

**MERCHANT APPLICATION**



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

New Location  Additional Location

109-15 14th Avenue, Suite 200 • College Point, NY 11356 • 1.800.933.0064

[www.cynergydata.com](http://www.cynergydata.com)

**▶ Business Information**

|   |                |                     |  |                          |      |
|---|----------------|---------------------|--|--------------------------|------|
| Legal Name:   |                |                     | Name of Account (Doing Business As):   |                          |      |
| Legal Address:  |                |                     | Physical Street Address (No P.O. Box): |                          |      |
| City:   | State:         | Zip:                | City:                                  | State:                   | Zip: |
| Phone #:<br>( )   | Contact:       | DBA Phone #:<br>( ) |  |                          |      |
| Must Choose One Mailing Address:<br><input type="checkbox"/> DBA Address <input type="checkbox"/> Legal Address |                | E-Mail Address:     |  | Website Address:<br>www. |      |
| Federal Tax #   | # of Locations | Years in Business   | Years Owned Business                   |                          |      |
| Bank Reference:   |                |                     | Contact:                               | Phone #:<br>( )          |      |

**▶ Owners or Officers • Individual Ownership Must be Equal to or Greater than 50%**

|                    |                  |                |                    |                     |
|--------------------|------------------|----------------|--------------------|---------------------|
| Name:<br>1.        | Title:           | Date of Birth: | Applicant's SS #:  | % Equity Ownership: |
| Residence Address: | City:            | State:         | Zip:               |                     |
| # Years:           | Driver's Lic. #: | State:         | Home Phone:<br>( ) |                     |
| Name:<br>2.        | Title:           | Date of Birth: | Applicant's SS #:  | % Equity Ownership: |
| Residence Address: | City:            | State:         | Zip:               |                     |
| # Years:           | Driver's Lic. #: | State:         | Home Phone:<br>( ) |                     |

**▶ Business Profile**

Type of Ownership:  Sole Proprietor  Partnership  PA or PC  
 Corporation  Limited Liability Company  Not For Profit

Type of Goods or Services Sold: \_\_\_\_\_ SIC Code: \_\_\_\_\_

Do you currently accept Visa/Mastercard?  Yes  No  
(If yes, you should submit 3 current months' statements.) Name of Current Processor: \_\_\_\_\_

Has Merchant or any associated principal disclosed below filed  Yes Date: \_\_\_\_\_  
 bankruptcy or been subject to involuntary bankruptcy?  No

**▶ Sales Profile**

|  |   |
|--|---|
| Merchant Type:<br><input type="checkbox"/> Retail<br><input type="checkbox"/> Restaurant<br><input type="checkbox"/> Lodging<br><input type="checkbox"/> Service<br><input type="checkbox"/> Internet<br><input type="checkbox"/> Home Based<br><input type="checkbox"/> Other | Visa/MasterCard Sales Profile (Be Accurate):        |
|  | Card Swipe _____ %                                  |
|  | Manual Key Entry with Imprint, Card Present _____ % |
|  | Mail Order/Telephone _____ %                        |
|  | Internet _____ %                                    |
|  | Total = _____ 100%                                  |

**▶ Business Trade Suppliers • List Two**

|       |          |          |                 |
|-------|----------|----------|-----------------|
| Name: | Address: | Contact: | Phone #:<br>( ) |
| Name: | Address: | Contact: | Phone #:<br>( ) |

**▶ Merchant Site Survey Report • To Be Completed by Sales Representative**

Merchant Location:  Retail Location with Store Front  Office Building  Internet  Residence  Other \_\_\_\_\_

Area Zoned:  Commercial  Industrial  Residential Square Footage:  0-250  251-500  501-2,000  2,001+

Does the amount of inventory and merchandise on shelves and floor appear consistent with this type of business?  Yes  No  
 If No, explain: \_\_\_\_\_

The Merchant:  Owns  Leases the Business Premises Landlord Name & Phone #: \_\_\_\_\_

Further Comments by Inspector (Must Complete)

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.

Verified and Inspected by: \_\_\_\_\_ Office #: \_\_\_\_\_ Representative #: \_\_\_\_\_ Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**X** **X**

**► Visa / Mastercard Standard Retail / High Risk Retail Rates**

Merchant Chooses to accept the following:  
 VS/MC (Other Cards) Discount Rate: \_\_\_\_\_ %  
 VS/MC Debit Card Discount Rate: \_\_\_\_\_ %  
 AMEX Discount Rate: \_\_\_\_\_ %  
 Discover Discount Rate: \_\_\_\_\_ %

**► Fees**

VS/MC Transaction Fee: \_\_\_\_\_ Per Item  
 Non-Bankcard Transaction Fee: \_\_\_\_\_ .25 Per Item  
 Statement Fee: \_\_\_\_\_ Monthly  
 VIMAS Online Service: \_\_\_\_\_ Monthly  
 Monthly Minimum: \_\_\_\_\_ \$20.00 Monthly  
 Annual Fee: \_\_\_\_\_ \$55.00 Per Year  
 Debit Transaction Fee Plus Network Fees: \_\_\_\_\_ Per Item  
 EBT Transaction Fee: \_\_\_\_\_ Per Item  
 EBT Statement Fee: \_\_\_\_\_ Monthly  
 Batch Fee: \_\_\_\_\_ .25 Per Batch  
 Manual Imprinter: QTY: \_\_\_\_\_ One Time  
 Chargeback/ACH Reject Fee: \_\_\_\_\_ \$25.00 Per Item  
 Retrieval Fee: \_\_\_\_\_ \$5.00 Per Item  
 Voice Authorization Fee: \_\_\_\_\_ .95 Per Call  
 Early Termination Fee: \_\_\_\_\_ \$250.00 One Time  
 Others (please specify): \_\_\_\_\_

**► Mail / Phone / Internet / Touchtone Rates**

Merchant Chooses to accept the following:  
 VS/MC (Other Cards) Discount Rate: \_\_\_\_\_ %  
 VS/MC Debit Card Discount Rate: \_\_\_\_\_ %  
 AMEX Discount Rate: \_\_\_\_\_ %  
 Discover Discount Rate: \_\_\_\_\_ %

**► Fees**

VS/MC Transaction Fee: \_\_\_\_\_ Per Item  
 Non-Bankcard Transaction Fee: \_\_\_\_\_ .30 Per Item  
 Statement Fee: \_\_\_\_\_ Monthly  
 VIMAS Online Service: \_\_\_\_\_ Monthly  
 Monthly Minimum: \_\_\_\_\_ \$25.00 Monthly  
 Annual Fee: \_\_\_\_\_ \$55.00 Per Year  
 MOTO/Internet Surcharge: \_\_\_\_\_ .05 Per Item  
 AVS Surcharge: \_\_\_\_\_ .05 Per Item  
 Batch Fee: \_\_\_\_\_ .30 Per Batch  
 Manual Imprinter: QTY: \_\_\_\_\_ One Time  
 Chargeback/ACH Reject Fee: \_\_\_\_\_ \$25.00 Per Item  
 Retrieval Fee: \_\_\_\_\_ \$5.00 Per Item  
 Voice Authorization Fee: \_\_\_\_\_ .95 Per Call  
 Early Termination Fee: \_\_\_\_\_ \$250.00 One Time  
 Others (please specify): \_\_\_\_\_

1) I/We understand and agree to the following: that my/our discount rate as stated above will be charged on all electronically authorized bankcard transactions that are in batches closed daily (qualified rate);  
 2) and that all bankcard transactions that do not meet the requirements stated in number 1 above may be charged up to 1.99% + .10¢ higher than my/our discount rate. Visa/Mastercard business transactions may be charged up to 1.99% + .10¢ above qualified rate.

**► Merchant Benefits Club**

Yes, I want to participate in the optional Merchant Benefits Club which includes equipment support and replacement for an additional \$9.50 per terminal per month. Initials: **X**

**► American Express**

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

Signature: **X** Date: \_\_\_\_\_

**► Discover**

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

Signature: **X** Date: \_\_\_\_\_

**► Debit/Credit Authorization • Staple Voided Check Here**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation.

**DDA:** **INVESTIGATIVE CONSUMER REPORT:** An investigative or consumer report may be made in connection with application. MERCHANT authorizes BANK or any of its agents to investigate the references provided or any other statements or data obtained from MERCHANT, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

**ABA Routing:**

**AVERAGE TICKET SIZE:** \_\_\_\_\_ **AVERAGE MONTHLY VOLUME:** \_\_\_\_\_

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4c and 13b of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.

**IMPORTANT NOTICE:** All information contained in this application was completed, supplied and/or reviewed by the undersigned Merchant. Processor shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of Processor and/or Bank of America, N.A., Charlotte, NC. By signing below you are agreeing to the provisions stated within this merchant application, on the reverse side (the Merchant Agreement) and acknowledge receipt of the merchant operating guide. Those provisions must be read before signing. By signing below, you agree to the terms on the front and back of this MERCHANT Processing Agreement and the merchant operating guide.

**► Individual Guaranty • No Titles**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

**AGREED AND ACCEPTED**

**X** \_\_\_\_\_  
 #1 From Application - Signature Date  
**X** \_\_\_\_\_  
 #2 From Application - Signature Date

**► For All Corporations • Corporate Resolution**

The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the here within named corporation. **MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.**

Print Legal Name of Merchant Business  
 \_\_\_\_\_  
**X** \_\_\_\_\_ #1 From Application - Signature Date  
**X** \_\_\_\_\_ #2 From Application - Signature Date  
**X** \_\_\_\_\_ Accepted by Processor Date  
**X** \_\_\_\_\_ Accepted by Bank of America, N.A., Charlotte, NC. Date





**7. Security Interests, Reserve Account, Recoupment and Set-Off.**

**A. Security Interests.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

**B. Reservation of Rights.** You will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral under this Agreement. Nevertheless, Processor and Bank reserve the right to file a motion for relief from an automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

**C. Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. Processor and Bank may debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

**D. Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise any and all rights under this Agreement to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

**E. Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

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

**8. Fees and Other Amounts Owed Bank.**

**A. Transaction Set Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

**B. Other Amounts Owed.** You will immediately pay Processor and Bank any amount incurred by Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any and all obligations which you may owe to Processor and Bank, including but not limited to, without limitation, the amount of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

**C. Merchant Supply/Replacement Program.** You are responsible for purchasing all supplies required to properly process Card transactions (sales slips, printer rolls, etc.). If you elect to participate in CD's Supply/Replacement Program, you understand that you will be liable for the cost of the supplies and the cost of the program. Quantity of supplies provided is at the discretion of CD. Enrollment in CD's Supply/Replacement Program also entitles merchant to free refurbished replacement equipment after CD has collected 3 monthly payments from you (you are responsible for all shipping costs). A separate program is required for each terminal you may have. If your terminal type is unavailable, at CD's discretion, a substitute may be provided. CD may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent. Maintenance is not available for any wireless terminals.

**D. Application.** You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales, are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

**E. Indemnification.** You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of the Agreement and the control and maintenance of this contract. Processor or Bank shall be liable for indirect, special, or consequential damages.

**F. Limitation of Liability.** Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any month in which the Processor or Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

**G. Performance.** Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

**9. Representations and Warranties.** You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

**A. Information.** You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information you have submitted to Processor or Bank in any document or other communication is true, accurate, complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

**B. Entry Power.** Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

**C. No Litigation or Termination.** There is no pending or threatened litigation or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

**D. Transactions.** All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

**E. Rule compliance.** You will comply with the Laws and Rules.

**11. Audit and financial information.**

**A. Audit.** You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

**B. Financial Information.**

**i. Authorizations.** You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

**ii. Documents.** You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

**12. Third Parties.**

**A. Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

**B. Use of Terminals Provided by Other Parties.** You authorize Processor and Bank to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

**C. Debit Network Requirements.** In Card Transactions by Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

**13. Term and Termination.**

**A. Term.** The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

**B. Termination.** The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal

Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and BAMS or CD will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

**C. Action upon Termination.**

**i. Terminated Merchant File.** You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

**ii. Designated Account.** All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

**iii. Equipment.** Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

**iv. Early Termination.** If you terminate this Agreement before the end of the Initial Term, you will immediately pay Bank, as deconvension costs, an early termination fee equal to \$250. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination. Other remedies Bank or Processor may have under this Agreement still apply.

**14. Compliance With Laws And Rules.** You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, JCB, any other issuer of Cards, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

**15. Use of Trademarks and Confidentiality.**

**A. Use of Trademarks.** Your use of Visa and MasterCard trademarks must fully comply with the Rules. Your use of Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in stating eligibility for your products or services. If you have any promotional materials, you must obtain the prior written consent of Processor and Bank. You must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

**B. Confidentiality.**

**i. Cardholder Information.** You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe or CVV2 data after authorization.

**ii. Prohibitions.** You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.

**iii. Disclosures.** You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

**C. Return to Bank.** All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

**16. General Provisions.**

**A. Entire Agreement.** This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

**B. Governing Law.** This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.

**C. Exclusivity.** During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

**D. Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

**E. Assignment.** This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

**F. Notices.** Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

**G. Bankruptcy.** If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

**H. Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

**I. Amendments.** Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

**J. Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

**K. Independent Contractors.** Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

**L. Employee Actions.** You are responsible for your employees' actions while in your employment.

**M. Survival.** Sections 4.A, 4.B, 6.7, 9.13, C, 15, 16.B, and 16.H will survive termination of this Agreement.

**N. Bank Contact.** You may contact Bank at the following address and telephone number: Bank of America, N.A., 1231 Durrett Lane, Louisville, KY 40285-0001, 502-315-2948.