

Merchant Processing Agreement

This Merchant Processing Agreement (“Agreement”) is entered into by and among the business entity indicated on the Merchant Application (“Merchant” or “you”), Datalink Bankcard Services Co. (“Datalink”) and Merrick Bank (“Member”), as of the date signed by the Member and Datalink (“Effective Date”). Merchant desires to accept credit cards validly issued by Visa U.S.A., Inc. (“Visa”) and MasterCard International, Incorporated (“MasterCard”) (“Cards”). Datalink and Member desire to provide credit card processing to the merchant. Therefore Merchant, Member and Datalink agree as follows:

1. **Honoring cards.** You will honor, without discrimination, any Card properly tendered by Cardholder. “Cardholder” means a person possessing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring the Card. You will comply with all operational requirements set forth in the Operating Guide, which is incorporated into this Agreement by reference.

2. **Authorization.** You will obtain a prior authorization via an electronic terminal or similar device before completing any transaction.

3. **Presentation of Sales Drafts.** You will use a Sales Draft or other form approved by Member and Datalink (“Sales Draft”) to document each Card transaction that complies with the requirements set forth in the Operating Guide.

4. **Deposit of Sales Drafts.** You will deposit Sales Drafts in accordance with the Operating Guide. Member will deposit to the Designated Account (defined below) funds, evidenced by sales drafts, in accordance with the Operating Guide.

A. **Chargebacks.** You are fully liable to Datalink and Member for all transactions returned to Datalink or Member for whatever reason, otherwise known as “chargebacks”. You will pay Datalink and Member on demand the value of all chargebacks. You agree to accept for chargeback and will be liable to Member and Datalink in the amount of any sale for which the cardholder disputes the validity of the sale. You authorize Datalink and Member to offset from incoming transactions and to debit the Designated Account, the Reserve Account, or any other account held at Member or at any other financial institution the amount of all chargebacks. You will fully cooperate with Datalink and Member in complying with the rules regarding chargebacks. Guarantors are personally liable for all chargebacks.

B. **Fraud and Factoring.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the cardholder. **Perpetrators of fraud will be referred to law enforcement officials.** You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any sales draft representing the refinancing of an existing obligation of a Cardholder. You agree that member and Datalink may, with in its sole discretion, suspend the disbursement of any Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Datalink and Member will have no liability for any losses you may attribute to any suspension of funds disbursement.

5. Designated Account.

A. **Establishment and Authority.** You will establish and maintain with an ACH receiving depository institution acceptable to Member one or more commercial checking account(s) to facilitate payment for Card transactions (collectively, the “Designated Account”). You will maintain sufficient funds in the Designated Account to accommodate all transactions, including but not limited to fees, fines and chargebacks, contemplated by this Agreement. You irrevocably authorized Member and Datalink to debit Designated Account for chargeback and any other amounts in accordance with the Rules and for fees and any other penalties or payments under this Agreement and under any other Agreement between you and Datalink or a Datalink Affiliate. You also authorize Datalink or Member’s vendors or agents to debit the Designated Account for any fees due such vendor or agent under this Agreement. You must obtain prior written consent from Member and Datalink to change Designated Account. If you do not get that consent, Datalink or Member may immediately terminate the agreement and may take other actions necessary to protect them with in their discretion.

B. **Designated Account.** Member will deposit all funds evidenced by Sales Drafts to the Designated Account subject to Section 4 and pursuant to this Agreement. Datalink and Member have the right to delay, within their discretion, crediting the Designated Account with funds evidenced by submitted Sales Drafts. You authorize Member or Datalink to initiate reversal or adjustment entries and initiate or suspend such entries as may become necessary to grant you conditional credit for any entry. You authorize and appoint Member to act as your agent to collect Card transactions amounts from the Card issuing bank. As the collecting agent, Member grants you provisional credit for transaction amounts in the process of collection subject to receipt of final payment by Member and Datalink subject to all chargebacks, returns, fees and fines.

C. **Asserted Errors.** Promptly examine all statements relating to the Designated Account, and immediately notify Datalink in writing via certified mail of any errors. Your written notice must include (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received via certified mail by Datalink within 30 days after you received the periodic statement containing the asserted error. You may not make any claim against Member or Datalink for any loss or expense relating to any asserted error for 60 days immediately following Datalink’s receipt of your written notice. During that 60 day period, Datalink will be entitled to investigate the asserted error. All statements are final 90 days after you receive such statement. Datalink will not make any adjustment on any statement 90 days or more after you receive such statement.

D. **Indemnity.** You defend, indemnify and hold Datalink and Member harmless for any action that they take against the Designated Account or Reserve Account pursuant to this Section. You will also defend, indemnify and hold harmless the institution at which you maintain you Designated Account for acting in accordance with any instruction from Datalink or Bank regarding the Designated Account. This section will survive the termination of this Agreement.

E. **ACH Authorization.** You authorize Member, Datalink or their vendors or agents to initiate debit/credit entries via the Automated Clearing House (“ACH”) to the Designated Account, the Reserve Account or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. This authorization extends to payments for any other amounts owed by you to Datalink, a Datalink affiliate, or Member, including but not limited to amounts owed for lease, rental or purchases of POS terminals, check guarantee services, and supplies. You will provide Datalink with a voided check from the Designated Account. This ACH authorization will remain in effect after termination of this Agreement for amounts you owe Datalink or Member, and until Member and Datalink have received written notice via certified mail terminating this authorization and all obligations to Datalink and Member have been paid in full. In the event you change the Designated Account, you will notify Datalink, and this authorization will apply to the new account and to any other account you own at any other financial institution. You will also indemnify and hold harmless any other financial institution for acting in accordance with any instruction from Datalink or Bank pursuant to this section.

6. Security Interests, Reserve Account, Recoupment and Set-Off.

A. Security Interests.

i. **Security Agreement.** This Agreement will constitute a security agreement under the Uniform Commercial Code. You may grant to Member and Datalink a security interest and a lien upon: (a) all funds at any time in the Designated Account, regardless of the source of such funds, (b) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds, (c) present and future Sales Drafts, and (d) any amount which may be due to you under this Agreement. These security interests and liens will secure all of you obligations under this Agreement and any other agreements now existing or later entered into between Merchant, Datalink, a Datalink affiliate and/or Member including, but not limited to, your obligation to pay any amount due and owing to Member and Datalink or a Datalink affiliate. The Security interest may be exercised by Datalink and Member with out notice or demand of any kind by making an immediate withdrawal or freezing secured assets.

ii. **Perfection.** Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Datalink has control over and may direct the disposition of Secured Assets, and Member agrees to comply with such direction without further consent of Merchant. You represent and warrant that no other person or entity has a secured interest in Secured Assets. With respect to such security interests and liens, Member and Datalink will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Member and Datalink written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of Recoupment and Member and Datalink are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by Datalink or Member. You authorize Member and Datalink and appoint Member and Datalink your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

B. Reserve Account.

i. **Establishment.** For the purpose of providing a deposit and a source of funds to pay Member and Datalink for amounts owed by you, you shall deposit into an account maintained by Member (or other approved depository institution) initially or at any time in the future as requested in good faith by Member and Datalink, sums sufficient to satisfy your current and/or future obligations as determined by Member and Datalink. Funds, if any, in the Reserve Account shall remain in the Reserve Account until each of the following has occurred: (a) this Agreement has been terminated, (b) Merchant has paid in full all amounts owing or that could ever be owed under this Agreement, including, without limitation, all the outstanding/uncollected amounts and potential chargebacks. Member or Datalink may, at any time, require that the amount on deposit in the Reserve Account be increased. In no event shall you be entitled to a return of any amounts remaining in the Reserve Account before 270 days following the effective date of termination of this Agreement.

ii. **Funding.** Member and Datalink have a right to debit the Designated Account to establish and maintain funds in the Reserve Account. Member and Datalink may deposit into the Reserve Account funds they would otherwise be obligated to pay you, for the purpose of establishing or maintaining the Reserve Account in accordance with this Section, if they determine such action is reasonably necessary to protect their interests. You understand and agree that if you are required to establish a Reserve Account you have an obligation under this Agreement to maintain at all times a balance in the Reserve Account sufficient to protect Member and Datalink against losses resulting from any transactions initiated by you.

iii. **Authorizations.** Member or Datalink may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Member or Datalink. Also, Datalink or Member may debit the Reserve Account to exercise their rights under this Agreement to collect any amounts due to Member or Datalink including, without limitation, rights of Set-Off and Recoupment.

C. **Recoupment and Set-Off.** Member and Datalink have the right of Recoupment and Set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: 9i) any amounts they would otherwise be obligated to deposit into the Designated Account, and (ii) any other amounts Datalink or Member may owe you under this Agreement or any other agreement. You acknowledge that in the event t of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code §362 to Datalink and Member, you must create or maintain the Reserve Account as required by Member and Datalink, and Datalink will have the right to offset against the Reserve Account for any and all other obligations with you may owe to Datalink and Member, with out regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

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

7. Fees and Other Amounts Owed.

A. **Fees.** You will pay Member and Datalink fees for services, forms and equipment in accordance with the rates set forth on the Merchant Application and the following: \$0.35 per batch, \$25 per chargeback, \$20 per retrieval request, \$10 per designated account change, \$1.75 per voice authorization, \$0.20 per excessive authorization, \$25 per ACH reject, and an annual membership fee (billed 60 days after Datalink accepts this Agreement and covers the Merchant participation in the Equipment Program and priority replacement of any non-user damaged equipment). Such fees will be calculated and debited from the Designated Account once each business day or month, as determined by Datalink, for the previous day’s or month’s activity, or will be netted out from the funds due you under this agreement. Member may adjust the fees in accordance with Section 13J below.

B. **Other Amounts Owed.** You will immediately pay Datalink or Member any amount incurred by Datalink or Member attributable to this Agreement, including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw the Designated Account, Reserve Account, or any other account you have at Member or at any other financial institution for any amount you owe Datalink or Member under this Agreement or any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Datalink or Member, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse Datalink or Member for the amount owed, you will immediately pay Datalink or Member such amount.

C. **Equipment.** You authorize Datalink to debit from the Settlement Account any amounts owed to Datalink for equipment including monies paid by Datalink to leasing companies on your behalf as a result of lease default.

D. **Taxes.** You are also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

E. **Merchant Supplies.** Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If Merchant elects to participate in Datalink’s Supply/Replacement Program, merchant understands that they are entitled to a maximum of 6 rolls of paper and 2 printer ribbons each month. Quantity of supplies provided is at the sole discretion of Datalink. Enrollment in Datalink’s Supply/Replacement Program also entitles merchant to free refurbished replacement equipment. A separate program is required for each terminal that a merchant might have. If a merchant’s terminal type is unavailable, at Datalink’s discretion, a substitute may be provided. Datalink may choose to cancel the merchant’s Supply/Replacement Program at any time without notice. This program is non-transferable without written consent.

8. Application, Indemnification, Limitation of Liability.

A. **Application.** You represent and warrant to Member and Datalink that all information contained in the Merchant Application (“Application”) is correct and complete, including but not limited to the average ticket size and average monthly volume. Any variance in the stated average ticket size and monthly volume could result in increased fees, and delayed and/or withheld settlement of funds. You must notify Datalink or Member in writing via certified mail of any changes to the information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (ie sole proprietorship, corporation, etc.), type of goods and services provided, and how sales are completed (i.e. by telephone, mail electronic commerce or in person at your place of business). The notice must be received by Datalink within 10 business days of the change. You will provide the updated information to Datalink within a reasonable time upon request. You are liable to member and Datalink for all losses and expenses incurred by Member or Datalink arising out of your failure to report changes to us. Datalink may immediately terminate this agreement upon notification by you of a change to the information in the application.

Merchant Processing Agreement (cont.)

B. Indemnification. You will be liable for, defend, hold harmless and will indemnify Datalink, Member and their employees, officers, directors, and agents against all claims by third parties arising out of this Agreement, for all actions or omissions of any third party with which you have contracted, and for all attorneys' fees and other costs and expenses paid or incurred by Member and Datalink in the enforcement of the Agreement, including but not limited to those resulting from any transaction processed under this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Datalink or Member under this Agreement, whether to you or any other party, whatever the basis of liability, will not exceed in the aggregate the difference between (i) the amount of fees Datalink received from you during the month in which the transaction out of which the liability arose accrued, and (ii) assessments, chargebacks, and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of Datalink and Member's liability will not exceed the lowest amount determined in accord with the previous sentence for any one month involved. In no event will Datalink, Member or their agents, officers, directors or employees be liable for indirect, special or consequential damages, whether or not they have been advised of the possibility of such damages.

D. Performance. Datalink and Member will perform all services in accordance with this Agreement. Datalink makes no other warranty, expressed or implied, regarding the services and nothing contained in the Agreement will constitute such a warranty. **Datalink disclaims all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Datalink nor Member will be liable for the acts or omissions of any third party.

9. Representations and Warranties. You represent and warrant to Datalink and Member at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Datalink is true and complete and properly reflects the business, financial condition and principle partners, owners or officers of the Merchant. You are not engaged or affiliated with any business, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Datalink and Member.

B. Corporate Power. Merchant and the person signing this Agreement have the power to execute and perform this Agreement and Merchant represents and warrants that that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Merchant which may be required by Datalink now or in the future. If Merchant has not signed the Merchant Application, you agree that Merchants first transmission of Sales Drafts to Datalink constitutes Merchants acceptance of this Agreement. Furthermore, you represent and warrant that this Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH system or the Combine Terminated Merchant File, unless you have disclosed this to Datalink.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve a Cardholder obtaining cash from you unless allowed by the rules and agreed in writing with Datalink.

E. Rule Compliance. You will comply with the laws and rules. You agree that processing any Visa/MasterCard transactions through Datalink as a result of this Merchant Agreement constitutes a full acknowledgement and acceptance of the Datalink Operating Rules and Procedures provided by Datalink.

10. Audit Information and Personal Guarantee.

A. Audit. You authorize Datalink and Member to audit your records and confirm compliance with this Agreement. You will obtain and submit a copy of an audit of your business when requested by Datalink or Member.

B. Information.

i. Authorizations. You and all Guarantors authorize Datalink and Member to make, from time to time, any business and personal credit, tax report and other inquiries they consider necessary to review the acceptance and continuation of this Agreement. You will also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to them.

ii. Documents. You will provide Datalink and Member financial statements and other financial information as requested from time to time. You will furnish with in 120 days after the end of each fiscal year to Datalink and Member a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

C. Personal Guarantee. As a primary inducement to Member/Datalink 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 Member/Datalink pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that Member/Datalink may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible there for to it or any security held by Member/Datalink or Merchant. Guarantor(s) authorize Datalink or Member 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 the termination of this Agreement, and until Datalink has received written notice via certified mail terminating this authorization and all Guarantor(s) obligations to Datalink and Member have been paid in full. Guarantor(s) will indemnify and hold Datalink and Member 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 Datalink or Member in pursuant to this Section. This guarantee will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Member or Datalink. Guarantor(s) understand that the inducement for Member/Datalink 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.

11. Term and Termination.

A. Term. The Agreement will be come effective on the date Member executes this Agreement ("Effective Date"). The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 2 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by either party effective at the end of the Initial or any Renewal Term by providing written notice via certified mail of an intent not to renew prior to the expiration of the then current term. Additionally: i) this Agreement may be terminated at any time by Member or Datalink with or without cause, and without prior notice and ii) this Agreement may be terminated by you in the event of a material breach of the terms of this Agreement by Member or Datalink, provided that you give Datalink and Member written notice via certified mail of any alleged breach and such breach remains uncured for a period of 30 days following the receipt of written notice by the breaching party. Datalink's and Member's rights of termination under this Agreement are cumulative. A specific right of termination shall not limit any other right of Datalink or Member to terminate this Agreement expressed elsewhere. Termination shall be effective on the date specified by written notice.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Member and/or Datalink is required to report your business name and the name of the Merchant's principles to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules. You will waive and hold harmless Datalink and Member for all claims and liabilities you may raise and a result of such reporting. You also acknowledge that Member and/or Datalink may file a credit report upon the termination of Agreement for cause.

ii. Accounts. All your obligations regarding accepted Sales Drafts will survive termination. Collected Sales Drafts will be placed in the Reserve Account until you pay all amounts you owe to Datalink and Member or amounts for which you are liable under this Agreement. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the specified term of this Agreement. Any balance remaining after chargeback rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize Member to debit those accounts or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account and Reserve Account is not adequate, you will pay Member and Datalink the amount you owe them upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorney fees.

iii. Equipment. Within 30 days of the date of termination you must return all equipment owned by Datalink and immediately pay Datalink any amounts you owe for equipment costs. Merchant further agrees that in the event that the equipment is not returned to Datalink or is returned damaged or otherwise inoperable condition, a reasonable replacement penalty will be charged. You authorize us to debit from the Settlement Account any amounts owed to Datalink for equipment.

iv. Early Termination. If you terminate this Agreement before the end of the Initial or any Renewal Term, you will immediately pay Datalink and Member, as liquidated damages, an early termination fee calculated as follows: an amount equal to the average monthly billing payable by merchant for the preceding 12 calendar months (or such shorter period if this Agreement has not been in effect for 12 months), multiplied by the number of months remaining during the then current term of this Agreement, or \$250.00, whichever is greater. Merchant shall also reimburse Member and Datalink for any damage, loss or expense incurred by Member or Datalink as a result of a breach by Merchant, including any damages set forth in any addendums. All such amounts shall be due and payable by Merchant on the effective date of such termination. Notwithstanding the foregoing, Merchants accounts shall remain open for 9 months following the effective date of termination to facilitate the processing of chargebacks. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination.

12. Compliance with Laws and Rules. You agree to comply with all rules and operating regulations issued from time to time by MasterCard and Visa and any policies and procedures by Member or Datalink ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time affecting acceptance of the Cards, processing of Card transactions, and the transactions contemplated by this Agreement. You will assist Member and Datalink by complying in a complete and timely manner with all Laws an Rules hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to member and Datalink all such documents they may from time to time reasonably deem necessary.

13. General Provisions.

A. Entire Agreement. This Agreement including the Operating Guide, Schedule of Fees, the completed Application, the Rules and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 12J below, all of which are incorporated into this Agreement, constitutes the entire Agreement between the parties, and all prior or other agreements or representations, written or oral, are merged in and suspended by this Agreement.

B. Governing Law and Venue. This Agreement will be governed by the Laws of the State of Texas. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Texas and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business with in the State of Texas. The parties submit to the jurisdiction and venue of the state and federal courts located in Dallas County, Texas for any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that such venue is convenient.

C. Exclusivity. During the Initial and any renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by Datalink and Member as contemplated by this Agreement without Datalink's prior written consent.

D. Construction. Any alteration or strike over or addition to the text of this pre-printed Agreement or Merchant Application will have no binding effect, and will not be deemed to amend this Agreement or Merchant Application. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

E. Assignability. This Agreement may be assigned by Datalink and by Member upon Datalink's consent, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Datalink. If you nevertheless assign this Agreement without Datalink's consent, the Agreement will be binding on the assignee. **If you sell your business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners.**

F. Notices. Any written notice under this Agreement will be deemed given on the earlier of: (i) actual receipt or (ii) five days after being deposited into the United States mail, and addressed, if to Datalink, to: 10215 Miller Road, Suite 200, Dallas, TX 75238, attn: President, and if to the other parties at the last address shown on the records of the sender.

G. Bankruptcy. You will immediately notify Datalink and Member of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Member and Datalink on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to Datalink under applicable Rules or Law. You acknowledge that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

H. Attorney's Fees. Merchant will be liable for and will indemnify and reimburse Member and Datalink for all attorney's fees and other costs and expenses paid or incurred by Member and Datalink in the enforcement of this Agreement, or in collecting any amounts due from Merchant to Member or Datalink or resulting from any breach by Merchant of this Agreement.

I. Customer Contact. You authorize Member or Datalink to contact your customers or their Card issuing bank if they determine that such contact is necessary to find out information about any Card transaction between you and the customer.

J. Amendments. Member and Datalink may propose amendments or additions to this Agreement. Member or Datalink will inform you of a proposed change in a periodic statement, a fax, an e-mail, or other form of written notification. You will be deemed to have agreed to the change if you continue to present transactions to Member and Datalink after 7 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement will be effective upon notice to you, unless a later effective date is provided. Further, Datalink is entitled to increase any fee due to an increase imposed by Visa or MasterCard, or telecommunication vendors without giving you the right to terminate this Agreement.

K. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be constructed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Datalink or Member to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by Datalink.

L. Independent Contractors. Datalink, Member, and Merchant will be deemed independent contractors and none will be considered agent, joint venturer, or partner of the other except as provided in Section 6.0 and 7.A (ii).

M. Survival. Sections 4, 6, 7, 8, 9, 11.C and 13 will survive termination of this Agreement.