

TAB 15



City of Palmetto Agenda Item

Meeting Date**8/16/10**

Presenter: **Jim Freeman** **Department:** Finance

Title:**To approve banking agreements for banking services**

PROBLEM: The City Commission has approved the selection of BB&T to provide banking services as a result of the RFP process.

BACKGROUND: On July 19, 2010 the City Commission approved the RFP Committee's recommendation to award the contract for banking services to BB&T. BB&T was chosen by the committee for it's ability to provide the needed services effectively and provide higher interest rates on the city's cash as well as lower service fees.

The City Attorney is reviewing four agreements necessary for the banking services BB&T will be providing. These four agreements include: Treasury Management (main contract), Remote Deposit (new service), Merchant Services (online credit cards) and Armored Car services (free service to the city). The Treasury Management agreement is necessary to the set-up of the accounts as soon as possible, while the other three may be approved at a later date.

Currently, the City Attorney has reviewed the Treasury Management agreement. While the agreement is better for the City than any other agreements between BB & T and other Florida cities according to BBT, the City Attorney continues to have reservations and is working to complete language changes in the other three agreements. We would ask for Commission's approval of all four agreements subject to the City Attorney's final review.

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** **Expenditure Amount:**

Additional Budgetary Information:

Funding Source(s): FY2011 Budget **Sufficient Funds Available:** ☒ Yes ☐ No **Budget Amendment Required:** ☒ Yes ☐ No **Source:**

City Attorney Reviewed: ☐ Yes ☐ No ☒ N/A **Advisory Board Recommendation:** ☐ For ☐ Against ☒ N/A **Consistent With:** ☐ Yes ☐ No ☒ N/A

Potential Motion/ Direction Requested: Approve the Mayor to execute the Treasury Management agreement with BB & T for the Remote Deposit, Armored Car and Merchant agreements subject to the City Attorney's final review.

Staff Contact: Karen Simpson Finance

Attachments: Treasury Management Agreement

BB&T FINANCIAL, FSB
MERCHANT AGREEMENT AND MERCHANT PROGRAM GUIDE

I. Acceptance of Cards

1.1 Honor Cards. The undersigned Merchant ("Merchant") agrees to honor all valid Cards in the selected Card acceptance category below, bearing the MasterCard, Visa and/or Discover Network trademarks as well as other credit, debit and electronic payment Cards ("Card(s)") not included below, but serviced by BB&T Financial, FSB ("Bank"), when properly presented as payment by customers who hold Cards ("Cardholders") in connection with business Transactions arising out of Merchant's usual trade or business as disclosed in the Merchant Application. Merchant may not establish any practices that discourage, favor or discriminate against the use of any particular Card. However, the Merchant may choose limited acceptance and choose not to accept either U.S. issued Debit Cards or U.S. issued Credit Cards as described in the acceptance categories below:

The Merchant must select one of the following Card acceptance categories:

☐ **Accept all MasterCard, Visa or Discover Network Cards including consumer credit and debit, and commercial Cards.**

☐ **Limited Acceptance. Accept MasterCard, Visa or Discover Network consumer credit and commercial Cards only.** Merchants choosing this option must accept all MasterCard, Visa or Discover Network credit and commercial products including MasterCard, Visa or Discover Network business check Cards.

☐ **Limited Acceptance. Accept MasterCard, Visa or Discover Network consumer debit Cards only.** Merchants choosing this option must accept all MasterCard, Visa consumer or Discover Network debit Card products, which will be identified with the word "DEBIT" printed on the front of the Card.

If a Merchant selects one of the limited acceptance options, any Transaction submitted into interchange outside of the selected product category will be downgraded and assessed all applicable interchange, assessment, and handling fees.

If Merchant accepts Card checks, the Merchant's Card check acceptance policy must treat the acceptance of checks from all Payment Card brands equally. Merchant should handle these Card checks like any other personal check drawn upon a bank in the United States.

China UnionPay, JCB® and Diners Club International® (DCI) Card Transactions that are accepted by Merchant and processed through the Discover Network will be considered and treated as Discover Network Transactions for the purposes of this Agreement and all applicable Discover Network Rules will apply as referenced throughout this Agreement.

Merchant will be paid by Bank or by one of Bank's affiliated financial institutions holding the Operating and/or Reserve Account ("Affiliate(s)") on the terms and conditions provided for in this Agreement by and between Merchant and Bank ("Agreement"). Visa U.S.A., Inc. ("Visa"), MasterCard International Incorporated ("MasterCard"), DFS Services, LLC ("Discover Network"), Interlink, Maestro, NYCE, Honor, Explore, MAC, and Pulse are payment networkPayment Networks providing services to banks that provide for the electronic processing of sales drafts. They are referred to jointly in this Agreement as "Payment Networks."

Merchant understands and agrees to the following terms and conditions:

1.2 Card Descriptions. At the point of sale, Merchant must carefully examine the Card to be certain it is legitimate and valid. This includes checking for: appropriate account numbers, holograms with the appropriate symbol, valid effective dates, expiration dates and signatures. Do not permit a person other than the Cardholder to sign a sales draft; the signature must match.

1.3 Displaying Service Marks. Merchant must adequately display in each of its locations, catalogs, and websites, the appropriate service mark symbols and names (such as decals, stand-alone point-of-sale signs, etc.) in compliance with the current signage Rules of the Payment Networks, based upon the selected Card acceptance category selected by Merchant under Section I. I of this Agreement to inform Cardholders of the Cards Merchant will honor at all of its places of business. Merchant will not use the marks or logos of Cards that are not included in Merchant's selected Card acceptance category nor in a manner that creates the impression that Merchant's goods or services are sponsored, produced, affiliated with, or offered or sold by any Payment Network. Merchant agrees not to use the marks or logos on its stationary, letterhead, envelopes or

the like nor in its solicitations without prior review and written approval by Bank. Merchant's right to display the above names, service marks or symbols will continue only so long as this Agreement remains in effect or until Merchant is notified by Bank to cease usage or display.

(a) Discover Network Sublicense to Use 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 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 pursuant to the Merchant Program 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 Merchants must be 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.

1.4 Agreement and Payment Network Rules. Merchant agrees to follow all requirements of this Agreement in connection with each Card Transaction and to comply with all applicable Payment Network Rules. From time to time, Bank may amend the Agreement, by providing Merchant with prior written notice as provided in Section 5.6, and those provisions will be deemed incorporated into this Agreement.

1.5 Transaction Procedures and Obligations. In this Agreement, "Transactions" means sales, credits, errors, returns and adjustments.

(a) Obtaining Authorization. Merchant agrees to obtain an Authorization approval Code for all Transactions in the manner instructed in materials provided by Bank. The Card issuer must approve the Transaction. Issuer approval is obtained by contacting the center designated by Bank. Merchant may not request authorization before the charge date, except as permitted by this Agreement and the respective Payment Network operating Rules, regulations, procedures, policy statements and guidelines (collectively, "Rules") for specific types of Transactions such as lodging and car rental. If authorization is granted, Merchant must provide an authorization code on the record of each charge submitted for processing. If authorization is denied, Merchant will not make further attempts to obtain authorization with that Card on that day, must not allow the charge, and should follow instruction from the authorization provider. If the charge involved suspicious or unusual circumstances, Merchant must request a "Code 10" authorization. Merchant will retain any Card presented by reasonable and peaceful means, if requested to do so by the authorization provider.

(b) Scope of Authorization. If Merchant completes a Transaction without required authorization, Merchant will be responsible for any chargeback of the Transaction and for any additional fees imposed by Visa for settling Transactions that have not been authorized. A positive Authorization request for Visa, MasterCard and Discover Network Transactions remains valid for thirty (30) days. Obtaining authorization only means that, at the time authorization is requested, sufficient credit is available from the Card issuer to the Cardholder and the Card is not on a warning list. Obtaining authorization does not assure that the person using the Card is a Cardholder and will not prevent a chargeback to Merchant for numerous reasons under the Payment Network Rules, including use of the Card by an unauthorized user or a claim or defense involving the Transaction by the Cardholder. In the event of a POS authorization failure or communication error, Merchant agrees to obtain authorization according to voice back-up procedures furnished by Bank, at current per authorization fees and interchange rates.

(c) Agreements in Accepting Cards. Merchant agrees not to do any of the following, whether the Transaction is approved, declined, or processed as a sale Transaction:

(i) impose a surcharge on Cardholders who elect to use a Card in lieu of payment by cash, check or other mode of payment;

(ii) establish minimum or maximum dollar Transaction amounts exclusively for those customers choosing to use Cards as a payment option except that for Discover Network Transactions, Merchant may limit the maximum amount a Discover Network Cardholder, if and only if, Merchant has not received a positive response from the Card Issuer;

(iii) obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;

(iv) extend Merchant credit for, or defer the time of payment of the total cash price in any Transaction;

- (v) honor a Card except in a Transaction where a total cash price is due and payable;
- (vi) make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- (vii) transmit or accept for payment any Transaction which was not originated directly between Merchant and Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application initially submitted to and approved by Bank ("Merchant Application"). Charges involving solicitations from third parties, for example, telemarketing by independent contractors, and charges involving franchisees, partners, or joint venturers of Merchant are not allowed except as authorized in writing signed by an officer of Bank.
- (viii) honor or accept a Card as payment for legal services or expenses arising out of or related to (1) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (2) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- (ix) use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- (x) redeposit a previously charged Transaction, regardless of whether Cardholder consents;
- (xi) initiate a Transaction that is illegal or related to illegal activities by Cardholder;
- (xii) use authorization and any data received therefrom for any other purpose except for determining whether Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- (xiii) draw or communicate any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- (xiv) disclose any information obtained through Bank to any person except for necessary disclosures to affected Cardholders, Bank and/or the Card issuer, or as Merchant may otherwise be required by law to provide;
- (xv) add any tax to Transactions unless applicable law expressly requires that Merchant collect a tax. Any tax, if allowed, must be included in the Transaction amount and collected separately;
- (xvi) disburse funds in the form of cash advances, or travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant or otherwise;
- (xvii) accept a Card to collect or refinance an existing debt deemed uncollectible;
- (xviii) issue a Transaction credit for returned goods or services acquired in a cash Transaction;
- (xix) make any cash refund to a Cardholder who has made a purchase with a Card. All Transaction credits must be issued to the same Card account number as the sale and may not exceed the amount of the original sale;
- (xx) present to Bank any Transaction it knows or should have known to be fraudulent, not authorized by the Cardholder or not made pursuant to all applicable terms and conditions of this Agreement; or
- (xxi) execute two or more Transactions for a single purchase or service or purchases consummated at a single time in order to avoid authorization.
- (xxii) require the Cardholder to supply any personal information (e.g., home or business phone numbers; home or business address; or driver's license number) unless instructed by the Authorization Center. One exception to this is for an Internet/mail/phone order or delivery-required Transaction and zip-code for a Card-present key-entered Transaction in order to obtain an Address Verification (AVS). A second exception exists in cases where the Card is not signed. The Merchant must review two pieces of positive identification such as a passport, driver's license or government issued picture identification bearing the Cardholder's signature and ask the Cardholder to sign the Card in order to proceed with the Transaction.

(xxiii) quote or otherwise advise Cardholders of the total Card Transaction amount in U.S. Dollars if the Transaction was completed in an Approved Currency other than U.S. Dollars. Such quotes significantly increase Cardholder inquiries and Disputes because the U.S. Dollar equivalent at the time of the Card Transaction is not necessarily the actual amount billed to the Cardholder due to fluctuating exchange rates between the Card Transaction date and Settlement of the Card Transaction.

(d) Process for Completion of Sales – “Card-Present.”

(i) All “Card-Present” sales slips, drafts or other instruments acknowledging or recognizing the Transactions and credit vouchers submitted by Merchant to Bank will be completed to include either an electronic printing resulting from the use of an industry-compliant magnetic stripe reading Point-of-Sale (POS) device, or physical imprint of the Cardholder’s Card, which shall contain: account number, Cardholder name, Merchant name, Merchant address, Merchant Internet address, city and state where the Transaction occurred, Merchant’s account number, Merchant customer service telephone number, Transaction date, Transaction dollar amount, a brief description of goods purchased or leased, or services rendered, and the signature of the authorized user as it appears on the back of the Card. For Discover Network Transactions, the Transaction receipt or credit voucher must contain the signature of the authorized Merchant representative or employee that conducted the Transaction. Merchant understands and agrees that if the receipt is electronically printed, the Cardholder copy of the receipt must reflect only the last four digits of the Cardholder account number and preceding digits must be pre-filled by an “X”, “*” or “#” Example: Cardholder Account Number: *****1234. The Merchant copy of the receipt may be required to reflect no more than the last four or five digits of the Cardholder account number depending upon state or local legislation enacted in the jurisdiction of Merchant’s location. It is Merchant’s responsibility to determine requirements of and comply with local and/or state legislation as applicable.

(ii) Merchant is responsible for determining that the presented Card has not expired, and that the Card contains the Cardholder’s signature as shown on the reverse side signature panel of the Card. Merchant must also make sure the account number displayed on the terminal and/or the sales draft matches the embossed number on the Card. If Merchant can not or does not verify the account number and accepts the sale, Merchant may be subject to chargeback and could be debited for the amount of the Transaction, plus any chargeback fees or Payment Network fees.

(iii) If the Card’s magnetic stripe is unreadable, Merchant will key-enter the Card number into the POS device, complete the Transaction by imprinting the Cardholder’s Card and include the authorization code and all information indicated in subsections (d)(i) and (ii) above. Merchant must deliver a fully completed, legible copy of the Transaction to Cardholder at the time of Transaction. Merchant must also use Address Verification Service (AVS) to electronically verify Cardholder’s billing zip code from the Payment Network for face-to-face key entered sales. If Card’s magnetic stripe cannot be read, Bank will pass on all applicable Payment Network interchange assessments it incurs to Merchant.

(iv) Special Guidelines Regarding Unembossed Cards: Visa, MasterCard and Discover Network now allow issuance of unembossed Cards, such as pre-paid gift Cards. The Cards may have laser-engraved or thermal printing of the account number. MasterCard has branded its Card offering as “MasterCard Electronic” and the logo on the Card reflects this terminology. Visa and Discover Network Cards will indicate “electronic use only” on the face of the Card. Card numbers and names, if present, on both Cards are smooth; in contrast to raised or embossed numbers on the Cards Merchant may be more familiar with today. The Cardholder must be physically present in order to complete a Transaction. If the Card is valid only in a country different from where the Merchant establishment is located, the Card may not be accepted. Otherwise, unembossed Cards may be accepted by any Merchant utilizing an electronic payments terminal, which is capable of reading the magnetic stripe. If the magnetic-stripe read fails, Visa and Discover Network recommend that the Merchant request another form of Visa payment. Because the Card is not capable of being imprinted, Merchant will have to hand-write the Card number on the sales draft and/or key-enter the Transaction. If Merchant accepts an unembossed Visa or Discover Card without successfully swiping the magnetic-stripe, the Transaction could be subject to dispute and/or chargeback should the issuer dispute the Transaction. Merchant must not accept or submit a Transaction if the swipe cannot be successfully completed for MasterCard Electronic Card Transactions; no hand-keyed Transactions or hand-written sales drafts are allowed.

(v) Cash Over Transactions (i.e., the dispensing of cash by Merchant in connection with a Card sale or purchase) are not available for MasterCard or Visa Transactions. Only Merchants granted specific, advance permission by Bank may issue Cash Over in connection with a Discover Network Card Transaction provided the Transaction is conducted in compliance with the provisions of this Agreement and including the following additional requirements. Merchant must receive one positive authorization request for the aggregate total of the good/services purchase amount and the Cash Over amount of the Card Transaction. The Merchant must complete one Sales Draft and must include the purchase amount and the Cash Over amount. No minimum purchase amount is required for Merchant to offer Cash Over to a Discover Network Cardholder, provided that some portion of the total Card sale must be attributable to the purchase of good or services. The maximum amount of cash that a Merchant may issue as Cash Over is \$100. A Merchant must not issue Credit for the Cash Over portion of a Card Transaction.

(vi) Merchants participating in MasterCard's Quick Payment Service Program, Visa's Small Ticket, MasterCard's Small Ticket and/or certain Discover Network Transactions submitted under certain Merchant category codes approved by Discover Network with full track data and the sale amount is \$25 or less, are not required to obtain the Cardholders signature under certain conditions set forth by each program.

(e) **Process for Completion of Sales – "Card-Not-Present."** The following provisions apply to "Card-Not-Present" Transactions:

(i) **Limits on Transactions.** Card-Not-Present Transactions include mail, telephone, and electronic commerce Transactions. Merchant may only engage in Card-Not-Present Transactions to the extent reflected in the application as a percentage of total Card Transactions. Failure to adhere to this requirement may result in termination of this Agreement

Card-Not-Present Transactions have a substantially higher risk of chargeback. Since Cards are not imprinted or magnetically swiped and the Cardholder's signature is not obtained on the sales draft, Merchant assumes all risk associated with Card-Not-Present Transactions. As to each Card-Not-Present Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant, Merchant shall pay Bank the amount of the Transaction, any chargeback fee in the attached fee schedule, plus any Payment Network fine or assessment. Bank may charge such Transaction to the Operating Account or Reserve Account without prior notice to Merchant.

(ii) **Payment Network Requirements.** The following procedures are required by the Payment Networks and Merchant agrees to follow these procedures and comply with these requirements. The following may also be useful in reducing chargebacks in a Card-Not-Present processing environment:

- Obtain Authorization. All Card-Not-Present Transactions must be electronically authorized. An authorization should be seen as an indication that account funds are available and Card has not been reported lost or stolen. It is not proof that the true Cardholder engaged in the Transaction.
- On the sales draft, clearly print the Cardholder's account number; effective and expiration dates; date of Transaction; description of the goods and services; amount of the Transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; authorization code; Merchant's name and address (city and state required) and in lieu of Cardholder's signature, a notation of (i) mail order (MO), (ii) telephone order (TO), (iii) e-commerce order (EO), or (iv) pre-authorized order (PO) on the signature line. Merchant understands and agrees that if the receipt is electronically printed, the Cardholder copy of the receipt may not reflect the effective and expiration dates and must reflect only the last four digits of the Cardholder account number and preceding digits must be pre-filled by an "X", "*" or "#". Example: Cardholder Account Number: *****1234. The Merchant copy of the receipt may be required to reflect no more than the last four or five digits of the Cardholder account number depending upon state or local legislation enacted in the jurisdiction of Merchant's location. It is Merchant's responsibility to determine requirements of and comply with local and/or state legislation as applicable.

- Utilize Visa Cardholder Verification Value 2 (CVV2), MasterCard Card Validation Code 2 (CVC2), or Discover Card Identification (CID). CVV2/CVC2/CID is a three-digit number imprinted on the signature panel of Visa, MasterCard, or Discover Network Cards, respectively, to help Card-Not-Present Merchants verify that the customer has a legitimate Card in hand at the time of the order. Discover Network Rules specifically require that Merchants submit the CID with the Authorization request for all Card-not-present Transactions. The Merchant asks the customer for the CVV2, CVC2 or CID code and then sends it to the Card Issuer as part of the authorization request. The Card Issuer checks the CVV2, CVC2 or CID code to determine its validity, and then sends a CVV2, CVC2 or CID result back to the Merchant along with the authorization. CVV2 is required on all Visa Cards. To protect CVV2, CVC2 and CID data from being compromised, Payment Network Operating Regulations prohibit Merchants from knowingly or unknowingly keeping or storing CVV2, CVC2 or CID numbers once a Transaction has been completed and Merchant agrees that this data will not be kept or stored electronically or manually.
- If feasible, obtain and keep a copy of the Cardholder's signature on file on a form authorizing you to submit Card-Not-Present Transactions.
- Utilize Address Verification Service (AVS). Merchant must perform electronic address verification to verify Cardholder's billing address from the Payment Network for telephone, mail order, or e-commerce Transactions. Failure to do so may result in increased interchange fees. AVS is a separate process from obtaining an authorization and will provide a separate response. This service is designed to assist Merchants in reducing the risk of fraud by confirming whether certain elements of the billing address provided during a Card-Not-Present Transaction match the billing address maintained by the Issuing Bank. It is Merchant's responsibility to monitor the AVS responses and use the information provided to avoid high risk Transactions. It is recommended that the Merchant ship to the same address that received a "match" response code when AVS was performed. Discover Network Rules specifically require that Merchants receive a positive AVS match response for all submitted Card-not-present Transactions.
- Merchant must transmit a ticket/invoice number as part of the authorization. Failure to do so may result in increased interchange fees.
- Merchant must notify the Cardholder of shipping date (or delivery time frames), special handling, or cancellation policies. Disclosure of these time frames or policies does not prevent the Cardholder from disputing the Transaction.
- Merchant must not submit Transaction until the Merchant has shipped the goods or provided the service purchased by the Cardholder. Merchant must obtain proof of Delivery or other evidence of successful delivery of the goods or services as directed by the Cardholder and must retain proof of delivery or other evidence for 265 calendar days from the delivery date in case of a dispute of the Card Transaction. If Cardholder visits the Merchant's retail location to pick up the goods ordered, the Merchant must obtain an imprint of the Card as well as the Cardholder's signature.

(iii) Card-Not-Present Fraud Indicators. Card-Not-Present fraud indicators may include, but are not limited to, the following and when one or more indicators is true during a Card-Not-Present Transaction, fraud may be involved:

- First-time shopper. Criminals are always looking for new victims.
- Larger than normal orders. Because stolen Cards or account numbers have a limited life span, criminals must maximize the size of the purchase.

- Orders that include several of the same item. Having multiples of the same item increases a criminal's profits.
- Orders made up of "big ticket" items. These items have maximum resale value and therefore maximum profit potential.
- "Rush" or "overnight" shipping. Criminals want these fraudulently obtained items as soon as possible for the quickest possible resale; they are typically not concerned about extra delivery charges.
- fraudulent Cardholders outside of the United States. Visa AVS cannot validate outside the United States, except Canada and the United Kingdom.
- Transactions with similar account numbers. The account numbers may have been generated using software available on the Internet.
- Shipping to a single address, but Transactions placed on multiple Cards. Could involve an account number generated using special software or a batch of stolen Cards.
- Multiple Transactions on one Card over a very short period of time. Could be an attempt to "run a Card" until the account is closed
- Multiple Transactions on one Card or a similar Card with a single billing address but multiple shipping addresses. Could represent organized activity rather than one individual at work.
- In online Transactions, multiple Cards used from a single IP (Internet Protocol) address. More than one or two Cards could indicate a fraud scheme.
- Orders from Internet addresses that make use of free e-mail services. These e-mail services involve no billing relationships and often neither an audit trail nor verification that a legitimate Cardholder has opened the account.

If Merchant is suspicious of a Transaction, the Merchant must request a "Code 10" authorization as provided in section 1.5(a).

(iv) Additional Requirements for Completion of Electronic Commerce Transactions. Merchant must notify Bank in writing of its intent to accept Card Transactions over the Internet and obtain Bank approval prior to initiating the Transactions. Merchant agrees to comply with the requirements of this Agreement and those requirements of the Payment Networks for each Card Transaction processed over the Internet. The Merchant shall take all steps necessary to ensure all credit Card information received and transmitted via the Internet is encrypted to meet Payment Network Secure Electronic Transaction (SET) standards. Additionally, each Internet Discover Network Card Transaction accepted by Merchant and submitted to Bank shall comply with Discover Network standards, including, without limitation, Discover Network standards governing the formatting, transmission, and encryption of data, referred to as the "designated protocol." The designated protocol for the encryption of data is Secure Socket Layer (SSL). Merchant must not accept any Internet Card Transactions unless the Transaction is sent by an Internet browser that supports the protocol. Electronic Commerce Merchants must provide Bank with (1) the name of the company that issued their Digital Certificate; (2) their Digital Certificate Number; and (3) the expiration date of their Digital Certificate before engaging in any Internet commerce Transactions. In addition, the Electronic Commerce Indicator must be used to identify electronic commerce Transactions in the authorization request and clearing record. Penalties can be assessed for failure to use the correct Electronic Commerce Indicator. Merchant agrees that for Internet Transactions, copies of Transaction records will be delivered to the Cardholder electronically or in paper format. Cardholder account numbers will not be transmitted to Cardholders for Internet purchases. Merchant may not store or maintain the 3-digit CVV2/CVC2/CID value obtained from a Cardholder. As to each Electronic Commerce Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as

Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant, Merchant shall pay Bank the amount of the Transaction, any chargeback fee in the attached fee schedule, plus any Payment Network fine or assessment imposed on Bank. Bank may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant.

If Merchant conducts Internet Transactions, Merchant's website must include:

- a posting of the Merchant's consumer data privacy policy,
- the method of Transaction security employed,
- a complete description of goods and services offered,
- a returned merchandise and refund policy,
- a customer service contact including Electronic Mail Address and/or telephone number,
- Transaction currency,
- delivery policy,
- export or legal restrictions,
- physical address of the Merchant's permanent establishment and its country of domicile on either the checkout page or within the sequence of the web pages during the checkout process.

The website must also prominently disclose that the sale or disclosure of Cardholder account numbers, personal information or Transaction information to third parties is prohibited.

Additional website requirements for Internet Payment Service Providers. An Internet Payment Service Provider must provide customer service through its website if the Cardholder accesses the Internet Payment Service Provider's website directly. The Internet Payment Service Provider must provide customer service either directly or through its sponsored Merchants.

(v) Recurring, pre-authorized orders. If Merchant accepts a pre-authorized recurring order, the Cardholder must execute and deliver to Merchant a written request for this pre-authorization. This written request, which may include on-line consent, must be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once a year. Merchant will not deliver goods or perform services covered by a pre-authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored. An authorization approval code may only be used once, as such a new authorization is required for each recurring charge. The floor limit for recurring bill payments is \$0. Merchant must always obtain an authorization and identify recurring bill payments in the authorization request as required by MasterCard, Visa and Discover. For all recurring Transactions, Merchant should submit the 3-digit Card validation code (CVV2/CVC2/CID) with the first authorization, but not subsequent authorization requests. Discover Network Rules specifically require that Merchant follows this Card Validation Code practice for Discover Network recurring Transactions. A recurring Transaction can NOT be deposited if an authorization request receives a negative response. Forced depositing of declined authorization requests is prohibited. If a Card expires during the term of the Cardholder's Recurring Payment Plan, Merchant must obtain a current Expiration date from the Cardholder and Merchant must obtain an approved Authorization response using the new expiration date before submitting to Bank any installment that comes due after the Card expiration date. Identify recurring bill payment Transactions in authorization and clearing record as required by MasterCard, Visa and Discover. The clearing record for recurring Transactions must contain Merchant contact information in the Merchant name or city field to enable the Cardholder to contact the Merchant directly. Partial payment for goods or services purchased in a single Transaction is NOT allowed. Finance Charges are not permitted on a recurring Transaction. The account number may not be used for any purpose other than for a recurring payment. All

Transaction receipts for recurring electronic commerce Transactions must include the frequency and duration of the recurring Transactions as agreed to by the Cardholder on the Transaction receipt. "Recurring Transaction" must be written on the signature line of the Transaction receipt. Also, for Discover Network recurring Transactions, the Transaction receipt must include a general description of the Transactions, your Merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring Transaction.

(f) **Special Provisions Regarding Transaction Authorization and Submission.** All Transactions must be authorized prior to completion of the Transaction. Generally, the authorization must be obtained on the Transaction date, except in special conditions such as in travel and entertainment Transactions, mail or phone orders, electronic commerce, or automated fuel dispenser Transactions. Additional fees will be imposed on Visa Transactions that have received positive authorization responses but are not subsequently submitted within twenty (20) days for travel and entertainment (T&E) Merchants and ten (10) days for all other Merchants; or for Visa Transactions that do not subsequently have the authorizations reversed within twenty-four (24) hours for Card-present Transactions or within seventy-two (72) hours for Card-not-present Transactions, such as in the case of cancelled sales. Additional fees will also apply on Visa Credit Transactions if not subsequently submitted within ten (10) days for T&E Merchants and five (5) days for all other Merchants.

If a Discover Network sale is cancelled or if the amount of the Transaction changes following the Merchant's receipt of the positive authorization response for the sale, Merchant must call the Voice Authorization Center directly and request a cancellation of the authorization. An authorization may be cancelled at any time within eight (8) days of the receipt of the authorization, but must be cancelled before the Transaction is submitted to Bank for settlement, after which the authorization can not be changed. Discover Network Transactions not submitted for settlement within thirty (30) calendar days of the authorization request may be rejected and not funded or subject to higher interchange and other fees or subject to Dispute. Discover Network Credit Transactions must be submitted for settlement within ten (10) calendar days after Merchant has promised credit or the Transactions may be subject to dispute. In the case of even exchange of the same goods or services, Merchant must be given a receipt indicating the even exchange; such receipt should not be submitted for settlement.

Merchant must authorize all Card Transactions for the "known" check amount and not the amount plus estimated tip. If the amount authorized and the actual Transaction amount submitted for deposit do not match, Merchant will incur increased interchange fees except as noted in the following provisions.

Special provisions regarding gratuities:

(i) For Transactions conducted with a Visa Card: Restaurant and Fast Food Merchants are allowed up to 20% variance above the amount authorized. If the final amount exceeds the amount "pre-authorized" by more than 20%, the Merchant must perform a second authorization for the additional amount. If a second authorization is not performed, the additional amount may be subject to chargeback.

(ii) For Transactions conducted with a MasterCard Card: Restaurant, Fast Food and Drinking Place Merchants are not subject to a variance percentage but must perform a second authorization for the additional amount if the final amount exceeds the "pre-authorized" amount by more than 25%. Beauty Shop Merchants are allowed up to a 25% variance above the amount authorized and must perform a second authorization for the additional amount if the final amount exceeds the "pre-authorized" amount by more than 25%. All other Merchants are allowed a 10% variance above the amount authorized and must perform a second authorization for the additional amount if the final amount exceeds the "pre-authorized" amount by more than 10%. If a second authorization is not performed, the additional amount may be subject to chargeback.

(g) **Suspected Fraud.** If Bank suspects fraud and terminates this Agreement as a result, Merchant will be reported to the "Combined Terminated Merchant File" as provided in Section 5.12 "Combined Terminated Merchant File" Merchant is responsible for the actions of its current and former employees.

(h) **Travel and Entertainment Preauthorization.** If Merchant is in a travel or entertainment business (e.g. car rental, hotel or other lodging business) that utilizes estimated pre-authorizations, then the following provisions apply:

(i) A Lodging Merchant must estimate Transaction amounts for Authorization based on the following:

- Cardholder's intended length of stay at check-in time
 - Room rate
 - Applicable tax
 - Service charge rates
 - Merchant's procedure for estimating additional ancillary charges
 - Other allowed charges
- (ii) A Cruise Line Merchant may estimate Transaction amounts for Authorization as follows.
- The Merchant must base the initial Authorization Request on the Cardholder's signed statement of intent to purchase goods or services aboard ship for a Cardholder-specified amount.
 - The Merchant may obtain additional amounts at any time on or between the Cardholder's embarkation date and disembarkation date, and must disclose any additional Authorizations to the Cardholder.
- (iii) A Car Rental Company must estimate Transaction amounts for Authorization based on the following:
- Cardholder's intended car rental period
 - Rental rate
 - Applicable tax
 - Mileage rates
 - Other allowed charges

When the Cardholder waives insurance at the time of the rental, the estimated Transaction amount must not include charges that cover potential vehicle damages or the insurance deductible amount.

- (iv) After completing the estimates, the Merchant must:
- Disclose the amount to be pre-authorized to the Cardholder.
 - Obtain an authorization for the estimated amount and include the date, amount, and Authorization Code on the Transaction Receipt
 - Promptly call the Voice Authorization Center to delete the authorization hold if the Cardholder decides to use another form of payment (e.g., cash, check, etc.). If a new Transaction takes place, a new imprinted and signed sales draft for the exact amount and new positive authorization response code for the amount must be obtained.
 - Wait twenty-four (24) hours before attempting to reauthorize if a declined response is received on a Transaction.
- (v) The Merchant may obtain a new pre-authorization if the actual charges or subsequent estimated charges exceed the initial estimated Transaction amount and must include the date, amount, and Authorization Code on the Transaction Receipt for each additional authorization. If an authorization request is declined, no charges occurring after that date will be accepted for that Cardholder.
- (vi) (vi) The Merchant may obtain and must record Authorizations for additional amounts above any amount already authorized any time:
- On the check-in/embarkation date or the car rental pick-up date or
 - Prior to the check-out/disembarkation date or rental return date.

The Merchant must obtain a final Authorization and include the date, amount, and Authorization Code on the Transaction Receipt if the actual amount exceeds the sum of the authorized amounts plus 15 percent for Visa and MasterCard Transactions or plus 20 percent for Discover Network Transactions.

A final or additional Authorization is not required if the Transaction amount does not exceed the sum of the authorized amounts plus 15 percent for Visa and MasterCard Transactions or plus 20 percent for Discover Network Transactions.

- (vii) When a Cardholder purchases multiple Airline or railway tickets at the same time on the same Account Number, the Merchant may obtain Authorization for each ticket individually.
- (viii) If a Merchant is suspicious of a Transaction, the Merchant must:
 - Contact the Issuer at the telephone number listed in the Visa Interchange Directory using an In or Out WATS line, if available, or a collect call
 - Ensure that its employees are familiar with "Code 10" procedures (available from Visa upon request)
 - Request a "Code 10" Authorization
 - If the Issuer is not available, process a normal Authorization Request

(i) **Special Provisions Related to Travel and Entertainment Transactions.** Travel and entertainment Merchants may charge certain additional charges when the Cardholder has signed a guest folio or car rental agreement. Lodging Merchants may charge Cardholders additional charges for room, food and beverage charges, and taxes. Lodging Merchants must not require Cardholders to pay additional charges for damage or theft. Car rental Merchants may charge Cardholders additional charges for fuel, insurance, parking tickets, and moving violations. Car rental Merchants must not require Cardholders to pay for damage, theft, or insurance deductibles if the Cardholder has declined coverage. A copy of the Sales Slip reflecting all additional charges must be sent to the Cardholder.

(j) **Transactions of Principals.** Merchant agrees that it will not complete Transactions from Cards of owners, partners or officers unless they are routine Transactions, typical in the business, for actual goods or services. A violation of this restriction entitles Bank to terminate this Agreement.

(k) **Examination of Statements.**

(i) Provision of Statements - Bank will provide a statement to Merchant at regular intervals when there is current activity on the Merchant Account. Merchant consents to electronic delivery of statements or any other common industry delivery channel chosen at Bank's discretion. Electronic delivery shall be deemed delivered when transmitted or when made available by Bank. USPS or private courier delivery shall be deemed delivered 3 business days after mailing or delivery to the carrier. Bank will endeavor to provide reasonable, prior notice to Merchant of any change in delivery channel using the then-current method of delivery or using Merchant's previously indicated delivery preference. Merchant may call the BB&T Merchant Client Support Center at 1-877-672-4228 to specify a preferred delivery channel at any time. If Merchant selects a preferred delivery method other than Bank's standard, current delivery method, Bank may charge Merchant a fee for this service.

(ii) Merchant will diligently examine its Merchant Transactions statement and report any questioned, disputed, or missing Transactions or fees within 90 days of receipt of statement. If a Merchant fails to raise any issues related to questioned or disputed Transactions or fees, or if a Merchant fails to report Transactions or fees that were not credited to the statement within 90 days, the statement is deemed to be correct.

1.6 Returns, Credits, Refunds and Adjustments. Merchant shall not discriminate between cash customers and Cardholder customers with respect to the granting of credit or making refunds. Any credit or refund policy of Merchant shall be determined solely by Merchant with regard to any particular sale or credit Transaction; provided however, if it is Merchant's policy to grant cash refunds to cash customers, Merchant must give a credit to a Cardholder customer by execution and submission of a Credit Voucher to Bank as specified below. Any credit or refund policy established by Merchant must be properly disclosed to Cardholder. Proper disclosure is defined as requiring Cardholder to sign a Sales Slip at the time of the Transaction disclosing Merchant's refund or credit policy regarding Card Transactions, including the

following or similar wording, if applicable, which appears legibly on all copies of the Sales Slip, in block letters at least 1/4 inch high and in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale prior to the sales draft or invoice being presented to Cardholder for signature (it being provided, however, that Merchant's failure to use this precise wording does not necessarily mean that proper disclosure has not been given): "NO REFUNDS," "EXCHANGE ONLY," "IN STORE CREDIT ONLY," or any other language which adequately describes Merchant's refund policy.

Merchant shall not make any cash refund to the Cardholder but must deliver promptly to Bank or Affiliate which received the related Sales Slip a Credit Voucher evidencing the refund or adjustment and completed as follows: Card account number, Cardholder name, Card expiration date, Merchant name, Merchant address, city and state where the Transaction occurred, Merchant's account number, date of credit Transaction, Transaction dollar amount, a brief description of the refund or credit, and the signature of the authorized user as it appears on the back of the Card.

1.7 Notice of Refund and Return Policy. If no refund or return will be permitted, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be given written notice of any no-cash refund policy, exchange only or in store credit only. A writing is defined as requiring Cardholder to sign a sales Transaction slip at the time of the Transaction disclosing Merchant's refund or credit policy regarding Card Transactions. The written notice should include the following or similar wording, if applicable, which appears legibly on all copies of the sales Transaction, in block letters at least 1/4 inch high and in proximity to the Cardholder's signature, or on an invoice issued at the time of the sale prior to the sales draft or invoice being presented to Cardholder for signature: "NO REFUNDS," "EXCHANGE ONLY," "IN STORE CREDIT ONLY," or other language which adequately describes Merchant's refund policy.

Merchant shall follow Payment Network reservation /no-show Rules. Merchant must notify Cardholders in writing of this policy and all advance reservations. The Cardholder must be notified at the time of the reservation of the exact number of days required for reservation deposit refunds.

Lodging Merchants must not require more than 72 hour cancellation notification prior to the scheduled arrival date. If the Cardholder makes the reservation within 72 hours of the arrival date, the cancellation deadline must be no earlier than 6 p.m. on the arrival date or date guaranteed. If Lodging Merchant requires that a Cardholder cancel before 6 p.m. Merchant outlet time on the date guaranteed, the Lodging Merchant must mail the cancellation policy including the date and time that cancellation privileges expire to the Cardholder.

1.8 Payment Card Industry (PCI) Data Security Standard. All Payment Networks including Visa, MasterCard and Discover Network have collaborated in creating common industry requirements, known as the Payment Card Industry (PCI) Data Security Standard, to protect Cardholder data. This program is an alignment of Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection (SDP) and Discover Information Security and Compliance (DISC) Security Standards. For purposes of this Agreement, reference to the PCI Data Security Standard includes also CISP, SDP, DISC and/or any successor standards. The PCI Data Security Standard applies to Merchants that store, process, or transmit Cardholder data.

All Merchants that accept Cards must comply with the following security requirements:

- Merchant will implement and maintain all security requirements, as specified in the PCI Data Security Standards, copies of which may be obtained by visiting the Payment Networks' web sites at www.pcisecuritystandards.org, www.visa.com/cisp, www.masterCard.com/sdp or www.discovernetwork.com/fraudsecurity/disc.html. Merchant will be responsible for all fees and expenses at the inception of this Agreement and during on-going processing under this Agreement related to meeting the PCI Data Security Standard, including meeting the standards summarized below, initial and ongoing security audits, or as may be required by Bank or by other Payment Network Rules.
- Merchant will immediately notify Bank, by giving written notice, of its use of all Qualified Security Assessor (QSA) or Approved Scanning Vendor (ASV) to bring it into compliance with the PCI Data Security Standards as well as to perform the required security audits meeting the requirements of the PCI Data Security Standards. Merchant agrees to use only Payment Network-approved QSA or ASV vendors.

- Merchant must validate compliance with PCI Data Security Standards by submitting required documentation to Bank. Documentation must also be made available to the Payment Networks upon request. Merchant agrees to provide documentation required to validate PCI Data Security Standard compliance at the time of Account opening and on an ongoing basis, consistent with the frequency standards under the PCI Data Security Standards. The documentation must include validation from a Payment Network-approved QSA or ASV vendor. Merchant acknowledges and agrees that in connection with PCI Data Security Standard audits performed by the QSA or ASV vendor, Bank will supply the vendor with certain information on Merchant and its customers in the possession of Bank and Bank will receive the results of the audit. Adherence to the PCI Data Security Standards does not guarantee that a security breach will not occur, nor does it guarantee that subsequent fines from Payment Networks will not occur.
- Merchant must use Third Party Providers (TPPs), Data Storage Entities (DSEs) and/or third-party application software that meets or exceeds PCI Data Security Standards and applicable Payment Network Rules. Merchant agrees to notify Bank, in writing, regarding the use of any TPP, DSE or third party application software prior to engagement or installation as provided in Section 7.3.
- Merchant must ensure that it and any of its TPPs or DSEs implements and maintains all security requirements, as specified in the PCI Data Security Standards.
- Merchant must notify Bank by phone at 1-877-672-4228 immediately, and in no event more than 24 hours after becoming aware of any suspected or confirmed loss or theft of materials or records that contain account information. This information will then be communicated by Bank to the Visa U.S.A. Fraud Control, MasterCard Compromised Account Team and Discover Fraud Investigations. In the event of a suspected or confirmed loss or theft of materials or records that contain account information, Merchant must both:
 - Demonstrate its ability to prevent future loss or theft of account or Transaction information, consistent with the requirements of the PCI Data Security Standards; and
 - Allow Bank, the Payment Networks or an independent third party acceptable to Payment Networks, to verify this ability by conducting a security review. Any cost incurred to conduct the security assessment following a potential compromise will be the sole responsibility of the Merchant, along with any chargeback or other fees and any fines imposed on Bank by the Payment Networks for non-compliance or for compromise events regardless of compliance status.
- In the event of a suspected or confirmed security breach involving Transactions and/or date of any of the Payment Networks, Merchant must provide Bank and/or Payment Networks with the following information: (i) the date of the breach; (ii) details concerning the data compromised (e.g. account numbers and expirations dates, Cardholder names and addresses, etc.); (iii) the method of such breach; (iv) Merchant's security personnel contacts; (v) the name of any person (including law enforcement) assisting Merchant with the investigation of such breach; and (vi) any other information which Bank reasonably requests from Merchant concerning such breach, including forensics reports. Merchant shall provide such information as soon as practicable, and the items listed in (i) – (v) shall be provided to Bank in any event within 48 hours of your initial notification to Bank of the breach. The Payment Networks reserve the right to conduct on-site visits to ensure compliance with its requirements.
- Merchant agrees to comply, as required, with the PCI Data Security Standards, which include, but are not limited to, the following:
 - Install and maintain a firewall configuration to protect data
 - Do not use vendor-supplied defaults for system passwords and other security parameters
 - Protect stored data
 - Encrypt transmission of Cardholder data and sensitive information across public networks
 - Use and regularly update anti-virus software
 - Develop and maintain secure systems and applications

- Restrict access to data by business need-to-know
- Assign a unique ID to each person with computer access
- Restrict physical access to Cardholder data
- Track and monitor all access to network resources and Cardholder data
- Regularly test networks
- Maintain a policy that addresses information security

Merchant also agrees to implement and maintain any and all security measures necessary to physically protect and secure all hardware devices, including but not limited to credit Card terminals, PIN pads, check readers, and electronic cash registers, in order to prevent unauthorized access and use. Bank strongly recommends employing password-protection on all devices which allow this feature.

II. Submission, Fees and Settlement

2.1 Delivery of Sale and Credit Transactions. On a business day basis, or in accordance with the applicable Payment Network Transaction presentment time frames, Merchant will electronically present all Card Transactions permitted under this Agreement to Bank, which are subject to billing to Cardholder in each case, except the following: (a) where the Transaction will not be presented until the goods are shipped or the services performed, and (b) where Merchant requests and receives authorization for delayed presentment from the authorization center (in which case, the authorization number and words "Delayed Presentment" must be legibly noted on the sales Transaction and presentation must then be made within the period permitted for delayed presentment). If sales Transactions are not cleared within twenty-four (24) hours from the time of sale, Bank shall pass all applicable Payment Network interchange assessments it incurs for delayed presentment to Merchant. Payment Card Networks may reject for settlement Card Transactions not presented within thirty (30) calendar days of the Card Transaction date or if Card Transactions are presented with missing, invalid or unreadable data, in such cases, Bank will not be required to fund or reimburse Merchant for the Card Transactions and Transactions may be subject to higher fees or subject to dispute.

2.2 Merchant Fees. Merchant shall pay Bank all fees specified on the attached fee schedule(s) or Merchant Pricing Offer Letter as may be amended by Bank from time to time in accordance with Section 5.6 herein. The fees set forth in this Agreement are based on assumptions associated with the anticipated annual volume and average Transaction size for all Services as set forth in this Agreement and Merchant's method of doing business. If the actual volume or average Transaction size are not as expected or Merchant significantly alters their method of doing business, Bank may adjust the Merchant's discount fee and Transaction fees without notice in accordance with Section 5.6 herein.

For Transactions that do not qualify for the appropriate interchange rates, the standard Payment Network interchange rates and assessments will apply, which may be higher for non-qualifying Transactions, plus an interchange surcharge. Any such amendment to the fees shall be directly attributed to increases in Payment Network pass-through fees or due to any increase in communications costs charged to Bank by communications common carriers. Such increases shall, without prior notice, become effective as of the date of change.

~~Bank may increase non-Payment Network fees or charges within its control upon fifteen (15) days prior written notice. Merchant may, upon written notice, terminate this Agreement within 15 days of receipt of Bank's notice of increased charges notice to Merchant in accordance with Section 5.6 herein.~~

Merchant agrees that Bank will deduct Merchant fees from the Operating Account or Reserve Account on a monthly basis. Merchant also agrees to pay Bank the amount of any fees, charges or penalties assessed against Bank by any Payment Network or issuer for Merchant's violation of the Rules, or relating to any additional requirement imposed by any Federal or state governmental agency or regulatory authority. Merchant further agrees to contract directly for and to pay for services related to compliance validation for PCI Data Security Standards and payment of any fines assessed against Bank resulting from non-compliance or compromise events.

Without limiting the foregoing, Bank shall have the absolute and unconditional right to increase discount rates and/or Transaction fees if Merchant or Merchant's Transactions do not satisfy eligibility requirements of any applicable Payment Network for minimum interchange fees, in accordance with the notice provisions of Section 5.6 herein. Merchant shall pay Bank all fees specified in this Agreement and any additional pricing supplements, as may be amended by Bank from time to

time in accordance with Section 5.6 herein. The Discount Rate percentage, applicable interchange fees, assessment fees, surcharges and per item fees are calculated on the gross Visa, MasterCard and Discover Network sales processed by Merchant. If Merchant's Visa, MasterCard and Discover Network Transaction(s) fail to qualify for the interchange level contemplated in the rates set forth, Merchant will be billed for the difference between the qualifying interchange rate and the higher applicable interchange rate, plus an additional interchange surcharge outlined in the attached fee schedule(s) or Merchant Pricing Offer Letter.

2.3 Merchant Operating and Reserve Account. Prior to accepting any Cards, Merchant shall establish a demand deposit account ("Operating Account") through which fees, charges and credits due in accordance with this Agreement will be processed. Merchant will maintain the Operating Account in good standing and with sufficient funds to accommodate all Transactions contemplated by the Agreement and all chargebacks, returns, adjustments, fees, fines penalties and other payments due under this Agreement. Bank will consider Merchant's failure to maintain the Operating Account in good standing as Merchant's notice of intent to close the Merchant Account. Upon Bank's written notification requesting a reserve account from Merchant in an amount determined by Bank, Merchant shall establish a reserve account at Bank or its Affiliate ("Reserve Account") for all future indebtedness of Merchant to Bank which may arise out of this Agreement, including, but not limited to, chargebacks, fees and fines, in such amount. If deemed necessary, Bank may immediately establish the Reserve Account in Merchant's name. Sole control of the Reserve Account will be with Bank and Merchant may not access the Reserve Account. Additionally, if in the sole opinion of Bank, there is a substantial negative change in the Merchant's business or financial position, or a Payment Network fines Bank with respect to Merchant's Account, Bank may require additional reserve. If Merchant fails to remit payment when due, Merchant authorizes Bank to debit all amounts Merchant owes Bank hereunder from the Operating Account, Reserve Account or deposit account at other financial institutions at times deemed appropriate by Bank through the ACH Banking Network, by a manual debit of such account or otherwise. Merchant waives any claim for loss or damage arising out of any appropriate charges or debits to such accounts.

For any losses that Bank incurs, including any related expenses which may result from any claims, disputes or billing errors asserted by any Cardholder, Merchant grants to Bank and to its Affiliates the right to apply or set off against the Operating and Reserve Accounts at any time and without advance notice to Merchant upon 30 days notice to Merchant. Bank may do so by directing its affiliate to transfer funds.

2.4 ACH Authorization. To the extent the Automated Clearing House (ACH) process is used to effect debits or credits to Merchant Deposit Account, the undersigned agrees to be bound by the terms of the operating rules of the National Automated Clearinghouse Association, as in effect from time to time. The undersigned Merchant authorizes Bank and its Affiliates to initiate credit and debit entries and adjustments to Merchant Deposit Account through the ACH settlement process and/or through direct instructions to (or such other arrangements as we deem appropriate) the financial institution where the Merchant's Deposit Account is maintained for amounts due under this Agreement and under any agreements with Bank or our Affiliates for any related services, as well as for any debit or credit entries made in error. Merchant hereby authorizes the financial institutions where its Merchant Deposit Account is maintained to affect all such debits and credits to Merchant's Deposit Account.

2.5 Funding of Reserve Account. The Reserve Account shall be funded on seven (7) days notice to Merchant, or in the cases of suspected fraud or suspected or known financial loss to Bank, the Reserve Account shall be funded immediately. Bank may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank or its Affiliates. The Reserve Account will be maintained for a minimum of six (6) months from the termination date of this Agreement or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank and commercially reasonable and Merchant's Account with Bank is fully resolved. Upon expiration of this period, any balance remaining in the Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Reserve Account during this period.

2.6 Billing. All amounts Merchant owes Bank may be charged to either the Operating Account designated, the Reserve Account, recouped by adjustment of any credits due to Merchant or set off against any account or property Bank holds for or on behalf of Merchant. All funds received by Bank for Merchant sales are property of Bank until Bank determines, in its sole discretion, that all such funds result from legitimate sales by Merchant made in compliance with all Payment Network Rules and this Agreement. Subject to the provision of any warranty of Merchant hereunder, all payments to Merchant will be the amount of sale Transactions submitted less credits. Any payment made by Bank to Merchant will not be final but shall be subject to subsequent review and verification by Bank. If Bank, as a result of Merchant's failure to comply with settlement

procedures in this Agreement, is unable to deliver payments otherwise due Merchant, such payments shall be earned compensation of Bank. The discount and other fees will be collected by Bank on a monthly basis, or may be collected by a combination of monthly collection of other fees and a daily collection of discount and interchange fees prior to crediting the Merchant's Operating Account. In the event that Merchant fails to meet any of its payment obligations under this Agreement, in addition to any other remedies it may have, Bank may retain a third party to collect what is due from Merchant, including the retention of a law firm to pursue legal remedies. Merchant will pay the fees, costs and expenses associated with such collection efforts to the fullest extent permitted by applicable law.

2.7 Security Interest—Limited Power of Attorney. Merchant hereby grants Bank a first priority lien and security interest in the funds held in the Operating Account, the Reserve Account and in other accounts held by Merchant at other financial institutions and the proceeds of all such accounts, including any affiliated companies of Merchant whether established or designated and encompassed pursuant to this Agreement. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Bank is hereby authorized by Merchant at any time and from time to time, without notice or demand to Merchant or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Merchant's obligations to Bank and its affiliates under this Agreement and any other agreement with Bank or any of Bank's affiliates for any related equipment or related services whether such obligations are liquidated, unliquidated, fixed, contingent, matured, or unmatured.

On request of Bank, Merchant will execute documents satisfactory to Bank, will pay all costs of filing in all public filing offices where filing is deemed by Bank to be desirable, and will obtain executed agreements from other financial institutions in order to perfect Bank's security interest in the Operating Account, the Reserve Account and accounts at other financial institutions. Merchant hereby conveys to Bank a limited power of attorney, which is irrevocable and coupled with an interest for the term of this Agreement or for as long as Merchant owes Bank, or could owe Bank, sums due under this Agreement. This power of attorney is limited to the execution of any and all documents, instruments or filings necessary to perfect Bank's security interest in the various accounts pledged by Merchant as security for its obligations to Bank. For purposes of illustration, and not in limitation, of this authority, Bank may execute account control agreements or blocked account agreements on behalf of Merchant with depository banks holding the pledged accounts. No document other than this Agreement is necessary to evidence this limited power of attorney. Merchant authorizes deductions from all such accounts by Automated Clearing House entries, night drafts, pre-authorized checks, reverse wires, and otherwise as Bank deems convenient.

Bank may also enforce this security interest by obtaining either a writ of attachment or a writ of possession without bond, pertaining to Merchant and/or Guarantor's personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that Bank determines to be necessary to preserve and protect this security interest. Merchant's and/or Guarantor's granting of this security interest in no way limits Merchant's or Guarantor's liabilities to Bank under this Agreement.

2.8 Retention of Original Sales Information. Merchant must retain all original documentation relating to Transactions for at least six (6) months from the date of the Transaction and retain copies of all such data for at least eighteen (18) months from the date of the Transaction. At the request of Bank, Merchant must provide Transaction information to Bank, within seven (7) days of receipt of written or electronic request from Bank. Failure to meet such time frame, or non-delivery of any item, or delivery of an illegible copy of an item requested by an issuer will constitute a waiver by Merchant of any claims and may result in an irrevocable chargeback for the full amount of the Transaction. Electronic records of such information will satisfy the requirements in this paragraph.

2.9 Storage of Card Transaction Information. Subject to Merchant's requirements under the Florida Public Records laws, Merchant or its agent must store all media containing Cardholder Account Numbers or imprints (such as Transaction Receipts, current card agreements, hold folios, Transaction Reports, and carbons) in a secured area limited to selected personnel, and render all data unreadable prior to destruction.

Merchant or its agent must not retain or store magnetic-stripe data, knowingly or unknowingly, subsequent to Authorization of a Card Transaction. In addition, Merchant or its agent must not retain or store Card Verification Value ? (CVV2), Card Validation Code ? (CVC2) or Card Identification (CID) data, knowingly or unknowingly.

subsequent to Authorization of a Card Transaction. This data must not be retained or stored electronically or manually.

2.10 Disclosure of Card Transaction Information. Merchant must not disclose a Cardholder Account Number, personal information or other Card Transaction Information to third parties other than to the Merchant's agents, Bank, or to Bank's Agent for the sole purpose of:

- Assisting the Merchant in completing the Transaction or,
- As specifically required by law.

Merchant must not, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, sell, transfer, or disclose any materials that contain Cardholder Account Numbers, personal information, or Card Transaction Information to third parties, except as may be required by law. The Merchant must:

- Return this information to Bank or,
- Provide acceptable proof of destruction of this information to Bank

2.11 Use and Disclosure of BIN Information. Merchant or its agent that receives BIN information from Bank must not use such information for any reason other than to identify Debit Category products at the point-of-sale, unless authorized by Visa U.S.A., MasterCard and Discover Network, or as otherwise may be required by law.

III. Chargebacks, Claims or Disputes

3.1 Recourse to Merchant. The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement will be without recourse to Merchant, except for Card-Not-Present Transactions, if Merchant violates its obligations otherwise indicated in this Agreement and in the following circumstances:

(a) the Transaction was forced based on a pre-authorization form and the Card on which the authorization was based has been canceled and Merchant was so notified prior to the Transaction;

(b) the Card giving rise to the Transaction was canceled and prior to, or at the time of the Transaction, Merchant received notice of the cancellation through electronic terminal, in writing or otherwise;

(c) Bank or issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder, provided that Merchant retains the right to challenge (re-present) such chargebacks per the Rules. Notwithstanding, until Bank has notice in writing with documentation from the Payment Network that the chargeback has been reversed, Bank reserves the right to take any actions consistent with the existence of a chargeback;

(d) The Cardholder makes a written complaint to Bank or issuer that the Cardholder did not make or authorize the Transaction, and that the goods or services identified in a Transaction were not delivered or were returned, rejected or defective and Merchant has failed either to perform any obligations agreed to or issue a credit Transaction to the Cardholder in the proper amount;

(e) Bank did not receive Merchant's response to a retrieval request within seven (7) business days or any shorter time period required by the Rules;

(f) A set-off or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;

(g) A Transaction is charged back by an issuer; or

(h) Any representation or warranty made by Merchant in connection with the Transaction or this Agreement is false or inaccurate in any respect

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such Transaction, Bank may return the Transaction to Merchant and Merchant must pay Bank the amount of the Transaction. Bank will provide notice to Merchant, in accordance with this Agreement, of any chargeback, claim or dispute; however, Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account, Reserve Account or as otherwise permitted in this Agreement; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank or its Affiliates holds for or on behalf of Merchant. If Merchant disagrees with a chargeback Transaction, Merchant must so notify Bank in writing within five (5) days of the chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction, or proof that a credit has been issued and proof from the Payment Network that the chargeback has been reversed.

3.2 Resolution of Claims and Disputes. All claims and disputes of any kind and for any reason asserted by any Cardholder respecting any sale or lease of goods or performance of services evidenced by a Transaction must be resolved directly between Merchant and Cardholder. Merchant will fully cooperate with Bank in connection therewith. If any money is determined to be due Cardholder in resolving any such dispute or claim, it will not be paid in cash by Merchant but rather through Bank or its Affiliate deducting the amount from the Operating Account and crediting the Cardholder's Card account. Merchant shall properly execute and deliver to Bank a credit Transaction to process the credit. If unresolved disputes occur with a frequency unacceptable to standards as noted in the Rules, Bank may terminate this Agreement. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- (a) The Cardholder's name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action, which Merchant took in an attempt to resolve the dispute.

Upon request by Bank, Merchant shall furnish this information in writing within three (3) days.

3.3 Payment Network Compliance. The Payment Networks have established guidelines, Merchant monitoring programs and reports to track Merchant activity such as, but not limited to excessive credit and chargebacks, and increased deposit activity. In the event the Merchant exceeds the guidelines or submits suspicious Transactions as identified by a Payment Network or any related program or report, Merchant may be subject to program requirement modifications; incremental chargebacks and/or fees; settlement delay or withholding; termination of Merchant Agreement; placement of Merchant on "Combined Terminated Merchant File" or audit and imposition of fines.

IV. Warranties, Limitation on Liability, Indemnification

4.1 Warranties and Powers of Merchant. Merchant warrants that it has obtained all necessary regulatory approvals, certificates and licenses to provide any goods and services it intends to offer and that it will fully comply with all Federal, state and local laws, Rules and regulations, as amended from time to time, including those relating to deceptive advertising, privacy rights, the Federal Truth-in-Lending Act, Regulation Z of the Board of Governors of the Federal Reserve System and other consumer protection laws.

As to each Transaction presented to Bank, Merchant warrants that:

- (a) it has complied with all of its obligations under Section I above;
- (b) the Transaction is valid in form and has been completed in accordance with current instructions, if any furnished by Bank to Merchant, and the Rules;

(c) Merchant has delivered Merchant's merchandise to the Cardholder signing such Transaction or completed Merchant's service described in accordance with Merchant's underlying agreement with the Cardholder;

(d) each sales Transaction represents the Cardholder's indebtedness to Merchant for the amount shown;

(e) Cardholder has no defense, right of offset, or counterclaim against Merchant in connection with the purchase or lease of the goods or services;

(f) Merchant has not charged Cardholder any separate or additional fee(s) or surcharge, or required Cardholder to pay any part of any charge imposed on Merchant by Bank in connection with a Transaction. The foregoing does not prohibit Merchant from extending discounts to customers paying cash, check, or any other means other than by Card, provided such discounted price is presented as a discount from the standard price available for all other means of payments;

(g) the customer's true identity as an authorized user of the Card, unless Merchant obtains and notes legibly on the Transaction independent evidence of the customer's true identity;

(h) it is not submitting any charges for purchases from any entity other than Merchant. This activity, commonly known as credit Card "Factoring" or "Laundering," is a frequent source of improper charges. Charges not approved by the Cardholder have a high probability of chargebacks up to the entire amount of charges submitted, with corresponding financial loss to Merchant, and may be a violation of criminal law.

4.2 Exclusion of Liability. Neither Bank nor its Affiliates will be liable to Merchant or Merchant's customers or any other person for any of the following:

(a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;

(b) Any loss caused by either a Transaction downgrade resulting from defective or faulty hardware and/or software to the extent card software is owned or licensed by Merchant; and

(c) The unavailability of services caused by the termination of Merchant contracts with computer hardware vendors, processors or installers.

4.3 Limitation on Damages. In no case shall Merchant be entitled to recover direct damages from Bank or its Affiliates which exceed the fees paid to Bank pursuant to this Agreement during the six (6) month period immediately prior to the event giving rise to the claim for damages, net of Payment Network interchanges, assessments and fines.

NEITHER BANK NOR ITS AFFILIATES SHALL BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES PERFORMED BY BANK OR ITS AFFILIATES PURSUANT TO THIS AGREEMENT.

MERCHANT ACKNOWLEDGES THAT NEITHER BANK NOR ITS AFFILIATES HAVE PROVIDED ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE AND NON-INFRINGEMENT REGARDING THE SERVICES PROVIDED HEREUNDER.

SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED, WHICH SHALL BE MERCHANT'S SOLE AND EXCLUSIVE REMEDY THEREFORE.

4.4 Indemnification. Merchant hereby agrees to indemnify Bank for claims brought against Bank, but only to the extent that the claims are found to result from the sole negligence of the Merchant, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts or omissions of any third parties, independent

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contractors, or third party agents of the Merchant. This indemnification shall not be construed as a waiver of the Merchant's sovereign immunity and shall be limited to only such traditional liabilities for which the Merchant could be liable under the common law interpreting the limited waiver of sovereign liability. Any claims brought against the Merchant shall comply with the procedures found in Section 768.28, Florida Statutes. The value of this indemnification is limited to the lesser amount payable by either party under the substantive provisions of this Agreement, or the limitations of Section 768.28, Florida Statutes. This indemnification shall not include any attorney's fees or costs associated therewith. Merchant agrees to indemnify, defend and hold Bank and its Affiliates harmless from any and all losses, claims, damages, fines, costs, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or its Affiliate), arising out of any of the following:

- (a) Merchant's failure to comply with any of its obligations under this Agreement;
- (b) any act or omission of Merchant;
- (c) any dispute concerning the quality, condition or delivery of any Merchant good or service;
- (d) the fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents, contractors, and/or assigns;
- (e) Merchant's selection of an Internet service provider or other telecommunication services provider; or
- (f) malicious Account activity perpetrated by obtaining Merchant's Account information to conduct Transactions not otherwise known to Merchant.

V. Other Contract Terms

5.1 Term. This Agreement is effective when signed by all parties and, unless sooner terminated in accordance with this Agreement, shall remain in effect for a term of three (3) years. This Agreement will renew automatically for successive terms of one (1) year each, unless one party provides written notice of termination to the other party at least sixty (60) days prior to the end of the current term. Early termination of this Agreement by Merchant within one year from the date of signing by all parties will result in a termination fee of \$295 per terminated Merchant Account. Early termination of this Agreement at any time during the second or third year from the date of signing or within any successive one (1) year renewal term will result in a termination fee of \$195 per terminated Merchant Account. Termination of this Agreement by Bank, in accordance with Sections 5.10 and 5.11, at any time prior to the expiration of the applicable term of the Agreement will result in a termination fee of \$295 per terminated Merchant Account. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by the Merchant's early termination. Bank will use best efforts to debit the Merchant's Operating Account or Reserve Account in the amount of the termination fee within (sixty 60) days of receipt of Merchant's notice of termination. Regardless of which party terminates this Agreement, all existing obligations, warranties, indemnities and Agreements with respect to Transactions entered into before such termination will remain in full force and effect and Merchant will remain liable for all obligations to Cardholders and Bank incurred while this Agreement is in effect. Prior to termination, Bank remains liable for providing settlement to Merchant for those Transactions subject to the exceptions noted in this Agreement by Bank. Bank may terminate this Agreement for convenience and without cause by giving written notice to Merchant at any time during the initial term of this Agreement, or any renewal, effective thirty (30) days after such notice.

5.2 Taxes. Each party hereto will report its income and pay its own taxes to any applicable jurisdiction. If Bank is required to pay any taxes, interest, fines, or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank. If excise, sales or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank is entitled to recover any taxes paid by it for Merchant from Merchant immediately after payment.

5.3 Exclusivity. Merchant shall submit all of its Card Transactions made during the term hereof to Bank for processing, unless Bank cannot or will not support this level of Merchant's processing activity.

~~5.4 Confidentiality. Merchant shall treat all information received in connection with this Agreement confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to issuers, and to financial and legal advisors, and as otherwise may be required by law.~~

~~5.5 Power of Attorney. Merchant appoints Bank, as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests and to make deductions permitted in this Agreement. The appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank. Bank may enforce its security interests and deductions without notice or demand.~~

~~5.6 Amendments to this Agreement. Bank may amend provisions of this Agreement or add Cards or services listed in the attached schedule(s) by notifying Merchant in writing of any amendment, but upon receipt of such notification, Merchant shall have 30 days to terminate this Agreement without penalty. Merchant consents to written notice provided through any common delivery channel indicated by Bank, including USPS mail, private courier, electronic delivery, etc., unless Merchant specifies a delivery preference to Bank by calling the BB&T Merchant Client Support Center at 1-877-672-4228 or writing to us your specific request at Bank address found in § 5.9. Electronic delivery shall be deemed delivered when transmitted or when made available by Bank. USPS or private courier delivery shall be deemed delivered 3 business days after mailing or delivery to the carrier.~~

There are certain computer hardware and software requirements needed to review and receive Account information and notices electronically. These minimum operating system requirements are:

- Internet Explorer® 6.0 sp2 or higher
- Adobe® Reader version 8.0 or higher
- Adobe Flash Player version 9 or higher
- HTTP1.1 must be active
- SSL3 must be active.
- Show images must be on
- Scripting must be active.
- Cookies must be active.
- Pop-up windows should be allowed to pop-up and not be forced into a new window/tab or blocked from view. If a pop-up blocker is enabled on Merchant's browser, the pop-up blocker needs to allow pop-up windows for www.mreports.com.

Bank will give ~~30~~45 days' prior written notice of such amendments, unless the amendments are due to changes in Payment Network Rules or for security reasons, in which case a shorter notice may be given. Bank may not voluntarily delete Cards without Merchant's explicit consent unless there is a material change in the relationship between such Payment Networks and Bank. All provisions of this Agreement shall apply to Cards or services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.

5.7 Credit Investigation and Audit.

(a) By signing this Agreement, each of the undersigned and/or guarantors authorizes Bank to request and obtain from and to share with a consumer reporting agency, personal and business consumer reports or other background information in conjunction with the maintenance, updating, renewal or extension of the Agreement. Merchant understands and agrees that any information provided in connection with this Account and all other relevant information may be supplied to Bank by our affiliates or that Bank may supply information to our affiliates. Bank may report information about your Merchant Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report.

(b) Merchant will provide Bank with quarterly financial statements within forty-five (45) days after the end of each fiscal quarter, and annual, audited (if available), financial statements within ninety (90) days after the end of the Merchant's fiscal year end. Bank may audit Merchant's compliance with the terms of this Agreement, including without limitation, Merchant's books, accounts, records, and/or files pertaining to all Transactions processed hereunder. After being given reasonable notice, Merchant shall provide all information reasonably requested by Bank to complete Bank's audit. Merchant

shall also deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate.

5.8 Information Sharing. Merchant understands and agrees that Bank may disclose any information gathered by us (a) to Bank's affiliates (i.e., companies related to us by common control or ownership) that offer financial products or services, including but not limited to those identified in the Agreement and to Bank's administrative or service units that perform such functions; (b) to non-affiliated companies to assist Bank in providing the products and services Merchant has requested; or (c) as required by the Payment Networks, Rules, or applicable local, state or Federal laws, or regulations.

5.9 Account Maintenance.

(a) Merchant agrees to the following provisions regarding Account maintenance:

(i) Merchant agrees that it must call Customer Service at 1-877-672-4228 immediately if there is a change to the Demand Deposit Account (DDA) Number ("Operating Account"). Bank may require, at its discretion that the change request be made in writing. If the DDA is held at a financial institution other than BB&T, Bank will require a voided check drawn on the new DDA to be submitted with the written request for verification purposes.

(ii) Merchant agrees that it must call Customer Service at 1-877-672-4228 immediately if there is a change in ownership, ownership structure, Federal tax identification number, type or kind of business, processing method, or in Merchant's third party provider(s). Merchant must notify Bank in writing if it agrees to obligate and pledge its future credit Card receivables as collateral to a third party entity offering a Cash Advance Loan program or a credit Card Receivables Purchase Program. Merchant is also required to notify Bank in writing if it offers clients the opportunity to purchase a gift Card and/or gift certificate with payment by credit Card. Bank reserves the right to require execution of a new Agreement with respect to any of these changes.

(iii) Merchant agrees that Bank may require, at its discretion, any changes to the company DBA Name, address, or telephone/facsimile number to be made in writing.

(iv) Merchant agrees to notify Bank of its intent to discontinue use of Merchant Account(s) and/or prior to initiating an agreement with another provider for similar payment acceptance services. Monthly fees as specified in this Agreement will be assessed until the Merchant notifies Bank of its intent to close Account(s).

(b) Written correspondence should be mailed to the following address:

BB&T Financial, FSB
P.O. Box 200
Wilson, North Carolina 27894

(c) In the event the Merchant fails to notify Bank of aforementioned events as required by this Agreement, Bank may terminate the Agreement.

5.10 Inactive Accounts and/or Terminal Profiles. Bank, at its discretion and without prior written notice to Merchant, reserves the right to impose a Minimum Processing Fee of \$15 on any Merchant Account(s) deemed "inactive" or to terminate and purge any Account(s) and/or terminal profile(s) deemed "inactive". The fee will only be imposed if a Minimum Processing Fee is not already in effect for the Account(s). An Account will be deemed "inactive" after a reasonable period of time has passed without any indication of use of the Account or after a reasonable period of time has passed without any Transaction activity being processed through the terminal profile. Bank reserves the right to define "reasonable period of time" at its discretion and in accordance with Bank policies.

5.11 Termination of Agreement by Bank.

(a) Bank may terminate this Agreement upon fifteen (15) days' written notice to Merchant under any of the below listed circumstances:

(i) In the opinion of Bank, there is substantial negative change in the Merchant's business or financial position, including but not limited to any BB&T account not in good standing;

(ii) Chargebacks exceed Payment Network Rules, or appear to be the result of fraudulent Transactions, as defined by the Payment Networks. Bank will provide Merchant with information defining the Payment Network guidelines which, at present, do not require termination for negligible violations that do not exceed two (2) months;

(iii) Material breach of the Agreement by Merchant;

(iv) Merchant fails to provide financial statements suitable to Bank on request; provided that those statements are the same as those provided to Merchant's board of directors and investors;

(v) Any transfer of the voting control of Merchant or a sale of substantially all of Merchant's assets; or

(vi) The death of any guarantor.

(b) Bank may terminate this Agreement immediately, without notice in the following circumstances and, in such event, place all funds otherwise due Merchant on hold for not less than one hundred eighty (180) days or until such time as questions regarding any Transaction have been resolved to the complete satisfaction of Bank in its sole discretion:

(i) Any act of fraud, dishonesty or unethical behavior is committed by Merchant, its employees, contractors and/or agents or Bank believes in good faith that Merchant, its former or current employees, contractors and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation in connection with Transaction processing;

(ii) Any representation or warranty made by Merchant in this Agreement or the Merchant Application is not true or correct, in a material respect;

(iii) A receiver is appointed for any of Merchant's property;

(iv) Any proceeding is instituted to seize any of Merchant's property;

(v) Merchant fails to maintain sufficient funds in the Operating or Reserve Account to cover the amounts due to Bank hereunder;

(vi) Merchant files, or has filed against it, a petition under any bankruptcy or insolvency law;

(vii) As a requirement of Bank by any Regulatory and/or external auditing agencies;

(viii) Merchant or any of its subcontractors or vendors is listed on the US Department of Treasury's Office of Foreign Assets Control (OFAC) list of Specially Designated Nationals and Blocked Persons, or any state or Federal regulator or law enforcement agency requires Bank to Terminate the Agreement for US foreign policy or national security purposes. Termination under this section shall relieve Bank from any further payment or performance obligation of any kind under this Agreement, whether currently due or past due. If Bank or its affiliates has any other contracts with Merchant, it or they may also terminate those agreements under this Section;

(ix) Merchant fails to adhere to any of the requirements of the PCI Data Security Standards;

(x) Merchant fails to adhere to any of the terms governing Card acceptance in this Agreement including requirements of the Payment Networks Rules; or

(xi) Merchant's business operations do not comply with the Requirements of Law applicable to the Merchant, Bank or Payment Networks or Merchant's business operations cause Bank or are likely to cause Bank to violate Requirements of Law applicable to Bank, regardless of the jurisdiction in which the Merchant accepts or conducts Card Transactions

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

5.12 Terminated Merchant File. If this Agreement is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other information regarding its principals to the Terminated Merchant Files maintained by the Payment Networks. Such reporting may result in Merchant never being allowed to accept Cards again with any other Merchant service provider. Merchant expressly agrees and consents to such reporting if Merchant is terminated as a result of the occurrence of an Event of Default or for any reason specified by the Payment Networks. Furthermore, Merchant agrees to waive and hold Bank harmless from and against any and all claims which Merchant may have as a result of such reporting.

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

5.14 Force Majeure. The parties will be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their reasonable respective control, including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, failure of suppliers, riots or any regulation, rule, law, ordinance or order of any Federal, state or local government authority. Force majeure includes the other party's failure to perform under this Agreement in a timely manner due to conditions that affect the Internet. In the event a force majeure event (other than Merchant's failure to perform) interferes with Bank's performance of the service, Bank will immediately take commercially reasonable steps to mitigate the force majeure as quickly as commercially reasonable to do so. If the force majeure continues for thirty (30) or more days, Merchant, at its sole option, may immediately terminate this Agreement upon written notice.

5.15 Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of the Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. §362 (a) to enforce any of Bank's rights or claims under this Agreement.

5.16 Financial Accommodations. Bank and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

5.17 Interest on Default. If Bank terminates this Agreement, all of the Merchant's monetary obligations under this Agreement shall immediately be due and payable, without notice, together with the maximum lawful interest on that debt until paid in full.

5.18 Parties in Interest, Limitation of Rights of Others. Except as otherwise provided in this Agreement, the terms of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, whether express or implied, will be construed to give any person other than the parties any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions or provisions contained in this Agreement.

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

5.20 Bank Secrecy Act Notice – Important Information About New Accounts. To help the United States 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. Therefore, Bank will ask for names, addresses, dates of birth and other information allowing Bank to identify and retain information on certain individuals associated with this Agreement on behalf of Merchant. We may ask to see a driver's license or other identifying information

5.21 Notices. All notices, requests, demands or other instruments that may or are required to be given by any party hereunder and are not specified elsewhere in the Agreement shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) business days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

BB&T Financial, FSB
P. O. Box 200
Wilson, North Carolina 27894
Attn: Merchant Services Division Manager

If to Merchant
[last known address in Bank's records]

Any party may change the address to which subsequent notices are to be sent by notice to the other given as aforesaid

5.22 Waivers. The failure of any party at any time to require performance of any provision hereof will not affect the right of such party at a later time to enforce this Agreement. No waiver of any condition, or of the breach of any term contained in this Agreement in one or more instances, shall be deemed to be or construed as a further or continuing waiver of such condition or breach, or a waiver of any other condition or of the breach of any other term of this Agreement.

5.23 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument.

5.24 Assignment. This Agreement may not be assigned or transferred by operation of law or otherwise by Merchant without the prior written consent of Bank, not to be unreasonably withheld.

5.25 Governing Law. This Agreement and the Account shall be governed by applicable laws of the United States and, to the extent applicable, by the laws of the State of ~~Florida~~ Georgia without regard to its conflict of laws principles.

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

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

5.28 Arbitration. IT IS IMPORTANT THAT MERCHANT READ THIS ARBITRATION PROVISION CAREFULLY. IT PROVIDES THAT MERCHANT MAY BE REQUIRED TO SETTLE A CLAIM OR DISPUTE THROUGH ARBITRATION. EVEN IF MERCHANT PREFERS TO LITIGATE SUCH CLAIMS IN COURT, MERCHANT IS WAIVING RIGHTS MERCHANT MAY HAVE TO LITIGATE THE CLAIMS IN A COURT OR BEFORE A JURY. MERCHANT IS WAIVING THE RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT, CLASS ACTION ARBITRATION OR OTHER REPRESENTATIVE ACTION WITH RESPECT TO SUCH CLAIMS. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any claim or dispute ("Claim") by either Merchant or Bank against the other arising from or relating in any way to Merchant's account, this Merchant Agreement or any transaction conducted at the Bank or any of its affiliates, will, at the election of either Merchant or Bank, be resolved by binding arbitration. This arbitration provision governs all claims, whether such claims are based on law, statute, contract, regulation, ordinance, tort, common law, constitutional provision, or any other legal theory and whether such claim seeks as remedies money damages, penalties, injunctions or declaratory or equitable relief. Claims subject to this arbitration provision include Claims regarding the applicability of this provision or the validity of this or any prior Merchant Agreement. As used in this provision, the term "Claim" is to be given the broadest possible meaning, and includes claims that arose in the past or arise in the present or future. If a party elects to arbitrate a Claim, the arbitration will be conducted as an individual action. This means that even if a class action lawsuit or other representative

action, such as those in the form of a private attorney general action, is filed, any Claim related to the issues of such lawsuits will be subject to arbitration if Merchant or Bank so elect. Claims subject to arbitration also include Claims that are made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise. The party filing for arbitration must choose one of the following arbitration administrators: American Arbitration Association, National Arbitration Forum or a mutually agreed upon arbitrator. Arbitration will be conducted under the rules of the selected administrator by an impartial third-party arbitrator. Any arbitration shall be conducted in the city where the account was opened, ~~the city of the Bank's main office~~, or a location mutually agreed upon by the parties.

The arbitrator will either be a lawyer with at least ten years' experience in banking, a retired or former judge or a law school professor with an expertise in banking law. The arbitrator will be selected in accordance with rules of the selected administrator. The arbitrator will apply the substantive law of the state ~~where the Bank's main office is located~~ of Florida. The parties may choose to be represented by an attorney. The arbitration will be conducted under the applicable procedures and rules of the administrator that were in effect on the date the request for arbitration is filed. Certain rights that Merchant would have if Merchant went to court such as discovery or the right of appeal may not be available in arbitration or may be more limited. The arbitrator's decision will be final and binding. If there is a conflict between the rules and procedures of the administrator and any term in this provision, the terms of this provision shall prevail. Merchant or Bank may bring an action including a summary or expedited motion to compel arbitration of any Claim, or to stay the litigation of any Claims pending in any court. Such action may be brought at any time. The failure to initiate or request arbitration at the beginning of a dispute or claim shall not be considered a waiver of the right to arbitration.

~~At Merchant's request, Bank will advance any reasonable arbitration filing fee, or administrative and hearing fees that Merchant is required to pay up to \$500. We will reimburse Merchant for the initial fee if Merchant paid it and Merchant fully prevails on their claim. All other fees will be allocated pursuant to the rules of the administrator. The arbitrator may award any fees, cost, and expenses including attorneys' fees, as permitted by the administrator's rules. Merchant may obtain copies of the current rules of each administrator, including information about arbitration, fees, and instructions for initiating arbitration by contacting the administrators: American Arbitration Association, 1633 Broadway, Floor 10, New York, NY 10017. Phone: 800-778-7879. Web site: www.adr.org. National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405. Phone: 800-474-2371. Web site: www.adrforum.com/.~~

VI. Terms of Equipment and Ancillary Service Plans

6.1 Equipment Management Service (EMS). An optional, fee-based monthly service plan that provides replacement for a credit Card terminal, printer or pin pad which becomes inoperative due to mechanical failure covered through the service. Upon receipt of the replacement device, Merchant is responsible for packaging the failed unit(s) and following the instructions provided for its proper return. The Merchant will be charged for unreturned equipment after 30 days. EMS is subject to the following conditions: Equipment damaged as the result of abuse, power surges, physical damage such as that due to fire, water, or acts of God may not be eligible for replacement or may be subject to additional fees. In addition, equipment deemed obsolete by the device manufacturer is not covered. If it is determined a failure occurred outside of normal wear and tear, additional repair charges may apply.

6.2 Per Incident Replacement Service. For a fee, on a per incident basis, Merchant will be provided a replacement for a failed device. The fee will be determined as agreed to in the Merchant's pricing offer letter or at the current per incident fee as disclosed by Bank or Bank's representative prior to replacement order. Upon receipt of the replacement device, Merchant is responsible for packaging the failed unit(s) and following the instructions provided for its proper return. The Merchant will be charged for unreturned equipment after 30 days. Per Incident Replacement Service is subject to the following conditions. Equipment damaged as the result of abuse, power surges, physical damage such as that due to fire, water, or acts of God may not be eligible for replacement or may be subject to additional fees. In addition, equipment deemed obsolete by the device manufacturer is not covered. If it is determined a failure occurred outside of normal wear and tear, additional repair charges may apply.

6.3 Supply Replenishment. Merchant has option to procure supplies through Bank's supplier on an as needed basis by calling 1-877-672-4228 or through a supplier of its own choosing. Merchant may be charged for supplies and applicable shipping and handling fees when ordered through Bank's supplier.

6.4 Third-Party Hardware Lease Agreements. Lease and rental agreements are written and executed directly between the Merchant and the lease company. Bank is not a party to the lease agreement and can not effect changes to the terms of the

agreement. All lease agreements are billed and managed by the third-party lease company. All lease related servicing questions and issues must be directed to the lease company.

EMS (Equipment Management Service) is included in executed lease agreements and is included in the lease payment. EMS is subject to the following terms: Merchant will be provided replacement of a device which becomes inoperative due to mechanical failure. Upon receipt of the replacement device, Merchant is responsible for packaging the failed unit(s) and following the instructions provided for its proper return. The Merchant will be charged for unreturned equipment after 30 days. EMS is subject to the following conditions: Equipment damaged as the result of abuse, power surges, physical damage such as that due to fire, water or acts of God may not be eligible for replacement or may be subject to additional fees. In addition, equipment deemed obsolete by the device manufacturer is not covered. If it is determined a failure occurred outside of normal wear and tear, additional repair charges may apply.

VII. Special Terms related to Merchant's Hardware and Software

7.1 Obsolete Equipment/End-of-Life Product Notices. From time to time, Bank is made aware that certain credit Card processing hardware has been deemed obsolete by its manufacturer and that the manufacturer will no longer provide technical support and/or will no longer supply parts or components needed for repair or replacement of existing devices currently in use. Generally, such parts and components may be available for some time period however, Bank can neither pre-determine nor control the future availability of the obsolete parts or components. When Bank is made aware of obsolete equipment or end-of-life product notices, it will use best efforts to communicate such notices to Merchant, if applicable, and to provide alternative equipment purchase options so that Merchant may take action to prevent potential, extended disruptions in its ability to accept credit Card payments. Bank will not, and is in no way obligated to, provide free replacement of obsolete equipment.

7.2 Software/Application Upgrades. Software applications contained within Merchant's credit Card terminal may on occasion require updates or upgrades in order to remain compliant with Federal, state or local legislation, Payment Network mandates and/or Bank's policies. Bank will use reasonable efforts to identify required updates and notify Merchant, if applicable, in writing and/or by phone, when updates are required and will provide instructions for conducting the update/upgrade. Most software application updates require the terminal to be downloaded with new programming and in most cases, the download must be performed by a specified date. The new programming may change the way the Merchant enters credit Card Transactions, with additional or different prompts. The Merchant should review and use all materials provided, such as terminal overlay Cards and quick reference guides to ensure correct Transaction processing. The Merchant must cooperate with Bank in conducting the updates in a timely manner. Failure to complete the updates/upgrades may subject Merchant to Federal, state, and/or local fines and penalties; Payment Network fines or penalties; increased interchange Transaction costs and fees and/or possible termination of Merchant's credit Card acceptance privileges.

7.3 Third Party Providers and/or Software Applications. Upon Bank approval, Merchant may be allowed to accept credit Card payments utilizing Third Party Providers (TPPs), Data Storage Entities (DSEs), and Personal Computer (PC) or Electronic Cash Register (ECR) software applications. In addition, upon Bank approval, Merchant may be allowed to use Internet payment gateway service providers. The Merchant must notify Bank of its intent to use any third party software or service provider and such provider must be approved by Bank prior to initiating Transactions through any Third Party Provider. The TPP, DSE or software application provider must be certified as compliant with the Payment Card Industry (PCI) Data Security standards. Upon its approval of the provider, Bank will provide Merchant the data parameters necessary to initiate Card processing using Bank's processing platform(s). The Merchant must notify Bank in writing and with reasonable advance notice of any changes to the third party's application including new version releases as these changes may impact Merchant's ability to successfully process Transactions. Furthermore, Bank is not responsible for issues related to interchange, product pricing, or technical assistance for Merchants using third party software applications. On occasion, updates may be required to the data parameters within the third-party software in order for the Merchant to remain compliant with Federal, state or local legislation; Payment Network mandates and/or Bank's policies. In most cases, the updates must be performed by a specified date. It is the Merchant's responsibility to coordinate the changes with their third-party provider in a timely manner. Bank will not, and is in no way obligated to, cover any costs associated with making the required changes. Failure to complete the updates may subject Merchant to Federal, state, and/or local fines and penalties; Payment Network fines or penalties; increased interchange Transaction costs and fees and/or possible termination of Merchant's credit Card acceptance privileges.

7.4 Bank Reseller of Products to Merchant. From time to time, Bank may offer certain software, payment gateways, virtual point of sale solutions, and other payment processing products ("Third Party Products") to Merchant that are owned and/or marketed by third parties ("Third Party Providers"). In offering such products, Bank is acting solely as a reseller of such Third Party Products. Bank does not endorse Third Party Products. Merchant must make its own determination as to whether to purchase such Third Party Products based on its own business needs. Bank is not authorized to bind Third Party Providers in connection with the sale of Third Party Products. Merchant's rights with respect to such Third Party Products may be specified in an agreement for such Third Party Products made available from the Third Party Provider. In such case, Merchant must accept such agreement from such Third Party Provider if it desires to use the Third Party Products. Bank expressly disclaims all representations and warranties in connection with Third Party Products, whether express or implied, including implied warranties of fitness for a particular purpose, Merchantability and freedom from infringement. If Merchant purchases Third Party Products, Merchant's sole recourse with respect to any claim that may arise in connection with or otherwise relate to the Third Party Products shall be with the Third Party Provider, and Merchant agrees that Bank shall not be liable for any such claims, whether at law or in equity. If Merchant elects to use Third Party Products, Merchant agrees that it shall use only the most recent version of such Third Party Product available to it, and will promptly upgrade to a newer version upon such newer version becoming available.

In addition, in connection with the use of any such Third Party Products, Merchant agrees to configure security settings as required by current PCI standards. Without limiting the foregoing, Merchant agrees to maintain and enforce a written password management policy that supports a high level of security for accounts used to access such Third Party Product. The policy shall include requirements for account lockout and password length, complexity and expiration that follow industry best practices. To the extent that any account used includes the receipt by a user of a temporary password, or in any case where Contractor resets a user's password, the user shall immediately change such temporary password or reset password to a new password. Merchant agrees to not write down, store or transmit the password portion of any account in clear text used for access to software that may be part of any Third Party Product. Merchant passwords also shall be resistant to "brute force" attacks, such as automated password-cracking programs. Merchant agrees that it shall immediately change any passwords if compromised by any third party in any way.

VIII. Special Debit Card Provisions

8.1 Definitions Applicable to Debit Transactions.

(a) **Debit Card** - The term "Debit Card," as used in this Agreement, shall mean an on-line debit, direct debit or ATM Card that has been issued by an issuer together with a special code referred to as a Personal Identification Number (PIN) to access customer's account, or any combination thereof, that may be used by the customer for the purpose of effecting a Transaction, in accordance with the Rules.

(b) **Cashback** - A purchase for more than the amount of goods or services, with the Cardholder receiving the difference in cash.

(c) **Chained Transactions** - Multiple Transactions that occur without the re-entry of the Debit Card and/or PIN.

(d) **Demand Deposit Account** - A deposit account established in Merchant's name with Bank, which is used for settlement of Merchant's Debit Card Transactions.

(e) **PIN (Personal Identification Number)** - The term "PIN," as used in this Agreement, shall mean a four (4) to twelve (12) character alpha-numeric code, issued to or selected by the Cardholder, that must be utilized by the Cardholder, as identification, with a Debit Card to initiate a Transaction.

(f) **PIN Pad** - A device that enables the Cardholder to enter a PIN at a Terminal.

(g) **Point-Of-Sale Network** - An electronic data organization or system with whom an agreement has been entered wherein Bank will sponsor the Merchant and Terminal(s) located on the Merchant's premises and will allow the customer to access the terminal using the access device.

(h) **Terminal** - A point-of-sale device, either manned or unmanned, that permits a Cardholder to initiate and effect a Transaction.

(1) **Transaction** - An electronic message interchanged between Members, that results in the exchange of financial information which identify both the Debit Card and Merchant.

(j) **Service Mark** - Distinctive mark or marks owned or controlled by the Point-Of-Sale network(s) that identify the Network.

8.2 Display of Service Marks. The Merchant shall adequately display all Service Marks, for Debit Cards accepted, on signs or decals at or near qualifying Terminals solely to inform the public that the Debit Cards accepted under this Agreement will be honored at the Merchant's place of business. The Merchant shall ensure that all Service Marks honored will be printed in a size whose surface area is no smaller than the size of the largest Service Marks of any other shared point-of-sale networks displayed on such sign or decal.

All displays of Service Marks by Merchants by way of decals, signs, printed and broadcast materials or otherwise must comply with the current graphic standards and effective Rules and regulations.

The Merchant may not refer to the Service Marks in stating eligibility for its products, services, or membership; or that such Service Marks are owned by the Merchant.

Upon termination of Agreement for any reason, the Merchant shall immediately cease to display all Service Marks, shall not in any way use the Service Marks, and shall promptly either return to Bank or destroy any materials displaying the Service Marks.

8.3 Completion of Transaction. The Merchant shall not complete a Debit Card Transaction that it knows or should have known to be fraudulent or not authorized by the Cardholder. Within the scope of this requirement, the Merchant shall be responsible for the actions of its employees while acting in its employ. If Bank believes in good faith, that Merchant has presented for processing any Transaction that was not originated as the result of direct Transaction between Merchant and Cardholder, Bank is authorized to delay crediting of Merchant's deposit account with, or otherwise paying Merchant, the amount(s) involved until it has finally determined to its complete satisfaction that the subject Transaction was properly originated.

8.4 Receipt Requirements. Upon completion of any authorized Debit Card Transaction, the Merchant must make available to the Cardholder a receipt that complies fully with all applicable state and Federal laws and regulations, including, but not limited to, Regulation E, and includes, but not limited to, the following information: (i) Transaction Amount, (ii) Transaction Date, (iii) Transaction Type (e.g., payment from Primary Account), (iv) Account Type (e.g., checking, savings, etc.), (v) Card Account Number, (vi) Location of the POS device at which the Transaction was initiated, (vii) Trace Number, (viii) Transaction Time, if the POS device has the capability. Merchant understands and agrees that if the receipt is electronically printed, the receipt must reflect only the last four digits of the Cardholder account number and preceding digits must be pre-filled by an "X", "*" or "#". Example: Cardholder Account Number *****1234

8.5 Terminal Requirements. The Merchant shall have at the point-of-sale where Debit Cards are accepted, an operating Track 2 Magnetic Stripe Reader that meets the requirements set forth in these Rules.

The Merchant shall have at the point-of-sale where Debit Cards are accepted, an operating PIN Pad with an alpha-numeric keyboard that meets the requirements set forth in these Rules. The PIN Pad must allow the entry of Personal Identification Numbers (PINs) having from four (4) to twelve (12) characters.

The Merchant shall require that the Cardholder enter his/her PIN at the point-of-sale when initiating a Debit Card Transaction. The Merchant may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity unless technical problems have prevented the Cardholder from entering his PIN.

A display is required to enable the Cardholder to view data either entered into the Terminal or received in a response to a Transaction. The PIN keyed in by the Cardholder must not be displayed.

Bank must provide an appropriate message to the Cardholder in any instance where the attempted Transaction was rejected. In those instances where a specific reason cannot be provided for the rejection, the message shall refer the Cardholder to the Issuer.

The Merchant shall take all reasonable actions necessary to ensure that all Terminals and PIN Pads operated at their premises are available for use by Cardholders during normal business hours and that the Terminals and PIN Pads are utilized in compliance with the Rules and regulations.

Bank shall ensure that Terminals adhere to the timeout requirements. Terminals must wait a reasonable time from the sending of an Authorization Request for a response before timing out the Transaction. This reasonable time must account for Switch latency as well as the time necessary to deliver the Authorization Request to the Terminal.

8.6 Reversal/Void A Debit Card Transaction may be reversed or voided electronically, but only if such Reversal/Void is entered prior to midnight of the calendar day on which the original Transaction was initiated. To effect a void or reversal, the Cardholder must re-enter his PIN, the Debit Card must be read by the Magnetic Stripe Reader and the Merchant must transmit the Trace Number and exact dollar amount of the Debit Card Transaction to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the receipt at which the original Transaction was initiated but need not be initiated at the same terminal.

8.7 Cashback Transactions Merchants that allow Cardholders to initiate Cashback Transactions shall transmit in its Transaction message to the point-of-sale network, for each Cashback Transaction initiated at the Merchant's location, the amount of cash given to the Cardholder pursuant to the Debit Card Transaction.

If the Merchant receives, in response to a request for authorization for a Cashback Transaction that involves the purchase of goods and/or services, a denial code indicating that a Cashback Transaction has been denied solely because the cashback portion of the Transaction would cause the Cardholder to exceed a limit on cash withdrawals imposed on the Cardholder by the Card Issuer Member, shall inform the Cardholder that the Transaction was denied because it would cause the Cardholder to exceed such limit on cash withdrawal, but that a new Transaction in the amount of the purchase alone may be approved.

8.8 Warranties Merchant will honor any valid Debit Card properly rendered for use. By presentation of a Debit Card Transaction of an electronic deposit to Bank, Merchant warrants that the goods or services described thereon were in fact timely delivered to the Cardholder, or to the Cardholder's designee or authorized user or to a location so prescribed, and Merchant warrants that the goods delivered or services performed in accordance with any agreement or understanding between Merchant and Cardholder, including, but not limited to the fact that such services rendered were adequate and satisfactory to Cardholder and to the fact that any goods furnished and delivered were of the correct quantity, quality, color, size or other agreed upon descriptive or quality requirement.

8.9 PIN-Less Transactions Debit Card Transactions not containing a PIN are prohibited by the point-of-sale networks.

8.10 Chained Transactions Merchants are prohibited from performing Chained Transactions unless the Debit Card is retained by the Terminal from initial insertion until after the final Transaction has been initiated, or unless a separate PIN entry is made for each Transaction.

8.11 Non-Card Swiped Transactions If the Merchant's magnetic stripe reader is disabled or the stripe on the customer's Debit Card is unreadable, manual entry of the Debit Card's account number is allowed as a fallback procedure only. The Cardholder and the Card must be physically present at the location at the time of the Transaction, and the Cardholder must enter a PIN to effect the Transaction. The Card Issuer may deny these Transactions as a result of missing data. Transactions authorized via the manual entry of the Debit Card's account number that are subsequently found to be fraudulent are the liability of the Merchant.

8.12 Unsatisfactory Performance The appropriate point-of-sale network shall notify the Acquirer if at any time it is determined that incidence of complaints regarding a Merchant is unsatisfactory. Such areas of non-compliance include (i) Transactions were not made as indicated on the records furnished by the Merchant, (ii) Transactions were in amounts that differ from those indicated on such records, (iii) Transactions were fraudulent or (iv) The number of Reversals is excessive. If any of these allegations are determined by the appropriate point-of-sale network to be in excess of a level satisfactory to the point-of-sale network, that point-of-sale network may upon written notice, require action to eliminate such deficiencies or require the Acquirer to suspend or entirely discontinue operations of any Merchant.

8.13 Confidentiality and Security. The Merchant shall not disclose, sell, purchase, provide, or exchange account number information in the form of Transaction Receipts, carbon copies of Transaction Receipts, mailing lists, tapes, or other media obtained by reason of a Transaction to any third party other than to the Merchant's agents for the purpose of assisting the Merchant in its business, to its Acquiring Bank, to the appropriate point-of-sale network, or pursuant to a government request, or as otherwise may be required by law.

8.14 Purchase Amounts. The Merchant shall not establish minimum or maximum purchase amounts as a condition of honoring Debit Cards.

8.15 Surcharges. The Merchant shall not require any Cardholder to pay any part of the Merchant's Processing Fee(s), whether through an increase in the price of the goods or services being paid or otherwise, or to pay any contemporaneous Finance Charge or surcharge in connection with any Transaction in which a Debit Card is used.

8.16 Record Retention. Merchants must maintain a copy of each Debit Card Transaction for a minimum of three (3) years or such longer period may be required by applicable Federal, state, or local law, rule, or regulation. Merchants must be able to produce a legible copy of the Debit Card Transaction upon request.

8.17 Return of Cards. Cards that are inadvertently left at a Merchant location may be returned to the Cardholder by the Merchant on the same day if the Cardholder provides positive identification. If the Card is not claimed by the Cardholder by the close of the next Business Day, the Card(s) are to be destroyed.

The Merchant must select one of the following Card acceptance categories:

- ☐ Accept all Visa, MasterCard and Discover Network Cards including consumer credit and debit, and commercial Cards.
- ☐ Limited Acceptance. Accept Visa, MasterCard and Discover Network consumer credit and commercial Cards only. Merchants choosing this option must accept all Visa, MasterCard and Discover Network credit and commercial products including MasterCard or Visa business check Cards.
- ☐ Limited Acceptance. Accept Visa, MasterCard and Discover Network consumer debit Cards only. Merchants choosing this option must accept all Visa, MasterCard and Discover Network consumer debit Card products, which will be identified with the word "DEBIT" printed on the front of the Card.

The Merchant acknowledges by signing below, that they have received and have reviewed the full Merchant Agreement & Merchant Program Guide either in electronic or printed form which precedes this signature page. Merchant also confirms that the information provided for the completion of the Merchant application is complete and accurate, that the persons signing this are duly authorized to bind Merchant to all provisions of the Merchant Application and Agreement; that the signature by the authorized representative of Merchant or the electronic transmission of a Merchant application shall be the Merchant's acceptance of and agreement to the terms and conditions contained in the Agreement including, without limitation, the Merchant application; that Merchant authorizes Bank and its affiliates, prior to acceptance of the application, to obtain credit reports or other background investigation reports for Merchant and Guarantor; and that any information provided in connection with the application and Agreement may be supplied by Bank to our affiliates or by our affiliates to Bank.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf as of the _____ day of _____, 20____.

MERCHANT:

Name _____
of Merchant (Corporate Name's Name)

Name _____
of Merchant (DBA Name)

By _____
Name _____
Title _____

By _____
Name _____
Title _____

By _____
Name _____
Title _____

GUARANTY

To induce Bank's acceptance of this Merchant Agreement, the undersigned, jointly and severally, unconditionally and irrevocably guarantee(s) performance and payment of all of Merchant's obligations that arise out of or are connected to this Agreement including any modifications, amendments or extensions, whether those obligations are owed to Bank or to any of its affiliates, including but not limited to any affiliate bank of Bank that may hold Merchant's Operating Account. The undersigned acknowledges and agrees that Bank or any affiliate of Bank owed an obligation by Merchant under this Agreement may exercise the right of set-off against accounts of Guarantor, without advance notice, to satisfy the obligations of Guarantor under this Guaranty and the obligations of Merchant under this Merchant Agreement. The undersigned waive(s) all surety defenses, including without limitation any requirement that Bank (or its affiliate) first pursue Merchant, provide notice of default or demand, or notice and/or consent by the undersigned. The undersigned has reviewed and understands the terms and conditions of this Guaranty, has had the opportunity to consult undersigned's lawyer and accept (s) all of the terms and conditions of this Guaranty.

Further, the undersigned gives his/her personal guaranty and has the authority to give a corporate guaranty, if applicable, on behalf of _____ to Bank. The undersigned shall pay Bank any attorney's fees, witness fees and other costs, expenses and damage arising from Bank's enforcement of this guaranty.

Printed Name _____	Printed Name _____
Physical address _____	Physical address _____
Signature 1 (Individual) _____	Signature 2 (Individual) _____
_____ (seal), an individual	_____ (seal), an individual
Dated: _____	Dated: _____

Entity Signature	
Printed Name _____	Entity Name _____
Physical address _____	Physical address _____
Signature 3 (Individual) _____	
_____ (seal), an individual	By: _____ (seal)
Dated: _____	Printed Name _____
	Its (Title) _____
	Dated: _____
