



Phone: (888) 599-4560
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135 Crossways Park Drive North
 Suite A
 Woodbury, New York 11797
 Phone: (800) 267-2256

Merchant Application and Agreement

| | | | | | |
|--|--|---|---|---|--|
| SALES REP NAME | | MERCHANT# | | MCC: | |
| MERCHANT NAME (DBA OR TRADE NAME) | | | LEGAL NAME (IF DIFFERENT) | | |
| LOCATION ADDRESS | | | BILLING ADDRESS | | |
| CITY, STATE, ZIP | | | CITY, STATE, ZIP | | |
| FEDERAL TAX ID | | PHONE # | | FAX # | |
| EMAIL ADDRESS: | | | WEBSITE: | | |
| MERCHANT NAME TO APPEAR ON CONSUMER STATEMENT: <input type="checkbox"/> DBA NAME <input type="checkbox"/> LEGAL NAME <input type="checkbox"/> OTHER: _____ | | | | | |
| MERCHANT BILLING ADDRESS: <input type="checkbox"/> DBA ADDRESS <input type="checkbox"/> LEGAL ADDRESS <input type="checkbox"/> OTHER: _____ | | | | | |
| DOES THIS LOCATION CURRENTLY TAKE VISA/MASTERCARD/DISCOVER®? (IF YES, PLEASE PROVIDE STATEMENTS) <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | |
| HAS MERCHANT OR OWNERS/PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING BANKCARDS FOR THIS OR ANY OTHER BUSINESSES? <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | |
| PRINCIPAL #1 INFORMATION | | | | | |
| NAME | | % OWNERSHIP | | DATE OF BIRTH | |
| RESIDENCE ADDRESS | | | | SOCIAL SECURITY # | |
| CITY, STATE, ZIP | | | | DRIVERS LICENSE # | |
| HOME PHONE: | | | CELL PHONE: | | |
| PRINCIPAL #2 INFORMATION | | | | | |
| NAME | | % OWNERSHIP | | DATE OF BIRTH | |
| RESIDENCE ADDRESS | | | | SOCIAL SECURITY # | |
| CITY, STATE, ZIP | | | | DRIVERS LICENSE # | |
| HOME PHONE: | | | CELL PHONE: | | |
| TYPE OF BUSINESS | | | NATURE OF BUSINESS | | |
| <input type="checkbox"/> INDIVIDUAL/SOLE PROPRIETOR | | <input type="checkbox"/> NON-PROFIT (PROVIDE 501-C3) | | <input type="checkbox"/> RETAIL | |
| <input type="checkbox"/> PARTNERSHIP | | <input type="checkbox"/> PRIVATE | | <input type="checkbox"/> PUBLIC SERVICE | |
| <input type="checkbox"/> CORPORATION | | <input type="checkbox"/> PUBLICLY TRADED | | <input type="checkbox"/> PETROLEUM <input type="checkbox"/> | |
| <input type="checkbox"/> LLC STATE: _____ | | <input type="checkbox"/> GOVERNMENT | | INTERNET | |
| | | | | <input type="checkbox"/> LODGING | |
| | | | | <input type="checkbox"/> QSR | |
| | | | | <input type="checkbox"/> UTILITY | |
| | | | | <input type="checkbox"/> OTHER _____ | |
| DATE BUSINESS STARTED _____ | | | PRODUCT OR SERVICE OFFERED _____ | | |
| LENGTH OF OWNERSHIP _____ | | | <input type="checkbox"/> SEASONAL SALES | | |
| | | | MONTHS OPEN _____ | | |
| MONTHLY VISA/MASTERCARD/DISCOVER VOLUME: \$ _____ | | | AVERAGE TICKET: \$ _____ | | |
| REFUND POLICY: _____ | | | | | |
| METHOD OF ACCEPTANCE (TOTALS TO EQUAL 100%) MERCHANTS PROCESSING LESS THAN 75% SWIPE TRANSACTIONS MUST COMPLETE THE MOTO QUESTIONNAIRE ON PAGE 2. | | | | | |
| SWIPE: _____% KEY ENTERED: _____% MO/TO: _____% INTERNET: _____% | | | | | |
| DOES MERCHANT USE AN INDEPENDENT SERVICE THAT STORES, MAINTAINS OR TRANSMITS CARDHOLDER INFORMATION : <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | |
| IF YES, PLEASE PROVIDE NAME: _____ PHONE NO.: _____ | | | | | |
| BANK ACCOUNT INFORMATION | | | | | |
| <input type="checkbox"/> CHECKING | | <input type="checkbox"/> SAVINGS | | BANK NAME: _____ | |
| CONTACT _____ | | | | PHONE NO.: _____ | |
| TRANSIT # (ABA ROUTING): _____ | | | | ACCOUNT # (DDA) _____ | |

SCHEDULE A VISA/MASTERCARD AND DISCOVER CARD DISCOUNT RATES & FEES

| | | | | | |
|---|-------------------------------------|-------------|-------------------------|---------|--|
| Visa/MasterCard and Discover Card interchange and online pin based debit network cost will be charged in addition to: | | | | | |
| CARD FEES | DISCOUNT | TRANSACTION | OTHER FEES | | You have the option of accepting MasterCard credit cards, Visa credit cards, credit cards issued by the Discover, MasterCard signature debit cards (MasterMoney Cards) or Visa signature debit cards (Check Cards), or debit cards issued by Discover. You may elect to accept any or all of these card types for payment. If you do not specifically indicate otherwise, your application will be processed to accept ALL MasterCard, Discover, and Visa card types. Elected Visa, Discover, or MC card types NOT to accept: |
| CHECK / DEBIT | % | \$ | CHARGEBACK FEE | \$25.00 | |
| QUALIFIED RATE | % | \$ | VOICE AUTHORIZATION FEE | \$.75 | |
| MID QUALIFIED RATE | % | \$ | BATCH FEE | \$.10 | |
| NON-QUALIFIED RATE | % | \$ | ANNUAL FEE | \$45.00 | |
| INTERCHANGE (COST) PLUS: | % | \$ | AMEX PER ITEM FEE | \$ | |
| DEBIT | % | \$ | DISCOVER PER ITEM FEE | \$ | |
| STATEMENT FEE | | \$ | GATEWAY MONTHLY FEE | \$ | |
| SETUP FEE | | \$ | MONTHLY MINIMUM | \$15.00 | |
| EQUIPMENT/GATEWAY: | PAYMENT APPLICATION/VERSION NUMBER: | | | | |

SITE INSPECTION (photographs of business location (interior & exterior) are required to be completed by sales rep)

| | | | |
|-------------------------------|--------------------------------------|---|---|
| MERCHANT: | AREA ZONED: | BUILDING TYPE: | SQUARE FOOTAGE: |
| <input type="checkbox"/> OWN | <input type="checkbox"/> COMMERCIAL | <input type="checkbox"/> SHOPPING CENTER <input type="checkbox"/> INDUSTRIAL BUILDING | <input type="checkbox"/> 0-500 FT. <input type="checkbox"/> 2501-5000 FT. |
| <input type="checkbox"/> RENT | <input type="checkbox"/> INDUSTRIAL | <input type="checkbox"/> OFFICE BUILDING <input type="checkbox"/> COMMERCIAL BUILDING | <input type="checkbox"/> 501-2500 FT. <input type="checkbox"/> 5001-1000+ FT. |
| | <input type="checkbox"/> RESIDENTIAL | <input type="checkbox"/> STAND ALONE BUILDING <input type="checkbox"/> RESIDENCE | |

BASED UPON YOUR REVIEW, DOES MERCHANT HAVE APPROPRIATE FACILITIES, EQUIPMENTS, INVENTORY, PERSONNEL AND LICENSE OR PERMIT TO OPERATE THEIR BUSINESS? YES NO COMMENTS: _____

*BY SIGNING BELOW, INSPECTOR IS CERTIFYING HE/SHE HAS VISITED THE LOCATION AND INFORMATION PROVIDED IS TRUE AND CORRECT.

INSPECTOR NAME: _____ SIGNATURE: _____ DATE: _____

MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
 To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

By executing this Merchant Application on behalf of the merchant described above ("Merchant"), the undersigned individual(s) represent(s), warrant(s), and acknowledges(s) that: (i) All information contained in this Merchant Application ("Application") is true, correct and complete as of the date of this Application; (ii) If the Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Application have the requisite legal power and authority to complete and submit this Application on behalf of the Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of the Merchant and individually; (iii) The information contained in this Application is provided for the purpose of obtaining, or maintaining, a merchant account for the Merchant with the Sponsor Bank ("BANK") and BANK shall rely on the information provided herein in its approval process and in settling the applicable Discount Rate, Approved Average Ticket, and Approved Monthly Bankcard Volume; (iv) BANK is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of the Merchant and each person listed on this Application; (v) BANK will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction. Merchant agrees to pay such approved fees; (vi) The Merchant Agreement shall not take effect until Merchant has been approved by BANK and a merchant number has been issued to merchant; and (vii) The undersigned has received, read, understood, the Merchant Agreement, which is incorporated herein by reference thereto, and agrees on behalf of the merchant to be bound by the terms of such Merchant Agreement. The merchant on whose behalf this Application is being submitted acknowledges that if this Application is being submitted to Merrick Bank as the Sponsor Bank, Java Payment Services, LLC ("JPS") shall also be a party to this Merchant Agreement. In such case, Merchant acknowledges that Java Payment Services, LLC ("JPS") shall rely on the representations and warranties set forth in this Application for Merchant Agreement and unless otherwise specified or prohibited by Association or applicable law, JPS shall have all the rights of BANK under this Application and Agreement

MERCHANT:
 PRINCIPAL #1: _____ PRINT NAME: _____ DATE: _____
 PRINCIPAL #2: _____ PRINT NAME: _____ DATE: _____
 BANK BY: _____ PRINT NAME: _____ DATE: _____
 JPS BY: _____ PRINT NAME: Ron Dowdy, President DATE: _____

CONTINUING PERSONAL GUARANTY PROVISION - PERSONAL GUARANTOR

By signing below, each individual or entity ("Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally guarantees to JPS and BANK the prompt payment and full and complete performance of all obligations of the Merchant identified above under the Merchant Agreement, as amended from time to time, including, without limitation, all promises and covenants of the Merchant, and all amounts payable by the Merchant under the Merchant Agreement, including, without limitation, charges, interest, costs and other expenses, such as attorney's fees and court costs. This means, among other things, that JPS or BANK can demand performance or payment from any Guarantor if the Merchant fails to perform any obligation or pay what the Merchant owes under the Agreement. Each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (1) the Merchant Agreement cannot be enforced against the Merchant for any reason, including, without limitation, bankruptcy proceedings; (2) either JPS or BANK agrees to changes or modifications to the Merchant Agreement, with or without notice to Guarantor; (3) JPS or BANK releases any other Guarantor or the Merchant from any obligation under the Merchant Agreement; (4) any law, regulation, or order of any public authority affects the rights of either JPS, Merchant, or BANK under the Merchant Agreement; and/or (5) anything else happens that may affect the rights of either JPS or BANK against the Merchant or any other Guarantor. Each Guarantor further agrees that: (a) JPS and BANK each may delay enforcing any of its rights under this guaranty without losing such rights and hereby waives any applicable Statute of Limitations; (b) JPS and BANK each can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor or from any security held by the BANK; and (c) such Guarantor will pay all court costs, attorney's fees, and collection costs incurred by either JPS or the BANK in connection with the enforcement of the Merchant Agreement or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. If the Merchant is a corporation or limited liability company, this Guaranty must be executed by a principal or affiliate of Merchant.

PRINCIPAL #1: _____ PRINT NAME: _____ DATE: _____
 PRINCIPAL #2: _____ PRINT NAME: _____ DATE: _____

BANK DISCLOSURE

| | |
|--|---|
| <p>Merchant Information: refer to Merchant application Important Merchant Responsibilities:</p> <ol style="list-style-type: none"> 1. Ensure compliance with cardholder data security and storage requirements. 2. Review and understand the terms of the Merchant Agreement. 3. Maintain fraud and chargebacks below thresholds. 4. Comply with Visa Operating Regulations. <p>The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member - Merrick Bank - is the ultimate authority should the Merchant have any problems.</p> <p>Merchant's Signature: _____ Date: _____</p> | <p>Merrick Bank, 135 Crossways Park Drive North, Suite A, Woodbury, New York 11797 Phone (800) 267-2256</p> <p>Important Bank Responsibilities:</p> <ol style="list-style-type: none"> 1. Merrick Bank is the only entity approved to extend acceptance of Visa products directly to a Merchant. 2. Merrick Bank is responsible for educating Merchants on pertinent Visa operating regulations with which Merchants must comply. 3. Merrick Bank is responsible for all funds held in reserve that is derived from settlement. 4. Merrick Bank is responsible for and must provide settlement funds to the Merchant. 5. Merrick Bank must be a principal (signer) to the Merchant Agreement |
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TERMS AND CONDITIONS

In consideration of the mutual covenants herein, Bank, JPS and Merchant have agreed as follows:

ARTICLE I - DEFINITIONS

- 1.01 "Account"** means a commercial checking account maintained by Merchant as set forth in Section 5.16 for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 1.02 "ACH"** means the Automated Clearing House paperless entry system controlled by the Federal Reserve.
- 1.03 "Agreement"** means these terms and conditions and any supplementary documents indicated herein.
- 1.04 "Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.05 "Card"** means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc., Discover® and MasterCard International, Inc. ("Bank Card"); or (ii) any other valid credit card accepted by Merchant by agreement with Bank and JPS.
- 1.06 "Card Association"** means Visa U.S.A., Inc., Visa International, Inc., Discover and MasterCard International, Inc. or any other Card Issuers that provide Cards that are accepted by Merchant by agreement with Bank and JPS.
- 1.07 "Card Issuer"** means the financial institution or company, which has provided a Card to a Cardholder.
- 1.08 "Card Not Present (CNP)"** means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.09 "Cardholder"** means the person whose name is embossed upon the face of the Card.
- 1.10 "Chargeback"** means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.11 "Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.12 "Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.13 "Mid or Non-Qualifying Transaction"** means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for the standard card industry code of Merchant and which may be charged fees as set forth in Schedule A.
- 1.14 "Sales Draft"** means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.
- 1.15 "Transaction"** means any sale of products or services, or credit for such, from a Merchant for which the customer makes payment through the use of any Card and which is presented to Bank for collection.
- 1.15 "Voice Authorization"** means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE II - CARD ACCEPTANCE

- 2.01 Honoring Cards** Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to Visa rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. (b) Merchant shall not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. (c) Merchant shall not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases. (d) Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
- 2.02 Advertising** (a) Merchant agrees to prominently display the promotional materials provided by Bank and JPS in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchants' use of promotional materials and Marks is subject to the direction of Bank and JPS. (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease use and return any inventory to Bank or JPS upon any termination thereof. (c) Merchant shall not use any promotional materials or Marks associated with Visa, Discover, or MasterCard in any way which suggests or implies that either endorses any goods or services other than Bank Card services.
- 2.03 Card Acceptance** When accepting a Card, Merchant will follow the steps provided by Bank and JPS for accepting Cards and will: (a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) Obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) Unless the Sales Draft is electronically generated or is the result of a mail, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) Offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement; and (g) Make an Imprint of the Card, if the Transaction is not based upon a mail, phone or pre-authorized order.
- 2.04 Authorization** (a) Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Sales Draft. (b) Merchant shall not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. (c) Merchant shall not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. (d) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization (i) is not a guarantee that the Transaction will not be subject to dispute or Chargeback or (ii) does not warrant the identity of the Cardholder. (e) Merchant shall not attempt to obtain an authorization by successively decreasing the sale amount. (f) Bank or JPS reserves the right to refuse to purchase or process any Sales Draft presented by Merchant (i) unless a proper authorization or approval code has been recorded on the Sales Draft; (ii) if Bank or JPS determines that the Sales Draft is or is likely to become un-collectible from the Cardholder to which the transaction would otherwise be charged; or (iii) if Bank or JPS has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement.
- 2.05 Retention and Retrieval of Cards** (a) Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card (i) when receiving such instructions when making a request for Authorization or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. (b) The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank and JPS harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 2.06 Personal Information of Cardholder** Merchant as a condition of sale may not impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder.
- 2.07 Multiple Transaction Records; Partial Consideration** Merchant shall not prepare more than one Sales Draft for a single sale or for a single item but shall include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (i) For purchases in separate departments of a multiple department store; (ii) For partial payment, installment payment, delayed delivery or an advance deposit; or (iii) For delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.

- 2.08 Telephone Orders, Mail Orders, eCommerce, Preauthorized Orders and Installment Orders** (a) Unless Merchant has been approved by Bank to accept mail, phone or ecommerce orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Merchant is found to be accepting Card Transactions without Bank's authorization, which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds there from shall be held pursuant to Section 4. (b) Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by telephone, mail or ecommerce nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant shall create a Sales Slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.
- 2.09 Lodging and Vehicle Rental Transactions** (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 2.10 Returns and Adjustments; Credit Vouchers** (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). (b) If Merchant does not make these disclosures, a full refund in the form of a credit to the cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. (c) Any change in Merchant's return or cancellation policy must be submitted in writing to Bank and JPS not less than fourteen (14) days prior to the change. Bank or JPS reserves the rights to refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank and JPS have not been notified as required herein.
- 2.11 Cash Payments** Merchant shall not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of effecting a deposit to the Cardholder's Card account.
- 2.12 Cash Advances; Scrip Purchases** Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and shall not accept any Card at a scrip terminal. Merchant agrees that either such action shall be grounds for immediate termination.
- 2.13 Duplicate Transactions** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any adjustments for duplicate Transactions and shall be liable for any Chargebacks which may result there from.
- 2.14 Deposit of Fraudulent Transactions** Merchant shall not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Merchant may be immediately terminated, and Bank may hold funds and/or demand an Escrow pursuant to Sections 4.02 and 5.06; further, Merchant may be subject to the Visa, Discover, and MasterCard reporting requirements set forth in Section 4.02 (c). Merchant understands and agrees that it is responsible for its employees' action, whether negligent or fraudulent, while in its employ.
- 2.15 Collection of Pre-existing Debt** Merchant shall not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations (i) previously owed to Merchant, (ii) rising from the dishonor of a Cardholder's personal check, Chargeback, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
- 2.16 Release of Cardholder Account Information** Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder's account number or any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card to any person other than Bank, JPS or the applicable Card Association and, except as expressly authorized in writing by the Cardholder, or as required by law. Further, Merchant agrees to store any material containing Cardholder account information in a secure manner or destroy such information at the proper time in a fashion which renders the data unreadable. Merchant agrees to also notify Bank and JPS of any existing third party involved in the payment process that may have access to cardholder data and obtain approval from the Bank and JPS prior to entering into any third party arrangement whereby such third party would have access to cardholder data.
- 2.17 Compliance with Card Association Rules** Merchant shall comply with and conduct its Card activities in accordance with all applicable Card Association rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on the Terminated Merchant File. With respect to MasterCard, Discover or Visa USA, Merchant shall not (i) accept cardholder payments for previous Cards charges incurred at the Merchant location; (ii) establish a minimum or maximum transaction amount as a condition for honoring a Card; (iii) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (iv) add any surcharge to transactions; (v) add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (vi) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of cardholder approval (Merchant may pursue payment from the customer outside the Card Association system); (vii) request or use an account number of any purpose other than as payment for its goods or services; (viii) disburse funds in the form of travelers checks, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant; (ix) disburse funds in the form of cash, unless: Merchant is a Lodging or Cruise Line Merchant disbursing cash to a Cardholder; Merchant is dispensing funds in the form of travelers checks, Cards, or foreign currency; or Merchant is participating in the Card Association Cash Back Service; (x) accept a Card for the purchase or scrip; (xi) accept a Card for manual cash disbursement; (xii) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; or (xiii) enter into Interchange a Transaction that represents collection of a dishonored check.
- 2.18 Merchant's Business** (a) Merchant shall provide Bank with immediate notice of its intent to (i) transfer or sell any substantial part of its total assets, or liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (v) alter in any way Merchant's approved monthly volume and average ticket; or (vi) changes its return policies or to another fulfillment house different from those identified in Merchant Application. (b) Merchant shall provide Bank and JPS with prompt written notice if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. (c) Failure to provide notice as required above may be deemed a material breach and shall be sufficient grounds for termination of Merchant and for exercise by Bank and/or JPS of all their rights and remedies provided by this Agreement. In the event any of the changes listed above should occur, Bank and JPS shall have the option to re-negotiate the terms of this Agreement or provide immediate notice of termination. (d) With notice and during Merchant's normal business hours, Bank or JPS's duly authorized representatives may visit Merchant's business premises and may examine only that part of Merchant's books and records that pertain to the acceptance of Cards and transactions processed.

2.19 Warranties of Merchant Merchant hereby provides the following warranties to Bank and JPS: (a) All information contained in Merchant's application for processing services or any other documents delivered to Bank and /or JPS in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers. (b) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject. (c) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so. (d) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations. (e) Each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement. Further, Merchant warrants that each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft. (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby. (h) Merchant has complied with Bank's procedures for accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement, and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations. (i) Merchant warrants that any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

3.01 Acceptance Bank shall accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant is required to transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same of next business immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Associations. Bank shall only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, Reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.

3.02 Endorsement The presentment of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and shall constitute an endorsement by Merchant to Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf.

3.03 Prohibited Payments Bank shall have the sole right to receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically unauthorized in writing by Bank, Merchant shall not make or attempt to make any collections on any Sales Draft, including Chargebacks, and shall hold in trust for Bank and shall promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.

3.04 Chargebacks (a) Merchant agrees to accept for chargeback any sale for which: (i) The Cardholder disputes the validity of the sale according to prevailing Card Association regulations. (ii) An Issuer or Bank determines that Merchant has any way failed to comply with Card Association regulations or Bank's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase. (b) Section 2.03 notwithstanding, Merchant acknowledges that Bank shall have full recourse to charge back the amount of a Card sale for which the Cardholder disputes that he/she authorized the charge if (i) the Imprint of the Card or (ii) the signature of the Cardholder was not obtained by Merchant. (c) Merchant shall not initiate a sale Transaction in an attempt to collect a Chargeback. (d) Merchant agrees to pay the current published fees for each Chargeback as listed on Schedule A.

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

4.01 Term; Termination (a) This Agreement shall become effective upon acceptance by Bank and shall continue for a period of three (3) years with automatic three-year renewals thereafter until any party has provided written notice of non-renewal given no less than thirty (30) days from the end of the then-current term. Bank or JPS may terminate this Agreement immediately without prior notice if (i) either party has reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, JPS or Card Issuers; or (iii) Merchant appears on any Card Association's security reporting. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination hereof. (b) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank or JPS shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by either Bank or JPS. Notwithstanding such termination, Bank, at its sole discretion, may determine that Consent to Merchant's subsequent assumption of this Agreement is in Bank's and JPS's best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank, including the provision for adequate security, and comply with the applicable federal or state laws governing such assumption.

Effect of Termination

(a) Suspension of Payment In the event of termination regardless of cause, merchant expressly authorizes Bank to withhold and discontinue the disbursement for all Cards and other payment transactions of Merchant in the process of being collected and deposited. (b) Reserve Account. Collected funds will be placed in a non-interest bearing account at Bank (the "Reserve Account") until Merchant pays any equipment cancellation fees and any outstanding charges, losses or amounts and for chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. Bank and JPS shall be granted a continuing security interest in the Reserve Account. The Reserve Account shall be maintained a minimum of one hundred and eighty (180) days after the termination date and for any reasonable period thereafter during which Cardholder disputes may remain valid under the Card Associations' regulations. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be disbursed to Merchant (c) If Merchant is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the Merchant Alert to Control High Risk Merchants (MATCH file) maintained by Visa, Discover and MasterCard. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any of the reasons requiring listing on the MATCH file. Furthermore, Merchant waives and shall hold harmless Bank and JPS from any claims which Merchant may raise as a result of such reporting. (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement. (e) Following termination, Merchant shall upon request provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. (f) De-conversion Fee. If JPS or Bank terminates Merchant for cause at any time during the initial term of this Agreement, Merchant shall pay to JPS a de-conversion fee of Three Hundred and Fifty Dollars (\$350). (g) Merchant agrees upon early termination of the agreement to pay three hundred and fifty dollars (\$300).

ARTICLE V - MISCELLANEOUS

5.01 Account Monitoring Merchant acknowledges that JPS and/or Bank will monitor Merchant's daily deposit activity. Merchant agrees that Bank may upon reasonable grounds suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. JPS and/or Bank will make good faith efforts to notify Merchant promptly. JPS and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

5.02 Forms Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Bank or JPS, and Merchant shall not use such forms other than in connection with Card Transactions.

5.03 Internet Gambling A merchant may not accept a Card for an unlawful internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

5.04 Records In addition to any records routinely furnished to Bank or JPS pursuant to this Agreement, Merchant shall preserve a copy of the actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least two (2) years after the date Merchant presents the Transaction to Bank.

5.05 Requests for Copies Immediately upon receipt of any request by Bank or JPS, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof (in size comparable to the actual Sales Draft) and any other documentary evidence available to Merchant and reasonably requested by Bank or JPS to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

5.06 Compliance with Law Merchant shall comply with all laws applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.

5.07 Fees and Charges Merchant shall pay to Bank the fees and charges set forth on Schedule A including any additional charges applied to transactions that fail to meet Card Association requirements for the lowest interchange levels. Merchant's Account will be debited through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Bank and JPS shall have the right to change fees, including adding fees for additional services utilized by Merchant, upon thirty (30) days written notice.

5.08 Security Merchant agrees that all of its obligations under this Agreement shall be secured to Bank and JPS by all deposit accounts maintained by Merchant with Bank, including deposits made by Merchant as collateral or funds withheld by Bank or JPS as the result of routine security monitoring, and by all other personal property that serves as collateral for any other indebtedness arising out of Merchant's business and owed by Merchant to Bank or JPS. Merchant agrees that if Bank determines that the proceeds of Merchant's future Card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Bank or JPS (whether because this Agreement has been terminated or for any other reason), Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with financial institutions other than Bank, pending a determination from time to time by Bank and JPS to exercise their respective rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank and JPS.

5.09 Modifications to Agreement This Agreement is subject to amendment to conform with Card Association regulations, as amended from time to time. From time to time Bank and JPS may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least thirty (30) days prior to the effective date of the amendments, and the amendment shall become effective unless Bank or JPS receives Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision.

5.10 JPS MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND JPS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

5.11 Supplementary Documents Reference to "this Agreement" includes any valid schedules, appendices and amendments thereto.

5.12 Limitation of Liability; Indemnity (a) Bank's and JPS's liability, whether joint or several, with respect to any Card Transaction shall not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges. Bank and JPS shall in no event be liable for any incidental or consequential damages whatsoever. (b) Neither JPS nor Bank shall be liable for any losses, claims, demands, penalties, actions, delays, costs or expense, including reasonable attorney's fees, of any kind unless Merchant provides written notice to JPS or Bank of the occurrence that gave rise to the alleged liability within thirty (30) days of the date Merchant knew or should have known of the occurrence. (c) Merchant hereby agrees to indemnify and hold Bank and JPS harmless from any claim relating to any Sales Draft paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that either Bank or JPS may incur as a result of Merchant's breach of this Agreement. Further, Merchant shall reimburse Bank or JPS, as the case may be, for all expenses and costs, including attorney's fees, with regard thereto.

5.13 Waiver Failure by Bank or JPS to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future.

5.14 Notices All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class mail, postage prepaid, addressed as follows:

a) Java Payment Services, LLC, 42400 Nine Mile Road, Novi, MI 48375, Attn: Manager of Merchant Services

b) Merrick Bank Corporation, 10705 South Jordan Gateway, Suite 200, South Jordan, UT 84095, Attn: Manager of Merchant Services

c) **If to Merchant**, at the address provided as the billing address and to the contact listed on the Merchant Application.

5.15 Choice of Law; Jurisdiction Any claim or cause of action arising out of this Agreement against Bank alone shall be initiated and maintained in the state courts located in Salt Lake County, Utah, in which case this Agreement shall be governed and construed under the laws of that state. Any other claim or cause of action, regardless of which party shall be the complainant, shall be initiated and maintained in the state courts located in Oakland County, Michigan, in which case this Agreement shall be governed and under the laws of the State of Michigan.

5.16 Entire Agreement; Assignability This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified by only in writing executed by all parties hereto. This Agreement may not be assigned, directly or by operation of law, without the prior written consent of Bank and JPS. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.

5.17 Deposit Account Merchant shall at all times maintain an Account at a bank that is a member of the Federal Reserve ACH System and shall provide Bank and JPS with proper authorization for debiting of the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement shall be made to the Account. Merchant may not close or change the Account without written notice to Bank or JPS. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank and JPS a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant shall execute any document and obtain any consents or Waivers from the bank at which the Account is maintained as requested by Bank or JPS to protect their security interests therein.

Credit and Financial Inquiries; Additional Locations; Inspections (a) Merchant authorizes Bank and JPS to make, at any time, any credit inquiries which either may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. If requested to do so by Bank or JPS, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or JPS may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. (b) Merchant may accept Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's and JPS's approval. Any party to this Agreement may delete any location by providing notice as provided herein. (c) Merchant agrees to permit Bank or JPS, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. (d) Representatives of Bank or JPS may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction.

5.18 Marketing of Non-Bankcard Services by JPS From time to time, JPS may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. In the event of such offers, Merchant shall indicate its desire to JPS to decline such offers or be deemed to have accepted the offers and be liable for payment therefore.