

- New Account  
 Additional Location  
 Main Location MID: \_\_\_\_\_  
 Ownership Change  
 Previous Owner's MID: \_\_\_\_\_
- Retail  
 MOTO  
 E-Commerce  
 Cash Advance  
 QSR  
 Debit  
 V/WEX  
 EZCheck  
 EBT  
 Rollover



**WOODFOREST**  
NATIONAL BANK  
Member FDIC



**MERCHANT BANKCARD APPLICATION/AGREEMENT**

WHEN COMPLETED DELIVER TO:  
P.O. BOX 8339  
The Woodlands, TX 77387-8339  
(800) 327-0093

REP NAME \_\_\_\_\_  
REP# \_\_\_\_\_ M.U.D. # \_\_\_\_\_

**SECTION I BUSINESS INFORMATION**

Business/Corporate Name (Exact Legal Name)		Statement Mailing Address (if different from location address)	
DBA (Doing Business As) Name		City, State, Zip	
Location/Site Address	Federal Tax ID Number (required)	Fax Number ( )	
City, State, Zip	Business Phone Number ( )	Customer Service Phone Number ( )	
Website Address		Email Address	

Sole Proprietorship   
  Partnership   
  Corporation   
  Non-Profit   
  LLC

Date Business Formed (month/year) /   
 Number of Locations   
 Do you currently accept VISA/MasterCard/Discover Network? (If yes, attach copy of last 3 months merchant statements)   
 Yes   
 No

MERCHANDISE/SERVICE SOLD	MONTHLY BANK CARD LIMIT \$	AVERAGE TICKET AMOUNT \$	HIGHEST TICKET AMOUNT \$	POS EQUIPMENT / SOFTWARE	ETC TYPE
PERCENT OF BUSINESS (MUST = 100%)			SALES METHOD (MUST = 100%)		
CARD SWIPED %	KEYED WITH IMPRINT %	KEYED WITHOUT IMPRINT %	STORE FRONT %	OFF PREMISE %	MAIL/PHONE ORDER %
			TRADE SHOW %	INTERNET SERVICES %	OTHER %

**SECTION II OWNERS'/OFFICERS' INFORMATION (MUST REFLECT 50% OR MORE OWNERSHIP)**

Name (Print) 1	Title	Residence Address	City, State, Zip
Previous Residence (if at current residence for less than 1 year)			
Social Security Number	Driver's License # / State	Other Form of ID / #	Phone Number ( )
Date of Birth (mm/dd/yyyy)	% Equity Ownership		
Cell Phone Number ( )	Email Address		
Name (Print) 2	Title	Residence Address	City, State, Zip
Previous Residence (if at current residence for less than 1 year)			
Social Security Number	Driver's License # / State	Other Form of ID / #	Phone Number ( )
Date of Birth (mm/dd/yyyy)	% Equity Ownership		
Cell Phone Number ( )	Email address		

**SECTION III TRADE REFERENCES (PLEASE COMPLETE SECTION IN FULL)**

Company	Company	Company
Contact	Contact	Contact
Address	Address	Address
City, State, Zip	City, State, Zip	City, State, Zip
Phone ( )	Phone ( )	Phone ( )

**SECTION IV MERCHANT SURVEY (TO BE COMPLETED BY SALES REPRESENTATIVE)**

Merchant Location  
 Store Front  
 Office Building  
 Warehouse  
 Residence  
 Website (site must be listed above)  
 Other

The Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Leases the business premises <input type="checkbox"/> Rents	Landlord Name	Landlord Telephone # ( )
Permanent Signage: <input type="checkbox"/> Yes <input type="checkbox"/> No	Zoning: <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Residential	Inventory Consistent with Business: <input type="checkbox"/> Yes <input type="checkbox"/> No
		Appears Legitimate: <input type="checkbox"/> Yes <input type="checkbox"/> No

I certify that I have inspected the business premises of the merchant identified in this Application  
 I certify that I have personally confirmed the identity of each person listed in the Business and Officers' Information Sections of this Application.  
 I certify that I have conducted my review of this merchant to the best of my ability and that, to the best of my knowledge and belief, the information set forth in this Application is true and accurate.

Inspected by (Print Name)	Signature	Date
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**SECTION IX AMERICAN EXPRESS**

I understand that the Terms and Conditions for American Express® Card Acceptance (Terms and Conditions) will be sent to the business entity indicated along with the welcome letter upon approval of such business entity to accept the American Express Card by American Express Travel Related Services Company, Inc. By accepting American Express Cards for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

**SECTION X MERCHANT ACCEPTANCE**

This Merchant Bankcard Agreement contains six (6) pages including detailed Terms and Conditions ("Terms and Conditions"). Each person signing below certifies that all information provided in this application is true, correct, and complete, and each person agrees to be bound by all provisions set forth in this six (6) page document, including but not limited to the Terms and Conditions stated in the front and back of this Agreement. Each person authorizes the Bank or any credit reporting agency employed by the Bank or any agent of the Bank, to make whatever inquiries the Bank deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing. An additional copy of the Terms and Conditions will be sent to the business entity indicated above along with the welcome letter upon approval of such business entity to accept bankcards by Woodforest National Bank. For detailed information related to the termination rights and obligations set forth in this Agreement, see Sections 2.14, 2.15, 2.17, 2.24, 2.27, 2.30, 2.34, 7.2, 7.3, Section 8 in its entirety, 10.12, and 10.16. The Terms and Conditions are also available online at <http://www.mccs-corp.com/MerchantBankcard.asp>.

AGREED AND ACCEPTED

Print Business Name: \_\_\_\_\_

X \_\_\_\_\_  
#1 From Application Date

X \_\_\_\_\_  
#2 From Application Date

**FOR ALL CORPORATIONS - Corporate Resolution**

The indicated officers identified in numbers 1 and 2 have the authorization to execute the Merchant Processing Agreement with Woodforest National Bank on behalf of the herewithin named corporation.

\_\_\_\_\_  
Secretary of the Board of Directors Date

**PERSONAL GUARANTY(NO TITLE):** The undersigned Guarantor(s) hereby, individually agrees to the terms set forth in section 2.34 of this agreement. The undersigned Guarantor(s) further agrees to pay to the BANK all expenses (including attorney fees and court costs) paid or incurred by the BANK in collecting such obligations and in enforcing this Guaranty.

X \_\_\_\_\_  
SIGNATURE HERE  
Guarantor #1 From Application (signature) (no title)

X \_\_\_\_\_  
SIGNATURE HERE  
Guarantor #2 From Application (signature) (no title)

X \_\_\_\_\_  
PRINT NAME HERE  
Guarantor #1 From Application (print name)

X \_\_\_\_\_  
PRINT NAME HERE  
Guarantor #2 From Application (print name)

**SECTION XI TERMINAL INFORMATION & DOWNLOAD**

APPLICATION TYPE:  RETAIL  DEBIT  MOTO/FULL AVS  REST  HOTEL  
 Scrip (3740 only)  QSR  Rev PIP  Dial Out Access (9)  TIP  CHECK IN/OUT

Secure Internet Provider: \_\_\_\_\_

Pin Pad Type: \_\_\_\_\_

Check Service — (note: a separate download form is required)

\_ EZ CHECK Scanner/Reader Type: \_\_\_\_\_

\_ OTHER: \_\_\_\_\_

Check Service Acct# \_\_\_\_\_

VERIFONE / LINKPOINT / NURIT:

Vx:	Nurit:	Eclipse:	Tranz:	Omni:	Linkpoint:
_ 510	_ 2080	_ Eclipse	_ 330	_ 3200	_ 2000
_ 510LE	_ 2085		_ 380	_ 3210	_ 3000
_ 570	_ 3000		_ 420	_ 3300	
_ 570 dual comm	_ 3020		_ 460	_ 3350	
	_ 8320		_ zonjrxl	_ 3730	
				_ 3730LE	
				_ 3740	
				_ 3750	
				_ 3750 dual comm	

Serial # \_\_\_\_\_ Download Speed \_\_\_\_\_

Application# \_\_\_\_\_ QSR Option # \_\_\_\_\_

FDR Omaha - Select an ETC type below:	ETC Type 0 - Select a front end below:
<input type="checkbox"/> 7 <input type="checkbox"/> 2	<input type="checkbox"/> Global East <input type="checkbox"/> FDC Nashville
<input type="checkbox"/> 4 <input type="checkbox"/> B	<input type="checkbox"/> VISANET/VITAL <input type="checkbox"/> Bypass

Autoclose (non-Restaurant) Time \_\_\_\_\_ am/pm  
 Contactless Card Reader

HYPERCOM:

\_ T7e \_ T7p \_ T77 \_ T1e  
 \_ T7Plus \_ ICE 5500 \_ ICE 5700 \_ T4100

Terminal ID# \_\_\_\_\_ QSR Option # \_\_\_\_\_

OTHER:

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_

Terminal ID# \_\_\_\_\_

**BUILD DOWNLOAD**  Yes  No

Quick Stop Shopp  Yes  No

One Stop Shopp  Yes  No

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

Phone: \_\_\_\_\_

VOIDED CHECK FROM CHECKING ACCOUNT MUST BE ATTACHED  
 (DO NOT USE A DEPOSIT SLIP)

THIS AGREEMENT is made by and between WOODFOREST NATIONAL BANK ("BANK"), a National Banking Association, and the undersigned "MERCHANT" and is subject to the approval of BANK. The parties hereto agree as follows:

1.0 AGREEMENT:

1.1 This document, as well as other documents executed by MERCHANT, pursuant to the acceptance of BANK, shall be incorporated herein and made a part hereof and shall constitute the entire agreement between BANK and MERCHANT.

1.2 MERCHANT agrees that throughout the term of this Agreement, it will not use the services of any bank, corporation, entity or any person other than BANK for the processing of bankcard transactions.

1.3 MERCHANT acknowledges that BANK may provide financial transaction processing hereunder through contracts or subcontracts with third parties engaged in the business of transaction processing and authorization.

1.4 BANK hereby notifies MERCHANT that the following options are available hereunder: (i) MERCHANT may elect to accept ONLY consumer credit and commercial cards; (ii) MERCHANT may elect to accept ONLY consumer debit cards; OR (iii) MERCHANT may elect to accept consumer credit and commercial cards and consumer debit cards.

2.0 Rights, Duties, and Responsibilities of Merchant:

2.1 MERCHANT shall honor all cards provided:

(a) The card is valid and is presented to MERCHANT at the time of the sale by the authorized cardholder or an authorized user of the card account. A card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face.

(b) The card is used as payment for products which are sold or rendered by MERCHANT under this Agreement.

(c) The MERCHANT has followed procedures as established by BANK for completion of sales drafts.

2.2 MERCHANT agrees to complete sales drafts in conformity with the terms of this Agreement, non-bankcard's Rules and Regulations, and the Card Association's Rules and Regulations, and additionally must comply with the following:

(a) For transactions that are not mail, phone orders or internet orders, unless electronically swiped, the imprint of the card, including the name of the cardholder, the cardholder account number and the card's expiration date;

(b) MERCHANT is not authorized to accept mail or phone order transactions unless specifically authorized by BANK and that acceptance of such transactions without written authorization from BANK will constitute a breach of the Agreement. If MERCHANT is authorized to accept mail or phone order transactions, the name of the cardholder, the cardholder account number and the expiration date;

(c) The signature of the cardholder or authorized card user. In the case of mail or phone orders, the letters MO or TO, as the case may be, shall be clearly indicated on the sales draft;

(d) The date of the sale;

(e) A short description of the products sold or rendered;

(f) The total cash price of the sale or the words "deposit" or "balance" if full payment is to be made in this manner at different times on different sales drafts; and

(g) The city and state wherein such transaction occurred.

(h) Type of fuel sold and odometer reading (if permitted by POS device) in the case of fleet card transactions

(i) MERCHANT shall deliver a completed copy of the sales draft to the cardholder.

2.3 MERCHANT'S policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with operating regulations of the applicable Card Association's or non-bankcard's Rules and Regulations. MERCHANT agrees to disclose, if applicable, to a cardholder before a card sale is made, that if merchandise is returned:

(a) No refund, or less than full refund, will be given;

(b) Returned merchandise will only be exchanged for similar merchandise of comparable value;

(c) Only a credit toward purchases will be given; or

(d) Special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges, or other noncredit terms). If MERCHANT does not make these disclosures, a full refund in the form of a credit to the cardholder's card account must be given. MERCHANT shall under no circumstances issue cash for returns of products where products were originally purchased in a card transaction. Disclosures must be made on all copies of sales drafts or invoices in letters approximately 1/4 inch high in close proximity to the space provided for the cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the cardholder's signature.

2.4 MERCHANT may not process for payment any transaction(s) representing the refinancing of an existing obligation of a cardholder including, but not limited to, obligations (i) previously owed to MERCHANT, (ii) arising from the dishonor of a cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness.

2.5 MERCHANT must not disclose a cardholder account number, personal information, or other transaction information to third parties other than to MERCHANT'S agent, BANK, or BANK'S agent for the sole purpose of assisting MERCHANT in completing the transaction or as required by law. MERCHANT must store all material containing cardholder account numbers or imprints in an area limited to selected personnel and render all data unreadable prior to discarding. MERCHANT must not retain or store magnetic-stripe data verification data subsequent to authorization of a transaction.

2.6 MERCHANT shall not require any cardholder to pay any part of any discount or charge imposed upon MERCHANT by this Agreement, whether through any increase in price or otherwise. MERCHANT shall not require a customer presenting a card for payment to pay any charge not also required from a person paying cash. These terms shall not, however, be construed as prohibiting discounts to customers for payments in cash.

2.7 MERCHANT agrees to obtain an authorization on all transactions. Any transaction which cannot be authorized electronically through a terminal is subject to a voice authorization charge. MERCHANT will obtain an authorization prior to completing a keyed transaction. Any transaction which is not properly authorized is made with full recourse and may be charged back to MERCHANT; furthermore, any keyed transaction will be subject to additional charges for a non-qualifying transaction. MERCHANT understands that an authorization does not constitute a guarantee of payment, only available credit and may be subject to dispute or chargeback. By signing this Agreement, Merchant agrees that the use of a "store & forward" terminal means that Merchant has the ability to store a swiped transaction at the terminal level when there is no phone line available. When a phone line becomes available, Merchant would then upload the transaction for a possible approval. Merchant understands and agrees that if Merchant uses this type of terminal, there is no guaranty whatsoever that once the transactions are uploaded Merchant will receive an approval. If Merchant allows the release of merchandise/service to the cardholder before receiving approval, Merchant agrees that this is to be done at Merchant's sole risk.

2.8 MERCHANT shall not complete any card sale for which an authorization has been declined. Any unauthorized card transaction is made with full recourse to MERCHANT, and BANK may charge back the amount of such card sale to MERCHANT.

2.9 MERCHANT acknowledges that BANK shall have full recourse to charge back the amount of a card sale for which (i) the imprint of the card is not obtained or (ii) the signature of the cardholder is not obtained and the cardholder disputes that he/she authorized the charge.

2.10 MERCHANT agrees to electronically deposit sales drafts and credit vouchers no later than the business day following the transaction date.

2.11 (a) MERCHANT shall, at all times, maintain an account at a bank that is a member of the Federal Reserve ACH System ("the Account"). All credits for collected funds and debits for fees, payments and chargebacks under the terms of this Agreement shall be made to the Account. MERCHANT may not close or change the Account without written notice to BANK. MERCHANT will be solely liable for all fees and costs associated with the Account and for all overdrafts. MERCHANT will maintain sufficient funds in the Account to accommodate all transactions, including fees, contemplated by this Agreement.

(b) MERCHANT shall promptly upon receipt, examine, balance, and reconcile all statements relating to the Account. Additionally, MERCHANT shall daily balance and reconcile all DAILY deposit and debit totals to confirm accuracy. MERCHANT is required to notify BANK IN WRITING of any and all errors on MERCHANT'S statements and/or DAILY totals. Each such written notice shall contain the following information: (i) MERCHANT name and account number, (ii) the specific dollar amount of the asserted error, (iii) a detailed description of the asserted error, and (iv) a detailed explanation of why MERCHANT believes an error exists and the cause of the error, if known. The written notice MUST be RECEIVED by BANK within thirty (30) days after MERCHANT receives the statement (regarding an asserted error on a

statement) or within thirty (30) days from the date the alleged error on a DAILY total was made. Failure to timely send the notice referred to herein constitutes a waiver of any and all rights MERCHANT may have against BANK related to the asserted error.

(c) MERCHANT agrees to fees of up to \$10 per occurrence for maintenance activities including but not limited to DDA changes and returned mail.

2.12 MERCHANT assumes the responsibility for storage of all sales drafts and credit vouchers. Failure to provide BANK with requested documentation within five (5) business days after receipt of such request may result in the transaction being charged back to MERCHANT, and BANK shall have the right to debit the Account for full amount of the transaction in question.

2.13 MERCHANT shall pay any fees charged to MERCHANT by the telephone company for the preparation of the site(s) prior to installation of electronic data capture terminals and/or peripheral equipment.

2.14 MERCHANT shall not deposit any transaction for the purpose of obtaining or providing a cash advance. MERCHANT agrees that any such deposit shall be grounds for immediate termination.

2.15 MERCHANT must notify BANK in writing of any changes to the information in this Application, including but not limited to:

(a) Transfer or sale of any substantial part of its total assets, or liquidate;

(b) Change the basic nature of its business, including selling any products or services not related to its current business;

(c) Change ownership or transfer control of its business; or

(d) Enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in MERCHANT'S business. The notice must be received by BANK within ten (10) business days of the change. MERCHANT will provide updated information to BANK within a reasonable time upon request. Failure to provide notice as required above may be deemed as material breach and shall be sufficient grounds for immediate termination of MERCHANT. In the event any of the changes listed above should occur, BANK shall have the option to renegotiate the terms of this Agreement or provide thirty (30) days notice of termination. MERCHANT is liable to BANK for all losses and expenses incurred by BANK arising out of a failure to report changes to BANK.

2.16 MERCHANT is liable for repayment to BANK for all valid chargebacks. BANK will comply with non-bankcard's or Card Associations' prevailing Rules and Regulations in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside the non-bankcard's or Card Association's Rules and Regulations. In the event of a chargeback loss to BANK, MERCHANT hereby transfers and assigns to BANK any lien rights that it has or may have on the merchandise sold to the cardholder.

2.17 MERCHANT shall not accept or deposit any fraudulent transactions and may not under any circumstances present for processing or credit, directly or indirectly, a transaction which originated with any other merchant or any other source. MERCHANT shall be prohibited from making a deposit of a credit transaction without a preceding debit. MERCHANT shall not, under any circumstances, deposit telemarketing transactions under this Agreement unless authorized by BANK in advance of processing any telemarketing transactions. If MERCHANT deposits any such transaction, MERCHANT may be immediately terminated and BANK may hold funds and/or demand an escrow pursuant to sections 4 and 8; further, MERCHANT may be subject to VISA, MasterCard, and Discover Network reporting requirements set forth in Section 8.8.

2.18 MERCHANT will not deposit duplicate transactions. MERCHANT shall be debited for any adjustments for duplicate transactions and shall be liable for any chargebacks which may result therefrom. Merchant will be liable for any fees assessed by the Card Associations to the BANK.

2.19 MERCHANT shall not initiate a sales transaction in an attempt to collect a chargeback.

2.20 Discount/Fee Schedule:

(a) MERCHANT'S Account will be debited daily, through ACH for amounts set forth in the pricing schedule which is part of this Agreement, and for any other fees or charges incurred by MERCHANT and associated with processing services. MERCHANT is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. BANK reserves the right, in its sole discretion, to change, amend, add, or adjust any discount rates or fees set forth herein, in accordance with Section 10.6 of this Agreement.

(b) The "Qualified Retail Discount Rate" will be charged on all swiped retail bankcard transactions that are electronically authorized and closed in a daily batch. On VISA transactions only, all manually keyed transactions that are closed in a daily batch, have AVS (Address Verification Service), an Order Number and reply to the prompt with "Exact Match" will be charged the "Mid-Qualified Rate." Notwithstanding the foregoing, if the interchange rate (charged by the Card Associations) is higher than the swiped retail bankcard rate, BANK, in its sole discretion, has the option of charging the "Mid-Qualified Rate" or "Non-Qualified Rate" for that type of transaction. Examples of cards and transactions that would fall into that type of category include but are not limited to VISA Rewards Cards, MasterCard World Cards, VISA Signature Cards, foreign cards, corporate cards, purchase cards, mail/telephone, e-commerce, and T&E.

(c) Increase in long-distance communications costs and processing charges from third-party vendors may be reflected in increased discount rates.

(d) MERCHANT'S pricing is partially based upon the annual volume, average ticket and method of doing business stated in this MERCHANT Application. If the actual volume and average ticket are not as warranted or if MERCHANT significantly alters its method of doing business, BANK may adjust MERCHANT'S discount and/or transaction fees without prior notice. Merchants using AVS (Address Verification System) will be charged for each address verification request. This is in addition to the transaction fee. In the event of multiple locations, each location shall be considered to have a separate MERCHANT BANKCARD AGREEMENT for all fee purposes. For the purposes of charging Transaction Fees under this Agreement, "transaction" is defined as any action by a merchant that results in activity to a cardholder or merchant account, including authorizations, batch closings, sales, or returns.

2.21 MERCHANT will be assessed a fee of \$25.00 for each return ACH debit.

2.22 MERCHANT will be assessed a merchant investigation fee for suspicious activity and/or Agreement deviations up to a maximum of ten percent (10%) of the dollar amount investigated.

2.23 A divert fee of \$25.00 per month will be charged for a special account maintained at BANK to house diverted funds for MERCHANT.

2.24 MERCHANT agrees that Excessive Activity during any monthly period will be a breach of this Agreement and cause of immediate termination. Excessive Activities include i) chargebacks in excess of one percent (1%) of the sales transactions processed, ii) sales activity that exceeds by 25% the dollar volume indicated on the Application, iii) the dollar amount of returns exceeds 20% of the average monthly dollar amount of MERCHANT'S card transactions, iv) other ratios required by VISA, MasterCard, Discover Network, or BANK. BANK will provide MERCHANT with any information possessed by BANK which may enable MERCHANT to recover from others the amount of any sale charged back to MERCHANT. MERCHANT understands that BANK will assess a fee per chargeback per presentment and a fee for each retrieval and each representation request.

2.25 Any transaction that has not received an authorization, or that is deposited (transmitted) more than two (2), but not greater than thirty (30), business days following the transaction date, or that is made with a foreign card will be subject to a non-qualified increase. NOTE: Days allowed for settlements are calculated by excluding the transaction date, Sundays and holidays; and including the processing (settlement) date.

2.26 MERCHANT will use its reasonable, best efforts to recover any card: (i) on VISA cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number, (ii) if MERCHANT is advised by BANK (or its designee), the issuer of the card or the designated voice authorization center to retain it, (iii) if MERCHANT has reasonable grounds to believe the card is counterfeit, fraudulent or stolen, or not authorized by the cardholder, (iv) on Discover Network cards, if the printed four digits on the signature panel do not match the last four digits of the embossed account number, or if the card does not have the Discover Network acceptance mark in the lower right corner on both sides of the card, or (v) for MasterCard, the embossed account number, indent printed account number and/or encoded account number do not agree, or the card does not have a MasterCard hologram on the lower right corner of the card face.

## 2.27 ELECTRONIC COMMERCE

(a) MERCHANT may process electronic commerce ("EC") transactions only if it has so indicated in this Agreement and only if MERCHANT has obtained BANK'S consent, and only if the transactions have been encrypted by a third party vendor acceptable to BANK. If MERCHANT submits EC transaction(s) without BANK'S consent, BANK may immediately terminate this Agreement. If MERCHANT has indicated on this Application that it will be submitting EC transactions, MERCHANT acknowledges that MERCHANT has received a copy of the VISA Cardholder Information Security Program ("CISP") manual. If MERCHANT presents EC transactions to BANK, such transactions must comply with the CISP requirements. MERCHANT understands that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. MERCHANT is liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) MERCHANT has obtained BANK'S consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions are MERCHANT'S responsibility. MERCHANT understands that BANK will not manage the EC telecommunications link and that it is MERCHANT'S responsibility to manage that link. All EC transactions will be settled by BANK into a depository institution in the United States in U.S. currency.

(b) Whereas, MERCHANT desires to honor at its business location(s) Card Numbers presented in connection with the Mail/Telephone/Internet sale of products/services to customers the parties hereto agree to the following: i) MERCHANT agrees to use and retain proof of a traceable delivery system as means of shipment of product to customer; ii) MERCHANT agrees that transactions will not be processed until products are shipped to the cardholder. For goods to be shipped on EC transactions, MERCHANT may obtain authorization up to seven (7) calendar days prior to shipment date. MERCHANT need not obtain a second authorization if the sales draft amount is within fifteen percent (15%) of the authorized amount, provided that the additional amount represents shipping costs. Further, MERCHANT'S website must contain all of the following information: i) complete description of the goods or services offered, ii) returned merchandise and refund policy, iii) customer service contact, including electronic mail address and/or telephone number, iv) transaction currency (such as U.S. or Canadian dollars), v) export or legal restrictions, if known, and vi) delivery policy.

(c) If MERCHANT accepts EC transactions, MERCHANT must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data, MERCHANT must retain legal control of proprietary information and use limited "need-to-know" access to such assets, network or data. Further, MERCHANT must reference the protection of cardholder information and compliance with the VISA CISP Rules in contract with other service providers. If MERCHANT stores cardholder account numbers, expiration dates, and other personal cardholder data in a database, MERCHANT must follow VISA, MasterCard, and Discover Network guidelines on securing such data. MERCHANT understands that failure to comply with this Section may result in fines by VISA, MasterCard, and/or Discover Network, and MERCHANT agrees to indemnify and reimburse BANK immediately for any fine imposed due to MERCHANT'S breach of this Section.

2.28 MERCHANT warrants and agrees that MERCHANT shall fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including the Federal Truth-in-Lending Act, Regulation E, and Regulation Z of the Board of Governors of the Federal Reserve System.

2.29 This Agreement shall be effective only upon acceptance by BANK.

2.30 MERCHANT agrees to pay, in addition to any and all other fees referred to herein, a non-refundable annual customer service fee per year per location. This fee shall be generated and charged any time within one year from the date of this Agreement. The actual date of the initial charge (within said first year) shall be at the sole discretion of BANK. The fee shall be debited from the Account for the initial year and on the anniversary date (of the initial charge) for each year thereafter that the Account is in force. In the event this Agreement is terminated, for any reason, no portion of a charged annual customer service fee shall be rebated to MERCHANT.

2.31 MERCHANT agrees that in the event MERCHANT fails to pay BANK on a chargeback loss, MERCHANT hereby assigns any rights it may have against the cardholder (related to said chargeback loss) to BANK.

2.32 MERCHANT will not present any sales draft or other memorandum to BANK for processing (whether by electronic means or otherwise) which relate to the sale of goods or services for future delivery without BANK'S prior written authorization. If BANK has previously given such consent, MERCHANT represents and warrants to BANK that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. MERCHANT will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

2.33 All disputes between MERCHANT and any cardholder relating to any card transaction will be settled between MERCHANT and the cardholder. BANK bears no responsibility for such transactions.

2.34 As a primary inducement to BANK to enter into this Agreement, the Guarantor(s) indicated on this Application, by signing this Application, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by MERCHANT of each of its duties and obligations to BANK pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. Guarantor(s) understands further that BANK may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by BANK or MERCHANT. Guarantor(s) authorizes BANK to debit via ACH from any account singly or jointly held by Guarantor(s) at any financial institution in the amount of any amount owed by Guarantor(s) under this Agreement. This ACH authorization will remain in effect after termination of this Agreement, and until BANK has received written notice terminating this authorization and all Guarantor(s) obligations to BANK have been paid in full. Guarantor(s) will indemnify and hold BANK harmless for any action they take pursuant to this Section. Guarantor(s) will also indemnify and hold harmless any other financial institution for acting in accordance with any instructions from BANK pursuant to this Section. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of BANK. Guarantor(s) understand that the inducement to 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) receives no additional benefit from the guaranty.

2.35 MERCHANT must not establish a minimum or maximum dollar amount as a condition of honoring a VISA, MasterCard, or Discover Network transaction.

2.36 Legislation has passed ("Truncation Laws") requiring terminals to suppress all but the last few digits from the cardholder's account number, as well as the expiration date. MERCHANT is responsible for compliance. Although federal law is in place regarding this issue, specific state laws may have more strict deadlines and requirements. MERCHANT is required to check its specific state law to be sure that MERCHANT is in compliance.

3.0 Rights, Duties and Responsibilities of BANK.

3.1 BANK will accept for purchase all sales drafts deposited by MERCHANT that comply with the terms of this Agreement. The electronic submission of sales transactions to BANK through services provided by BANK shall constitute an endorsement by MERCHANT to BANK of the sales drafts representing such transactions. Unless otherwise informed by BANK and provided MERCHANT completes batch operation prior to 5:59pm CST, BANK will pay MERCHANT up to three (3) business days after the date the BANK receives the transaction, the total face amount of each sales draft, less any credit vouchers, discounts, fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by BANK, and prompt adjustments shall be made for inaccuracies discovered.

3.2 Notwithstanding any other provisions of this Agreement, BANK may refuse to accept any sales draft, or revoke its prior acceptance, in any of the following circumstances:

(a) the sale giving rise to such sales draft was not made in compliance with all the terms and conditions of this Agreement including Card Associations' Rules and Regulations, as well as applicable laws and regulations of any governmental authority; or  
(b) The cardholder disputes his/her liability on any of the following grounds: (i) that the products covered by such sales drafts were returned, rejected or defective in some respect or MERCHANT failed

to perform any obligation on its part in connection with such products, and MERCHANT has refused to issue a credit voucher in the proper amount; (ii) MERCHANT has failed to obtain a signature on the sales draft and the cardholder claims he/she did not authorize the transaction. In the event of a revocation of a prior acceptance of a sales draft, BANK may withdraw from the Account any amount previously paid to MERCHANT for such sales draft.

3.3 BANK will provide electronic data capture, monthly activity statement, and will assign customer service phone numbers which will accept all customer service calls and other communications from MERCHANT relating to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and chargebacks.

3.4 BANK will process all requests for drafts and chargebacks from card issuers and will provide MERCHANT with timely notice of requests and chargebacks for documentation.

3.5 BANK will provide, at MERCHANT'S option, a 24 hour toll-free help line for servicing of peripheral equipment which shall include repair and reprogramming of equipment leased, rented or purchased from other vendors.

3.6 Use of Independent Sales Offices: MERCHANT acknowledges that BANK may have been referred to MERCHANT through an independent sales office operating under applicable VISA, MasterCard, and Discover Network rules and regulations. The independent sales office is an independent contractor and has no authority to alter the terms of this Agreement without BANK'S prior written approval.

4.0 Account Monitoring.

4.1 MERCHANT acknowledges that BANK will monitor MERCHANT'S daily deposit activity. MERCHANT agrees that BANK may, upon reasonable grounds, divert the disbursement of MERCHANT'S funds from any account MERCHANT has in ANY financial institution for any reasonable period of time required to investigate suspicious or unusual deposit activity. BANK will make good faith efforts to notify MERCHANT immediately. BANK shall have no liability for any losses, either direct or indirect, which MERCHANT may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account at BANK, and not be released until such time that questionable/suspect/ fraudulent transactions have been resolved to the BANK'S satisfaction.

5.0 Warranties; Disclaimer of Warranties.

5.1 MERCHANT unconditionally represents and warrants to BANK that all sales drafts submitted to BANK hereunder will represent the indebtedness of cardholder with whom MERCHANT has completed a sales transaction in amounts set forth therein for products only, shall not involve any element of credit for any other purposes and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by a cardholder under the Card Associations' Rules and Regulations, the Consumer Credit Protection Act ( 15 USC 1601 ) or other relevant state or federal statutes or regulations. Further, MERCHANT warrants that any credit voucher which it issues represents a bonafide refund or adjustment on a card sale by MERCHANT with respect to which a sales draft has been accepted by the BANK.

6.0 Limitations of Liability; Indemnification; Due Care.

6.1 BANK shall have no liability for any negligent design or manufacture of any point-of-sale terminal, printer, or other equipment used by MERCHANT for the acceptance of credit card transactions. BANK MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, CONCERNING ANY EQUIPMENT, OR OTHER SERVICE PROVIDED BY OTHERS AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURCHASE. Should MERCHANT fail to pay for any amounts due to their ISO/MSP, MERCHANT grants to BANK the right to set-off against MERCHANT'S deposit account in order to allow BANK to collect any and all equipment payments not made by MERCHANT.

6.2 MERCHANT shall indemnify and hold BANK harmless from all liability, loss and damage, including reasonable attorney's fee and costs which may arise as a result, whether direct or indirect, of any act or failure to act or the breach of any warranty by MERCHANT pursuant to the terms of this Agreement and the Card Associations' Rules and Regulations. In the event any Card Association or other entity assesses a fine to BANK due to the direct or indirect actions of MERCHANT, MERCHANT shall reimburse BANK the amount of the fine.

6.3 BANK will use due care in providing services covered by this Agreement and the performance of all services called for in this Agreement shall be consistent with industry standards. The liability, if any, of BANK under this Agreement for any claims, costs, damages, losses and expenses for which it is or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of fees paid by MERCHANT, less interchange and assessments, over the previous twelve (12) month period, calculated from the date the liability accrued. In no event will BANK or its agents, officers, directors or employees be liable for indirect, special, or consequential damages.

7.0 Display of Materials; Trademarks.

7.1 MERCHANT agrees to prominently display the promotional materials provided by BANK in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Mark") associated with Card(s) shall be limited to informing the public that card(s) will be accepted at MERCHANT'S place(s) of business. MERCHANT'S use of promotional materials and marks is subject to the direction of BANK.

7.2 MERCHANT may use promotional materials and marks during the term of the Agreement and shall immediately cease use and return any inventory to BANK upon any termination thereof.

7.3 MERCHANT shall not use any promotional material or marks associated with VISA, MasterCard or Discover Network in any way which suggests or implies that either endorses any goods or services other than bankcard services. Further, MERCHANT may be subject to immediate termination if deemed to be creating harm or loss to the goodwill of VISA, MasterCard, Discover Network, or BANK.

7.4 Discover Network Program Marks. MERCHANT is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by BANK. Program Marks mean the brands, emblems, trademarks, and/or logos that identify the Discover Network Cards. Additionally, MERCHANT shall not use the Program Marks other than to display decals, signage, advertising, and other forms depicting the Program Marks that are provided to MERCHANT by BANK or otherwise approved in advance in writing by BANK. MERCHANT may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by MERCHANT are approved in advance by BANK in writing. MERCHANT shall not use the Program Marks in such a way that customers could believe that the products or services offered by MERCHANT are sponsored or guaranteed by the owners of the Program Marks. MERCHANT recognizes that it has no ownership rights in the Program Marks. MERCHANT shall not assign to any third party any of the rights to use the Program Marks.

8.0 Term; Termination.

8.1 This Agreement shall become effective upon acceptance by BANK and shall continue in full force and effect for a term of two (2) years thereafter. At the end of the initial two (2) year term and at the end of every renewal term thereafter, the Agreement will automatically renew for additional two (2) year periods, unless terminated by any party upon written notice at least thirty (30) days prior to the end of the then existing term or twenty (20) days as per the Voyager Merchant Agreement. In the event MERCHANT terminates this Agreement prior to the maturity date of the then existing term, MERCHANT SHALL be liable to BANK for an early termination fee of \$375.00 per location.

8.2 This Agreement may be immediately terminated by BANK for the following reasons:

(a) Reasonable belief that MERCHANT is employed in practices that involve elements of fraud or conduct deemed to be injurious to cardholders;  
(b) Reasonable belief that MERCHANT will constitute a risk to BANK by failing to meet the terms of this Agreement;  
(c) Issuing cash advances as set forth in Section 2.14; or  
(d) MERCHANT appears on any Card Association's security reporting.

8.3 BANK may terminate this Agreement immediately and without cause upon providing MERCHANT with written notice of such termination.

8.4 In the event of termination whether with or without cause, MERCHANT expressly authorizes BANK to withhold and discontinue the disbursement of all cards and other payment transactions of MERCHANT in process of being collected and deposited. Collected funds may be placed in an escrow account at BANK until MERCHANT pays any outstanding charges or losses. Further, BANK reserves the right to require MERCHANT to deposit additional amounts, based upon MERCHANT'S processing history and /or anticipated risk of loss to BANK, into an escrow account. BANK shall be granted a continuing security interest in funds held pursuant to this section. Said escrow account shall be maintained for a minimum of one hundred eighty (180) days after the termination date and for any reasonable period thereafter, during which cardholder disputes may remain valid under the card plans. Any balance remaining after

- chargeback rights have expired will be disbursed to MERCHANT.
- 8.5 Security Interests. This Agreement will constitute a Security Agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon: (i) all funds at any time in the Account (ii) all funds in diverted account (see section 4.0), (iii) the Reserve Account (as defined below), (iv) future sales drafts, (v) all rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement and (vi) any other account MERCHANT has in any financial institution, (collectively, the "Secured Assets"). Upon request of BANK, MERCHANT will execute one or more financing statements or other documents to evidence and perfect this security interest. MERCHANT represents and warrants that no other party has a security interest in the Secured Assets. These security interest and liens will secure all of MERCHANT'S obligations under this Agreement and any other agreements between MERCHANT and BANK including, but not limited to, MERCHANT'S obligation to pay any amounts due and owing to BANK. With respect to such security interests and liens, BANK will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. MERCHANT will obtain from BANK written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant represents and warrants that no other person or entity has a security interest in any property in which you have granted BANK a security interest hereunder. MERCHANT agrees that this is a contract of recoupment and BANK is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, MERCHANT agrees not to contest or object to any motion for relief from the automatic stay filed by BANK. MERCHANT hereby grants BANK the right to offset by ACH any account MERCHANT has in ANY financial institution in order to collect any amount due from MERCHANT to BANK pursuant to this Agreement.
- 8.6 Reserve Account. (i) Establishment: Upon termination of this Agreement or upon BANK'S request and within BANK'S sole discretion, MERCHANT will establish and maintain a deposit ("Reserve Account") at BANK in an amount reasonably determined by BANK necessary to protect BANK'S interests under this Agreement. (ii) Funding: BANK has the right to debit the Account to establish or maintain funds in the Reserve Account. BANK may deposit into the Reserve Account funds it would otherwise be obligated to pay MERCHANT, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. (iii) Funds: in no event will MERCHANT be entitled to return of Reserve Account funds before two-hundred seventy (270) days following the effective date of termination of this Agreement, provided however, that MERCHANT will remain liable to BANK for all liabilities occurring beyond such two-hundred seventy (270) day period. BANK will have sole control of the Reserve Account. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code Section 365, as amended from time to time, MERCHANT must establish or maintain a Reserve Account in an amount satisfactory to BANK.
- 8.7 Recoupment and Set-Off. BANK has the right of recoupment and set-off from the Reserve Account or the Account. This means that it may offset any outstanding/uncollected amounts owed from: (i) any amounts it would otherwise be obligated to deposit into the MERCHANT Account, and (ii) any other amounts MERCHANT may owe BANK under this Agreement or any other agreement. MERCHANT acknowledges that in the event of a bankruptcy proceeding, in order for MERCHANT to provide adequate protection under Bankruptcy Code Section 362 to BANK, MERCHANT must create or maintain the Reserve Account as required by BANK, and BANK will have the right of offset against the Reserve Account for any and all obligations which MERCHANT may owe to BANK, without regard to whether the obligations relate to sales drafts initiated or created before or after the filing of the bankruptcy petition.
- 8.8 If MERCHANT is terminated for cause, MERCHANT acknowledges that BANK may be required to report MERCHANT'S business name and the names and other identification of its principals to the Combined Terminated Merchant File (MATCH) maintained by VISA, MasterCard, and Discover Network. MERCHANT expressly agrees and consents to such reporting in the event MERCHANT is terminated for any of the reasons specified as cause by VISA, MasterCard, and Discover Network. Furthermore, MERCHANT shall hold harmless BANK for claims which MERCHANT may raise as a result of such reporting.
- 8.9 Bankruptcy. MERCHANT will immediately notify BANK of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against MERCHANT or any of its principals. MERCHANT will include 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, and failure to do so will be cause for immediate termination or any other action available to BANK under applicable rules or law. MERCHANT acknowledges that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of MERCHANT, and, as such, cannot be assumed or assigned in the event of MERCHANT'S bankruptcy.
- 8.10 In the event MERCHANT requests a rate reduction or a fee reduction on any rate or fee set forth herein and BANK agrees to said reduction, the Term of this Agreement shall automatically be extended for an additional two (2) years from the date said rate or fee reduction takes effect.
- 9.0 Notices.
- 9.1 All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class, postage prepaid, addressed as follows:  
 (a) Woodforest National Bank, P.O. Box 8339, The Woodlands, TX 77387-8339  
 (b) If to MERCHANT, to any owner or officer stated in this Agreement at the MERCHANT'S place of business as also stated on this Merchant Application.
- 10.0 Additional Terms.
- 10.1 Card Plans. This Agreement is subject to the bylaws and rules promulgated by VISA, MasterCard, Discover Network, or any other card plan. The parties hereto are bound by and shall fully comply with these bylaws and rules and by such amendments or additions as may be made hereto. The parties hereto shall further comply with all Debit/ATM Network rules and regulations.
- 10.2 Inspection of Books and Records. Representatives of BANK may, during normal business hours, inspect, audit and make records of MERCHANT'S books, accounts, records and files pertaining to any card transactions. During the term hereof, at the request of BANK, MERCHANT shall provide up to two (2) years of current financial statements and other related information that is requested by BANK. MERCHANT will preserve its records of any card sale and any refund or credit adjustment thereon for at least seven (7) years from the date of such sale, credit, refund or adjustment.
- 10.3 Confidentiality. MERCHANT will not use for its 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 BANK (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that MERCHANT uses to protect its own confidential information.
- 10.4 Privacy. Woodforest National Bank complies with the Bank Secrecy Act and the USA Patriot Act to help the government fight the funding of terrorism and money laundering activities. Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account or becomes a new customer of the financial institution. Our Customer Identification Program is designed to comply with all federal mandates. When MERCHANT opens an account or obtains a service from the bank, BANK will ask for owner/officer name, address, date of birth, and other information that will allow BANK to identify MERCHANT. BANK will also be asking MERCHANT to provide to identifying documentation, such as driver's license or other forms of identification. BANK can and will refuse to open an account or provide services if adequate identification is not provided, or BANK is dissatisfied with the identification provided. BANK collects non-public personal information about MERCHANT from the following sources: Information received from on applications or other forms; Information about transactions with BANK, our affiliates, or others; and Information received from consumer reporting agencies. As required by the USA PATRIOT Act, BANK also collects information and takes actions necessary to verify MERCHANT identity. BANK may disclose all the information collected, as described above, to companies that perform marketing services on BANK'S behalf or to other financial institutions with which BANK has joint marketing agreements. BANK does not disclose any non-public personal information about our MERCHANTS to anyone, including our affiliates, except as permitted by law. Internally, BANK restricts access to non-public personal information about MERCHANTS to associates who need to know that information to provide customer support and or to maintain records. BANK'S internal conduct clearly defines the manner in which an associate may access, use, or disseminate non-public information. BANK maintains physical, electronic, and procedural safeguards that comply with federal standards to guard MERCHANT'S non-public personal information. If MERCHANT decides to close account(s) or become an inactive merchant, BANK will adhere to the policies and practices as described in this notice.
- 10.5 Force Majeure. BANK shall not be liable for any damages resulting from any delay in performance or non-performance caused by circumstances beyond BANK'S control including, but not limited to acts of God, fire, flood, war, governmental action, accident, labor trouble or shortage, or other events of similar effect in connection with BANK'S obligation herein.
- 10.6 Amendment. MERCHANT acknowledges that the terms set forth herein including but not limited to fees, rates, and charges may be changed by BANK. MERCHANT agrees that any such changes shall be considered accurate and final unless MERCHANT disputes them in writing within 30 days of receipt of documentation showing said changes.
- 10.7 Section Headings. All section headings contained herein are for descriptive purposes only, and the language of such section shall control.
- 10.8 Assignability. This Agreement may not be assigned, directly or by operation of law, without the prior written consent of BANK.
- 10.9 Attorney's Fees and Costs. MERCHANT shall be liable for and indemnify BANK for any and all attorney's fees and other costs and expenses paid or incurred by the BANK in the enforcement hereof, or in collecting any amounts due from MERCHANT to BANK hereunder or resulting from any breach by MERCHANT of any of the terms or conditions of this Agreement.
- 10.10 Binding Effect: Governing Law; jurisdiction and Venue. Any action or proceeding on this Agreement by or against BANK shall be initiated and maintained under the jurisdiction of the State of Texas with venue in the courts of Harris County, in which case this Agreement shall be construed and governed by the laws of the State of Texas. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.
- 10.11 The rights conferred upon BANK in this Agreement are not intended to be exclusive of each other or of any other rights and remedies. Rather, each and every right of BANK at law or in equity will be cumulative and concurrent and in addition to every other right.
- 10.12 In the event MERCHANT chooses to participate in the Optional Merchant Club, the following Terms and Conditions shall apply: The term of enrollment is for one (1) year. The term shall be automatically and continually renewed for consecutive one-year terms unless the Merchant or Bank provides a written notice of non-renewal at least sixty (60) days prior to end of the then existing term. The fee for membership shall be charged per unit of equipment per month (terminal, printer, pinpad or any combination thereof). MERCHANT understands membership fee is in addition to fees charged by BANK in MERCHANT'S Merchant Bankcard Agreement. In the event MERCHANT'S Merchant Bankcard Agreement is terminated during the existence of any term of membership, the fee shall be paid for the remainder of the then existing term. Example: In the event a MERCHANT becomes a member and is terminated after seven (7) months, the remaining five (5) months of fees shall still be paid by MERCHANT to BANK. For all members in good standing, and subject to the terms herein, BANK shall provide equipment support or repair during the membership term. If the equipment cannot be repaired, it shall be replaced with refurbished equipment of comparable quality. MERCHANT agrees to pay any and all encryption fees. For any equipment shipped by BANK to MERCHANT hereunder, MERCHANT shall pay BANK the sum of \$29.95 per item to cover shipping and handling. MERCHANT agrees to pay BANK additional fees for Saturday or priority delivery. In the event BANK replaces any item of equipment for MERCHANT'S faulty equipment, MERCHANT is required to send BANK the faulty equipment within thirty (30) days from the date MERCHANT receives the replacement equipment. In the event MERCHANT fails to comply with this section, MERCHANT shall be required to pay BANK the full retail price for the replacement equipment immediately upon the expiration of said thirty (30) day period. Full membership benefits do not take effect for thirty (30) days following the Date of Enrollment. In the event BANK provides replacement equipment during the first thirty (30) days of membership, MERCHANT shall pay BANK the sum of \$75.00 per unit replaced. The following items are NOT covered under the membership and MERCHANT shall receive NO benefits for said items: wireless terminals, power packs, pin pad cables, check reader cables, printer cables, printer ribbons, or any other cable that would connect a peripheral device to the terminal, equipment which in the sole discretion of BANK has been subject to abuse, accidental damage, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service which in any way is not contemplated in the documentation for the equipment, equipment with alteration tampering or defacing of the serial number or model number, any damage that occurs in shipment due to an act of God, failures due to power surges, cosmetic damage.
- 10.13 MERCHANT is liable for repayment to BANK for all valid chargebacks related to Debit and/or ATM Transactions. BANK will comply with Debit/ATM Networks' prevailing Rules and Regulations in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside the Debit/ATM Network Rules and Regulations.
- 10.14 MERCHANT agrees to \$25 per hour, with one (1) hour minimum, research fee to be charged by BANK for research it performs at MERCHANT'S request.
- 10.15 For purposes of compliance with VISA CISP, MERCHANT is required to notify BANK in writing of any changes to the software type and version number from that originally stated within this Agreement. MERCHANT is liable to BANK for all losses and expenses incurred by BANK arising out of a failure to report changes to BANK.
- 10.16 MERCHANT must report to BANK its participation in any cash advance program outside of that offered by BANK. Failure to report participation in such a program shall result in immediate termination of MERCHANT account.
- 11.0 Fleet Card Acceptance.
- 11.1 If MERCHANT executes a Wright Express ("WEX") Merchant Agreement, MERCHANT understands that BANK will provide such agreement to WEX, but that neither BANK nor WEX shall have any obligation whatsoever to MERCHANT with respect to processing WEX Cards unless and until WEX executes WEX Merchant Agreement. If WEX executes WEX Merchant Agreement and MERCHANT accepts WEX cards, MERCHANT understands that WEX transactions are processed, authorized, and funded by WEX. MERCHANT understands that WEX is solely responsible for all agreements that govern WEX transactions and that BANK is not responsible and assumes absolutely no liability with regard to any such agreement or WEX transactions, including, but not limited to, the funding and settlement of WEX transactions. MERCHANT understands that WEX will charge additional fees for the services that it provides.
- 11.2 If MERCHANT accepts Voyager Cards, MERCHANT should adhere to the following Voyager Regulations:  
 (a) MERCHANT should check Fleet Cards for any printer restrictions at the point of sale,  
 (b) If an increase in the number of Voyager transaction authorization calls from MERCHANT, not due to Voyager system outages, are in excess of 15% for a given month as compared to the previous month, Voyager may, in their sole discretion, deduct telephone charges not to exceed \$.25 per call for the increased calls from MERCHANT settlement of MERCHANT'S Voyager transactions,  
 (c) Settlement of Voyager transactions will generally occur by the fourth banking day after the applicable card transaction is processed. Voyager shall reimburse MERCHANT for the dollar amount of sales submitted for a given day by MERCHANT, reduced by the amount of chargebacks, tax exemptions, discounts, credits, and other fees,  
 (d) For daily transmission of data, MERCHANT shall maintain true and complete records for not less than thirty-six (36) months from the date of generation of the data, and MERCHANT is responsible for the expense of retaining such sales data records and sales drafts,  
 (e) In addition to the information provided in Section 6.3, in no event shall BANK'S cumulative liability to MERCHANT for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions, exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by MERCHANT for the two months prior to the action giving rise to the claim.