

**First American Payment Systems, L.P.**301 Commerce Street, Suite 2000 • Fort Worth, Texas 76102
817/317-9100 • FAX: 817/317-9191 • www.first-american.net

MCC:

MERCHANT APPLICATION**BUSINESS NAME(S)**

EXACT LEGAL NAME:

NAME OF ACCOUNT (DOING BUSINESS AS):

MAILING/BILLING ADDRESS:

PHYSICAL STREET ADDRESS (IF DIFFERENT FROM MAILING ADDRESS):

CITY, COUNTY, ST., ZIP:

CITY, COUNTY, ST., ZIP:

CORPORATE PHONE NO.:

DBA PHONE NO.:

DBA CONTACT:

MUST CHOOSE ONE:

CORRESPONDENCE SHOULD BE MAILED TO: ☐ DBA ADDRESS ☐ CORPORATE ADDRESS**MERCHANT PROFILE**TYPE OF OWNERSHIP: ☐ SOLE PROPRIETOR ☐ PARTNERSHIP ☐ PA OR PC
☐ CORPORATION ☐ LIMITED LIABILITY COMPANY ☐ NOT FOR PROFIT

TYPE OF GOODS OR SERVICES SOLD:

HAVE YOU EVER ACCEPTED VISA/MASTERCARD? ☐ YES ☐ NO IF YES, NAME OF PROCESSOR:
(IF YES, SUBMIT 3 MOST CURRENT MONTHS' STATEMENTS.)

HAS THIS BUSINESS OR ANY ASSOCIATED PRINCIPAL BEEN TERMINATED

AS A VISA/MASTERCARD MERCHANT? ☐ YES ☐ NOHAS MERCHANT OR ANY ASSOCIATED PRINCIPAL DISCLOSED BELOW FILED ☐ YES DATE: _____
BANKRUPTCY OR BEEN SUBJECT TO INVOLUNTARY BANKRUPTCY? ☐ NO

HIGH VOLUME AND/OR SEASONAL MONTHS:

VISA/MASTERCARD INFO

MERCHANT TYPE:

☐ RETAIL
☐ RESTAURANT
☐ LODGING
☐ SERVICE
☐ SEASONAL
☐ INTERNET

VISA/MASTERCARD SALES PROFILE (BE ACCURATE):

CARD SWIPE	%
MANUAL WITH IMPRINT, CARD PRESENT	%
MAIL/PHONE ORDER	%
INTERNET	%
	100%

WEB SITE ADDRESS:

HOURS OF OPERATION:
M-F:

SAT/SUN:

BANK REFERENCE:

FEDERAL TAX #

OF LOCATIONS

YEARS IN BUSINESS

YEARS OWNED BUSINESS

CHECKING ACCOUNT NO.:

DATE OPENED:

BANK PHONE NO.:

BANK CONTACT:

OWNERS OR OFFICERS

NAME:

TITLE:

DATE OF BIRTH:

APPLICANT'S SSN#:

HOME PHONE:

1.

RESIDENCE ADDRESS:

CITY:

STATE:

ZIP:

HOW LONG:

% EQUITY OWNERSHIP:

NAME:

TITLE:

DATE OF BIRTH:

APPLICANT'S SSN#:

HOME PHONE:

2.

RESIDENCE ADDRESS:

CITY:

STATE:

ZIP:

HOW LONG:

% EQUITY OWNERSHIP:

(IF ANY) ALL OTHER EQUITY OWNERS:

NUMBER: _____ %

BUSINESS TRADE SUPPLIERS (LIST THREE)

NAME:

PRODUCT PURCHASED:

CONTACT:

PHONE:

NAME:

PRODUCT PURCHASED:

CONTACT:

PHONE:

NAME:

PRODUCT PURCHASED:

CONTACT:

PHONE:

MERCHANT SITE SURVEY REPORT (TO BE COMPLETED BY SALES REPRESENTATIVE)

MERCHANT LOCATION:

☐ RETAIL LOCATION WITH STORE FRONT☐ OFFICE BUILDING☐ RESIDENCE☐ OTHER _____

AREA ZONED:

☐ COMMERCIAL☐ INDUSTRIAL☐ RESIDENTIAL

SQUARE FOOTAGE:

☐ 0 - 250☐ 251 - 500☐ 501 - 2,000☐ 2,001+

DOES THE AMOUNT OF INVENTORY AND MERCHANDISE ON SHELVES AND FLOOR APPEAR CONSISTENT WITH THIS TYPE OF BUSINESS?

☐ YES ☐ NO IF NO, EXPLAIN

THE MERCHANT:

☐ OWNS☐ LEASES THE BUSINESS PREMISES

WHOM DOES MERCHANT LEASE FROM? NAME & PHONE NO.:

FURTHER COMMENTS BY INSPECTOR:**I HEREBY VERIFY THAT THIS APPLICATION HAS BEEN FULLY COMPLETED BY MERCHANT APPLICANT AND THAT I HAVE PHYSICALLY INSPECTED THE BUSINESS PREMISES OF THE MERCHANT AT THIS ADDRESS AND THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF**

VERIFIED AND INSPECTED BY (PRINT NAME):

AGENT NO.:

REP NO.:

DATE:

REPRESENTATIVE SIGNATURE:

SCHEDULE OF CHARGES

VISA / MASTERCARD RATES

VISA DISCOUNT RATE:	%	VISA TRANSACTION FEE:	¢
MASTERCARD DISCOUNT RATE:	%	MASTERCARD TRANSACTION FEE:	¢

CHECK ONE: ☐ **CARD SWIPE** ☐ **MANUAL ENTRY / MOTO** ☐ **INTERNET**

Manual Entry / Moto / Internet order transactions performed without address verification service (AVS), will be charged a higher discount rate.

Transaction Fees and Discount Rates are based upon MERCHANT's business type, method of sale and processing procedure. Deviation from the standards noted above may result in increased charges. In addition, charges made via MasterCard

Business™ Card or Visa Commercial Card at Travel and Entertainment merchant locations will be subject to surcharge. See paragraph 21 of the MERCHANT Processing Agreement for additional information.

VOICE AUTHORIZATION FEE:	95¢	PER REQUEST
T/E DISCOVER AUTHORIZATION/CAPTURE FEE:	25¢	PER ITEM
BATCH/SETTLEMENT FEE:	20¢	PER BATCH

WIRELESS FEES (IF APPLICABLE)

RADIO / RAM MONTHLY ACCESS FEE: \$25.00 PER TERMINAL **WIRELESS TRANSACTION SURCHARGE: 07¢ PER ITEM**

ESN: _____ **MANN:** _____ **SERIAL#:** _____

OTHER FEES

STATEMENT FEE: (MUST CHOOSE ONE)	<input type="checkbox"/> \$ _____ MONTHLY	<input type="checkbox"/> \$ _____ WEEKLY
ANNUAL FEE: (SEE PARAGRAPH 24)	\$95.00	PER YEAR
CHARGEBACK FEE:	\$25.00	PER ITEM
RETRIEVAL FEE:	\$5.00	PER ITEM
NSF DRAFT	\$25.00	PER ITEM

DEBIT / CREDIT AUTHORIZATION

MERCHANT hereby authorizes BANK in accordance with this MERCHANT Processing Agreement to initiate debit/credit entries to any bank account including, but not limited to the designated account. The authority is to remain in full force and effect until (a) BANK has received written notification from MERCHANT of its termination in such a manner as to afford BANK reasonable opportunity to act on it; and (b) all obligations of MERCHANT to BANK that have arisen under

this agreement have been paid in full, including, but not limited to those obligations described in paragraph 12 of this Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials.

MERCHANT authorizes the BANK or any credit reporting agency employed by BANK or any agent of BANK, to make whatever inquiries the BANK deems appropriate to investigate, verify or research references, statements or data obtained from MERCHANT for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing.

AVERAGE TICKET SIZE:	<input type="text"/>	AVERAGE MONTHLY VOLUME:	<input type="text"/>
HIGH TICKET SIZE:	<input type="text"/>	HIGH MONTHLY VOLUME:	<input type="text"/>

Each person certifies that the average ticket size and sales volume indicated is accurate and acknowledges any variance to this information could result in delayed and/or withheld settlement of funds. Also, see paragraph 22 of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.

IMPORTANT NOTICE: All information contained in this application was completed or supplied by all contracting parties. FIRST AMERICAN PAYMENT SYSTEMS, L.P. and/or First National Bank shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of FIRST AMERICAN PAYMENT SYSTEMS, L.P. and/or First National Bank. The provisions on the reverse sides of this MERCHANT Agreement are a part of this MERCHANT Agreement. Those provisions must be read before signing. By signing below, you agree to the terms of the front and back of this MERCHANT Agreement and that all blanks were completed.

MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY First American Payment Systems, L.P., AND/OR BANK AND A MERCHANT NUMBER IS ISSUED.

AGREED AND ACCEPTED

PRINT LEGAL NAME OF MERCHANT BUSINESS

X
#1 FROM APPLICATION—SIGNATURE & TITLE _____ DATE _____

X
#2 FROM APPLICATION—SIGNATURE & TITLE _____ DATE _____

FOR ALL CORPORATIONS CORP. RESOLUTION

The indicated officer(s) identified in numbers 1 and/or 2 have the authorization to execute the MERCHANT Processing Agreement on behalf of the herewithin named corporation.

X
Corporate Officer _____ DATE _____

INDIVIDUAL GUARANTY (NO TITLES)

FOR VALUE RECEIVED, and in consideration of the mutual undertakings contained in the MERCHANT PROCESSING AGREEMENT (the "Agreement") by and between MERCHANT and BANK, the undersigned jointly and severally if more than one, unconditionally guarantee to BANK and its successors and assigns the full and prompt payment when due and performance of all the obligations of every kind of MERCHANT arising directly or indirectly out of the agreement and all amendments thereto or any document or agreement executed and delivered by MERCHANT in accordance with the terms of the Agreement. The undersigned acknowledge this Guaranty as a con-

X
#1 FROM APPLICATION—SIGNATURE _____ DATE _____

X
ACCEPTED BY FIRST AMERICAN PAYMENT SYSTEMS, L.P.

tinuing guaranty and shall not be affected by the release or discharge of MERCHANT, waiving any right to require BANK to proceed against MERCHANT prior to enforcing this Guaranty, further agree to pay to BANK all expenses (including attorney's fees and court costs) paid or incurred by BANK in collecting such obligations, and in enforcing this Guaranty. The undersigned hereby waives notice of default by MERCHANT hereunder. The provisions on the reverse side of this MERCHANT Agreement are a part of this disclosure. Those provisions must be read before signing. By signing below you agree to the terms contained within all pages of this Agreement.

X
#2 FROM APPLICATION—SIGNATURE _____ DATE _____

X
ACCEPTED BY FIRST NATIONAL BANK IN BROOKINGS

THIS AGREEMENT, is made by and between First National Bank in Brookings ("Bank"), a national banking organization and the undersigned "MERCHANT" and shall be effective upon execution by Bank.

WHEREAS, Bank is engaged in the business of financial transaction processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of bank cards bearing the Visa U.S.A. Incorporated ("Visa") and MasterCard International Incorporated ("MasterCard") trademarks, as well as certain other credit, debit, and other electronic payment cards, each of such cards hereinafter referred to as a bank card; and

WHEREAS, Bank has entered into a Transaction Processing Agreement with First American Payment Systems, L.P. ("First American") authorizing First American to perform the processing functions and exercise the legal rights under this agreement; and

WHEREAS, MERCHANT hereby warrants that it is engaged in a lawful business and is duly licensed under the laws of the state, county, and city disclosed by MERCHANT on the Merchant Application, to conduct such business; and

WHEREAS, MERCHANT currently accepts or desires to accept bank cards for its customers' purchase of goods and services it provides or anticipates providing; and

WHEREAS, MERCHANT warrants that neither it nor any of its officers, directors, or owners has been terminated for any reason by any bank or processor in connection with any agreement regarding depositing or processing bank card sales.

NOW, THEREFORE, in consideration of the representations, covenants, and promises made herein, the receipt and sufficiency of which are acknowledged, Bank and MERCHANT agree as follows:

1. Agreement. This Agreement and all applicable bank card rules and regulations as well as all other documents executed by MERCHANT required for acceptance of MERCHANT's bank card processing by Bank, all of which are deemed incorporated herein, shall constitute the entire agreement between Bank and MERCHANT. Reference to "this Agreement" includes any valid schedules, appendices, and amendments hereto, including the Merchant Application, and all schedules, appendices, and amendments thereto, as completed by MERCHANT. MERCHANT acknowledges that Bank will provide financial transaction processing hereunder through First American or other third parties engaged in the business of transaction processing authorization. MERCHANT agrees that First American may perform the functions of Bank hereunder and that First American may enforce the terms of this Agreement against MERCHANT as an assignee of Bank's rights hereunder, whether or not Bank is a party to such proceeding or transaction.

2. Acceptance of Bank Cards. MERCHANT agrees to honor without discrimination all valid bank cards when properly presented as payment by customers in connection with bona fide, legitimate business transactions arising out of MERCHANT's usual trade or business as disclosed in the Merchant Application. The acceptance of all other credit cards (e.g., American Express, Diner's Club) is subject to the rules and regulations of the issuing associations. Such rules and regulations are incorporated herein by this reference.

3. Completion of Bank Card Sales Draft. MERCHANT agrees to complete all bank card sales drafts (hereinafter "sales slips") or credit drafts or vouchers (hereinafter "credit slips") in accordance with prescribed rules and regulations of Visa and MasterCard or any other applicable card issuing organization, as may from time to time be in effect.

MERCHANT agrees that in all face-to-face sales to either (i) imprint the sales slip with the embossed data from the customer's bank card and the MERCHANT's plate on an imprinter, or (ii) generate electronically a sales slip by card swiping a customer's bank card. MERCHANT shall obtain the cardholder's signature on the sales slip and confirm that such signature matches the signature on the card. MERCHANT shall verify that the embossed cardholder number is the same cardholder number contained in the bank card's magnetic strip.

MERCHANT agrees not to accept bank cards when the customer's signature does not appear to match the signature on the signature strip on the bank card.

Notwithstanding MERCHANT's use of an electronic terminal or similar device through which an authorization may be obtained (a point of sale "POS" terminal), for all face-to-face sales MERCHANT must still obtain the cardholder's signature on the printed sales receipt. Failure to properly do so may result in a delay in processing, a chargeback or sales proceeds not being deposited to MERCHANT's Designated Account.

MERCHANT shall be solely responsible for the proper verification of the cardholder's signature and the expiration date of the bank card, which obligation shall not be discharged by receipt of an electronic approval code.

4. Point-of-Sale Devices. MERCHANT agrees to utilize a POS terminal in connection with all bank card transactions processed pursuant to this Agreement. MERCHANT agrees to keep all imprinters and POS terminals used to process bank card transactions in good working order and shall notify Bank prior to any change of the imprinted or programmed information.

5. Bank Card Authorization. MERCHANT understands and acknowledges that the dollar amount established for each transaction over which authorization from the bank card issuer must be obtained (its "floor limit") shall be ZERO and that all transactions must be authorized.

In the event of a POS terminal failure, bank card defect, or communication error, MERCHANT agrees to obtain (i) authorization according to voice back-up procedures furnished by Bank at then current interchange rates, and (ii) in the case of a face-to-face sale, an imprinted sales slip.

6. Mail Order and Telephone Sales. Bank discourages MERCHANT from accepting mail or telephone orders because of the high incidence of fraud associated with such sales. MERCHANT acknowledges that Bank shall have the right to immediately terminate this Agreement without liability to MERCHANT if MERCHANT has not received previous written approval of Bank to accept mail or telephone orders. Bank's failure to exercise the right to terminate this Agreement as a consequence of MERCHANT's acceptance of mail or telephone orders shall not constitute a waiver of such termination right and such right to terminate may be exercised at any time regardless of when Bank determines MERCHANT has accepted or is accepting mail or telephone orders.

7. Settlement. MERCHANT agrees to balance and deliver to Bank transaction records of bank card sales daily, except on days when MERCHANT's place of business is regularly closed or closed for normal holidays or the periodic taking of inventory, and in such cases, delivery of transaction records of bank card sales shall be on the next business day.

8. Payments. All payments to MERCHANT for legitimate and authorized bank card sales shall be made by Bank through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to a "Designated Account" of the MERCHANT identified in the Merchant Application. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, Bank cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, the MERCHANT agrees to assist Bank to help resolve any problems in crediting MERCHANT's "Designated Account." MERCHANT agrees to provide Bank three (3) days prior written notice of any change of Designated Account. Unless proper notice is provided by MERCHANT to Bank, MERCHANT shall not charge a Designated Account.

Subject to the provisions of any warranty of MERCHANT hereunder, all payments to MERCHANT for the amount of bank card sales submitted to Bank shall be less discount, credit chargebacks, reserve amounts, transaction fees, statement fees, and other applicable fees for which MERCHANT shall be responsible. Any payment made by Bank to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by Bank. If Bank, as a result of MERCHANT's failure to comply with settlement procedures provided herein, is unable to deliver payments otherwise due MERCHANT, such payments shall be earned compensation of Bank. Fees and other charges due Bank hereunder may be deducted from amounts otherwise due MERCHANT or may be debited against MERCHANT's "Designated Account" or other account at Bank's sole discretion. The discount and other fees may be collected by Bank on a daily, monthly, or other basis, as determined by Bank. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's "Designated Account," or paid directly by MERCHANT through ACH or otherwise at Bank's sole discretion.

9. Sales Slip Storage and Retrieval. Visa and MasterCard require Bank to obtain from MERCHANT and forward to bank card issuers, upon request, copies of sales or credit slips.

MERCHANT shall set up a system satisfactory to Bank to store and maintain sales slips in such manner and MERCHANT shall deliver to Bank within 24 hours of request copies of any sales slip requested by Bank. MERCHANT shall preserve a copy of the actual paper sales slips, credit slips and, if a mail order or pre-authorized order is involved, the customer's signed authorization for the transaction, for at least three (3) years after the date MERCHANT presents the transaction data to Bank. To assist in the resolution of any dispute and in addition to and without limiting the foregoing provisions of this paragraph 9, MERCHANT agrees to retain for one (1) year and make available within three

(3) days of a request all pertinent records pertaining to each transaction in question, including, but not limited to, itemized bills, authorization requests, and other related documents. MERCHANT shall store all such material in an area limited to selected personnel and exercise best efforts to maintain these materials in a secure manner. MERCHANT's obligations under this paragraph 9 shall continue following the close of MERCHANT's business or the termination of this Agreement.

MERCHANT understands that its failure to respond timely to a retrieval request from bank card issuers for a sales slip may result in a chargeback under Visa and MasterCard rules and regulations, additional fees to Bank and/or fees charged by Visa, MasterCard, and other links in processing, additional reserve requirements and other conditions, all of which chargebacks, fees, reserve requirements, and other conditions shall be the responsibility of MERCHANT and charged to MERCHANT.

In connection with retrieval requests or other administrative requirements associated with any MERCHANT agreement or account, Bank and/or its designated processor may charge retrieval fees and administrative charges which shall be the responsibility of MERCHANT. Bank and/or its designated processor shall determine in their sole discretion the amount of any retrieval fee and administrative charge and when such fee and charge shall be assessed. MERCHANT shall not be entitled to notice of any such fee or administrative charge or with respect to any change in the amount of any fee or administrative charge.

10. Warranties by Merchant. MERCHANT warrants that it shall fully comply with all federal, state, and local laws, rules, and regulations, as amended from time to time, including, but not limited to, the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

As to each bank card sale presented to Bank for payment, MERCHANT warrants that:

1. The sales slip is valid in form and has been completed in accordance with current instructions, if any, furnished by Bank;
 2. MERCHANT has delivered MERCHANT's merchandise to the cardholder signing such sales slip or completed MERCHANT's service described on the slip in accordance with MERCHANT's underlying agreement with the cardholder;
 3. MERCHANT has delivered to the cardholder a true and completed copy of the sales slip or suitable receipt evidencing the transaction involving use of the bank card;
 4. Each sales slip represents the cardholder's indebtedness to MERCHANT for the amount shown;
 5. The cardholder has no defense, right of offset, or counterclaim against MERCHANT in connection with the purchase of the goods or services;
 6. Unless expressly authorized in writing by Bank and as permitted by Visa and MasterCard rules and regulations, MERCHANT shall not make any cash advances to a cardholder, either directly or by deposit to the cardholder's account. Money orders sent by wire to persons or entities having no ongoing relationship with MERCHANT and processed pursuant to specific Visa and MasterCard regulations, contributions to charitable and political organizations, tax payments, insurance premium payments, alimony and child support payments, and court costs and fines shall not be considered cash advances or withdrawals;
 7. Neither MERCHANT nor any owner, director, officer, or employee of MERCHANT ("Affiliates") has advanced cash to cardholder in connection with the purported bank card sale, nor has MERCHANT or its Affiliates purchased, directly or indirectly, goods or services of MERCHANT in connection with such purported bank card sale;
 8. 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 the transaction. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying cash, check, or any other means other than by bank card, provided such discounted price is presented as a discount from the standard price available for all other means of payment;
 9. In any bank card transaction, MERCHANT warrants the customer's true identity as an authorized user of the bank card, whether or not cardholder's permission is obtained, unless MERCHANT obtains and notes legibly on the sales slip independent and verifiable evidence of the customer's true identity; and
 10. In any face-to-face sale, MERCHANT warrants it has verified the existence of a signature in the bank card signature panel and compared such signature with the signature on the sales slip. MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to Bank, to MasterCard or to Visa, or pursuant to a lawful government demand.
- MERCHANT warrants it shall have the right to use or display the proprietary names and symbols associated with bank cards only while this Agreement is in effect, or until MERCHANT is notified by Bank or the bank card organization to cease such usage. Bank and the bank card organization shall have the right at any time to require MERCHANT to cease such usage for any reason, whether or not this Agreement remains in effect.
- MERCHANT shall use the proprietary names and symbols associated with Bank or with bank cards only to indicate that bank cards are accepted for payment and shall not indicate, directly or indirectly, that Bank, MasterCard, Visa, or any other bank card organization endorses MERCHANT's products or services.
- MERCHANT's usual trade or business is shown in the Merchant Agreement. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining Bank's prior written consent to the change, move, or addition.
- MERCHANT acknowledges that the codes of professional responsibility and the rules of local, state, and national bar associations or the rules and regulations of state and local dental associations, medical associations, or other professional associations may apply to the transaction covered by this Agreement. MERCHANT warrants that it will not conduct any transactions that are not in compliance with both this Agreement and any such codes or rules and will indemnify and hold Bank harmless against any loss or damage Bank may suffer as a result of a breach of this or any other warranty by MERCHANT. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of Bank and request a modification to this Agreement to eliminate such inconsistency. Bank may agree to such modification to the extent it is consistent with Bank policy and in conformity with then existing MasterCard or Visa rules and applicable laws and regulations. Until Bank agrees to such modification, the terms of this Agreement shall remain in place.
- MERCHANT shall give prior written notice to Bank in the event of any anticipated change of address or ownership of MERCHANT or transfer of substantially all of the assets of MERCHANT. MERCHANT shall be responsible for any administrative charges of Bank associated with any change of address or ownership or transfer of assets.

11. Returns and Credits. MERCHANT shall properly complete a credit slip delivering one completed copy to cardholder at the time of each return or cancellation of sale. Bank shall charge MERCHANT the regular transaction fee as well as other fees applicable to all credit transactions.
- MERCHANT shall not, under any circumstances issue: (i) cash or MERCHANT's check for returns of merchandise of cancellation of service where goods or services were originally purchased in a bank card transaction; (ii) credit to MERCHANT or its Affiliates for returns of merchandise or cancellation of service where goods or services were originally purchased in a bank card transaction; (iii) a credit slip to a cardholder without having completed a previous purchase transaction with the same cardholder; or (iv) a credit slip to a cardholder for any prior sale or service made or provided at a location other than the location where the credit slip is issued.
- With proper disclosure at the time of the transaction where purchased goods or services are delivered to cardholder at the time the transaction takes place, MERCHANT may:

1. Refuse to accept merchandise in return or exchange and refuse to issue a refund to a cardholder; or
 2. Accept returned merchandise in exchange for the MERCHANT's promise to deliver goods or services of equal value available from MERCHANT at no additional cost to cardholder.
- Proper disclosure shall be deemed to have been given if, at the time of the transaction and prior to obtaining the customer's signature, the following notice appears on all copies of the sales slip in legible letters at least 1/4 inch high and close proximity to the space provided for the cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY," as applicable, or equivalent language.
12. Chargebacks. MERCHANT expressly acknowledges and agrees to any charge or debit made by Bank against MERCHANT's Designated Account or other account as a result of the exercise of chargeback rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of Visa, MasterCard or

other card associations as the same may be in effect from time to time. Without prior notice, Bank shall have the right to reduce MERCHANT's bank card sales proceeds received from issuing banks, debit MERCHANT's Designated Account or other account and/or demand immediate payment from MERCHANT through ACH or otherwise for any bank card transaction which is disputed or returned to Bank by the financial institution or company which has issued the bank card (the "Card issuer") utilized by the cardholder, and to chargeback such sale to MERCHANT in any of the following situations:

- (1) Where goods originally purchased have been returned to MERCHANT by cardholder and cardholder requested a credit slip and such credit slip was not processed by MERCHANT.
- (2) Where the purchase had not been authorized by a card authorization center as required hereunder.
- (3) Where sales slip covers goods or services other than those described in the MERCHANT Application.
- (4) Where a cardholder contends or disputes in writing to Bank or the Card issuer that:
 - (1) goods or services were not received by cardholder or by authorized user; or
 - (2) goods or services received by cardholder or by authorized user do not conform to what was described on the sales slip; or
 - (3) goods or services were defective or of unsatisfactory quality.
- (5) Where original sales slip is not received by Bank from MERCHANT when requested by Bank in accordance with paragraph 9 of this Agreement.
- (6) Where sales slip does not contain a transaction date or the face of such sales slip shows that such date or dollar amount has been altered or incorrectly entered.
- (7) Where the sales slip delivered to Bank contains the imprint or description of a bank card other than the bank card processed.
- (8) Where the sale was generated through the use of an expired bank card.
- (9) Where no signature appears on sales slip and the cardholder has represented in writing to Bank or the Card issuer that the cardholder did not make or authorize the transaction.
- (10) Where the sales slip does not contain the embossed legend from a bank card or MERCHANT has failed to obtain the specific authorization from a designated card authorization center to complete the transaction or the cardholder has represented in writing to Bank or the Card issuer that the cardholder did not make or authorize the transaction.
- (11) Where the signature on the sales slip is obviously different from the signature appearing on the signature panel of the card or where no signature appears on the signature panel.
- (12) Where a Card issuer or Bank has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card issuer or the cardholder participated in or authorized the transaction, or the Card issuer represents that there is no bank card outstanding with the account number used. Whereupon, Bank, at its option, may terminate this Agreement without prior notice.
- (13) Bank reasonably determines that the transaction record is improper, fraudulent, or not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder, MERCHANT or MERCHANT's owners, agents or employees. Whereupon Bank, at its option, may terminate this Agreement without prior notice.
- (14) If with respect to any one of MERCHANT's outlets, (i) the ratio of bank card counterfeit and fraud volume to bank card sales volume exceeds 8% for two successive months, or (ii) three (3) fraud charges without regard to dollar amount or location shall be determined by Bank to have occurred with respect to a single card during a 24-hour period; in Bank's sole and absolute discretion, and without limiting other rights hereunder, Bank may charge back all bank card sales and/or this Agreement may be terminated immediately without prior notice.
- (15) In any situation where the sales slip was executed or depository credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Visa or MasterCard rules and regulations which has resulted in a sale being charged back by the Card issuer.
- (16) According to all bank card organization rules or regulations as they currently exist or as they may be amended from time to time.
- (17) In such other circumstances where Bank determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback.

MERCHANT understands that Bank will assess MERCHANT a fee as well as administrative costs as determined by Bank for each chargeback.

MERCHANT, whether consented to or not by cardholder, shall not present to Bank for processing any sales slip representing a transaction which has been previously charged back to Bank and returned to MERCHANT. MERCHANT's obligations and Bank's rights under this paragraph 12 shall survive the termination of this Agreement.

13. **Fraudulent Sales/Factoring.** MERCHANT shall not present to Bank directly or indirectly, any sales slip or transaction record (i) that MERCHANT knows or upon exercising reasonable care should have known to be fraudulent, improper, illegal, or not authorized by the cardholder, (ii) that results from a transaction outside MERCHANT's normal course of business as described in the Merchant Application, (iii) that results from processing or credit, directly or indirectly, of any transaction not originated as a result of an act directly between cardholder and MERCHANT, or (iv) that contains the account number of a bank card account issued to MERCHANT. Should MERCHANT do so, this Agreement with MERCHANT may be immediately terminated by Bank without notice, all funds otherwise due MERCHANT may be placed on hold for such period as Bank may determine, but in any event, not less than 180 days and MERCHANT may be required to establish a reserve account in an amount determined by Bank. MERCHANT hereby releases, indemnifies and holds Bank harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a consequence of MERCHANT being placed by Bank or its agents on the Combined Terminated Merchant File or other applicable list where such events are reported.

Bank may withhold any payment to MERCHANT from all transactions following the determination of improper, fraudulent, suspect, or other questionable transactions, including, but not limited to, transactions varying materially in character or volume from original ticket size or monthly volume disclosed to MERCHANT in the Schedule of Charges which is a part of this Agreement, until such time as questions regarding such transactions have been resolved to the satisfaction of Bank.

14. **Limitation of Damages.** Bank shall not be liable for special, consequential, exemplary, or punitive damages. In no event shall Bank's cumulative liability to MERCHANT hereunder exceed the amount of processing fees paid by MERCHANT to Bank for the transaction in question.

15. **Force Majeure.** The parties to this Agreement shall be released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, sabotage, war, military operation, national emergency mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or either party's compliance therewith or government proration, regulation, or priority, or any other cause beyond either party's reasonable control whether similar or dissimilar to such causes; provided however that this paragraph 15 shall not affect or excuse MERCHANT's obligation to establish reserve accounts or liability for chargebacks and applicable fees under this Agreement.

16. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Texas. In addition, this Agreement shall be subject to the bylaws and operating rules and regulations of Visa and MasterCard as amended from time to time. The parties to the Agreement, including any guarantor, agree to the jurisdiction of any state or federal court located in Tarrant County, Texas, and to service of legal process in accordance with the laws of the State of Texas.

17. **Assignment.** This Agreement and the rights and obligations underlying this Agreement may be assigned by Bank or First American. This Agreement may not be assigned by MERCHANT.

18. **Term; Termination.** This Agreement shall become effective upon acceptance by Bank and shall continue in full force and effect for a term of two (2) years therefrom. Thereafter, the Agreement will automatically renew for additional one-year periods unless terminated per this paragraph or other provisions of the Agreement. The original term of this Agreement shall commence with Bank acceptance hereof (as evidenced by the commencement of Bank's performance hereunder), and shall continue until either (i) terminated by MERCHANT by giving at least thirty (30) days notice of non-renewal to Bank, or (ii) terminated by Bank by giving notice to MERCHANT (such termination by Bank

to be effective as of the date such notice is received by MERCHANT). In the event MERCHANT submits card transactions to Bank after the date of termination, the card transaction may (at Bank's option) be processed subject to the terms and conditions of this Agreement.

If this Agreement is terminated, Bank will be entitled to recover, and MERCHANT will pay on demand, any and all losses (including consequential damages and loss of profits, costs, expenses and liabilities) incurred by Bank in connection with termination. MERCHANT agrees to pay bank/processor deconversion fees established by Bank, but in no event less than one hundred fifty dollars (\$150.00) for each MERCHANT location. MERCHANT authorizes Bank to debit Designated Account and other accounts for said deconversion fees, plus any and all losses (including consequential damages and loss of profits, costs, expenses, and liabilities) incurred by Bank in connection with termination. If the Designated Account does not have sufficient funds to pay for the deconversion fees, MERCHANT agrees to pay Bank immediately upon receipt of invoice therefor. Bank may hold payment of any monies due MERCHANT to insure that all chargeback or other obligations of MERCHANT are satisfied.

19. **Authorization.** MERCHANT hereby authorizes Bank in accordance with this Agreement to initiate debit/credit entries to its Designated Account as indicated herein. The authority to initiate such debit/credit entries shall remain in full force and effect until Bank has received written notification from MERCHANT of its effective termination of this Agreement in such manner as to afford Bank reasonable opportunity to act and Bank shall have been paid all fees under this Agreement and all chargebacks and other amounts shall have been paid.

20. **Attorneys' Fees and Costs.** MERCHANT shall be liable for and shall indemnify and reimburse Bank for any and all attorneys' fees and other costs and expenses paid or incurred by Bank in the enforcement hereof, or in collecting any amounts due from MERCHANT to Bank hereunder or resulting from any breach by MERCHANT of any of the terms or conditions of this Agreement.

21. **Fee/Rate Adjustments.** Discount shall mean a percentage of the total sales deposited to MERCHANT's Designated Account. Transaction fee shall mean a fee charge on each sales draft and each credit draft regardless of the total stated. Authorization fee shall mean the fee charged on each transaction attempted whether approved or declined and whether or not the sale was actually charged, and includes batch closing. The Discount Fee applies to Qualified transactions. Other transactions which will have higher Discount Fees are categorized as mid-qualified or nonqualified transactions. Qualified transactions include those in which the credit card was magnetically read and an authorization obtained, the credit card was issued by a bank within the United States, and the transaction was settled on the day of the sale. Mid-qualified transactions include those key entered or deposited more than one (1) business day following the transaction date. Non-qualified transactions include those where no authorization was obtained, the transaction was deposited more than two (2) business days after the transaction date, the credit card was issued by a bank outside the United States or the card was issued for business procurement purposes.

Processing fee, also referred to as the discount rate, shall mean a percentage of the total bank card sales processed for MERCHANT's account. Transaction fee shall mean a fee charged on each sales slip and each credit slip regardless of the total stated.

Bank shall have the right to adjust charges as necessary to offset any direct or indirect increase to Bank in the costs of providing services hereunder including, but not limited to, costs associated with collection and administration of chargebacks, fees charged by Visa or MasterCard, fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of Visa and MasterCard or other applicable bank card organization, charges for changed merchant accounts or information, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in communication costs charged to Bank by common carriers. Such charges shall, without prior notice, become effective as of the date of charge. Upon any request from MERCHANT for copies of file information, account research, or other information, Bank may charge fees for such services, including per hour fees as determined by Bank. Without limiting the foregoing, Bank shall have the absolute and unconditional right to increase discount rates and/or transaction fees for any reason when deemed appropriate in Bank's sole discretion. Bank may charge a fee not less than \$25.00 for a change of depository bank account by MERCHANT.

MERCHANT agrees that should MERCHANT elect to accept other bank cards under this Agreement in addition to Visa and MasterCard, that all duties and obligations herein shall apply to such other bank cards unless contrary to rules and regulations applicable to the issuers or acquirers of said bank cards.

Without limiting the foregoing, Bank shall have the absolute and unconditional right in its discretion to increase discount rates and/or transaction fees if MERCHANT or MERCHANT's transactions do not satisfy eligibility requirements of Visa and/or MasterCard for minimum interchange fees. MERCHANT acknowledges that fees and rates charged hereunder may vary as a consequence of variable charges incurred under Visa and MasterCard programs as each may change from time to time.

22. **Variances.** MERCHANT acknowledges and agrees that Bank may hold funds, temporarily suspend processing under this Agreement or terminate this Agreement if there exists material variances in the nature of MERCHANT's business, type of composition of bank card processing, actual average ticket size or actual monthly volume amount from such amounts represented or disclosures made by MERCHANT on the Merchant Application or Schedule of Charges of this Agreement. If such variances exist, MERCHANT does not swipe credit card through POS terminals, MERCHANT does not receive authorization for transactions, Bank receives excessive retrieval requests against MERCHANT's prior activity, or excessive or suspicious chargebacks are debited against MERCHANT's prior activity, Bank may delay or withhold settlement of funds for a period not less than 180 days or until Bank is reasonably certain fraud or other activity detrimental to Bank has not occurred. All determinations shall be made by and at the discretion of Bank. MERCHANT should immediately contact Bank if material variances from the average ticket size or monthly volume occur. For purposes hereof, Bank's determination of materially shall be binding upon MERCHANT.

23. **Merchant Reserve Account.** Bank may require the MERCHANT to establish a Reserve Account against current and future indebtedness upon three (3) days written notice for any reason and immediately when Bank suspects fraudulent, improper, suspicious, or other out of the ordinary activity. Failure of MERCHANT to fund the reserve can result in immediate cancellation of the Agreement, suit for specific enforcement, and/or damages. The MERCHANT agrees that Bank may deduct at any time any amount owed Bank pursuant to this Agreement from the Reserve Account, the Designated Account and other applicable accounts or funds. At the time of such deduction or establishment of a reserve, any amounts shall be deemed the property of Bank. Any reserve will be held by Bank for period of time as is consistent with Bank's liability for indebtedness purchased from MERCHANT under applicable MasterCard International and Visa USA regulations. Bank shall be entitled to charge MERCHANT a per transaction fee for any chargeback, suspected fraudulent transaction or other transactions subject to a reserve account. Bank shall also be entitled to collect and be reimbursed for any out of pocket expenses including the costs of personnel associated with the collection of any chargeback and the administration of any transactions subject to fraudulently improper, suspicious, or out of the ordinary characteristics. In the event Bank suspects fraud or improper, suspicious, or out of the ordinary activity, Bank may immediately estimate the amount of the potential losses, fees, and costs and require MERCHANT to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. In the event MERCHANT fails to establish the reserve account and/or funds available to Bank are inadequate to meet the estimate of Bank, after thirty (30) days Bank may charge interest at the highest lawful rate on any amount requested which results in a chargeback and for which the reserve was inadequate to cover such chargeback. In no event shall Bank charge interest in excess of the applicable maximum lawful rate. In the event that any amount of interest charged shall be deemed to exceed the maximum rate, such amount shall first be applied to amounts owed to Bank, obligations of MERCHANT hereunder and the remaining amount placed in a reserve account to cover applicable anticipated costs or reserve obligations of MERCHANT, or refunded to MERCHANT.

24. **Annual Fee.** This amount will be collected via ACH transfer within sixty days from the approval date of this Merchant Agreement and on each anniversary date each year thereafter. Annual Fees may be increased upon thirty day written notice and shall apply to each Merchant location.