate against the use of any particular Card; (c) not establish minimum or maximum transaction amounts as a condition for accepting Cards; (d) not impose any surcharge or fee for accepting a Card (except as permitted and within limitations of certain debit card networks) or establish any special conditions for accepting a Card; (e) unless permitted under the Rules, not require a cardholder to provide any personal information, such as a home or business address or telephone number, or a driver's license or other proof of identification as a condition of honoring a Card, unless instructed by the authorization center (with exceptions for a mail/telephone order or delivery required transaction and zip code for a card-present key-entered transaction in order to obtain address verification); (f) any taxes that Merchant collects (and any other similar handling fees) must be included in the total transaction amount and not collected separately in cash nor processed as an additional transaction. Merchant is responsible for the payment of all taxes applicable to Transactions. Merchant agrees not to indicate that Visa or MasterCard or any other Association endorses its goods or services. Merchant understands and agrees that it shall have no right to use the proprietary name and/or symbol of Bank, Visa or MasterCard unless the materials containing such are provided to Merchant by Bank and/or are approved in advance by Bank, and, in either event, only while this Agreement is in effect or until Merchant is notified by Bank, Visa or MasterCard to cease usage.

**2. Authorization.** Approval by, or on behalf of, a cardholder's bank or the bank that issued the Card (hereinafter, "Authorization") is required on all Transactions. Merchant understands and acknowledges that an Authorization only confirms the availability of the cardholder's credit at the time of the Authorization; it does not warrant that the person presenting the Card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Bank or EMS that a Transaction is or will be deemed valid and not subject to dispute, debit or Chargeback (as hereinafter defined). Merchant acknowledges and understands that its floor limit shall be Zero and that all Transactions must be authorized in advance through the authorization center. Merchant shall request Authorization for the exact amount of the Transaction on the date the Transaction takes place by swiping the Card through the terminal or keying the account number, expiration date, amount and address verification ("AVS") information into the terminal. If the electronic Card terminal is not functioning, Merchant may obtain Authorization by telephone, calling the voice authorization phone number provided by Bank or EMS. Merchant must provide the voice authorization center the Card account number, expiration date and the amount of the sale. In order to process any approved voice authorization, when the electronic credit card terminal is functioning, the transaction must be key entered utilizing the "force", "offline", or "post authorization" function. Merchant agrees that in connection with the acceptance of Cards that (in addition to, and not in lieu of, other applicable procedures and Rules) it will comply with the following procedures and Rules: (a) use due diligence to verify that a Cardholder is authorized to use the Card presented and that at the point of sale (i) carefully examine the signature on every Card presented and carefully compare the signature on the Card to the sales record, (ii) check the date on which the Card becomes valid and the date on which the Card expires. Merchant agrees that it shall not accept any Card that is not yet valid or has expired, and must verify that such Card is not stolen, fraudulent or counterfeit; (b) for Card present Transactions when the signature panel for a Visa Card is not signed Merchant shall in addition to requesting an Authorization (i) review positive identification bearing the Cardholder's signature to validate the cardholder's identity, (ii) indicate the positive identification, including any serial number and expiration date, on the Transaction receipt, and (iii) require the cardholder to sign the signature panel of the Card prior to completing the Transaction; (c) when the signature panel for a MasterCard Card is not signed and the Cardholder refuses to sign the Card, Merchant shall not accept it for a Transaction. If the cardholder is willing to sign the Card in the presence of Merchant, Merchant shall request two pieces of valid and current identification; and (d) for Visa and MasterCard, a signature panel bearing the words "See I.D." or equivalent language shall be deemed to be blank. In either case, if such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Card, Merchant shall contact Bank's designated authorization center for instructions. If Authorization is denied, the Transaction shall not be completed and Merchant shall follow instructions from the authorization center, including recovery of Cards by reasonable and peaceful means. Merchant shall retain or retrieve Cards, as required by the Rules, which are expired or for which reasonable grounds exist to believe that such Cards are counterfeit, fraudulent or stolen.

**3. Sales Drafts.** Merchant agrees to use a Point of Sale ("POS") device, computer, telephone and related equipment approved by Bank and EMS for transmission of all Transaction data and to record each Transaction by "swiping" the Card through the POS device whenever a Card is present, or if a Card cannot be electronically read, to enter the Card number and expiration date into the POS device manually. Merchant shall prepare a sales draft in legible form for each Transaction. All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales draft. Merchant shall legibly type, print or imprint the following information on each sales draft: (a) the cardholder's name or name of authorized user; (b) the cardholder's account number and expiration date; (c) Merchant's correct name and address of business; (d) the date of the Transaction; (e) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes); (f) the amount to be charged if a partial payment is made in cash or by check, or the amount to be charged if a partial payment is made as a deposit or as the balance owing after a deposit has been accepted; (g) a brief description of the goods or services; (h) the words "deposit" or "balance" if full payment is to be made in this manner at different times on different sales drafts; (i) the authorization approval code from the authorization center; and (j) for telephone orders transactions, the designation "TO", for mail order transactions, the designation "MO", for preauthorized transactions, the designation "PO",

and for recurring transactions, the phrase "Recurring Transaction" in each instance shall be typed or printed on the signature line. Merchant will take reasonable steps to verify card information in accordance with the Rules for each Transaction. Merchant warrants the cardholder's identity whether or not Authorization is received and whether or not Card is present. Merchant shall deliver to the cardholder a true and completed copy of the sales draft. Failure to comply with the above requirements will, in addition to other penalties, subject Merchant to immediate termination, indemnification of Bank and EMS by Merchant under Section 17 and the establishment of a Reserve Account under Section 15 hereof.

**4. Mail, Telephone, E-Commerce (Internet), Recurring and Pre-Authorized Transactions.** Bank and EMS discourage accepting mail or telephone orders and other Transactions in which the Card is not presented by the cardholder in person. Merchant understands that mail, telephone and e-commerce (Internet) Transactions have substantially higher risk of Chargeback and cardholder dispute than Card "present" Transactions, as Merchant will not have an imprinted or magnetically "swiped" Transaction with the cardholder's signature on the sales draft. Merchant understands that it may engage in mail, telephone and e-commerce Transactions only if requested in the Application and only for the approved percentage of Merchant's total monthly sales volume limit reflected on the Application, or as may otherwise have been approved in writing by Bank and EMS. If Merchant exceeds the approved percentages disclosed on the Application, payment for said Transactions may be withheld by Bank and EMS pending further review. Bank and EMS may make payment of these Transactions at its sole discretion. Bank and EMS reserve the right to establish a Reserve Account pursuant to Section 15 below to fund Chargebacks that may arise from said Transactions. Merchant acknowledges that failure to disclose true and accurate percentages as part of the Application may result in the establishment of a Reserve Account, increased discount rate or fees and transaction fees, or the termination of this Agreement.

Mail, Telephone, Recurring Transactions, Pre-authorized Orders and E-Commerce (Internet) Transactions. Merchant acknowledges that all mail order Transactions, telephone order Transactions, periodic charges for recurring goods or services to be provided by Merchant ("Recurring Transactions"), pre-authorized order Transactions, and e-commerce (internet) Transactions are difficult to defend against Chargeback and agrees that it shall take reasonable precautions to protect against Chargebacks, including, but not limited to the following: (i) delivering merchandise only to the cardholder's billing address where the issuing bank sends the cardholder's billing statement, (ii) using a delivery service that maintains shipping logs and requires signatures by a person receiving merchandise, (iii) using AVS and not processing sales unless all information matches the AVS, (iv) obtaining CVV2/CVC2 verification from the issuing bank, (v) obtaining the expiration date of the Card, and (vi) on the sales draft, clearly print the cardholder's account number, effective and expiration dates, date of Transaction, description of the goods and services, amount of the Transaction (including shipping, handling, insurance, etc.), cardholder's name, billing address and shipping address, Authorization code, and Merchant's name and address.

Recurring Transaction and Pre-authorized Order Regulations. If Merchant processes Recurring Transactions and charges a cardholder's account periodically for recurring products or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), Merchant must, in addition to other applicable procedures and the Rules, comply with the following: (i) have the cardholder complete and deliver to Merchant a written request and consent for such products or services to be charged to cardholder's account. At a minimum, the written request must specify the transaction amounts, the frequency of recurring charges and the duration of time for which the cardholder's consent or permission is granted and be provided promptly in response to a cardholder's request for a copy; (ii) if the Recurring Transaction is renewed, the cardholder must complete and deliver to Merchant a subsequent written request for the continuation of such products or services to be charged to the cardholder's account; (iii) Merchant may not complete a Recurring Transaction after receiving a cancellation notice from the cardholder or issuing bank or after a request for Authorization has been denied; (iv) Merchant must obtain an Authorization for each Transaction and type or print legibly on the signature line of the sales draft for Recurring Transactions the words "Recurring Transaction" (and "PO" for MasterCard Transaction) in lieu of the cardholder's signature and must provide both an invoice number and the appropriate "Recurring Transaction" indicator must be included in each Authorization request; (v) Merchant must perform an AVS inquiry for at least the first Transaction and then annually thereafter, if applicable. Merchant understands that penalties can be assessed by the Associations for failure to use the Recurring Payment Indicator; (vi) a Recurring Transaction or Pre-authorized order may not include partial payments for products or services purchased in a single Transaction; and (vii) no finance charge may be imposed in connection with a Recurring Transaction or Pre-authorized order. Pre-authorized Transactions may be submitted if Merchant advises the cardholder that it will be immediately billing his or her Card at the time of the transaction for prepayment of services or for full prepayment of custom-ordered merchandise to be manufactured to the cardholder's specifications. In any case, all Transactions with an Authorization date more than thirty (30) days prior to shipping date or date services are rendered are subject to a greater risk of Chargeback.

E-Commerce (Internet). If Merchant is an e-commerce merchant and accepts orders via the internet, Merchant agrees that it must, in addition to other applicable procedures and the Rules, comply with the following: (i) post its privacy and security policies on its websites, where such policies shall be clearly marked for consumers to see and review; (ii) include on its website all the following information in a prominent manner: (1) complete description of the products or services offered, (2) returned merchandise and refund policy, (3) method for the cardholder to acknowledge his acceptance of the terms and conditions for returned merchandise or for the refund policy; this acknowledgment should be in a format that complies with Association guidelines for proper disclosure, (4) customer service contact, including e-mail address and/or telephone number; (5) Transaction currency (U.S. dollars, unless permission is otherwise received from Bank and EMS), (6) any applicable export or legal restrictions, (7) delivery policy, (8) consumer data privacy policy, and (9) a description of the Transaction security used on Merchant's website. Merchant acknowledges that the Electronic Commerce Indicator must be used to identify e-commerce Transactions in the Authorization request and clearing record. Penalties may be assessed for failure to use the correct Electronic Commerce Indicator.

**5. Retention of Records.** Bank and/or EMS may examine and verify at reasonable times all records of Merchant pertaining to all Transactions processed hereunder. Merchant will be responsible for the retrieval of all sales drafts and receipts and credit receipts requested by Bank or EMS within the time limits established by the Rules. Merchant will retain originals or copies of sales drafts and receipts and credit receipts for at least three (3) years from the processing date of the Transaction. Merchant agrees to deliver the paper copy or facsimile of any such sales drafts and credit receipts in its files to Bank or EMS, or to such person as Bank or EMS may designate, within such period after request therefor as is required by law or by the Rules. Such requested copies must be legible. Merchant will be responsible for all liabilities arising from any failure to provide an acceptable copy of any sales drafts as required by law or the Rules. Prior to discarding any sales drafts or other records of Transactions, Merchant will destroy in a manner rendering data unreadable, all material containing cardholder account numbers, Card imprints, and carbons. Merchant shall not under any circumstances retain cardholder information including cardholder name, account number, expiration dates, billing addresses, etc. in a database that can be accessed via a web-based application. Merchant shall indemnify and hold Bank and EMS harmless from all judgments, losses, costs and expenses, including reasonable attorneys' fees, incurred by Bank or EMS and arising out of any claim by cardholders whose security has been breached due to violation of Merchant of this Section. Merchant acknowledges that EMS may pass on research fees of up to \$75 per hour resulting from research of archived records that are the responsibility of the Merchant. Merchant further acknowledges that it is responsible for examining its monthly Merchant Statement for billing accuracy. EMS reserves the right to limit billing error corrections and refunds to those occurring within the last ninety (90) days. Merchant further agrees that Bank or EMS or their representatives may, during normal business hours, inspect, audit, and make copies of Merchant's books, accounts, records and files pertaining to any transactions, refunds or adjustments thereon.

**6. Settlement.** Merchant understands and agrees to balance and settle its POS terminal(s) daily and to electronically submit sales no later than the day following the date of Authorization. Transactions submitted for settlement more than one day after the date of Authorization may be refused, become subject to Chargeback or

assessed additional fees by Bank and EMS. Transactions charged to a Card issued by a foreign (non U.S.A.) issuer or a commercial card issued for business purposes may be assessed additional fees. Merchant acknowledges that all transactions between Merchant, Bank and EMS under this Agreement shall be treated as a single transaction and that all settlements are provisional subject to the cardholder's rights under the Rules for disputing charges against the cardholder's account. In submitting transactions to Bank and EMS, Merchant endorses and assigns to Bank and EMS all right, title and interest to such items with rights of endorsement. Bank and EMS have the right to receive payment on all Transactions acquired and Merchant will not attempt to collect any such Transactions. If any payment is received, Merchant will hold it in trust and promptly deliver it to Bank or EMS.

**7. Payment.** Merchant shall at all times maintain a commercial checking account with Bank or with another financial institution of Merchant's choice that belongs to the Automated Clearing House ("ACH") network and can accept ACH transactions and that Bank and EMS will use to debit and/or credit funds on a daily or monthly basis. EMS and Bank will debit Merchant's Designated Deposit Account ("DDA") daily for the Discount Fees. Merchant agrees to cooperate with Bank and EMS to help resolve any problems in crediting/debiting Merchant's DDA. Merchant agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association as in effect from time to time. Merchant hereby authorizes EMS and Bank to access information from the DDA and to initiate credit and/or debit entries and adjustments to Merchant's DDA by bank wire or ACH transfer process and/or through direct instructions to the financial institution where Merchant's DDA is maintained for amounts due under this Agreement and under any agreements with Bank or its affiliates for any related services, as well as for any credit entries in error. Merchant hereby authorizes the financial institution where Merchant's DDA is maintained to effect all such debits and credits to the Merchant DDA. This authorization is without respect to the source of any funds in the DDA, is irrevocable and is coupled with an interest, and shall remain in full force and effect until Bank and/or EMS have given written notice to the financial institution where Merchant's DDA is maintained that all monies due under this Agreement and under any other agreements with Bank or its affiliates for any related services have been paid in full. All settlements for Visa and MasterCard Card Transactions will be net of credits/refunds, adjustments, applicable Discount Fees when due, Transaction Fees, Chargebacks, reserves, lease payments, rental fees, Minimum Discount Fees, or other adjustments, charges and any other amounts then due from Merchant. All credits to Merchant's DDA or other payments to Merchant are provisional and are subject to, among other things, final audit by Bank and/or EMS, Chargebacks (including Bank and/or EMS related losses) fees, assessments, and fines imposed by the Associations. Merchant agrees that Bank and/or EMS may debit or credit Merchant's DDA for any deficiencies, overages, fees, fines, charges, and pending Chargebacks, or may deduct such amounts from settlement funds due to Merchant. Merchant hereby also agrees and authorizes Bank and/or EMS at its/their sole discretion, to debit any other banking account maintained by Merchant for any and all such amounts. Alternatively, Bank and/or EMS may elect to invoice Merchant for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified. Bank and/or EMS cannot guarantee the timeliness with which any ACH payment may be credited by Merchant's bank. Merchant understands that, due to the nature of the ACH and the electronic networks utilized for the movement of funds and the fact that not all banks belong to the ACH Network, payment to Merchant can be delayed. Bank and EMS will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, by Bank and/or EMS, including but not limited to any Association or Merchant's financial institution. Merchant acknowledges that the funds due for Visa and MasterCard Transactions will generally be processed and transferred to the Merchant's DDA within two (2) business days from the time a batch is closed. Bank and/or EMS reserve the right to divert and hold all funds when Bank and/or EMS is investigating the breach of any warranty, covenant, representation, or agreement by Merchant or has reasonable cause to believe that Merchant may have violated a provision of this Agreement, the Rules and/or is engaged in illegal, fraudulent or suspicious activity. In the event that a payment is rejected by Merchant's bank or fails to arrive within five (5) business days after Bank's attempted ACH payment, Bank may periodically wire transfer any funds due Merchant until the ACH problem is resolved, and all such wire transfers and resolution of all issues shall be solely at the Merchant's expense. If Merchant receives settlement funds by wire transfer, Bank and/or EMS may charge a wire transfer fee per wire, which fee is not subject to refund. Not all fees will be debited on a daily basis, but may be subject to a month end debit to the DDA or other available funds.

**8. Visa Cardholder Information Security Program/MasterCard Site Data Protection Program, Non-Disclosure, Retention, and Storage of Cardholder and Transaction Information Requirements.** Merchant understands that it must comply with the Rules, including without limitation, those relating to cardholder information security issues, non-disclosure of cardholder information and Transaction documents, retention and storage of cardholder and Transaction information and other security procedures adopted by the Associations. Merchant hereby confirms its agreement to abide by and fully comply with such Rules, including without limitation the Rules and procedures described below:

Visa Cardholder Information Security Program and MasterCard Site Data Protection Program. Visa and MasterCard have implemented programs to protect cardholder data. The Visa Cardholder Information Security Program ("CISP") and MasterCard Site Data Protection Program ("SDP") apply to Merchant if Merchant processes or stores cardholder data as a result of internet or mail/telephone acceptance of Visa or MasterCard Card account information. A copy of the complete Visa Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained online at [www.visa.com/cisp](http://www.visa.com/cisp) or from EMS's customer service department, and a copy of the SDP provisions can be obtained from EMS's customer service department. Visa and MasterCard may impose restrictions, fines, or prohibit Merchant from participating in Visa or MasterCard programs if it is determined that Merchant is non-compliant. Merchant may be required to comply with an audit to verify compliance with security procedures. The following is a highlight of the current CISP and SDP program requirements, all of which Merchant may be required to comply with, if applicable to Merchant: (i) install and maintain a working network firewall to protect data accessible via the internet; (ii) keep security patches up-to-date; (iii) encrypt stored data; (iv) encrypt data sent across networks; (v) use and regularly update anti-virus software; (vi) restrict access to data by business "need to know"; (vii) assign a unique ID to each person with computer access to data; (viii) don't use vendor-supplied defaults for system passwords and other security parameters; (ix) track access to data by unique ID; (x) maintain a policy that addresses information security for employees and contractors; and (xi) restrict physical access to cardholder information.

Transaction Information. Merchant acknowledges that the sale or disclosure of databases containing cardholder account numbers, personal information, or other Transaction information to third parties is strictly prohibited by the Rules. Unless Merchant obtains consents from Bank and EMS, and each applicable Association, issuing bank and cardholder, Merchant must not use, disclose, sell or disseminate any cardholder information obtained in connection with a Transaction (including without limitation, the names, addresses and Card account numbers of cardholders, copies of imprinted sales drafts and/or credit records, mailing lists, tapes or other media obtained in connection with a sales draft and/or credit record) except for purposes of authorizing, completing and settling Transactions and resolving any Chargebacks, retrieval requests or similar issues involving Transactions, other than pursuant to a court or governmental agency request, subpoena or order. Merchant shall use proper controls for, limit access to, and render unreadable prior to discarding all records containing cardholder account numbers and Card imprints. Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signature of a cardholder, Merchant may not reproduce such signature except upon the specific request of Bank or EMS. Merchant shall store all media containing cardholder names, cardholder account information, and other personal information, as well as Card imprints (such as sales drafts and credit records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding any such information, destroy it in a manner that renders the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer or disclose any materials that contain cardholder account numbers, personal information, or Transaction information to third parties, and shall return the information to Bank or EMS and provide acceptable proof of destruction to Bank and EMS.

**9. Term.** The term of this Agreement shall be one (1) year commencing on the acceptance of the Application and this Agreement by Bank and EMS and the issuance of a merchant account identification number to Merchant identifying Merchant for accounting, billing, customer service and related purposes in connection with the Services. Thereafter, the Term shall automatically renew for additional consecutive one (1) year terms, unless written notice of termination (to be effective upon the expiration of the then current term) is provided by Merchant to Bank and EMS or by Bank and EMS to Merchant at least ninety (90) days prior to the then existing term, unless earlier terminated in accordance with the provisions of this Agreement.

**10. Termination and Events of Default.** Bank and/or EMS, in addition to any rights of immediate termination without notice as may be contained elsewhere in this Agreement, may terminate this Agreement, and at Bank's and/or EMS's discretion, any merchant processing agreement(s) of any other business that is commonly owned or controlled by Merchant for any reason or cause (or for no reason) whatsoever upon ten (10) business days prior written notice to Merchant. Such termination shall become effective on the later of ten (10) business days from the date such notice is given in the manner prescribed for notices herein or the date specified in such notice; provided, however, that in the event of termination due to breach by Merchant of any of the terms and conditions of this Agreement, such termination shall become effective immediately upon the giving of such notice by Bank and/or EMS, and Merchant shall pay to EMS a termination fee in the amount of \$300. This Agreement may also be terminated effective upon the giving of notice at the discretion of Bank and/or EMS for reasons including but not limited to: (a) Bank and/or EMS determines that Merchant's type of business as indicated on the Application differs from the actual type of business Merchant operates; (b) Merchant moves or relocates to a new location without giving Bank and EMS at least thirty (30) days prior written notice; (c) the business as conducted by Merchant could endanger the safety and/or soundness of Bank; (d) the owner, officer or corporate entity has a separate relationship with Bank and/or EMS and such relationship has been terminated by Bank and/or EMS; (e) Merchant and/or any of its guarantors files for bankruptcy or is otherwise shown to be insolvent; (f) Merchant has Chargebacks which exceed one-half of one percent (0.50%) of the total number of Transactions completed by Merchant in any thirty (30) calendar day period; (g) Merchant owes money to Bank and/or EMS and fails to make a timely payment thereof; or (h) Merchant has breached or is in default under an End-User Agreement or similar agreement regarding the provision of web hosting, e-mail, electronic commerce, domain name and/or other internet application or system services. Upon the occurrence of an event of default or the termination of this Agreement by Bank or EMS in accordance with the terms hereof, Bank and EMS shall be entitled to pursue all rights and remedies available to it or them under this Agreement, at law or in equity. All obligations of confidentiality and of any party to this Agreement to pay funds to another shall survive any termination hereof. Nothing herein shall be construed as relieving Merchant of the obligation for the Minimum Discount Fee as provided in Schedule Of Fees for the term of this Agreement.

**11. Point of Sales Devices.** (a) Merchant agrees to utilize and maintain, at Merchant's expense, POS terminal(s), proprietary software and related equipment approved by Bank and EMS for all Transactions, in a format and medium of transmission acceptable to Bank and EMS. Bank and EMS shall have no liability or responsibility for any negligent design or manufacture of any POS terminal or printer, or for any proprietary software or related equipment; EMS' entire liability, if any, and Merchant's exclusive remedy in all situations, shall be to perform repair services on any inoperative POS terminal or printer sold or leased by EMS. (b) Merchant shall record each transaction by "swiping" the card through the POS terminal whenever possible. Merchant acknowledges that each outlet, retail location, or business entity will have its own POS terminal and Merchant identification number. Merchant understands and agrees that sales completed at one location cannot be processed through a terminal at another location. (c) In the event of breakdown of the POS terminal or other system failure, Merchant shall immediately contact the designated Merchant Help Desk. In such case, Merchant shall imprint each sales draft with the embossed data from each card and Merchant's imprinter plate and obtain the cardholder's or authorized user's signature which must match the signature on the card. If Merchant uses an electronic printer connected to a POS terminal, Merchant must still obtain the cardholder's or authorized user's signature on the printed sales draft. As soon as a POS Terminal is operable, Merchant will enter all transactions engaged in during such period. Failure to comply with these requirements may result in a Chargeback. (d) Merchant is responsible for all telephone and communication fees and charges with respect to POS terminals.

**12. Returns and Credits.** Merchant shall maintain a fair policy permitting refunds, exchanges, returns and adjustments in accordance with applicable law. If, with respect to any Transaction, any goods are accepted for return or any services are refunded, terminated or canceled, or any price adjustment is allowed by Merchant and except where otherwise required by law or governmental regulations, Merchant shall not under any circumstances, except as permitted by certain debit card networks, during the term of this Agreement, issue cash for return of goods or cancellations of service where goods or services were originally purchased in a Transaction. Instead, Merchant shall utilize a credit record evidencing such refund or adjustment. Merchant must process the credit record Transaction within three (3) business days of the original Transaction. Merchant shall date each credit record with the credit date and include thereon a brief description of the goods returned, services canceled or adjustment made and the amount of the credit, in sufficient detail to identify the Transaction. A completed copy of the credit record shall be delivered to the cardholder at the time of each return or cancellation of a transaction. The credit shall not exceed the amount of the original Transaction. The per item Transaction Fee will be applicable and Merchant may not receive a refund of Discount Fees paid for the original Transaction. With proper disclosure at the time of the Transaction, Merchant may: (a) refuse to accept goods in return or exchange and refuse to issue a refund to a cardholder; (b) accept returned goods in exchange for the Merchant's promise to deliver goods or services of equal value available from Merchant at no additional cost to cardholder; or (c) stipulate special circumstances agreed to by the cardholder. Proper disclosure shall be deemed to have been given only if, at the time of the Transaction, the following notice appears on all copies of the sales draft in legible letters at least one-quarter (1/4) inch high and in close proximity to the space provided for the cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY" or any special terms as applicable, or equivalent language, provided and to the extent such sales practices are permitted under applicable law.

**13. Warranties by Merchant.** Merchant represents and warrants to Bank and EMS that Merchant has taken all necessary action and has the authority to enter into this Agreement with Bank and EMS and that the person(s) signing for or on behalf of Merchant is (are) specifically authorized and directed to do so by Merchant. This Agreement constitutes the legal, valid and binding obligation of Merchant, enforceable against Merchant in accordance with its terms. Without limiting any other representations, warranties, covenants and agreements hereunder, Merchant agrees, represents and warrants to Bank and EMS that at all times during the term of this Agreement: (a) it is engaged in the lawful business shown on the front of the Application and is duly licensed under the laws of the State, County and City in which Merchant is located to conduct such business; (b) Merchant currently accepts or desires to accept Cards for the purchase of goods and services through Transactions with cardholders; (c) it has not been terminated from the settlement of card transactions by any financial institution or determined to be in violation of the rules and regulations of Bank, EMS, MasterCard, Visa or any other Association or network; (d) it will fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including all laws with respect to consumer protection and credit, and the Rules; (e) it will provide Bank and EMS sixty (60) days prior written notice of its intent to (i) transfer or sell 10% or more of its total stock, assets and/or liquidate, (ii) change the nature of its business, or (iii) convert all or part of its retail sales to mail or telephone orders or any other sales method in which the Card is not present and swiped through the POS terminal; (f) as to each Transaction presented to Bank and EMS for payment: (i) the sales draft is valid in form and has been completed in accordance with the Rules, all applicable laws and requirements, (ii) Merchant has delivered goods to the Cardholder or completed the service described on the sales draft in accordance with Merchant's agreement with the Cardholder, (iii) each sales draft represents a bona fide Transaction directly between the Merchant and the cardholder in the Merchant's ordinary course of business and the sales draft shows the cardholder's indebtedness for the total amount shown, (iv) the cardholder has no claim, defense, right of offset, or dispute against Merchant in connection with the purchase of the goods or service and Merchant will provide adequate services to cardholders and will honor all warranties applicable thereto, (v) Merchant has not charged cardholder any separate or additional fee(s) in connection with the

Transaction other than as may be required by law. The foregoing shall not prohibit Merchant from extending discounts to customers paying by cash, check, or any other means, other than by Card. (vi) each Transaction was placed by a person who is the cardholder or authorized user of the Card; (g) all of Merchant's business locations engage in the same or substantially similar business activity as that listed on the face of this Agreement; (h) the percentage of mail and/or telephone order sales listed by Merchant is consistent at all of Merchant's locations; (i) MERCHANT offers no enticements or incentives to cardholders in connection with Transactions for the sale of Merchant products; (j) Merchant and its employees will not use their personal credit cards on the Merchant's POS Terminal; (k) Merchant uses both the name and address shown on the front of the Agreement on all sales drafts and does not use any other name; (l) shall include all items of goods and services purchased in a single Transaction in the total amount on a single sales draft or transaction record (i.e., Merchant shall not "split tickets"). Merchant shall not submit duplicates of any transaction; (m) no Transaction is between a cardholder and an entity other than Merchant; and (n) Merchant shall be responsible for its employees' and agents' actions. Merchant further warrants and agrees that it shall not, without the cardholder's consent and as permitted by law and the Rules, sell, purchase, provide, or exchange card account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a Transaction or otherwise, to any third party other than to Merchant's agents approved by Bank and EMS for the purpose of assisting Merchant in its business, to Bank, EMS, or the respective card issuer or Association or pursuant to lawful government demand. All media containing card account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed in a manner that will render the data unreadable. Merchant will not disclose and will keep confidential the terms and conditions of this Agreement. If Merchant processes and stores Card data and/or has access to that information via the internet, Merchant agrees to comply with all Rules in respect of protecting Card data and maintaining security measures. Failure to comply with the Rules or foregoing requirements, the occurrence of any significant circumstance that may create harm or loss of goodwill to any Association, and/or any security breach compromising Card data shall make the Merchant liable for any network fines, fees and/or unauthorized charges to compromised Card accounts. Merchant understands and agrees that violation of any of the foregoing warranties, representations, covenants and agreements or otherwise provided in this Agreement shall constitute an event of default and breach by Merchant of this Agreement, and may cause this Agreement to be immediately terminated, or be subject to termination, and may result in all funds being placed in a Reserve Account pursuant to Section 15 hereof.

**14. Chargebacks.** Merchant understands and acknowledges that an authorized sale does not constitute a guarantee of payment, only available credit, and may be subject to dispute or chargeback. For purposes of this Agreement, "Chargeback" shall mean the procedure by which a sales draft or other indicia of a Transaction (or disputed portion thereof) is denied or returned to Bank or the issuing bank after it was entered into the appropriate settlement network for payment, in accordance with the Rules, for failing to comply with the Rules or due to a cardholder dispute, the liability of which is the Merchant's responsibility. Notwithstanding any nonrecourse provisions contained herein, Merchant is responsible for any and all Chargebacks, as well as Association fines, assessments and fees related to or arising out of such Chargeback's, and will pay BANK and EMS, upon demand and without notice, the face amount of any Chargeback, and Bank and EMS shall have the right to debit the Merchant's DDA, incoming transactions, or any other funds of the Merchant in Bank's and EMS's direct or indirect control by reason of Bank's and EMS's security interest granted by Merchant under Section 20 below, for the face amount of any Chargeback including without limitation and by way of example, in any of the following circumstances: (a) a mail order or telephone order Transaction is disputed by the cardholder; (b) merchandise has been returned or service canceled by cardholder and cardholder requested a credit from Merchant and such credit was not processed by Merchant; (c) the purchase had not been authorized as required or the denial of an Authorization was disregarded; (d) a Transaction is for a type of merchandise or services other than as described in the Application and the draft was charged back by the cardholder; (e) the cardholder contends or disputes to Bank, EMS or the appropriate issuing bank that: (1) the goods or services were not received by the cardholder or their authorized user or (2) the goods or services received by cardholder or their authorized user do not conform to what was on the sales draft or (3) goods or services of value were defective or (4) the dispute reflects a claim or defense authorized against card issuers or creditors by a relevant statute or regulation; (f) Merchant fails to honor a retrieval request for an original sales draft from Bank or EMS in accordance with the requirements hereof; (g) a sales draft is illegible, incomplete or does not contain a Transaction date on the face or such dollar amount has been altered or incorrectly entered and sales draft has been charged back by the Card issuer; (h) the sales draft contains the imprinted or otherwise transcribed description of a Card other than the Card specified; (i) the transaction was generated through the use of an invalid, altered, counterfeit or expired Card; (j) no signature appears on the sales draft or sales draft does not contain the embossed legend from a Card or Merchant has failed to obtain the specific authorization from a designated Authorization Center to complete the Transaction and/or the cardholder has certified in writing, to Bank, EMS or the issuing bank that he did not make or authorize the Transaction; (k) security procedures have not been followed or where the signature on the sales draft is different from the signature appearing on the signature panel of the Card and the sales slip is charged back; (l) a Card issuer, Bank or EMS has information that Merchant fraud occurred at the time of the Transaction, whether or not such Transaction was authorized by the issuer and the cardholder neither participated in nor authorized the Transaction; (m) if with respect to any one Merchant outlet, the ratio of questionable Merchant activity to Card sales exceeds industry standards, in the sole determination of Bank or EMS. If, with respect to any one of Merchant's outlets, the amount of any Card counterfeit or fraud incidences becomes excessive, in the sole and absolute discretion of Bank or EMS, Merchant may be charged back for all Transactions, terminated immediately for cause, and Merchant's funds, including but not limited to those incoming Transactions and in Merchant's DDA and Reserve Account shall be held pursuant to the provisions of this Agreement. Merchant agrees to accept and understands that it is responsible for all Chargebacks and understands that some Chargebacks cannot be rebutted or remedied. Merchant agrees to satisfy directly with the cardholder any claim or dispute arising from a Transaction. Bank and EMS will provide Merchant with any information possessed by them that will enable Merchant to recover from others the amount of any Chargeback. Bank and EMS shall retain any discount and/or other fee related to a Chargeback. Merchant understands that Bank and EMS will assess up to \$25 per Chargeback, or other charges that may be established by Bank and EMS from time to time. Furthermore, Bank and EMS may assess Merchant for any fines imposed by MasterCard and Visa plus a processing fee for such fine as may be required by Bank and EMS at their sole discretion. Disputes relating to Chargebacks shall be governed by the Rules of each Card issuing Association and as amended from time to time, including Merchant's obligation to provide required documentation. If the actual Card is "not present", Merchant understands and acknowledges that Merchant bears one hundred percent (100%) of the risk of Chargeback under the Rules, for all Transactions and any fees resulting from any losses, claims, and costs arising from or associated with such all Transactions, including any Authorizations.

**15. Reserve Account.** In addition to the security interest and Chargeback rights granted to Bank and EMS by Merchant, Merchant hereby authorizes Bank or EMS to establish a non-interest bearing "Reserve Account", with or without notice to the Merchant, at any time prior to, at, or after the termination of this Agreement, when the Bank or EMS have determined that any of the following has occurred: (a) reasonable doubt exists concerning Merchant's ability to comply with this Agreement; (b) Merchant's breach of this Agreement or other applicable Rules and regulations; (c) excessive Chargebacks, customer disputes, ACH rejects, retrieval requests or the reasonable possibility of any of the foregoing occurring; (d) inability of the Merchant to fund any potential Chargebacks, post termination fees, charges or other expenses and fees payable to the Bank or EMS. The Reserve Account may be funded, supplemented or replenished by the Bank or EMS in any or all of the following methods: (i) one or more debits to Merchant's DDA; (ii) one or more deductions from payments due Merchant; or (iii) if Bank, EMS and Merchant agree, delivery of letter of credit or certificate of deposit issued by a financial institution acceptable to Bank and EMS. Merchant hereby agrees that Bank or EMS may deduct from this Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in the Reserve Account may be held until the expiration of any applicable Chargeback rights in respect to purchased indebtedness under applicable Rules of the Card issuer, whose holding period may extend beyond the termination of this Agreement. Bank or EMS may fund, supplement or replenish the Reserve Account in such an amount as Bank or EMS may reasonably estimate is necessary to secure Merchant's payment obligations under this Agreement. Funds in the Reserve Account will be non-interest bearing.

Without limiting the generality of the foregoing, Merchant shall, upon termination of this Agreement, maintain sufficient funds in the Reserve Account in such amount as may be reasonably required by Bank or EMS until all of the Chargeback rights of the Transactions processed preceding termination have expired. Merchant hereby agrees that any financial institution at which Merchant maintains a deposit account may rely upon an executed copy of this Agreement provided by Bank and/or EMS as Merchant's express, written instruction and authorization to permit such offset by Bank and/or EMS, and Merchant's agreement that said financial institution shall be released from any liability for any good faith compliance with the express written instruction and authorization as set forth herein to permit such offset by Bank and/or EMS. Notwithstanding any provision contained herein to the contrary, EMS may not have access, directly or indirectly, to any account for funds or funds due to Merchant and/or funds withheld from Merchant for Chargebacks, and Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from or related to the performance of this Agreement to EMS.

**16. Fraudulent Sales, Factoring Or Laundering.** Merchant shall never accept or deposit or enter into its POS terminal a fraudulent Transaction or Transaction made by any entity other than the Merchant. Should Merchant do so, Bank or EMS may immediately terminate this Agreement, have all funds placed into a Reserve Account pursuant to Section 15 above and be placed on the "Combined Terminated Merchant File" as required by the Rules. Said action may result in Merchant's being restricted from settling Transactions with any bank in the future. Merchant hereby releases Bank and EMS and agrees to hold Bank and EMS harmless from any claims, liabilities, losses or damages arising out of or resulting from Merchant's being placed on any such restrictive list.

**17. Indemnification; Bank and EMS Liability.** Merchant agrees to indemnify and hold Bank and EMS harmless from and against any Association fines or fees and all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under this Agreement (including, without limitation, a violation of the Rules), or arising out of Merchant's or Merchant's employees' negligence or willful misconduct, in connection with Transactions or otherwise arising from Merchant's provision of products and services to cardholders. Bank agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Bank under this Agreement or arising out of Bank's or its employees' gross negligence or willful misconduct in connection with this Agreement. EMS agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by EMS under this Agreement or arising out of EMS's or its employees' gross negligence or willful misconduct in connection with this Agreement.

Except as expressly provided in this Agreement, Bank and EMS make no other warranties whether express, implied or statutory, in connection with this Agreement and without limiting the foregoing, Bank and EMS disclaim all warranties of merchantability and fitness for a particular purpose. Bank or EMS may utilize systems of others, including those of any Associations, in connection with its performances of the services described hereunder. Bank and EMS shall not be responsible or liable for any information provided by others or for the use of any system or equipment of Bank and EMS or others or for any circumstances beyond its control. Bank and EMS shall not be liable for lost profits, consequential, special, punitive, exemplary or incidental damages, even if Bank and EMS have been advised of the possibility of such damages. The sole and exclusive liability of Bank and EMS and remedy of Merchant hereunder (including negligence) shall be general money damages not to exceed the amount of the item subject to claim or dispute, regardless of the characterization of such action.

**NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL BANK AND EMS, OR THEIR AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY, FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**18. Force Majeure.** The parties to this Agreement shall be released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or either party's compliance therewith, or governmental proclamation, regulation, or priority, or any other cause beyond either party's reasonable control, whether similar or dissimilar to such causes.

**19. Notices.** Any notice, request, instruction or other document required or permitted under this Agreement shall be deemed to have been given (i) upon receipt if by personal delivery or by overnight courier service by way of a national courier or (ii) on the third day after the same shall be deposited in the United States mail, by first class registered mail, return receipt requested and postage prepaid, and addressed in either event to First Place Bank at \_\_\_\_\_, KeyBank National Association at 4910 Tiedeman Road, Cleveland, Ohio 44144, EMS at 5005 Rockside Road, Suite PH100, Cleveland, Ohio 44131 or to MERCHANT at the address written on the Application or at such other address as any party may give to the others from time to time by written notice to the other parties.

**20. Security Interest.** IN ORDER TO SECURE ALL OBLIGATIONS OF MERCHANT TO BANK AND EMS ARISING FROM THIS AGREEMENT, MERCHANT HEREBY GRANTS BANK AND EMS A CONTINUING SECURITY INTEREST IN AND TO ALL DEPOSITS, REGARDLESS OF SOURCE, TO MERCHANT'S DDA AND OTHER ACCOUNTS IN THE DIRECT OR INDIRECT CONTROL OF THE BANK OR EMS, ESTABLISHED IN MERCHANT'S NAME OR BY ANY PARTY SIGNING THE PERSONAL GUARANTY AS PART OF THIS AGREEMENT, AND TO ALL PROCEEDS OF SAID DEPOSITS. Said security interest may be set-off or otherwise exercised by BANK and EMS without notice or demand of any kind by making an immediate withdrawal from or holding said account, upon Bank's or EMS's reasonable determination that a breach of any obligation of Merchant under this Agreement has occurred. The exercise of this security interest shall be in addition to any other rights of Bank and EMS under this Agreement or applicable laws. The parties specifically acknowledge and affirm that pursuant to the Uniform Commercial Code of Ohio, Bank and EMS have a general lien and right of offset upon all funds on deposit with Bank and EMS, which shall stand as one continuing collateral security for the timely performance by Merchant of all of its obligations to Bank and EMS. Bank and EMS shall also have the right to require Merchant to furnish such other and different security as Bank or EMS shall deem appropriate in its sole discretion in order to secure Merchant's obligations under this Agreement. Merchant agrees to execute any documents or take any actions required in order to comply with and perfect any security interest under this Section, at Merchant's cost. To the extent permitted by law, Merchant irrevocably authorizes Bank and EMS to record any financing statement or other documents relating to this security interest.

**21. Discount Fee and Transaction Fees.** Merchant agrees to pay to Bank and EMS the non-returnable fees stated in the Schedule of Fees incorporated herein and as amended from time to time with thirty (30) days' written notice. The Bank must approve, in advance, any fee to or obligation of the Merchant arising from or related to performance of this Agreement. Bank and EMS shall have the right to increase the Discount Fees, Transaction Fees, or add fees from time to time in accordance with Sections 19 or 30. EMS also may increase Discount Fees or Transaction Fees immediately without notice to Merchant, if approved by Bank in advance, if Merchant changes the nature of its business from that indicated on the Application or otherwise changes its business or goods sold or services rendered in a way that may increase EMS's costs or lead to excessive Chargebacks, or if Merchant's percentage of on and off premises, mail, telephone, and internet transaction sales varies from that disclosed in the Application. Fees become due at the time a Transaction is submitted to Bank and EMS. A "Discount Fee" means a fee charged on the total value of a Transaction at the Discount Rate disclosed on the face of this Agreement. A "Transaction Fee" shall mean a fee charged on

each sales draft and each credit record regardless of the total stated and shall also mean a fee charged for any other Transaction which utilizes a POS device for transmission or reception of Card data or information, including but not limited to, debit card transactions, batch closing, Authorizations and any other communications using the POS terminal. Merchant acknowledges that Bank and EMS have relied upon the information contained in the Application including but not limited to the type of business in which Merchant is engaged, the product or service sold, the average transaction or ticket size and monthly volume, the amount of telephone and mail order sales, and the ratio of keyed/swiped transactions in determining whether to accept the Application and in setting the Discount Fees and Transaction Fees charged Merchant. Merchant acknowledges the Discount Fees quoted in the accompanying Application is contingent upon Merchant's closing batches at least once every business day, and further understands that in the event that batches are not closed at least daily, Bank and EMS may initiate batch closing on Merchant's behalf. In the event of a change in the parameters stated above or should special circumstances arise which shall change either temporarily or permanently the existing conditions, Merchant must notify Bank or EMS prior to those changes, so that necessary adjustments can be made. Additional fees may be assessed for processing sales or credit drafts emanating from foreign (non U.S.A.) credit cards or commercial cards issued for business purposes. Merchant will be charged additional Discount Fees (See Schedule Of Fees) and subject to increase for all Transactions which do not qualify for the lowest interchange fees. To qualify, batches must be closed daily and an Authorization obtained for every Transaction-matching the sales amount exactly (or within 15% for hotels and car rentals, 20% for restaurants, bars and night clubs). PLEASE REFER TO THE SCHEDULE OF FEES INCORPORATED INTO THIS AGREEMENT FOR THE AMOUNT OF THESE FEES. Merchant agrees to pay these fees and any increase in interchange fees. If not covered by the Schedule Of Fees, any additional fees due to a transaction not qualifying for the lowest interchange fee shall be paid by Merchant.

**22. Minimum Discount Fee/Access Fee.** Merchant agrees that the Minimum Discount Fee to be imposed for any month, or portion thereof, shall be in accordance with the Schedule Of Fees. Merchant acknowledges that Bank and EMS shall assess a Monthly Access Fee (see Schedule Of Fees) or such other fee as may be established from time to time if approved in advance by Bank. Merchant also acknowledges that the monthly minimum Discount Fee and Access Fee apply to each Merchant identification number assigned to Merchant, and hereby agrees to pay these fees.

**23. Severability.** If any part of this Agreement is held unenforceable or invalid or prohibited by law, said part shall be deemed stricken therefrom and this Agreement shall be read and interpreted as though said part did not exist, and shall not affect the validity or enforcement of any other provision.

**24. Waiver.** Neither the failure nor any delay on the part of Bank or EMS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

**25. Entire Agreement.** This Agreement, including the Application and any other documents executed in conjunction herewith, constitutes and expresses the entire agreement and understanding between the Merchant, Bank and EMS with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, by Bank, EMS or its sales representative, whether expressed or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than be a writing specifically identified as such and signed by the duly authorized representatives of Bank and EMS. This Agreement is not effective and may not be modified in any respect without the express written consent of Bank.

**26. Assignment and Delegation.** This Agreement may be assigned by Bank. EMS may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party any right or obligation of EMS set forth herein except as may be approved by Bank and permitted under the Rules. This Agreement may not be assigned by Merchant without Bank's and EMS's prior written consents and any purported assignment without such consents shall be void. This Agreement shall be binding on the parties and their permitted heirs, successors, and assigns. Bank (and EMS, if and to the extent permitted under the Rules) reserves the right, in its sole discretion, to delegate or assign to third parties the performance of certain of Bank's (or EMS's, if applicable) servicing or settlement obligations to Merchant. The relationship of Bank, EMS and Merchant is solely that of independent parties contracting for services.

**27. Disputes, Governing Law, Jurisdiction, and Venue.** Bank and EMS shall have the absolute right to initiate or defend any and all disputes arising from this Agreement with Merchant. This Agreement shall be governed by and constructed in accordance with the laws of the State of Ohio. In the event of a claim by Bank and/or EMS for the failure of a Merchant to pay any Chargebacks, fees, settlement costs or other amounts due hereunder, Merchant agrees that personal jurisdiction and venue of any such claim shall lie in the federal or state courts of Cuyahoga County, Ohio, and Merchant and any guarantors of Merchant's obligations and duties hereunder do each hereby waive all objections to said jurisdiction and agree to submit thereto. Each party is responsible to its own costs and expenses, except that Merchant shall be liable for all costs and expenses of Bank and EMS (including attorneys fees in connection with the enforcement of this Agreement), as a result of any breach or the collection of any sums due to Bank or EMS hereunder (including bankruptcy).

**28. Arbitration.** Except as expressly provided in Section 27, any claim or dispute arising out of or related to this Agreement shall be finally resolved by final and binding arbitration. Whenever a party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other parties. The party giving such notice shall refrain from instituting the arbitration proceedings for a period of thirty (30) days following such notice to allow the parties to attempt to resolve the dispute between or among themselves. If the parties are still unable to resolve the dispute, the party giving notice may institute the arbitration proceeding under the rules of the American Arbitration Association ("AAA Rules"). Arbitration shall exclusively and solely be held in Cleveland, Ohio. The arbitration shall be conducted before a single arbitrator mutually chosen by the parties, but if the parties have not agreed upon a single arbitrator within fifteen (15) days after notice of the institution of the arbitration proceeding, then the arbitration shall be conducted by a panel of three (3) arbitrators. In such case, Merchant, on the one hand, and Bank and/or EMS on the other, shall within thirty (30) days after notice of the institution of the arbitration proceedings appoint one arbitrator. The presiding arbitrator shall then be appointed in accordance with AAA Rules. Decisions of the arbitrator(s) shall be final and binding on the parties. The arbitrator shall have the authority to award any remedy or relief a court of the State of Ohio could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the awarding of the issuance of an injunction or the imposition of sanctions for abuse or frustration of the arbitration process. Judgment upon the award of the arbitrator may be entered in any court of competent jurisdiction and enforced with full judicial effect thereafter. All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentations. The arbitrator(s) is/are authorized to award any party such sums as shall be deemed proper for the time, expense and inconvenience of arbitration, including arbitration fees and attorney fees. Except to the extent that entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence by the parties.

**29. Compliance and Disclosure of Information; Patriot Act.** Merchant shall provide such information and certifications as Bank and EMS may reasonably require from time to time to determine Merchant's compliance with the terms and conditions of this Agreement and the Rules. Merchant further agrees to produce and make available for inspection by Bank, EMS or its officers, agents or representatives, such books and records of Merchant as Bank or EMS may deem reasonably necessary to be adequately informed of the business practices and financial condition of Merchant, or the ability of Merchant to observe or perform its obligations to Bank and EMS pursuant to this Agreement. Merchant further agrees to provide to Bank or EMS within seven (7) days of notice such information as Bank or EMS may request including but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as Bank or EMS

may request. Merchant grants to Bank and EMS continuing authority to conduct credit checks and background investigation and inquiries concerning Merchant and its owner(s) including, but not limited to, character and business references and the financial condition of Merchant and Merchant's owner(s). Merchant expressly authorizes Bank, EMS or its agents and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of Merchant. Bank and EMS may share with others its credit, sales and other information. Merchant will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to Bank or EMS and providing Bank or EMS with the opportunity to terminate this Agreement.

Merchant acknowledges that Bank has implemented a customer identification program as required under the USA Patriot Act and other similar state laws and regulations. Merchant agrees to make available to Bank and/or EMS such information as may be required by Bank in connection with its customer identification program and/or as required under the USA Patriot Act and related state laws and regulations.

**30. Amendments.** This Agreement may be amended by Bank and EMS from time to time upon written notice of the change(s) in terms and conditions or fees. Any amendment to this Agreement shall be effective on the later of the effective date specified in the notice or thirty (30) days after the notice is mailed to Merchant or in the manner prescribed for notices herein. In the event of any amendment of the terms and conditions of this Agreement or of the fees payable to Bank or EMS hereunder, Merchant shall have the right to terminate this Agreement without the payment of the termination fee provided in Section 10 above by providing Bank and EMS written notice of such termination prior to the effective date of such amendment. No such termination shall effect any obligation of Merchant to pay any fees, charges, or other obligations incurred by Merchant under this Agreement prior to the date of termination. Submission of transactions to Bank and EMS on or after any effective date constitutes acceptance of any amendment. Any unrelated alteration or modification to the preprinted form of this Agreement has no effect and, at the Bank and EMS's discretion, may render this Agreement void.

**31. Survival.** All representations, warranties and covenants shall survive the termination of this Agreement.

**32. Construction.** The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement.

**33. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

**34. Schedule of Fees.** Incorporated herein by reference is a Schedule of Fees that contains the Discount Fee, Transaction Fees, and other terms and conditions in effect on the commencement date of this Agreement. Bank and EMS reserve the right at all times to unilaterally change all or part thereof or any other terms of this Agreement in accordance with Sections 19, 21 or 30.

**35. Exclusive Agent.** For purposes of this Agreement and performance of the Services by EMS, (i) EMS is the exclusive agent of Bank, (ii) Bank is at all times and entirely responsible for and in control of EMS's performance hereunder, and (iii) Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement.

**36. Default Interest Rate.** Merchant agrees that all amounts due and payable by Merchant to Bank or EMS under this Agreement shall accrue interest at the rate of one and one-half percent (1.50%) per month, or the maximum interest rate permissible under law, whichever is lesser, beginning as of date due and continuing following any judgment obtained by Bank or EMS against Merchant until paid in full.

**37. Financial Accommodation.** The acquisition, processing and settlement of Transactions is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assigned or enforced and Bank and EMS shall be excused from performance hereunder.

This Agreement shall be effective only upon acceptance and signature by Bank and EMS. Any application fee paid to Bank or EMS is nonrefundable whether or not Merchant and this Agreement are accepted by Bank and EMS.



Electronic Merchant Systems  
5005 Rockside Road, #PH100  
Cleveland, Ohio 44131  
800-726-2117

# MERCHANT APPLICATION

- Sponsored By  
 Key Bank USA  
 Cleveland, OH  
 First Place Bank  
 Youngstown, OH  
 Merrick Bank  
 Woodbury, NY

MCC:

MN:

Office:

Account Mgr:

Account Rep:

BUSINESS NAME(S)			
Corporate or Legal Name		No. Locations	Doing Business As
Corporate Address		Location Address (if different from corporate)	
City, State, Zip Code		City, State, Zip Code	
Telephone Number ( ) ( )	Fax Number ( ) ( )	Telephone Number ( ) ( )	Alternate Phone ( ) ( )
Federal Tax ID Number: (must be nine digits)	Contact Person	Contact E-Mail	Mail to: <input type="checkbox"/> Corporate <input type="checkbox"/> Location

MERCHANT PROFILE			VISA / MASTERCARD HISTORY		
Type of Ownership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC			Has the business or any associated owner ever been terminated as a VISA/MasterCard Merchant? <input type="checkbox"/> YES <input type="checkbox"/> NO		
Type of Goods Sold SIC/MCC			Do you currently accept VISA/Mastercard? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, please submit 3 most current monthly statements.		
Length of Ownership YRS MOS	Years at Location YRS MOS	Business Established in:	3rd parties involved with payment process? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, identify		
CREDIT CARD TRANSACTION PROFILE			Additional Services Merchant Numbers		
<input type="checkbox"/> Retail	On Premise Sales ____%	Sales swiped through POS terminal _____%	American Express _____ <input type="checkbox"/> EDC <input type="checkbox"/> Auth		
<input type="checkbox"/> Restaurant w/tip	Off Premise Sales ____%		Discover _____ <input type="checkbox"/> EDC <input type="checkbox"/> Auth		
<input type="checkbox"/> Lodging	Mail Order ____%	Sales keyed into POS terminal _____%	Diners Club _____ <input type="checkbox"/> EDC <input type="checkbox"/> Auth		
<input type="checkbox"/> Trade/Craft Shows	Telephone Order ____%		Website Address: _____		
<input type="checkbox"/> Mail/Phone Order	Internet ____%		Call Waiting <input type="checkbox"/> YES <input type="checkbox"/> NO	Predial Prefix? _____	
<input type="checkbox"/> Internet	<b>MUST TOTAL 100%</b>	<b>MUST TOTAL 100%</b>	Terminal Model # of Units	Printer Model # of Units	Pinpad Model
<input type="checkbox"/> Service					

OWNERS AND OFFICERS					
Name (please print) 1)		Title	Residence Address, City, State, Zip, County		
Social Security Number	Equity Ownership %	Time at Residence Yrs Mos	<input type="checkbox"/> Own <input type="checkbox"/> Rent	Date of Birth	Residence Telephone ( ) ( )
Name (please print) 2)		Title	Residence Address, City, State, Zip, County		
Social Security Number	Equity Ownership %	Time at Residence Yrs Mos	<input type="checkbox"/> Own <input type="checkbox"/> Rent	Date of Birth	Residence Telephone ( ) ( )
<b>BANK REFERENCE</b>	Account #:	Telephone Number: ( ) ( )	Contact:		
<b>TRADE REFERENCE</b>	Account #:	Telephone Number: ( ) ( )	Contact:		
<b>TRADE REFERENCE</b>	Account #:	Telephone Number: ( ) ( )	Contact:		
<b>TRADE REFERENCE</b>	Account #:	Telephone Number: ( ) ( )	Contact:		

MERCHANT SITE INSPECTION REPORT (must be completed by sales representative)		
Merchant Location: <input type="checkbox"/> Shopping Center <input type="checkbox"/> Retail Storefront <input type="checkbox"/> Residence <input type="checkbox"/> Mobile Merchant <input type="checkbox"/> Office Building	Area is Zoned: <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Industrial Square Footage <input type="checkbox"/> 0-250 <input type="checkbox"/> 250-500 <input type="checkbox"/> 500-2000 <input type="checkbox"/> 2000+	
Does the inventory, merchandise and staff appear to be consistent with the type of business? <input type="checkbox"/> YES <input type="checkbox"/> NO If no, please explain:		
The Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Leases	Landlord's Name or Mortgage Holder	Landlord/Mortgage Holder Telephone Number:
General Comments by Inspector:		
I hereby verify that I <input type="checkbox"/> have <input type="checkbox"/> have not physically inspected the business premises of the merchant at this address and the information stated above is correct to the best of my knowledge.	Signature of Rep/Inspector:	Date:

# MERCHANT AGREEMENT

## DEBIT/CREDIT AUTHORIZATION

MERCHANT hereby authorizes BANK and EMS in accordance with this MERCHANT Agreement to initiate debit/credit entries to MERCHANTS' checking account as indicated below. This authority is to remain in full force and effect during the term of the Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreement applying to POS terminal, accompanying equipment, check guarantee fees and/or gift/loyalty card fees.

STAPLE CHECK HERE

**DO NOT USE A DEPOSIT TICKET**

**MAKE SURE CHECK IS VOIDED PROPERLY**

**CHECK MUST BE MICR ENCODED WITH ABA ROUTING NUMBER AND ACCOUNT NUMBER**

**MAKE SURE CHECK IS PRE-PRINTED WITH MERCHANT BUSINESS NAME**

## SCHEDULE OF FEES

VISA/MasterCard Discount Rate	_____ % + _____ ¢ Transaction	\$10.00 Monthly Access
Pin Debit Card Discount Rate	_____ % + _____ ¢ Transaction	\$17.50 Monthly Access with Debit or Online Statements
<input type="checkbox"/> E-Commerce Monthly Fee	\$ _____	\$25.00 Monthly Access with Debit and Online Statements
<input type="checkbox"/> E-Commerce Trans Fee	\$ _____	Voice ARU \$0.60 / Batch Headers \$0.20
<input type="checkbox"/> Monthly Internet Gateway Fee	\$ _____	Monthly Minimum Visa/MC Discount Fee \$ 25.00
		\$45.00 Semi-Annual Technology Update
		<input type="checkbox"/> Cellular Transactions \$10.00 Per Month + .10¢ Per Transaction
		<input type="checkbox"/> Platinum Service Club \$10.00

Additional charge of 1.75% of sales amount for international, commercial, or non best qualified credit card transactions. Fees of \$15.00 per retrieval request, \$25.00 per chargeback and \$25.00 per returned ACH item. For restaurants, supermarkets, hotel, passenger transport, and gas station merchants Standard Visa Credit reward cards will be surcharged .50% and Signature Visa Credit reward cards .95%.

AN INVESTIGATIVE CONSUMER REPORT MAY BE MADE IN CONNECTION WITH THE ATTACHED APPLICATION. MERCHANT AUTHORIZES BANK, EMS OR ANY CREDIT REPORTING AGENCY EMPLOYED BY BANK OR EMS TO INVESTIGATE THE REFERENCES GIVEN OR ANY OTHER STATEMENTS OR DATA OBTAINED FROM MERCHANT, OR ANY OF THE UNDERSIGNED PRINCIPALS, FOR THE PURPOSE OF THIS APPLICATION OR ANY APPLICATION FOR ACCOMPANYING POS EQUIPMENT FINANCING. THE ABOVE SCHEDULE OF FEES IS PREDICATED ON THE BUSINESS PROFILE AND THE FOLLOWING INFORMATION:

**AVERAGE MONTHLY SALES VOLUME: \$ \_\_\_\_\_ AVERAGE TICKET SIZE: \$ \_\_\_\_\_ HIGHEST TICKET SIZE: \$ \_\_\_\_\_**

OFFICERS AND OWNERS OF MERCHANT WARRANT THAT THE AVERAGE MONTHLY SALES VOLUME AND AVERAGE TICKET SIZE ARE ACCURATE AND ACKNOWLEDGE THAT ANY VARIANCE MAY RESULT IN THE DELAY OR THE WITHHOLDING OF FUNDS SETTLEMENT OR TERMINATION OF THE MERCHANT AGREEMENT.

**IMPORTANT NOTICE:** All information contained in the attached Merchant Application was completed by owners and/or authorized officers of Merchant. No spaces were left incomplete. N/A or None is to be filled in any space where applicable. MERCHANT accepts all contractual obligations of this Agreement.

**MERCHANT ACKNOWLEDGES HAVING READ AND RECEIVED A COPY OF THIS AGREEMENT, AND THAT IT SHALL NOT BE EFFECTIVE UNTIL APPROVED BY BANK AND EMS. THIS IS AN AUTOMATICALLY RENEWABLE 12 MONTH MERCHANT CONTRACT. CANCELLATION DURING THE TERM WILL RESULT IN A \$300 EARLY TERMINATION FEE.**

## AGREED AND ACCEPTED

Print Merchant Name \_\_\_\_\_

(1) Sign X \_\_\_\_\_  
Title Date

(2) Sign X \_\_\_\_\_  
Title Date

## CORPORATE RESOLUTION

The officers identified in #1 and #2 have the authority to execute the Merchant Agreement with BANK and EMS on behalf of the corporation.

Sign X \_\_\_\_\_  
Title Date

By my signature, I verify that I already own a manual imprinter and will provide imprinted sales drafts whenever necessary.

Sign X \_\_\_\_\_  
Title Date

## PERSONAL GUARANTY FROM OWNER/OFFICER

The undersigned (jointly and severally if more than one) in consideration of BANK and EMS entering into this Merchant Agreement ("Agreement") with the above named Merchant, hereby absolutely and unconditionally guarantee the full and prompt payment of any and all amounts owed to BANK and EMS and the performance of all MERCHANT'S obligations under this Agreement as may be subsequently amended from time to time, whether before or after termination or expiration of the Agreement. The undersigned guarantor(s) agree(s) to pay or perform upon demand and waive any notice, presentment, demand, collection from others or any delay in enforcement. This Guaranty includes (i) any amount returned by the BANK and EMS after receipt due to any bankruptcy or similar law and (ii) BANK's and EMS's expenses including attorney fees and costs. Any sums owing by the MERCHANT to the undersigned shall be subordinated to sums owed to BANK. This Guaranty is continuing, binding upon heirs and successors and may not be changed except in writing and signed by BANK and EMS. Each of the undersigned hereby authorize BANK and EMS to and obtain from any credit reporting agency financial or credit information pertaining to the undersigned and give BANK and EMS continuing authority to obtain such information in connection with the maintenance, renewal or extension of the Agreement.

(1) Sign X \_\_\_\_\_  
NO TITLE PERMITTED Date

(2) Sign X \_\_\_\_\_  
NO TITLE PERMITTED Date

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
PLEASE PRINT NAME

## EMS AND BANK USE ONLY

EMS Approval: \_\_\_\_\_  
Signature Title Date

Bank Approval: \_\_\_\_\_  
Signature Title Date

Bank Name: \_\_\_\_\_ Merchant Setup \_\_\_\_\_  
Initials

Declined by: \_\_\_\_\_  
Signature Title Date

TERMINAL ID NUMBER: \_\_\_\_\_

MERCHANT NUMBER: \_\_\_\_\_



Transactions for the sale of Merchant products; (j) Merchant and its employees will not use their personal credit cards on the Merchant's POS Terminal; (k) Merchant uses both the name and address shown on the front of the Agreement on all sales drafts and does not use any other name; (l) shall include all items of goods and services purchased in a single Transaction in the total amount on a single sales draft or transaction record (i.e., Merchant shall not "split tickets"); Merchant shall not submit duplicates of any transaction; (m) no exchange card is between a cardholder and an entity other than Merchant; and (n) Merchant shall be responsible for its employees' and agents' actions. Merchant further warrants and agrees that it shall not, without the cardholder's consent and as permitted by law and the Rules, sell, purchase, provide, or transaction card account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a Transaction or otherwise, to any third party other than to Merchant's agents approved by Bank and EMS for the purpose of assisting Merchant in its business. Bank, EMS, or its respective card issuer or Association or pursuant to lawful government demand. All media containing card account numbers must be stored in an area limited to selected personnel until discarded and must be destroyed in a manner that will render the data unreadable. Merchant will not disclose and will keep confidential the terms and conditions of this Agreement. If Merchant processes and stores Card data and/or has access to that information via the internet, Merchant agrees to comply with all Rules in respect of protecting Card data and maintaining security measures. Failure to comply with the Rules or foregoing requirements, the occurrence of any significant circumstance that may create harm or loss of goodwill to any Association, and/or any security breach compromising Card data shall make the Merchant liable for any network fines, fees and/or unauthorized charges to compromised Card accounts. Merchant understands and agrees that violation of any of the foregoing warranties, representations, covenants and agreements or otherwise provided in this Agreement shall constitute an event of default and breach by Merchant of this Agreement, and may cause this Agreement to be immediately terminated, or be subject to termination, and may result in all funds being placed in a Reserve Account pursuant to Section 15.

**14. Chargebacks.** Merchant understands and acknowledges that an authorized sale does not constitute a guarantee of payment, only available credit, and may be subject to dispute or chargeback. For purposes of this Agreement, "Chargeback" shall mean the procedure by which a sales draft or other indicia of a Transaction (or disputed portion thereof) is denied or returned to Bank or the Issuing Bank after it was entered into the appropriate settlement network for payment, in accordance with the Rules, for failing to comply with the Rules or due to a cardholder dispute, the liability of which is the Merchant's responsibility. Notwithstanding any nonrecourse provisions contained herein, Merchant is responsible for any and all Chargebacks, as well as Association fines, assessments and fees related to or arising out of such Chargebacks", and will pay BANK and EMS, upon demand and without notice, the face amount of any Chargeback, and Bank and EMS shall have the right to debit the Merchant's DDA, incoming transactions, or any other funds of the Merchant in Bank's and EMS's direct or indirect control by reason of Bank's and EMS's security interest granted by Merchant under Section 20 below, for the face amount of any Chargeback including without limitation and by way of example, in any of the following circumstances: (a) a mail order or telephone order Transaction is disputed by the cardholder; (b) merchandise has been returned or service canceled by cardholder and cardholder requested a credit from Merchant and such credit has not been received by Bank and EMS from the time to time; (c) the purchase had not been authorized as required or the denial of an Authorization was disregarded; (d) Transaction is for a type of merchandise or services other than as described in the Application and the draft was charged back by the cardholder; (e) the cardholder contends or disputes to Bank, EMS or the appropriate issuing bank that: (1) the goods or services were not received by the cardholder or their authorized user or (2) the goods or services received by cardholder or their authorized user do not conform to what was on the sales draft or (3) goods or services of value were defective or (4) the dispute reflects a claim or defense authorized against card issuers or creditors by a relevant statute or regulation; (f) Merchant failed to honor a retrieval request for an original sales draft from Bank or EMS in accordance with the requirements hereof; (g) a sales draft is illegible, incomplete or does not contain a Transaction date on the face or such dollar amount has been altered or incorrectly entered and sales draft has been charged back by the Card issuer; (h) the sales draft contains the imprinted or otherwise transcribed description of a Card other than the Card specified; (i) the Transaction was generated through the use of an invalid, altered, counterfeit or expired Card; (j) no signature appears on the sales draft or sales draft does not contain the embossed legend from a Card or Merchant has failed to obtain the specific authorization from a designated Authorization Center to complete the Transaction and/or the cardholder has certified in writing, to Bank, EMS or the Issuing Bank that he did not make or authorize the Transaction; (k) security procedures have not been followed or where the signature on the sales draft is different from the signature appearing on the Card; (l) the signature on the sales draft is different from the signature on the Card; (m) if with respect to any one Merchant outlet, the ratio of questionable Merchant activity to Card sales exceeds industry standards, in the sole determination of Bank or EMS. If, with respect to any one of Merchant's outlets, the amount of any Card counterfeit or fraud incidences becomes excessive, in the sole and absolute discretion of Bank or EMS, Merchant may be charged back for all Transactions, terminated immediately for cause, and Merchant's funds, including but not limited to those incoming Transactions and in Merchant's DDA and Reserve Account shall be held pursuant to the provisions of this Agreement. Merchant agrees to accept and understands that it is responsible for all Chargebacks and understands that some Chargebacks cannot be refunded or remedied. Merchant agrees to satisfy directly with the cardholder any claim or dispute arising from a Transaction. Bank and EMS will provide Merchant with any information possessed by them that will enable Merchant to recover from others the amount of any Chargeback. Bank and EMS shall retain any discount and/or other fee related to a Chargeback. Merchant understands that Bank and EMS will assess up to \$25 per Chargeback or other charges that may be established by Bank and EMS from time to time. Furthermore, Bank and EMS may assess Merchant for any fines imposed by MasterCard and Visa plus a processing fee for such fines as may be required by MasterCard and Visa for their own processing. Disputes relating to Chargebacks shall be governed by the Rules of each Card Issuing Association and as amended from time to time, including Merchant's obligation to provide required documentation. If the actual Card is "not present", Merchant understands and acknowledges that Merchant bears one hundred percent (100%) of the risk of Chargeback under the Rules, for all Transactions and any fees resulting from any losses, claims, and costs arising from or associated with such all Transactions, including any Authorizations.

**15. Reserve Account.** In addition to the security interest and Chargeback rights granted to Bank and EMS by Merchant, Merchant hereby authorizes Bank or EMS to establish a non-interest bearing "Reserve Account", with or without notice to the Merchant, at any time prior to, at, or after the termination of this Agreement, when the Bank or EMS has determined that any of the following has occurred: (a) reasonable doubt exists concerning Merchant's ability to comply with this Agreement; (b) Merchant's breach of this Agreement or other applicable Rules and regulations; (c) excessive Chargebacks, customer disputes, ACH retrieval, requests or the reasonable possibility of any of the foregoing occurring; (d) inability of the Merchant to fund any potential Chargebacks, post termination fees, charges or other expenses and fees payable to the Bank or EMS. The Reserve Account may be funded, replenished or replaced by the Bank or EMS in any or all of the following methods: (i) one or more debits to Merchant's DDA; (ii) one or more deductions from payments due Merchant; or (iii) Bank, EMS and Merchant agree, delivery of letter of credit or certificate of deposit issued by a financial institution acceptable to Bank and EMS. Merchant hereby agrees that Bank or EMS may deduct from this Reserve Account any amount owed to such party in accordance with this Agreement. Any funds in the Reserve Account may be held until the expiration of any applicable Chargeback rights in respect to purchased indebtedness under applicable Rules of the Card issuer, whose holding period may extend beyond the termination of this Agreement. Bank or EMS may fund, supplement or replenish the Reserve Account in such an amount as Bank or EMS may reasonably estimate is necessary to secure Merchant's payment obligations under this Agreement. Funds in the Reserve Account will be non-interest bearing. Without limiting the generality of the foregoing, Merchant shall, upon termination of this Agreement, maintain sufficient funds in the Reserve Account in such amount as may be reasonably required by Bank or EMS until all of the Chargeback rights of the Transactions processed preceding termination have expired. Merchant hereby agrees that any financial institution at which Merchant maintains a deposit account may rely upon an executed copy of this Agreement provided by Bank and/or Merchant as authority to permit such offset by Bank and/or EMS. Notwithstanding any provision contained herein to the contrary, EMS may not have access, directly or indirectly, to an account for funds or funds due to Merchant and/or funds withheld from Merchant for Chargebacks, and Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from or related to the performance of this Agreement to EMS.

**16. Fraudulent Sales, Factoring or Laundering.** Merchant shall never accept or deposit or enter into its POS Terminal a fraudulent Transaction or Transaction made by any entity other than the Merchant. Should Merchant do so, Bank or EMS may immediately terminate this Agreement, have all funds placed into a Reserve Account pursuant to Section 15 above and be placed on the "Combined Terminated Merchant File" as required by the Rules. Said action may result in Merchant's being restricted from settling Transactions with any bank in the future. Merchant hereby releases Bank and EMS and agrees to hold Bank and EMS harmless from any claims, liabilities, losses or damages arising out of or resulting from Merchant's being placed on any such restrictive list.

**17. Indemnification; Bank and EMS Liability.** Merchant agrees to indemnify and hold Bank and EMS harmless from and against any Association fines or fees and all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from any breach of any warranty, representation or agreement made by Merchant, or arising out of Merchant's or Merchant's employees' negligence or willful misconduct, in connection with this Agreement, or arising out of Merchant's or Merchant's employees' negligence or willful misconduct, in connection with Merchant's provision of products and services to cardholders. Bank agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Bank under this Agreement or arising out of Bank's or its employees' gross negligence or willful misconduct in connection with this Agreement. EMS agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by EMS under this Agreement or arising out of EMS's or its employees' gross negligence or willful misconduct in connection with this Agreement.

Except as expressly provided in this Agreement, Bank and EMS make no other warranties whether express, implied or statutory, in connection with this Agreement and without limiting the foregoing, Bank and EMS disclaim all warranties of merchantability and fitness for a particular purpose. Bank or EMS may utilize systems of others, including those of any Associations, in connection with its performance of the services described hereunder. Bank and EMS shall not be responsible or liable for any information provided by others or for the use of any system or equipment of Bank and EMS or others or for any circumstances beyond its control. Bank and EMS shall not be liable for any profits, consequential, special, punitive, exemplary or incidental damages, even if Bank and EMS have been advised of the possibility of such damages. The sole and exclusive liability of Bank and EMS and remedy of Merchant hereunder (including without limitation the right to charge back) shall be limited to the amount of the Merchant's actual net sales for the Transaction in question.

**NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY IN NO EVENT SHALL BANK AND EMS, OR THEIR AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY, FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**18. Force Majeure.** The parties to this Agreement shall be released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or any other party's compliance therewith, or governmental proclamation, regulation, or priority, or any other cause beyond either party's reasonable control, whether similar or dissimilar to such causes.

**19. Notices.** Any notice, request, instruction or other document under this Agreement shall be deemed to have been given (i) upon receipt by personal delivery or by overnight courier service by way of a national courier or (ii) on the third day after the same shall be deposited in the United States mail, by first class registered mail, return receipt requested and postage prepaid, and addressed in either event to First Place Bank at: KeyBank National Association at 4910 Tiedeman Road, Cleveland, Ohio 44144, EMS at 5005 Rockside Road, Suite PH100, Cleveland, Ohio 44131 or to MERCHANT at the address written on the Application or at such other address as any party may give to the others from time to time by written notice to the other parties.

**20. Security Interest.** IN ORDER TO SECURE ALL OBLIGATIONS OF MERCHANT TO BANK AND EMS ARISING FROM THIS AGREEMENT, MERCHANT HEREBY GRANTS BANK AND EMS A CONTINUING SECURITY INTEREST IN AND TO ALL DEPOSITS, REGARDLESS OF SOURCE, TO MERCHANT'S DDA AND OTHER ACCOUNTS IN THE DIRECT OR INDIRECT CONTROL OF THE BANK OR EMS, ESTABLISHED IN MERCHANT'S NAME OR BY ANY PARTY SIGNING THE PERSONAL GUARANTY AS PART OF THIS AGREEMENT, AND TO ALL PROCEEDS OF SAID DEPOSITS. Said security interest may be set-off or otherwise exercised by BANK and EMS without notice or demand of any kind by making an immediate withdrawal from or holding said account, upon Bank's or EMS's reasonable determination that a breach of any obligation of Merchant under this Agreement has occurred. The exercise of this security interest shall be in addition to any other rights of Bank and EMS under this Agreement or applicable laws. The parties specifically acknowledge and affirm that pursuant to the Uniform Commercial Code of Ohio, Bank and EMS have a general lien and right of offset upon all funds on deposit with Bank hereunder, which shall extend to the extent of the charges, fees or discounts of Bank, or the net proceeds of any sale or disposition of any such funds, and that Bank and EMS shall also have the right to require Merchant to furnish such other and different security as Bank or EMS shall deem appropriate in its sole discretion in order to secure Merchant's obligations under this Agreement. Merchant agrees to execute any documents or take any actions required in order to comply with and perfect any security interest under this Section, at Merchant's cost. To the extent permitted by law, Merchant irrevocably authorizes Bank and EMS to record any financing statement or other documents relating to this security interest.

**21. Discount Fee and Transaction Fees.** Merchant agrees to pay to Bank and EMS the non-returnable fees stated in the Schedule of Fees incorporated herein and as amended from time to time with thirty (30) days' written notice. The Bank must approve, in advance, any fee to or obligation of the Merchant arising from or related to performance of this Agreement. Bank and EMS shall have the right to increase the Discount Fees, Transaction Fees, or add fees from time to time in accordance with Sections 19 or 30. EMS also may increase Discount Fees or Transaction Fees immediately without notice to Merchant, if approved by Bank in advance, if Merchant changes the nature of its business from that indicated on the Application or otherwise changes its business or goods sold or services rendered in a way that may increase EMS's costs or lead to excessive Chargebacks, or if Merchant's percentage of on and off premises, mail telephone and internet transaction sales varies from that disclosed in the Application. Fees become due at the time a Transaction is submitted to Bank and EMS. A "Discount Fee" means a fee charged on the total value of a Transaction at the Discount Rate disclosed on the face of this Agreement. A "Transaction Fee" shall mean a fee charged on each sales draft and each credit record regardless of the total stated and shall also mean a fee charged for any other Transaction which utilizes a POS device for transmission or reception of Card data or information, including but not limited to, debit card transactions, batch closing, Authorizations and any other communications using the POS terminal. Merchant acknowledges that Bank and EMS have relied upon the information contained in the Application including but not limited to the type of business in which Merchant is engaged, the product or service sold, the average transaction or ticket size and monthly volume, the amount of telephone and mail order sales, and the ratio of keyed/swiped transactions in determining whether to accept the Application and in setting the Discount Fees and Transaction Fees charged Merchant. Merchant acknowledges the Discount Fees quoted in the accompanying Application is contingent upon Merchant's closing batches at least once every business day, and further understands that in the event that batches are not closed at least daily, Bank and EMS may initiate batch closing on Merchant's behalf. In the event of a change in the parameters set above or should special circumstances arise which shall change either temporarily or permanently the existing conditions, Merchant must notify Bank or EMS prior to those changes, so that necessary adjustments can be made. Additional fees may be assessed for processing sales or credit drafts emanating from foreign (non U.S.A.) credit cards or commercial cards issued for business purposes. Merchant will be charged additional Discount Fees (See Schedule Of Fees) and subject to increase for all Transactions which do not qualify for the lowest interchange fees. To qualify, batches must be closed daily and an Authorization obtained for every Transaction-matching the sales amount exactly (or within 15% for hotels and car rentals, 20% for restaurants, bars and night clubs). PLEASE REFER TO THE SCHEDULE OF FEES INCORPORATED INTO THIS AGREEMENT FOR THE AMOUNT OF THESE FEES. Merchant agrees to pay these fees and any increase in interchange fees. If not covered by the Schedule Of Fees, any additional fees due to a transaction not qualifying for the lowest interchange fee shall be paid by Merchant.

**22. Minimum Discount Fee/Access Fee.** Merchant agrees that the Minimum Discount Fee to be imposed for any month, or portion thereof, shall be in accordance with the Schedule Of Fees. Merchant acknowledges that Bank and EMS shall assess a Monthly Access Fee (see Schedule Of Fees) or such other fee as may be established from time to time if approved in advance by Bank. Merchant also acknowledges that the monthly minimum Discount Fee and Access Fee apply to each Merchant identification number assigned to Merchant, and hereby agrees to pay these fees.

**23. Severability.** If any part of this Agreement is held unenforceable or invalid or prohibited by law, said part shall be deemed stricken therefrom and this Agreement shall be read and interpreted as though said part did not exist, and shall not affect the validity or enforcement of any other provision.

**24. Waiver.** Neither the failure nor any delay on the part of Bank or EMS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the occurrence specifically stated in such writing.

**25. Entire Agreement.** This Agreement, including the Application and any other documents executed in conjunction herewith, constitutes and expresses the entire agreement and understanding between the Merchant, Bank and EMS with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, by Bank, EMS or its sales representative, whether expressed or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by a writing specifically identified as such and signed by the duly authorized representatives of Bank and EMS. This Agreement is not effective and may not be modified in any respect without the express written consent of Bank.

**26. Assignment and Delegation.** This Agreement may be assigned by Bank. EMS may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party any right or obligation of EMS set forth herein except as may be approved by Bank and permitted under the Rules. This Agreement may not be assigned by Merchant without Bank's and EMS's prior written consent and any purported assignment without such consents shall be void. This Agreement shall be binding on the parties and their permitted heirs, successors, and assigns. Bank (and EMS, if and to the extent permitted under the Rules) reserves the right, in its sole discretion, to delegate or assign to third parties the performance of certain of Bank's (or EMS's, if applicable) servicing or settlement obligations to Merchant. The relationship of Bank, EMS and Merchant is solely that of independent parties contracting for services.

**27. Disputes, Governing Law, Jurisdiction, and Venue.** Bank and EMS shall have the absolute right to initiate or defend any and all disputes arising from this Agreement with Merchant. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. In the event of a claim by Bank and/or EMS for the failure of a Merchant to pay any Chargebacks, fees, settlement costs or other amounts due hereunder, Merchant agrees that personal jurisdiction and venue of any such claim shall lie in the federal or state courts of Cuyahoga County, Ohio, and Merchant and any guarantors of Merchant's obligations and duties hereunder do each hereby waive all objections to said jurisdiction and agree to submit thereto. Each party is responsible to its own costs and expenses, except that Merchant shall be liable for all costs and expenses of Bank and EMS (including attorneys fees in connection with the enforcement of this Agreement), as a result of any breach or the collection of any sums due to Bank or EMS hereunder (including bankruptcy).

**28. Arbitration.** Except as expressly provided in Section 27, any claim or dispute arising out of or related to this Agreement shall be finally resolved by final and binding arbitration. Whenever a party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other parties. The party giving such notice shall refrain from instituting the arbitration proceedings for a period of thirty (30) days following such notice to allow the parties to attempt to resolve the dispute between or among themselves. If the parties are still unable to resolve the dispute, the party giving notice may institute the arbitration proceeding under the Rules of the American Arbitration Association ("AAA Rules"). Arbitration shall be held in Cleveland, Ohio. The arbitration shall be conducted before a single arbitrator mutually chosen by the parties, but if the parties have not agreed upon a single arbitrator within fifteen (15) days after notice of the institution of the arbitration proceeding, then the arbitration shall be conducted by a panel of three (3) arbitrators. In such case, Merchant, on the one hand, and Bank and/or EMS on the other, shall within thirty (30) days after notice of the institution of the arbitration proceedings appoint one arbitrator. The presiding arbitrator shall then be appointed in accordance with AAA Rules. Decisions of the arbitrator(s) shall be final and binding on the parties. The arbitrator shall have the authority to award any remedy or relief a court of the State of Ohio could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the awarding of the issuance of an injunction or the imposition of sanctions for abuse or frustration of the arbitration process. Judgment upon the award of the arbitrator may be entered in any court of competent jurisdiction and enforced with full judicial effect thereafter. All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentations. The arbitrator(s) is/are authorized to award any party such sums as shall be deemed proper for the time, expense and inconvenience of arbitration, including arbitration fees and attorney fees. Except to the extent that entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence by the parties.

**29. Compliance and Disclosure of Information; Patriot Act.** Merchant shall provide such information and certifications as Bank and EMS may reasonably require from time to time to determine Merchant's compliance with the terms and conditions of this Agreement and the Rules. Merchant further agrees to produce and make available for inspection by Bank, EMS or its officers, agents or representatives, such books and records of Merchant as Bank or EMS may deem reasonably necessary to be adequately informed of the business practices and financial condition of Merchant, or the ability of Merchant to observe or perform its obligations to Bank and EMS pursuant to this Agreement. Merchant further agrees to provide to Bank or EMS within seven (7) days of notice such information as Bank or EMS may request including but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as Bank or EMS may request. Merchant grants to Bank and EMS continuing authority to conduct credit checks and background investigation and inquires concerning Merchant and its owner(s) including, but not limited to, character and business references and the financial condition of Merchant and Merchant's owner(s). Merchant expressly authorizes Bank, EMS and its agents and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of Merchant. Bank and EMS may share with their credit, sales and other information. Merchant will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to Bank or EMS and providing Bank or EMS with the opportunity to terminate this Agreement.

Merchant acknowledges that Bank has implemented a customer identification program as required under the USA Patriot Act and other similar state laws and regulations. Merchant agrees to make available to Bank and/or EMS such information as may be required by Bank in connection with its customer identification program and/or as required under the USA Patriot Act and related state laws and regulations.

**30. Amendments.** This Agreement may be amended by Bank and EMS from time to time upon written notice of the change(s) in terms and conditions or fees. Any amendment to this Agreement shall be effective on the later of the effective date specified in the notice or thirty (30) days after the notice is mailed to Merchant or in the manner prescribed for notices herein. In the event of any amendment of the terms and conditions of the fees payable to Bank or EMS hereunder, Merchant shall have the right to terminate this Agreement without the payment of the termination fee provided in Section 10 above by providing Bank and EMS written notice of such termination prior to the effective date of such amendment. No such termination shall affect any obligation of Merchant to pay any fees, charges, or other obligations incurred by Merchant under this Agreement prior to the date of termination. Submission of transactions to Bank or EMS shall constitute acceptance of any such amendment. Any unratified alteration or modification to the printed form of this Agreement has no effect and, at the Bank and EMS's discretion, may render this Agreement void.

**31. Survival.** All representations, warranties and covenants shall survive the termination of this Agreement.

**32. Construction.** The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement.

**33. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

**34. Schedule of Fees.** Incorporated herein by reference is a Schedule of Fees that contains the Discount Fee, Transaction Fees, and other terms and conditions in effect on the commencement date of this Agreement. Bank and EMS reserve the right at all times to unilaterally change all or part thereof or any other terms of this Agreement in accordance with Sections 19, 21 or 30.

**35. Exclusive Agent.** For purposes of this Agreement and performance of the Services by EMS, (i) EMS is the exclusive agent of Bank, (ii) Bank is at all times and entirely responsible for and in control of EMS's performance hereunder, and (iii) Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement.

**36. Default Interest Rate.** Merchant agrees that all amounts due and payable by Merchant to Bank or EMS under this Agreement shall accrue interest at the rate of one and one-half percent (1.50%) per month, or the maximum interest rate permissible under law, whichever is lesser, beginning as of date due and continuing following any judgment obtained by Bank or EMS against Merchant until paid in full.

**37. Financial Accommodation.** The acquisition, processing and settlement of Transactions is a financial accommodation and, as such, in the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assigned or enforced and Bank and EMS shall be excused from performance hereunder.

This Agreement shall be effective only upon acceptance and signature by Bank and EMS. Any application fee paid to Bank or EMS is nonrefundable whether or not Merchant and this Agreement are accepted by Bank and EMS.

Print Merchant Name

ELECTRONIC MERCHANT SYSTEMS

Print Officer Name

Signed By

Date

Signed By

Date

# Electronic Check Services



Bankcard Merchant # \_\_\_\_\_

NEW LOCATION  ADDITIONAL LOCATION ISO # \_\_\_\_\_ ISO NAME: \_\_\_\_\_ SALES REP: \_\_\_\_\_

## ELECTRONIC CHECK SERVICE AGREEMENT

Legal Name: \_\_\_\_\_ Tax ID Number (required): \_\_\_\_\_

DBA Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

DBA Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Type of Ownership:  Sole Proprietor  Partnership  Corporation Type of Goods Sold: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Total Years in Business: Year(s) \_\_\_\_\_ Months: \_\_\_\_\_ Time in Business at this Location Year(s): \_\_\_\_\_ Months: \_\_\_\_\_

### PRINCIPAL INFORMATION

Name (Print): \_\_\_\_\_ Title: \_\_\_\_\_ % Equity Ownership: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Social Security # \_\_\_\_\_ Drivers License # \_\_\_\_\_ Phone # ( ) \_\_\_\_\_

Principal Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### CHECK INFORMATION

Average check amount? \$ \_\_\_\_\_ Largest check amount MERCHANT requests? \$ \_\_\_\_\_ Estimated monthly check volume? \$ \_\_\_\_\_

### SCHEDULE OF CHARGES/FEEES (Reference section 10.2)

<input type="checkbox"/> <b>QSP Quick Service Program</b> (Conversion, Verification, Guarantee)	<input type="checkbox"/> <b>eGold</b> (Conversion, Verification, Guarantee)	<input type="checkbox"/> <b>eSilver</b> (Conversion, Verification, <b>Non-Guarantee</b> )
Transaction Fee: \$ _____	Discount Rate: _____%	Transaction Fee: \$ _____
Monthly Service Fee: \$ _____	Transaction Fee: \$ _____	Monthly Service Fee: \$ _____
Monthly Minimum Fee: \$ _____	Monthly Service Fee: \$ _____	Monthly Minimum: \$ _____
	Monthly Minimum: \$ _____	

QSP and eGold Combo: Please include Pricing for both  
24X7 secure online transaction and deposit tracking: \$49.95 one-time set-up  MERCHANT Elects  MERCHANT Declines

### MERCHANT ACCEPTANCE

THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS CONTAINED ON THE FRONT AND ATTACHED RECITALS OF THIS AGREEMENT. THIS AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF EACH PARTY AS OF THE DATE BELOW. MERCHANT AUTHORIZES GETI OR ANY CREDIT REPORTING AGENCY BY GETI OR AGENT OF GETI, TO MAKE WHATEVER INQUIRIES THAT GETI DEEMS APPROPRIATE TO INVESTIGATE, VERIFY OR RESEARCH REFERENCES, STATEMENTS OR DATA OBTAINED FROM MERCHANT FOR THE PURPOSE OF THIS APPLICATION FOR ACCOMPANYING POS TERMINAL(S) OR EQUIPMENT FINANCING.

**PERSONAL GUARANTEE:** TO INDUCE AND IN CONSIDERATION OF GETI ACCEPTANCE OF THE ELECTRONIC CHECK TRANSFER PORTION OF THIS AGREEMENT, THE UNDERSIGNED (HEREIN REFERRED TO AS "GUARANTOR") UNCONDITIONALLY, PERSONALLY, INDIVIDUALLY, JOINTLY AND SEVERALLY GUARANTEES PERFORMANCE OF THE MERCHANT'S OBLIGATIONS UNDER THIS AGREEMENT AND PAYMENT OF ALL SUMS DUE THEREUNDER AND HEREBY CONTINUES TO PERSONALLY INDEMNIFY GETI FOR ANY AND ALL FUNDS DUE FROM MERCHANTS UNDER THE TERMS OF THIS AGREEMENT.

**ACH DEBIT/CREDIT AUTHORIZATION:** MERCHANT HEREBY AUTHORIZES BANK IN ACCORDANCE WITH THIS CHECK GUARANTEE AGREEMENT TO INITIATE DEBIT/CREDIT ENTRIES TO MERCHANT'S CHECKING ACCOUNT, AS INDICATED PER THE ATTACHED COPY OF A VOIDED CHECK FROM SAME. THE AUTHORITY IS TO REMAIN IN FULL FORCE AND EFFECT UNTIL (A) BANK HAS RECEIVED WRITTEN NOTIFICATION FROM MERCHANT OF ITS TERMINATION IN SUCH A MANNER AS TO AFFORD BANK REASONABLE

OPPORTUNITY TO ACT ON IT, AND (B) ALL OBLIGATIONS OF MERCHANT TO BANK/GETI THAT HAVE ARISEN UNDER THIS AGREEMENT HAVE BEEN PAID IN FULL.

### IMPORTANT NOTICE

ALL INFORMATION CONTAINED ON THIS APPLICATION WAS COMPLETED BY OWNERS AND/OR OFFICERS OF MERCHANT AND THEY WARRANT THAT ALL CHECK INFORMATION AND SALES VOLUME INDICATED THROUGHOUT THIS APPLICATION ARE ACCURATE AND ACKNOWLEDGE THAT ANY VARIANCE TO THIS INFORMATION COULD RESULT IN DELAYED AND/OR WITHHELD SETTLEMENT OF FUNDS AS WELL AS THE LOSS OF ALL GUARANTEE PRIVILEGES OF ALL CHECKS. NO BLANK SPACES WERE LEFT INCOMPLETE. N/A OR NONE HAS BEEN FILLED IN ANY SPACES WHERE APPLICABLE THIS AGREEMENT SHALL NOT BE BINDING OR TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY A GETI OFFICER AND A MERCHANT NUMBER HAS BEEN ISSUED WITH CHECK LIMIT AND GUARANTEE LIMIT.

**MERCHANT AGREED AND ACCEPTED:**  
I have read and agree to the terms of this agreement

**CORPORATE RESOLUTION FOR CORPORATIONS AND LLC's "ONLY"**  
The officer(s) identified have the authority to execute the Check Service Agreement with GETI on behalf of the corporation or LLC

**X** \_\_\_\_\_  
Authorized MERCHANT Signature Date

**X** \_\_\_\_\_  
Authorized Officers' Signature/Title Date

### EQUIPMENT INFORMATION

Terminal: \_\_\_\_\_ Quantity: \_\_\_\_\_ Check Reader: \_\_\_\_\_ Printer: \_\_\_\_\_

Platform: \_\_\_\_\_ Application # \_\_\_\_\_

### SITE VERIFICATION

I hereby verify that I have physically inspected the business premises of the MERCHANT at this address and the information stated above has been verified and is represented to be true and correct under the penalty of perjury.

Inspected By: (Print Name) \_\_\_\_\_ Inspector's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Staple  
Check  
Here

**VOIDED CHECK FROM CHECKING ACCOUNT MUST BE ATTACHED WITH PRE-PRINTED BUSINESS NAME  
(DO NOT USE A DEPOSIT TICKET) (BANK MUST HAVE ACH CAPABILITY)**

### GETI USE ONLY

Application Approved By: \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
Authorized Signature Title Date Check Limit Guarantee Limit

MERCHANT wishes to initiate debit and credit entries pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Global eTelecom, Inc. (GETI) is willing to act as the third party processor for MERCHANT, subject to the terms and conditions set forth in this Agreement with respect to such Entries. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data, which is transmitted by the MERCHANT to GETI to prepare such Entries for processing.

This agreement is only applicable to processing point of sale transactions utilizing the end-customer's Checking account data. Upon MERCHANT'S request and GETI'S approval, check guarantee services (hereinafter referred to as "GETI Gold" service) will also be provided pursuant to provisions below. If MERCHANT has not requested GETI Gold service, or if GETI has not accepted the MERCHANT application for GETI Gold service, GETI will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

#### AGREEMENT

**1.1 MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to GETI that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.

**1.2 GETI GOLD.** If MERCHANT has marked the GETI GOLD box on the application form of this Agreement then MERCHANT wishes GETI also to provide check guarantee services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged GETI to provide for each check: verification, electronic funds transfer and certain collection services.

**1.3 CHECK COLLECTION.** MERCHANT authorizes GETI to represent all return items forwarded to GETI and to originate an electronic entry for the amount of any allowable recovery fee. MERCHANT agrees to complete a return item authorization form and forward it to MERCHANT'S bank. GETI shall have sixty (60) days from the date of receipt of a return check item to complete their electronic return process. If this Agreement is terminated for any reason, GETI will retain the right to complete their electronic return process for all return check items forwarded to GETI prior to said termination.

**1.4 MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** GETI shall provide signage to be displayed at the point of purchase (POP), which informs customers of the MERCHANT'S use of GETI Electronic Check Processing Service. MERCHANT agrees to display these materials in the best visible and unobstructed location so as to inform the public that MERCHANT will honor electronic check processing service by GETI. From time to time, GETI may design educational and promotional materials and send such to MERCHANT for MERCHANT to distribute to customers. MERCHANT further agrees to immediately remove and properly dispose of GETI'S promotional materials and to display the most current materials upon receipt of such from GETI. MERCHANT will discontinue the use of all of GETI'S promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event of suspension, MERCHANT shall redisplay appropriate materials upon receipt of written verification of resumption of service by GETI.

**2.1 RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING GETI'S SERVICES.** MERCHANT shall make no use of GETI'S promotional materials or marks, other than as set forth in paragraph 1.4 above, without GETI'S prior written consent. In no way shall the MERCHANT indicate that GETI'S services are an endorsement of the MERCHANT, its business or its business practices.

**3.1 REQUIREMENTS FOR PROCESSING ELECTRONIC CHECKS.** MERCHANT shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by GETI from time to time. MERCHANT shall accept only the following checks as source documents to initiate ACH debit entries through GETI; (a) All demand deposit account checks must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than \$2500 unless otherwise authorized by GETI. (b) MERCHANT shall obtain proper identification, in the form of a valid driver's license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to GETI for authorization. (c) MERCHANT shall obtain a customer authorization in the form of a signed sales receipt for each check transaction submitted for electronic processing; (d) MERCHANT shall scan each check through its POP MICR reader/check scanner to initiate electronic processing. MERCHANT shall use an electronic printer connected to a POP MICR reader/check scanner to generate and print all electronic check sales receipts; (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (f) At the time MERCHANT initiates authorization with GETI, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. Once GETI authorizes the transaction, MERCHANT shall ensure that the customer that presented the check signs the receipt and legibly prints his/her correct full name and telephone number by hand. To be valid, MERCHANT shall ensure the following: 1. That the sales receipt contains the following correct information: (a) the customer's bank account number and the check number from the MICR data; (b) MERCHANT'S correct name and business address; (c) the date of the transaction; (d) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes) or the amount to be charged if a partial payment is made in cash or by credit card or the amount to be charged as the remaining balance owing after the deposit has been made. (e) After customer signs the receipt, MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt; (f) No check may be altered after GETI authorizes acceptance of the check. MERCHANT may not resubmit a check electronically or deposit it by any means, once GETI authorizes a transaction. 2. MERCHANT shall write the current phone number and driver's license number of the customer on the face of the check. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of guarantee of ALL transactions), subject MERCHANT to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of GETI by MERCHANT pursuant to this Agreement. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CUSTOMER BANK ACCOUNT WITHOUT THE ELECTRONIC CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A \$10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS UNLAWFUL TO INITIATE ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF CHECK (S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.**

**3.2 CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY.** MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct GETI to initiate an ELECTRONIC CHECK DEBIT ENTRY ("ENTRY") for MERCHANT against customer. If further permits GETI to reinitiate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. **Any collection fees received by GETI in collecting returned checks shall be the sole property of GETI.** GETI shall present the ENTRY no more than three times. GETI, for non-GETI Gold service shall be entitled to assess a transaction fee as set forth in the schedule against MERCHANT for each representation. If a check is returned unpaid after the third presentation, GETI shall be entitled to debit the MERCHANT'S account for the amount of the check (non-Gold service only).

**3.3 RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR ELECTRONIC PROCESSING.** From time to time, GETI shall establish necessary security and identification procedures for presentation of checks for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by GETI. In no event, will GETI accept a check greater than \$2500 for processing without prior written authorization by GETI. GETI shall also establish the number of checks, which may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide GETI with any and all information needed to establish such limitations. MERCHANT further agrees to inform GETI immediately of any changes in business activities, rules or regulations, which may affect these limitations. MERCHANT further agrees to abide by these limitations as a condition to GETI electronically processing any check. MERCHANT shall scan each check submitted for processing through no more than one POP MICR reader/check scanner. MERCHANT agrees that sales completed at one location cannot be processed through a MICR reader/check scanner at another location. In no event is MERCHANT allowed to process checks manually by keying in the MICR number.

**3.4 UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing, and MERCHANT agrees not to submit any of the following transactions to GETI for electronic processing: (a) MERCHANT shall not process any temporary checks or checks that do not have the customer's current name, address and phone number preprinted on its face, (b) MERCHANT shall not electronically process any checks drawn on any depository institution that is not federally insured or part of the ACH network, (c) MERCHANT shall not electronically process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (d) MERCHANT shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (e) MERCHANT shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (f) MERCHANT shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to MERCHANT, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (g) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (h) MERCHANT shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (i) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (j) MERCHANT shall not knowingly submit a check on an account which GETI previously denied authorization. MERCHANT'S submission of any of the above transactions for electronic processing may subject the MERCHANT to immediate suspension or termination, and all funds of MERCHANT, including those in MERCHANT'S account, may be placed on hold. This will also remove GETI Gold service from all checks.

**3.5 SURCHARGES AND TAXES.** MERCHANT shall not impose any surcharge on any electronically processed check transaction. MERCHANT shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by GETI and must be reflected in the face amount of the check. In any event, MERCHANT shall not collect any required taxes separately in cash, or otherwise. MERCHANT is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

**4.1 EQUIPMENT.** MERCHANT shall furnish each outlet, retail location, or business entity with a POP MICR reader/check scanner electronic printer. GETI shall assign each MERCHANT'S POP MICR reader/check scanner an identification number. MERCHANT is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the POP MICR reader/check scanners. MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT'S expense. MERCHANT shall advise GETI immediately in the event of a breakdown of a POP MICR reader/check scanner, electronic printer, or check reader or of any other system failure. MERCHANT acknowledges that GETI is not responsible for any POP MICR reader/check scanner or related equipment problems unless required fees are current. MERCHANT acknowledges that GETI will replace any reader/ check scanner within 24 hours of notification of any MERCHANT in good standing provided they are current with monthly fees including their \$5.00 monthly reader/check scanner replacement fee. Replacement of equipment will be subject to written notification from MERCHANT to GETI and GETI'S approval of request. Moreover, GETI'S approval of such equipment does not constitute nor express an implied warranty, representation or endorsement of such equipment.

**4.2 USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by GETI for the electronic processing of checks and in a format and medium of transmission acceptable to GETI.

**5.1 DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees to "batch out" each POP MICR reader/check scanner used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions on each POP MICR reader/check scanner used by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the batch out to GETI. In addition, any transactions contained in an untimely batch out may be refused or become subject to chargeback or held until after a sixty-day period for consumer chargebacks by GETI. If MERCHANT account is GOLD then checks contained in an untimely batch out are not covered under the GOLD program. If so requested by GETI, the signed Electronic Check Authorization receipt must be sent out and received at GETI'S designated location within 48 hours from the check date. Failure to do so will remove GETI'S obligations under the GETI Gold program for such checks at GETI'S sole discretion. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at GETI'S sole discretion. **MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks and GETI may apply a \$25.00 fee for each terminal daily on which MERCHANT fails to transmit a timely batch out.**

**5.2 NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between GETI and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and GETI.

**5.3 PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between GETI and MERCHANT are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting electronic checks to GETI, MERCHANT endorses and assigns to GETI all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that GETI has the right to receive payment on all electronically processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify GETI by telephone of the payment, endorse the check; sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, MERCHANT shall reimburse GETI by MERCHANT'S check.

**5.4 PAYMENT.** MERCHANT acknowledges that this Agreement provides for the provisional settlement of MERCHANT'S transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including those limited to those enumerated herein. All payments to MERCHANT for legitimate and authorized transactions shall be made by GETI through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, GETI cannot guarantee the timeliness with which any payment may be credited by MERCHANT'S bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with GETI to help resolve any problems in crediting MERCHANT'S designated account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the date of settlement due to problems beyond GETI'S control, GETI may periodically wire transfer all funds due MERCHANT until the problem is corrected, at MERCHANT'S EXPENSE. All payments to MERCHANT shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which MERCHANT is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against MERCHANT'S designated Account at GETI'S sole discretion, without any further notice or demand.

**5.5 AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes GETI to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 180 days after termination of this Agreement, or for a longer period as determined necessary by GETI in the exercise of its sole discretion in order to properly terminate business. Unless a reserve or delay is placed on the MERCHANT'S account, GETI will transmit settlement to MERCHANT'S bank by the fourth bank business day following the day MERCHANT batches out a MICR reader/check scanner's transactions. In cases where MERCHANT has been approved by GETI in advance to initiate credit entries, the debit to MERCHANT'S account will be initiated first and the credit to the customer may be held until MERCHANT'S debit clears, generally within 6 banking days or for a longer period as determined necessary by GETI to insure the funds have cleared MERCHANT'S account. GETI may hold back certain amounts where GETI is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. GETI shall monitor MERCHANT'S transactional activity and MERCHANT agrees that GETI may delay funds for a reasonable period to investigate account activity. GETI will attempt to notify MERCHANT of any investigation, but GETI shall have no liability to MERCHANT or any other party, for any such actions taken by GETI. MERCHANT agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on MERCHANT'S financial condition. GETI will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by GETI. GETI may return any item to MERCHANT for correction or proper processing.

**5.6 RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. Unless MERCHANT has been approved by GETI in advance to initiate credit entries for a lesser amount than the original electronic check entry, MERCHANT must initiate a credit receipt for the same amount as the debit entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT must use the POP equipment or approved GETI software to transmit the credit. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer's authorized representative prior to crediting Customer's account. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and credit entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to GETI to initiate such reversal. MERCHANT shall give GETI enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by GETI.

**6.1 WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of GETI. With each transaction presented to GETI by MERCHANT for authorization, MERCHANT specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account, that each debit or credit is for an amount agreed to by the customer; (b) each debit or credit entry is authorized by the person named on the checking account or the authorized representative or agent of such person; (c) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (d) the total amount of each item's receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (e) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt draft; (f) each sales draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT'S ordinary course of business and that the amount of the sales draft evidences the customer's total indebtedness for the transaction involved; (g) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate warranties to the person presenting the check and will honor all warranties applicable thereto; (h) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by cash or by any means other than electronic check processing; (i) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (j) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (k) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (l) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT'S MICR reader/check scanner; (m) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (n) MERCHANT has not submitted duplicates of any transaction; (o) MERCHANT warrants that check banking information on the printed receipt is correct; and (p) no transaction submitted for authorization to GETI is with or through an entity other than MERCHANT; MERCHANT further acknowledges that if for any reason funds are credited to MERCHANT in excess of the amount that MERCHANT is entitled to receive under this Agreement, MERCHANT shall return all such excess funds to GETI upon demand by GETI. Such excess funds may be collected by GETI by a debit to MERCHANT'S designated account initiated by GETI as provided in this Agreement. If for any reason such account does not have sufficient funds, then MERCHANT shall promptly remit the excess funds to GETI. Until the return of such funds to GETI, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of GETI.

**7.1 LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** GETI shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. GETI shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as GETI'S communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. **IN NO EVENT SHALL GETI BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

7.2 **FORCE MAJEURE.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

8.1 **CONFIDENTIALITY OF CUSTOMER INFORMATION.** MERCHANT further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to GETI, MERCHANT'S agents approved by GETI for the purpose of assisting MERCHANT in its business to GETI, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. MERCHANT will not disclose and will keep confidential the terms and conditions of this Agreement.

9.1 **CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except as set forth in the GETI GOLD provisions below (provided that MERCHANT has purchased and GETI agreed to provide GOLD service). GETI shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in GETI'S direct or indirect control by reason of GETI'S security interest granted to GETI by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where a check or transaction is for a type of goods or services sold other than as disclosed in the MERCHANT application or approved in advance by GETI or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to GETI, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation; (e) where a check authorization document was not received by GETI as required herein or is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03,R04 return codes) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where no signature of the transaction appears on the sales check authorization document or if MERCHANT failed to obtain specific authorization in advance from GETI to complete the transaction and/or a valid authorization number was not on the sales receipt and/or the customer has certified in writing to GETI or his financial institution that no authorized user made or authorized the transaction; (h) where security procedures were not followed; (i) where the customer's financial institution or GETI has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) in any other situation where the check authorization was executed or a credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of applicable law or where MERCHANT has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (k) a sales receipt was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI; (l) MERCHANT does not provide copy of the signed authorization receipt as requested by GETI within forty-eight (48) hours from the time of such request. MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. GETI shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that GETI will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by GETI from time to time. **Additionally, GETI shall have the same rights to debit MERCHANT'S account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction. If MERCHANT has requested the GETI GOLD service, and GETI has accepted the application for GOLD service, certain transactions are guaranteed, as listed in the GETI GOLD provisions below.**

9.2 **CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, GETI reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon GETI'S reasonable determination of the occurrence of any of the following: (a) MERCHANT engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) Failure by MERCHANT to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customers; (c) Failure by MERCHANT to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of MERCHANT for processing through GETI; (d) Failure by MERCHANT to fully disclose the true ownership of MERCHANT'S business entity or evidence of fraud; (e) Processing by MERCHANT of unauthorized charges or any other action which violates applicable risk management standards of GETI or is likely to cause loss; (f) Any misrepresentation made by MERCHANT in completion of the MERCHANT Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by GETI; (g) MERCHANT has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by MERCHANT in any thirty (30) calendar day period; (h) Excessive number of requests from customers or issuing banks for retrieval of documentation; (i) MERCHANT'S financial stability is in question MERCHANT ceases doing business; or (j) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by GETI, for all obligations on the part of MERCHANT to GETI under this Agreement, MERCHANT may request GETI to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to MERCHANT until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify MERCHANT of such fact and GETI will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

9.3 **COLLECTIONS.** MERCHANT acknowledges and agrees that when collection services are required, GETI may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes GETI to continue collection efforts for MERCHANT. If collections are unsuccessful after sixty (60) days, GETI shall discontinue collections and be absolved of all responsibility.

10.1 **GETI GOLD.** The GETI GOLD provisions are operational only if MERCHANT has marked the GETI GOLD box on the application form of the Agreement. If so marked, MERCHANT wishes GETI to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for electronic processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, GETI has established a per account Guarantee Limit, as per the Schedule (located in the Application Approval Box), based on a percentage of the face amount of any and all checks (and a local access [Transaction fee] fee) as set forth in the pricing section of the agreement presented at MERCHANT'S place of business or at other locations which are listed in any attachments to this Agreement, subject to the terms and conditions set forth in this Agreement. GETI shall reimburse MERCHANT per Schedule, up to the Guarantee Limit, as measured from the date of verification of non-payment, subject to MERCHANT'S compliance with all of the terms and conditions contained in this Agreement or any of GETI'S other published instructions. GETI shall have the right to adjust MERCHANT'S rate including GETI Gold rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of electronic check deposits. GETI shall process up to the check limit established for MERCHANT, but will not be responsible for reimbursement of checks exceeding the MERCHANT'S approved guarantee limit. The following transaction types are not included in the GETI GOLD service, and GETI assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data reads, unable to locate account or invalid account number returns, customer chargebacks or customer revocations of any transaction. **Gold reimbursement shall only serve to cover MERCHANT losses due to, NSF returns, and Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.**

10.2 **MERCHANT SHALL PAY.** A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks required to the database during the month. A network compliance fee up to \$4.00 per month. As per schedule: a Monthly Minimum fee and service fee to be paid each month, a transaction fee for each ACH deposit, and a transaction fee for each electronic inquiry to the database that does not result in an electronic transfer of funds and a "batch out" fee equal to the transaction fee, or 25 cents, whichever is greater. A fee of no more than twenty-five dollars may be charged per transaction return. A \$5.00 monthly fee to be paid each month as related to reader/scanner replacement and an annual subscription fee of \$59.95 that may be debited each year. If MERCHANT terminates this agreement, a one-time termination fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from the MERCHANT'S account for administrative processing. MERCHANT must promptly notify GETI in writing of any dispute regarding fees under this Agreement. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by GETI. MERCHANT'S failure to so notify GETI will waive and bar the dispute.

10.3 **CHECK PROCESSING.** MERCHANT shall submit all documentation related to the GOLD guaranteed transactions to GETI within forty-eight hours of GETI'S request.

10.4 **ASSIGNMENT OF CHECKS.** As of the date of this Agreement and by subscribing to GETI GOLD, MERCHANT shall be deemed to have assigned to GETI, without recourse, all of MERCHANT'S right, title and interest in any and all checks, including any rights to triple or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI'S rights, including suing or prosecution of the customer under all applicable laws.

10.5 **NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify GETI pursuant to the provision set forth in Section 5.3.

11.1 **CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER GETI GOLD.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, GETI shall have no obligation to reimburse MERCHANT for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by MERCHANT or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by GETI; (d) Lost, stolen, altered or counterfeit, and GETI has reason to believe that MERCHANT failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which MERCHANT has accepted full or partial payment; (f) One of multiple checks presented to MERCHANT in a single transaction for electronic processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by MERCHANT or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, the closing of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which MERCHANT returns cash back to the customer, unless MERCHANT is approved in writing by GETI for such cash back; (j) Checks for which GETI previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns. In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, not a post office box, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. MERCHANT shall ensure that this identifying information is legibly printed on the check; (n) Checks must have a current phone number of customer imprinted or written on them; (o) Checks must have drivers license written on them.

12.1 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT shall provide such information and certifications as GETI may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by GETI or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as GETI may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to GETI pursuant to this Agreement. MERCHANT further agrees to provide to GETI from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as GETI may request. MERCHANT grants to GETI continuing authority to conduct credit checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes GETI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. GETI may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to GETI and provide GETI with the opportunity to terminate this Agreement.

13.1 **DATA RETENTION.** MERCHANT shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two years following the date of the transaction. According to GETI'S current policy for GETI, MERCHANT shall stamp, mark "ACH processed" and hand the check back to the check writer. **If check is handed back to check writer then MERCHANT acknowledges that GETI will not be able to provide any check collection services beyond the third electronic presentation of the check. Failure to provide the signed authorization receipt to GETI will result in cessation of collection efforts, and GETI will be entitled to immediately debit MERCHANT'S account for any previously processed and returned transactions.**

14.1 **ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit GETI to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to GETI shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

15.1 **ADDITIONAL GETI RESPONSIBILITIES.** GETI will accept entries via check reader hardware on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that GETI may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At MERCHANT'S written request, GETI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

16.1 **INDEMNIFICATION.** MERCHANT agrees to indemnify GETI for any cost, expense, and damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

17.1 **NON-WAIVER.** Neither the failure nor any delay on the part of GETI to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

18.1 **ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of GETI. GETI may freely assign this Agreement, its rights, benefits and duties hereunder.

18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT must provide sixty (60) days written notice to GETI of termination and monthly minimum and subscription fees will continue in effect for this time. If either party terminates this agreement a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from MERCHANT'S account. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT.

19.1 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

20.1 **SCHEDULE OF FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Discount Fee, Transaction Fees, Minimum Monthly Discount Fee, Subscription Fee, Batch Out Fee, Termination Fee and other terms and conditions in effect on the commencement date of this Agreement. GETI reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to MERCHANT.

20.2 **APPLICATION FEE.** Any application fee paid to GETI is non-refundable whether or not MERCHANT and this Agreement are accepted by GETI.

21.1 **ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between GETI and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreements(s) between GETI and the MERCHANT with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the performance provided herein is delayed in accordance with the terms of this Agreement, without the consent of any present or future statute, regulation or government policy to which GETI, the Originating Depository Financial Institution (ODFI) or MERCHANT is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and GETI, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.

22.1 **AMENDMENTS.** As stated in paragraph 21.1, GETI, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in the Rules or applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the ACH services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

23.1 **BINDING AGREEMENT; BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against GETI.

24.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT GETI shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

25.1 **CHOICE OF LAW, VENUE & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the NACHA Rules. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. To the extent that an issue arises which is not covered by the Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. MERCHANT acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by GETI.

26.1 **SEVERABILITY.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

27.1 **HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

28.1 **EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by GETI.

29.1 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Rev. 07-10-07 Global eTelecom, Inc. Electronic Check Conversion Agreement 7.2



# DEBIT CARD SERVICES REQUEST FORM

## Merchant Information

NOTE: Please ensure that you have also requested Credit Card Services by completing a "Merchant Service Application Form" available at [www.globalpayments.ca](http://www.globalpayments.ca)

Merchant Name  
(Doing Business As) \_\_\_\_\_

Merchant Address \_\_\_\_\_

## Additional Information

Global IDP \_\_\_\_\_ Average Ticket Size: \$ \_\_\_\_\_ Average Monthly Debit Volume: \$ \_\_\_\_\_

### Legal Business Structure : PLEASE CHECK (√) ONE OF THE FOLLOWING

Sole Prop  Partnership  Corporate  Government  NON Profit

### Chain Type: PLEASE CHECK (√) ONE OF THE FOLLOWING

Ownership  Franchise  Association  Corporate  Government  NON Profit

### Business Information

Trade Name	_____	Type of Business	_____
Registered Corp Name	_____	Sic Code/ Category Code	_____
Business Address	_____	Telephone Number	_____
	_____	Fax Number	_____
Mailing Address	_____	Language E/F	_____
	_____	Ownership Since	YY/ MM/ DD/
	_____	Date Bus Established	YY/ MM/ DD/

Seasonal Merchant  If seasonal CIRCLE the months open below  
(If applicable)

JAN FEB MAR APR MAY JUN JULY AUG SEPT OCT NOV DEC

### Principal Applicant Information

### 1st Applicant Information (If applicable)

Name	_____	Name	_____
Applicant address (Home)	_____	Applicant address (Home)	_____
Telephone #	_____	Telephone #	_____
Fax #	_____	Fax #	_____
SIN (optional)	_____	SIN (optional)	_____
Date of Birth	_____	Date of Birth	_____
E-mail Address (optional)	_____	E-mail Address (optional)	_____

Signed: \_\_\_\_\_

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

**To service this implementation without delay, all fields must be completed prior to submission  
Fax completed application to: Implementations Department 416-644-5964**



# DEBIT CARD SERVICES REQUEST FORM

## Merchant Information

NOTE: Please ensure that you have also requested Credit Card Services by completing a "Merchant Service Application Form" available at [www.globalpayments.ca](http://www.globalpayments.ca)

Merchant Name  
(Doing Business As)

(Max 25 characters appear under "Merchant Name" on Cardholder's Credit Card Statement)

Merchant Address

City

Prov

State  
(U.S.)

Postal  
Code/Zip

(Max 14 characters appear under "City" on Cardholder's Credit Card Statement)

Contact Name

Email

Telephone  
Number

Fax  
Number

Existing GPS  
Credit Bank ID

Existing GPS Credit  
Terminal / Merchant ID

## Settlement Information

NOTE: Please ensure that the information below is ACCURATE as it affects your Bank Account deposits.

Check (✓) the Bank to which you want your Debit Card funds deposited to:

- Alberta Treasury Branches (0219)
- Bank of Montreal (0001)
- Bank of Nova Scotia (0002)
- CaissesDesjardins (Many)
- CIBC (0010)
- Citibank (0260)
- Credit Union (Many) (0003)
- National Bank (0006)
- TD Canada Trust (0004)
- RoyalBank

**You must attach a VOID cheque from the bank account that you have chosen to deposit to.**

Note: If cheques are not available from the account you are requesting, please provide a letter from the branch or any other relevant document that clearly identifies the branch transit number and account number.

How many lanes/pinpads are you requesting

I agree to verify my bank accounts on a daily and monthly basis, to ensure that I am correctly receiving my deposits from Global.

Signed:

Date:

**Fax completed application to: Implementations Department 416-644-5964**

## Global Setup Information

This section will be completed by GPS Implementations Department

Pinpad ID 1  HW Serial No.

Pinpad ID 2  HW Serial No.

Pinpad ID 3  HW Serial No.

Pinpad ID 4  HW Serial No.

Pinpad ID 5  HW Serial No.

MMF Bank ID  0 0 Agent Banks  /

Plan Number  Company Number  Billing Method DEBIT INVOICE

RETAILER ID (PRDF/PDS)  5 7 0 3 Financial Institution Id  Init/Date

Transit No.  Account No.

Setup Completed by:

Date:

**Global Payment Systems of Canada, Ltd.  
Phone 416-644-5959 Fax 416-644-5964**