

- New Account
- Additional Location
- Ownership Change

INITIAL HERE _____



WOODFOREST NATIONAL BANK

Member FDIC

MERCHANT BANKCARD APPLICATION/AGREEMENT

REP NAME: JEFF ROSS E-Commerce Group: 877-501-ECOM

WHEN COMPLETED MAIL TO:

E-Commerce Group
2885 Meadow Port Drive
Dallas, TX 75234

REP# C-926

M.U.D. # 939

Office Use Only
EBT _____ EZCHECK _____ DEBIT _____ AMEX _____ EQPMT _____

BUSINESS INFORMATION

Business/Corporate Name	Statement Mailing Address (if different from location address)		
DBA (Doing Business As) Name	City, State, Zip		
Location/Site Address	Federal Tax ID Number		
City, State, Zip	E-mail	Phone Number ()	Daytime Phone Number ()

<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit				Type of Equipment:	
How Long in Present Business	Yrs	Number of Locations	Do you currently accept VISA/Master Card? <input type="checkbox"/> Yes <input type="checkbox"/> No	(If yes, attach copy of last 3 months merchant statements)	
MERCHANDISE/SERVICE SOLD		MONTHLY BANK CARD LIMIT \$	AVERAGE TICKET AMOUNT \$	HIGHEST TICKET AMOUNT \$	
PERCENT OF BUSINESS (MUST = 100 %)			SALES METHOD (MUST=100%)		
CARD SWIPED %	KEYED WITH IMPRINT OF CARD %	KEYED WITHOUT IMPRINT OF CARD %	STORE FRONT %	OFF PREMISE %	MAIL/PHONE ORDER %
TRADE SHOW %	INTERNET SERVICES %	OTHER %			

AMEX# _____ DISCOVER# _____ OTHER# _____

OWNERS/OFFICERS INFORMATION (MUST REFLECT 50% OR MORE OWNERSHIP)

Name (Print)	Title	Residence Address	City,State, Zip
1			
Social Security Number	Phone Number ()	% Equity Ownership	DRIVER'S LICENSE #
Name (Print)	Title	Residence Address	City,State, Zip
2			
Social Security Number	Phone Number ()	% Equity Ownership	DRIVER'S LICENSE #
Name (Print)	Title	Residence Address	City,State, Zip
3			
Social Security Number	Phone Number ()	% Equity Ownership	DRIVER'S LICENSE #

TRADE REFERENCES (PLEASE COMPLETE SECTION IN FULL)

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

MERCHANT SITE SURVEY (TO BE COMPLETED BY SALES REPRESENTATIVE)

Merchant Location Store Front Office Building Warehouse Residence Other:

The Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Leases the business premises	Landlord Name	Landlord Telephone # ()
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Merchant appears to be conducting business as represented in the application.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Have you taken pictures of the inside and outside of the premises?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Have you confirmed the identity of the person who signed the contract?
<input type="checkbox"/> Merchant is adequately staffed and stocked to do business		

Comments:

I hereby verify that I have physically inspected the business premises of the merchant at this address and the information stated above is correct to the best of my knowledge and belief.

Inspected by (Print Name)	Signature	Date
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COMPLETE THE FOLLOWING IF YOUR SALES ARE GENERATED THROUGH MAIL/TELEPHONE/INTERNET

- 1. Description of product sold:
2. Who owns product?
3. List the name(s) and address of vendors from which the product is purchased.
4. How do you advertise?
5. How does the customer order the product?
6. Name of Fulfillment House (if any)
7. Are consumers required to provide a deposit?
8. Delivery Time Frame:
9. Shipping Service Used:
10. What is your return or refund policy?
11. When you receive an authorization, how long before the merchandise is shipped?
12. In what geographic areas will the product be marketed and sold?
13. Whereas, MERCHANT desires to honor at its business location(s) Card Numbers presented in connection with the Mail/Telephone/Internet sale of products/service to customers the parties hereto agree to the following:

Table with 2 columns: Fee Name and Amount. Includes sections for Other Rates/Fees (Amex Disc. Rate, Discover Disc. Rate, etc.), Electronic Commerce (Monthly Network Access Fee), and Wireless (Wireless Set-Up Fee, etc.).

PRICING SCHEDULE AND ADDITIONAL RULES

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

Retail
(51% - 100% of sales swiped or with manual imprint)
Qualified Retail Discount Rate*:
Transaction Fee**: \$0.25
* The "Qualified Retail Discount Rate" will be charged on all swiped bankcard transactions...

MOTO/Internet
(50% - 100% of sales keyed without imprint)
Qualified MOTO Discount Rate*:
Transaction Fee**: \$0.30
* The "Qualified MOTO/Internet Discount Rate" will be charged on all manually keyed or Internet bankcard transactions...

AMERICAN EXPRESS Reverse PIP

By signing below, I represent that the information I have provided on the Application is complete and accurate. I understand that the Terms and Conditions for American Express® Card Acceptance (Terms and Conditions) will be sent to the business entity indicated above along with the welcome letter upon approval of such business entity to accept the American Express Card by American Express Travel Related Services Company, Inc.

MERCHANT ACCEPTANCE

Each person signing below agrees to the terms and conditions stated in the front and back of this merchant processing agreement and certifies that all information provided in this application is true, correct and complete. Each person authorizes the Bank or any credit reporting agency employed by the Bank or any agent of the Bank, to make whatever inquiries the Bank deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing.

- #1 From Application Date
#2 From Application Date
#3 From Application Date

FOR ALL CORPORATIONS - Corporate Resolution
The indicated officers identified in numbers 1 and 2 have the authorization to execute the Merchant Processing Agreement with Woodforest National Bank on behalf of the herewithin named corporation.
Secretary of the Board Date

NOTICE: DO NOT SIGN THIS DOCUMENT UNLESS ALL ITEMS THAT APPEAR ON PAGE 1 ARE COMPLETELY FILLED OUT.
PERSONAL GUARANTY(NO TITLE): The undersigned Guarantor(s) hereby, individually agrees to the terms set forth in section 2.36 of this agreement.

- Guarantor #1 From Application (signature) (no title)
Guarantor #2 From Application (signature) (no title)
Guarantor #3 From Application (signature) (no title)
Guarantor #1 From Application (print name)
Guarantor #2 From Application (print name)
Guarantor #3 From Application (print name)

FOR BANK USE ONLY
Application Approved By: Signature Title Date

THIS AGREEMENT is made by and between WOODFOREST NATIONAL BANK ("BANK"), a National Banking Association, and the undersigned "MERCHANT" and is subject to the approval of BANK.

WHEREAS: BANK is engaged in the general banking business including the purchase of credit card transactions from merchants and provides certain services related to the processing of credit card transactions to MERCHANT; and

WHEREAS: MERCHANT desires to honor at its business location(s) cards presented in connection with the retail sale of products and/or services to customers; and

WHEREAS: MERCHANT warrants that it has not been terminated from depositing bankcard sales by any other bank or bankcard processor.

NOW THEREFORE, in consideration of the representations, covenants and promises made herein, the parties hereto agree as follows:

1.0 AGREEMENT:

1.1 This document, as well as other documents executed by MERCHANT, pursuant to the acceptance of BANK, shall be incorporated herein and made a part hereof and shall constitute the entire agreement between BANK and MERCHANT, except as it shall be affected by the provisions of paragraph titled "Binding Effect" hereinafter.

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

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

2.0 Rights, Duties, and Responsibilities of Merchant:

2.1 MERCHANT shall honor all cards provided:

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

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

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

2.2 MERCHANT agrees to complete sales drafts in conformity with the terms of this Agreement and the Card Association's Rules and Regulations, which will include:

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

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

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

(d) The date of the Sale;

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

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

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

(h) MERCHANT shall deliver a completed copy of the sales draft to the Cardholder.

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

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

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

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

(d) Special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges, or other non-credit terms).

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

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

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

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

2.7 MERCHANT agrees to obtain an authorization on all transactions. Any transaction which cannot be authorized electronically through a terminal is subject to a voice authorization charge of \$1.00 per call. MERCHANT will obtain an authorization prior to completing a keyed transaction. Any transaction which is not properly authorized is made with full recourse and may be charged back to MERCHANT; furthermore, any keyed transaction will be subject to additional charges for a non-qualifying transaction. MERCHANT understands that an authorization does not constitute a guarantee of payment, only available credit and may be subject to dispute or chargeback.

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

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

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

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

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

herein constitutes a waiver of any and all rights MERCHANT may have against BANK related to the asserted error.

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

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

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

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

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

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

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

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

2.16 MERCHANT is liable for repayment to BANK for all valid chargebacks. BANK will comply with Card Associations' prevailing regulations in processing any chargebacks which result from cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between MERCHANT and the cardholder, and MERCHANT will indemnify BANK and will provide reimbursement for all expenses, including reasonable attorney's costs, which it may incur as the result of any cardholder claim which is pursued outside the Card Association rules and regulations.

2.17 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. MERCHANT shall not, under any circumstances, deposit telemarketing transactions under this Agreement unless authorized by the Bank in advance of processing any telemarketing transactions. If MERCHANT deposits any such transaction, MERCHANT may be immediately terminated and BANK may hold funds and/or demand an escrow pursuant to sections 4 and 8; further, MERCHANT may be subject to the VISA and MasterCard reporting requirements set forth in Section 8.5.

2.18 MERCHANT will not deposit duplicate transactions. MERCHANT shall be debited for any adjustments for duplicate transactions and shall be liable for any Chargebacks which may result therefrom. Merchant will be liable for any penalty fees assessed by the credit card association to the Bank.

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

2.20 **Discount/Fee Schedule:** MERCHANT'S Account will be debited daily or monthly as applicable, through ACH for amounts set forth in the Pricing Schedule which is part of this Agreement, and for any other fees or charges incurred by MERCHANT and associated with processing services. MERCHANT is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. Changes to the Discount Rate and/or Fees, unless otherwise specified below, shall become effective upon thirty (30) days written notice to MERCHANT. Pricing may be adjusted under any of the following circumstances:

(a) Discount Rate, which is a set percentage as indicated in the Pricing Schedule and shall be calculated against the gross dollars deposited by MERCHANT on a daily basis.

(b) If transactions require WATS communications, an additional 8¢ will be added to the transaction fee.

(c) Any increase in interchange rates from the Card Associations will be passed through to MERCHANT.

(d) Increase in long-distance communications costs and processing charges from third-party vendors may be reflected in increased Discount Rates.

(e) MERCHANT'S pricing is based upon the annual volume, average ticket and method of doing business stated in the MERCHANT application. If the actual volume and average ticket are not as warranted or if MERCHANT significantly alters its method of doing business, BANK may adjust MERCHANT'S Discount and/or transaction fees without prior notice.

(f) Merchants using AVS (Address Verification System) will be charged 5¢ for each address verification request. This is in addition to the transaction fee.

2.21 A minimum non-refundable application fee is required to process this Application.

2.22 MERCHANT will be assessed a fee of \$25.00 for each return ACH debit and a \$3.00 fee for each retrieval and each representation.

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

2.24 A statement fee of \$25 per month will be charged for a special account maintained at BANK to house diverted funds for MERCHANT.

2.25 MERCHANT agrees that chargebacks will not exceed one percent (1%) of the sales transaction processed in any given month, or ratios required by MasterCard or VISA. BANK will provide MERCHANT with any information possessed by BANK which may enable MERCHANT to recover from others the amount of any Sale charged back to MERCHANT. MERCHANT understands that BANK will assess a fee of \$25.00 per chargeback.

2.26 Any transaction which cannot be authorized electronically through a terminal is subject to a voice authorization charge of \$1.00 per call.

2.27 Any transaction that has not received an Authorization, or that is deposited (transmitted) more than two (2), but not greater than thirty (30), business days following the transaction date, or that is made with a foreign card will be subject to an increase of 1.49%. NOTE: Days allowed for settlements are calculated by excluding the transaction date, Sundays and holidays; and including the processing (settlement) date.

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

2.29 MOTO/INTERNET/ELECTRONIC COMMERCE merchants must: (i) Implement and maintain all security standards specified in the Visa USA Cardholder Information Security Standards manual, (ii) Immediately notify VISA USA Risk Management, through BANK, of the use of an agent, and (iii) Ensure that its agent implements and maintains all security standards specified in the Visa USA Cardholder Information Security Standards manual.

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

2.31 This Agreement shall be effective only upon acceptance by BANK. In the event MERCHANT is not accepted for processing services, any application fee paid to BANK shall be non-refundable.

2.32 MERCHANT agrees to pay, in addition to any and all other fees referred to herein, a non-refundable annual customer service fee in the amount of \$59.00 per year. This fee shall be generated and charged any time within one year from the date of this Agreement. The actual date of the initial charge (within said first year) shall be at the sole discretion of BANK. The fee shall be debited from the Account for the initial year and on the anniversary date (of the initial charge) for each year thereafter that the Account is in force. In the event this Agreement is terminated, for any reason, no portion of a charged annual customer service fee shall be rebated to MERCHANT.

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

2.34 You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Bank's prior written authorization. If BANK has previously given such consent, you represent and warrant to Bank that

you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

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

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

3.0 Rights, Duties and Responsibilities of BANK.

3.1 BANK will accept for purchase all sales drafts deposited by MERCHANT that comply with the terms of this Agreement. The electronic submission of sales Transactions to BANK through services provided by BANK shall constitute an endorsement by MERCHANT to BANK of the sales drafts representing such transactions. BANK will pay to MERCHANT two (2) business days after the date the BANK receives the transaction unless otherwise informed by the Bank, the total face amount of each sales draft, less any credit vouchers, discounts, fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by BANK, and prompt adjustments shall be made for inaccuracies discovered.

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

- (a) the sale giving rise to such Sales Draft was not made in compliance with all the terms and conditions of this Agreement including Card Associations' regulations, as well as applicable laws and regulations of any governmental authority; or
- (b) The cardholder disputes his/her liability on any of the following grounds:
 - (i) that the products covered by such sales drafts were returned, rejected or defective in some respect or MERCHANT failed to perform any obligation on its part in connection with such products, and MERCHANT has refused to issue a credit voucher in the proper amount;
 - (ii) MERCHANT has failed to obtain a signature on the sales draft and the cardholder claims he/she did not authorize the transaction.

In the event of a revocation of a prior acceptance of a sales draft, BANK may withdraw from the Account any amount previously paid to MERCHANT for such sales draft.

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

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

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

3.6 Use of Independent Sales Organization: MERCHANT acknowledges that BANK may use an independent sales organization member service provider ("ISO/MSP") operating under applicable VISA and MasterCard rules and regulations. ISO/MSP is an independent contractor and not an agent of BANK. ISO/MSP has no authority to execute the Agreement on BANK'S behalf or to alter the terms hereof without BANK'S prior written approval.

4.0 Account Monitoring.

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

5.0 Warranties; Disclaimer of Warranties.

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

6.0 Limitations of Liability; Indemnification; Due Care.

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

6.2 MERCHANT shall indemnify and hold BANK harmless from all liability, loss and damage, including reasonable attorney's fee and costs which may arise as a result, whether direct or indirect, of any act or failure to act or the breach of any warranty by MERCHANT pursuant to the terms of this Agreement and the Card Associations' operating regulations.

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

7.0 Display of Materials; Trademarks.

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

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

7.3 MERCHANT shall not use any promotional material or marks associated with VISA or MasterCard in any way which suggests or implies that either endorses any goods or services other than bank card services.

8.0 Term; Termination.

8.1 This Agreement shall become effective upon acceptance by BANK and shall continue in full force and effect for a term of two (2) years therefrom. Thereafter, the Agreement will automatically renew for additional one-year periods unless terminated by any party upon thirty (30) days written notice. In the event termination occurs for any reason prior to the maturity date of this Agreement, MERCHANT may be subject to pay BANK an amount not greater than eight (8) months of the current statement and monthly minimum fees for each

MERCHANT account.

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

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

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

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

8.5 Security Interests. This Agreement will constitute a Security Agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon: (i) all funds at any time in the account (ii) all funds in diverted account (see section 4.0), (iii) the Reserve Account (as defined below), (iv) future Sales Drafts, (v) all rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement and (vi) any other account merchant has in any financial institution, (collectively, the "Secured Assets"). Upon request of BANK, MERCHANT will execute one or more financing statements or other documents to evidence and perfect this security interest. MERCHANT represents and warrants that no other party has a security interest in the Secured Assets. These security interest and liens will secure all of MERCHANT'S obligations under this Agreement and any other agreements between MERCHANT and BANK including, but not limited to, MERCHANT'S obligation to pay any amounts due and owing to BANK. With respect to such security interests and liens, BANK will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. MERCHANT will obtain from BANK written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You represent and warrant that no other person or entity has a security interest in any property in which you have granted BANK a security interest hereunder:

8.6 Reserve Account. (i) Establishment: Upon termination of this Agreement or upon BANK'S request and within BANK'S sole discretion, MERCHANT will establish and maintain a deposit ("Reserve Account") at BANK in an amount reasonably determined by BANK necessary to protect BANK'S interests under this Agreement. (ii) Funding: BANK has the right to debit the Account to establish or maintain funds in the Reserve Account. BANK may deposit into the Reserve Account funds it would otherwise be obligated to pay MERCHANT, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. (iii) Authorizations: BANK may, without notice to MERCHANT, apply deposits in the Reserve Account against any outstanding amounts MERCHANT owes under this Agreement or any other agreement between MERCHANT and BANK. Also, BANK may exercise its rights under this Agreement to collect any amounts due to BANK including, without limitation, rights of set-off and recoupment. (iv) Funds: in no event will MERCHANT be entitled to return of Reserve Account funds before 270 days following the effective date of termination of this Agreement, provided however, that MERCHANT will remain liable to BANK for all liabilities occurring beyond such 270 day period. BANK will have sole control of the reserve Account.

8.7 Recoupment and Set-Off. BANK has the right of recoupment and set-off from the Reserve Account or the Account. This means that it may offset any outstanding/uncollected amounts owed from: (i) any amounts it would otherwise be obligated to deposit into the MERCHANT Account, and (ii) any other amounts MERCHANT may owe BANK under this Agreement or any other agreement.

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

8.9 If MERCHANT is terminated for cause, MERCHANT acknowledges that BANK may be required to report MERCHANT'S business name and the names and other identification of its principals to the Combined Terminated Merchant File (CTMF) maintained by VISA and MasterCard. MERCHANT expressly agrees and consents to such reporting in the event MERCHANT is terminated for any of the reasons specified as cause by VISA and MasterCard. Furthermore, MERCHANT shall hold harmless BANK for claims which MERCHANT may raise as a result of such reporting.

9.0 Notices.

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

- (a) Woodforest National Bank, P.O. Box 219320, Houston, TX 77218
- (b) If to MERCHANT, to any owner or officer stated on the Merchant Application at the MERCHANT'S place of business as also stated on the Merchant Application.

10.0 Additional Terms.

10.1 Card Plans. This Agreement is subject to the bylaws and rules promulgated by VISA and MasterCard or any other card plan. The parties hereto are bound by and shall fully comply with these bylaws and rules and by such amendments or additions as may be made hereto.

10.2 Inspection of Books and Records. Representatives of BANK may, during normal business hours, inspect, audit and make records of MERCHANT'S books, accounts, records and files pertaining to any card transactions. MERCHANT will preserve its records of any card sale and any refund or credit adjustment thereon for at least seven (7) years from the date of such sale, credit, refund or adjustment.

10.3 Confidentiality. MERCHANT will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of BANK (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that MERCHANT uses to protect its own confidential information.

10.4 Force Majeure. BANK shall not be liable for any damages resulting from any delay in performance or non-performance caused by circumstances beyond BANK'S control including, but not limited to acts of God, fire, flood, war, governmental action, accident, labor trouble or shortage, or other events of similar effect in connection with BANK'S obligation herein.

10.5 Amendment. BANK may propose amendments or additions to this Agreement. BANK will inform MERCHANT of a proposed change in a periodic statement or other written notice. MERCHANT will be deemed to have agreed to the change if it continues to present transactions to BANK after thirty (30) days following the mailing of the notice. Notwithstanding the previous sentence, changes to Discount/ Fees will be effective upon notice to MERCHANT, unless a later effective date is provided.

10.6 Section Headings. All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

10.7 Assignability. This Agreement may not be assigned, directly or by operation of law, without the prior written consent of BANK.

10.8 Attorney's Fees and Costs. MERCHANT shall be liable for and indemnify BANK for any and all attorney's fees and other costs and expenses paid or incurred by the BANK in the enforcement hereof, or in collecting any amounts due from MERCHANT to BANK hereunder or resulting from any breach by MERCHANT of any of the terms or conditions of this Agreement.

10.9 Binding Effect; Governing Law; jurisdiction and Venue. Any action or proceeding on this Agreement by or against BANK shall be initiated and maintained under the jurisdiction of the State of Texas with venue in the courts of Harris County, in which case this Agreement shall be construed and governed by the laws of the State of Texas. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.

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

10.11 In the event MERCHANT chooses to participate in the Optional Merchant Club ("OMC"), this service shall be initiated thirty (30) days after the date of this Agreement. The OMC shall include equipment support and repair for an additional \$4.95 per month per location. The OMC shall NOT include support or repair for wireless terminals.

