



The Independent BankersBank

# Visa / MasterCard Merchant Application

For Additional Information Contact:

**TIB Merchant Services**

**Phone: 800-288-4842, Ext. 6165**

**Fax: 972-650-6559**

See the instructions page, or call TIB  
if you have questions.

Revised 01/2002

# Instructions

## **Business Name and Location:**

- ◆ DBA Name, Address and Phone – This is “Doing Business As” information and must include the name of the business and the physical address.
- ◆ Corporate Name, Address and Phone: If your Company has a separate Corporate address, or if the DBA Mailing address is different from the DBA physical address, enter the information in this area. Otherwise, leave it blank.
- ◆ Person to Contact: Person at the merchant location who we contact for information.
- ◆ Federal Tax ID: This is absolutely required... we can not proceed without a Federal Tax ID Number. The owner’s Social Security Number can be used in some instances.
- ◆ Mail Statement to: Check the appropriate block.

## **Owners and Officers:**

- ◆ Complete this information on from 1 to 3 Owners or Officers of the company. All individuals listed here must sign on Page 2.

## **Business Profile:**

- ◆ Type Ownership: Check appropriate block.
- ◆ Type Goods or Services: Give a brief, but definitive description of your business.
- ◆ Type Business: Check appropriate block.
- ◆ Est. Annual Volume: Your best estimate of how much Credit Card sales volume you will do in one year. This item MUST BE FILLED IN.
- ◆ Est. Avg. Ticket: Estimate of the Average Ticket amount for Credit card transactions. This item MUST BE FILLED IN.
- ◆ Years in Business: Number of years in the same type of business.
- ◆ Do you, or have you ever accepted VISA or MC before?: Fill in as required.
- ◆ Percentage of Transaction Types: Fill in your best estimate of the percentage of each transaction type... the total should equal 100%.

## **Business Trade Suppliers:**

- ◆ List three companies that you currently do business with.

## **Type of Merchant:**

Check the block for processing method you select:

**ETC (Electronic Ticket Capture):** If you checked the “Electronic” or “Software” block under Type of Merchant, you must complete this area... otherwise, leave it blank.

## **Processing Information:**

- ◆ DDA Number: Your Checking Account number.
- ◆ Routing - Transit Number: Your bank Routing Number
- ◆ American Express, Discover, or Diners Club: If you will be processing these cards, enter the Account Number for each.

**Bank Information:** Fill in Bank Name and address information

**Merchant Acceptance:** Sign and Date. Signatures of individual(s) listed as Owner / Officer on Page 1.

**Merchant Site Survey:** A Bank Officer must complete and sign this section.

**Schedule A – Terms and Conditions:** Complete and sign

**Schedule B - Standard Procedures, and Merchant Bank Card Agreement:** Review and Sign

If you need assistance, Call 1-800-288-4842, ask for extension 6503, 6068 or 6080



Type of Merchant >>	Touchtone	Electronic (ETC)	Software
<b>ETC (Electronic Ticket Capture)</b>			
<b>Complete this section only if you checked 'Electronic' or 'Software' above</b>			
<b>I Want to Purchase the following Equipment:</b> Hypercom T7P, Terminal with Printer Verifone Tranz 330, Terminal  Verifone Printer 250 Verifone Tranz 380 (for Hotels) Verifone Omni 3200 Eclipse Payment Terminal Verifone Pin Pad 1000 PTC Software Other:	<b>I Already Own the following Equipment:</b> Hypercom T7P, Terminal with Printer  Verifone Tranz 330, Terminal  Verifone Printer 250 Verifone Tranz 380 (for Hotels) Verifone Omni 3200 Eclipse Payment Terminal Verifone Pin Pad 1000  Other	<b>I want to Lease the following Equipment:</b>  Tranz-330 Terminal  Printer-250	
		<b>I own the Following Software:</b>	
		<b>I want to purchase an Extended Warranty:</b> <b>Yes                      No</b>  <small>Available on Verifone T-330 Terminals and Printer-250 only</small>	
		I want the Terminal to Auto Close:  <b>Yes                      No</b>	
Merchants in need of manual imprinter(s) should indicate the number needed to the right. The first imprinter is free. Each additional imprinter is \$25.00. Merchants will receive a standard Welcome Kit, including metal plates for an imprinter, after the merchant account has been set up.			<b>Imprinters Needed:</b>

<b>Processing Information</b>		
DDA Number (Checking Account Number)	Bank Routing – Transit Number	
<b>If you want to process other cards, list the merchant numbers below:</b>		
American Express Merchant Number	Discover:	Diners Club:

<b>Bank Information</b>		
Bank	Person to Contact	Bank Number:
Address	City, State and Zip	

<b>Merchant Acceptance</b>		
Each person signing below agrees to the terms and conditions stated in all pages of this merchant processing agreement and certifies that all information provided 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, research references, statements, or data obtained from the Merchant for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing.		
Owner / Officer 1	Owner / Officer 2	Owner / Officer 3
Name	Name	Name
Date	Date	Date

<b>Merchant DBA Name:</b>		
<b>Merchant Site Survey (A Bank Officer must complete and sign this section):</b>		
<b>Merchant Location:</b> Retail location with store front Office Building Residence Mobile Merchant Other	<b>Area Zoned:</b> Commercial Industrial Residential	<b>Location Size:</b> 0 – 499 Sq. Ft. 500 – 1,999 Sq. Ft. 2,000 – 4,999 Sq. Ft. Over 5,000 Sq. Ft.
<b>Does the amount of inventory Appear consistent with the Type Of Business?</b>	<b>Yes</b> <b>No</b>	If “NO”, Explain:
<b>Does the Merchant own or Lease the business site?</b>	<b>Owns</b> <b>Leases</b>	Leases from:
<b>Comments:</b>		

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

**Bank Officer:**

**Bank:**

\_\_\_\_\_

Signature **X**

\_\_\_\_\_

Typed or printed name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

# Schedule A, Terms and Conditions

**1.1 Cards Honored:** Merchant will honor the following Cards subject to the Agreement:

- MasterCard Cards (including any other MasterCard International Inc., Cards)
- VISA Cards (including any other VISA U.S.A. Inc., and VISA International Service Association Cards)
- Other Cards as indicated: **American Express** **Discover** **Diners Club**

**1.2 Merchant's Business:** Merchant's usual trade or business is: \_\_\_\_\_  
 Merchant shall not change the usual trade or business or commerce operating an unrelated trade or business on the same premises as Merchant operates this stated trade or business without obtaining Bank's prior written consent to the change or addition.

**1.3 Medium of Transactions:** Merchant shall transmit transaction records to Bank by means of:

ETC - Electronic Ticket Capture (Electronic Terminal of PTC software)

ARU - Automated Response Unit (Touchtone or Voice)

**1.4 Merchant Discount:** The Discount rate applicable to Merchant's sales slips shall be:

Processing:	
Qualified Transactions:	
Non-Qualified Transactions:	
ARU Transactions	

**1.5 Merchant Transaction Fees:** Merchant shall pay Bank the following fees for the duration of the agreement:

Transaction Fees:	
Authorizations	
Voice Authorizations	
Per Transaction	
Monthly Minimum	
Chargebacks	
T&E Sales	
HelpDesk Per Month	
HelpDesk Per Call	
Merchant Club	

per occurrence

**1.6 Designated Account:** Merchant's checking account number: \_\_\_\_\_ shall be the primary account to be debited or credited in connection with the transactions contemplated by this agreement.

Bank: **TIB – The Independent BankersBank**

Merchant DBA:

Signature: **X**

Signature: **X**

Printed Name: **Greg Hughes**

Printed Name:

Title **Vice President**

Title

Address **PO Box 560528**

Address

City, State ZIP **Dallas, TX 75356**

City, State ZIP

Date

Date

## Schedule B, Standard Procedures

### 1.1 *Card Examination*

Before honoring any Card, Merchant agrees:

- ❖ To check the effective date (if any) and the expiration date on the Card.
- ❖ To examine any card security features (such as hologram) included on the Card.
- ❖ Merchant shall not honor any Card that is not yet effective or that has expired or which the security features give reasonable cause to believe has been altered or is not a validly issued Card.

### 1.2 *Authorization*

- ❖ Before honoring any Card, Merchant shall obtain authorization from Bank's designated authorization center.
- ❖ If authorization is granted, Merchant shall print the authorization number legibly in the designated area on the sales slip.
- ❖ If authorization is denied, Merchant shall not complete the Card transaction and shall follow any instructions from the authorization center.
- ❖ Regardless of any authorization, Merchant shall be liable to Bank if Merchant completes a transaction when the cardholder is present but does not have his or her Card, the cardholder does not sign the sales slip, or the signature on the sales slip does not match the signature appearing on the Card.
- ❖ Merchant shall not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a transaction record for the authorized amount if authorization for the transaction is given.
- ❖ Merchant shall not divide a transaction into two or more transactions to attempt to avoid having to obtain an authorization if Merchant has a floor limit.

### 1.3 *Retention and Retrieval of Cards*

- ❖ Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card:
- ❖ If Merchant is advised to retain the Card in response to an authorization request.
- ❖ If Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent, or stolen.
- ❖ The obligation of Merchant to retain or recover a Card imposed by this section does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank 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.

### 1.4 *Completing the Transaction Record*

- ❖ Except as provided below, Merchant agrees to do all of the following when honoring a Card:
- ❖ To enter on the sales slip the transaction date, a description of the goods or services sold and the price thereof (including any applicable taxes) in detail sufficient to identify the transaction.
- ❖ To obtain the signature of the customer on the sales slip.
- ❖ To compare the signatures on the sales slip and on the signature panel of the Card, and if the Card has photograph of the cardholder, to ascertain that the customer resembles

the person depicted in the photograph. If either identification is uncertain or Merchant otherwise questions the validity of the Card, Merchant shall contact Bank's authorization center for instructions.

- ❖ Unless the sales slip is electronically generated, imprint legibly on the sales slip the embossed legends from the Card and from the merchant imprinter plate.
- ❖ To deliver a true and completed copy of the sales slip to the customer at the time of delivery of the goods or performances of the services.
- ❖ To retain the reproduction of sales/credit slips for a minimum of three years.

#### ❖ *Personal Information*

- ❖ Merchant shall not require cardholders to provide personal information, such as a home or business telephone number or address, or a driver's license number, as a condition for honoring the Card unless the information is expressly required by MasterCard or VISA rules. This Section shall not prohibit the obtaining of such information if the same is necessary to the sale or performance of services, such as might be the case if merchandise is to be delivered to the cardholder's address, provided that the same information would be equally necessary and required of customers paying for the goods or services in cash.

#### ❖ *Telephone Orders, Mail Orders, Preauthorization Orders, and Installment Orders*

- ❖ This Bank Card Merchant Agreement does not contemplate regular acceptance of Cards in transactions consummated by telephone or by mail, nor through preauthorized orders. If Merchant regularly intends to accept Cards in connection with telephone, mail, or preauthorized orders, Merchant shall seek and obtain Bank's separate written consent. Merchant acknowledges that Bank is not obligated to give such consent and that any consent given by Bank may be subject to conditions. If an occasional Card transaction is made by telephone order (TO), mail order (MO), or preauthorized order (PO), or if Bank gives Merchant separate written consent for regular acceptance of cards for such transactions, the sales slip may be completed without a customer's signature or a Card imprint, but in such cases Merchant shall:
- ❖ Print legibly on the sales slip sufficient information to identify Merchant and the cardholder, including Merchant's name and address, the Card issuer's interbank number and bank initials (if any), the account number, the expiration date and any effective date on the Card, the cardholder's name, and any company name.
- ❖ Print legibly on the signature line of the sales slip the letters "TO", "MO", or "PO" ("Recurring Transaction" for VISA transactions), as appropriate.
- ❖ In any non imprint transaction, Merchant shall be deemed to warrant the customer's true identity as an authorized user of the Card, whether or not authorization is obtained, unless Merchant obtains and notes legibly on the sales slip independent evidence of the customer's true identity.
- ❖ In connection with a preauthorized order pursuant to which goods or services are delivered to or performed for a

cardholder periodically, Merchant agrees to the following conditions:

- ❖ Merchant must obtain a written request from the cardholder that the recurring transaction be charged to the cardholder’s account.
- ❖ The written request must specify the amount of the recurring transaction, the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect.
- ❖ Before renewing a preauthorized order, Merchant must obtain a subsequent written request from the cardholder containing the information listed above.
- ❖ Merchant must retain the cardholder’s written authorization and must provide a copy to Bank upon request.
- ❖ Merchant must not deliver goods or perform services covered by a preauthorized order after being advised that the preauthorization has been canceled or that the Card is not to be honored.
- ❖ Merchant may offer cardholders an installment payment option for its mail/telephone order merchandise subject to the following conditions:
  - ❖ Merchant’s promotional material must clearly disclose the installment terms, including but not limited to:
    - ❖ Whether the plan is available only for selected items or for the total amount of any order
    - ❖ How shipping and handling charges and applicable taxes will be billed
  - ❖ Merchant’s promotional material must advise cardholders who are not billed in the transaction currency of the Merchant that the installment billing amounts may vary owing to fluctuations in the currency conversion rates.
- ❖ No finance charges may be added by Merchant. The sum of the installment transactions may not exceed the total sales price of the merchandise on a single-transaction basis.
- ❖ Authorization is required for each installment transaction.
- ❖ Merchant may not present the transaction record for the first installment to Bank until the merchandise is shipped. Subsequent transaction records for installment transactions must be deposited at regular intervals of 30 days or more or on the same date each month.

**1.7 Lodging and Vehicle Rental Transaction**

Regardless of the terms and conditions of any written preauthorization form, the sales slip amount of any lodging or vehicle rental transaction shall include only that portion of the

Bank: **TIB–The Independent BankersBank**

Signature: **X**

Printed Name: **Greg Hughes**

Title: **Vice President**

Address: **P.O. Box 560528**

City, State, ZIP: **Dallas, Texas 75356-0528**

Date: \_\_\_\_\_

transaction, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to a customer and shall not include any consequential charges. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card transaction.

**1.8 Returns and Adjustments; Credit Slips**

- ❖ If merchant maintains a policy of permitting refunds, exchanges, returns, or adjustments for cash customers, Merchant shall maintain the same policy for purchases paid through use of a Card. If Merchant restricts or prohibits refunds, exchanges, or returns for cash customers and wishes to apply similar restrictions for Card transactions, Merchant shall disclose its policy at the time of the transaction by printing an appropriate notice (such as No Refunds or Exchanges) on all copies of the sales slip prior to obtaining the customer’s signature thereon.
- ❖ Except as provided above, Merchant shall not make any cash refund for any sales slip, but shall complete and deliver promptly to Bank a transaction record evidencing the refund or adjustment, and deliver to the cardholder a true and complete copy of the credit slip at the time the refund or adjustment is made. The amount of the credit slip shall not exceed the amount of the original transaction as reflected on the sales slip.

**1.9 Cash Payments**

Merchant shall not receive any payments from a customer for charges included on any transaction record resulting from the use of any card, nor receive any payment from a cardholder to prepare and present a transaction record for the purpose of effecting a deposit to the cardholder’s account.

**1.10 Cash Advances**

Unless expressly authorized in writing by Bank, Merchant shall not make any cash advances to a cardholder, either directly or by deposited to the cardholder’s account. Money orders sent by wire, contributions to charitable and political organizations, tax payments, insurance premium payments, alimony and child support payments, and court costs and fines shall not be considered cash advances or withdrawals.

Merchant: \_\_\_\_\_

Signature: **X**

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Date: \_\_\_\_\_

# Merchant Bank Card Agreement

This Merchant Bank Card Agreement (“Agreement”) applies to all Cards of the type described in Schedule A to this Agreement (Individually, a “Card”). In consideration of the mutual covenants herein the undersigned bank (“Bank”) and the undersigned merchant (“Merchant”) agree as follows:

## ARTICLE I – HONORING CARDS

### 1.1 *Honoring Cards*

- ❖ Merchant shall honor without discrimination all valid cards when properly presented as payment by customers in connection with bona fide, legitimate business transactions arising out of Merchant’s usual trade or business.
- ❖ Merchant shall not require, through an increase in price or otherwise, any cardholder to pay any surcharge at the time of sale or to pay any part of any charge imposed on Merchant by Bank.
- ❖ Merchant shall not establish minimum or maximum transactions amounts.
- ❖ Merchant shall not honor or present sales slips that relate to sales or services sold other than those arising out of Merchant’s usual trade or business.
- ❖ Merchant shall not regularly accept Cards on transactions consummated by telephone or by mail or through preauthorized orders without prior consent of Bank.

### 1.2 *Advertising*

- ❖ Merchant shall display adequately any advertising or promotional materials provided or required by Bank to inform the public that Cards will be honored at Merchant’s place of business unless expressly exempted from this requirement by MasterCard International Inc. (“MasterCard”) and/or VISA USA, Inc. (“VISA”), as applicable.
- ❖ Merchant shall have the right to use or display the proprietary names and symbols associated with Cards only while this Agreement is in effect, or until Merchant is notified by Bank or by MasterCard or VISA to cease such usage.
- ❖ Merchant shall comply with all applicable MasterCard and VISA rules and regulations concerning the use of service marks and copyrights owned by MasterCard or VISA, respectively.

**1.3 *Procedures.*** Additional terms and procedures applicable to this Agreement are set forth in Schedules A and B attached hereto and incorporated herein. Merchant shall follow all procedures as specified in Schedule B attached hereto as such Schedule is amended from time to time and such other procedures as may be required by applicable rules and regulations of VISA and MasterCard.

**1.4 *Merchant’s Business.*** Merchant’s usual trade or business is shown on Schedule A. Merchant shall not change its usual trade or business or commence operating an unrelated trade or business without obtaining Bank’s prior written consent to the change or addition.

**2.1 *Transmission of Data.*** Merchant shall present all Card transactions to Bank for clearing by depositing same to Merchant’s account identified on Schedule A. “Transaction Records” means the sales slips (which term shall include the electronic or magnetic tape record thereof) and credit slips (which term shall include the electronic or magnetic tape record thereof) evidencing transactions between Merchant and its customers accomplished through use of a Card. The term includes all information shown or required by this Agreement to be shown on the sales slips and credit slips. In lieu of depositing paper sales slips and credit slips with Bank, Merchant may transmit transaction records containing all data required by this Agreement to appear on the sales slips or credit slips to Bank in the form of magnetic tape or electronic data, as specified by and acceptable to Bank. The Term “sales data” as used in this Agreement shall mean the data transmitted by Merchant that is contained in a sales slip or the electronic or magnetic tape record that is the equivalent of such a sales slip. The term “credit data” as used in this Agreement shall mean the data transmitted by Merchant that is contained in a credit slip or the electronic or magnetic tape record that is the equivalent of such a credit slip. All data (transaction records) transmitted shall be in a medium, form, and format approved in advance by Bank and shall be presorted and organized according to Bank’s instructions. All references to “sales slips” and “credit slips” in this Agreement shall be deemed to include transaction records transmitted electronically or on magnetic tape, and the term “transaction record” shall include to the sales slip or credit slip if the same is transmitted in paper form.

**2.2 *Presentment of Transaction Record to Bank.*** If Merchant elects to use a third party as its agent for the direct delivery of data-captured transaction records, Merchant agrees to the following conditions (for the purposes of this Section 2.2, “Merchant” includes any agent designated by Merchant as permitted under this section:

- ❖ Agent must be authorized for use by the Bank.
- ❖ Merchant must provide satisfactory notice to the Bank that Merchant intends to use an agent for delivering transaction records.
- ❖ The obligation of Bank to reimburse Merchant for transactions is limited to the amount (less the appropriate discount fee delivered by Merchant’s designated agent.
- ❖ Merchant is responsible for any failure by its agent to comply with all applicable rules and regulations of MasterCard and VISA.
- ❖ Merchant shall present all transaction records relevant to sales transactions to Bank within seven (7) days after the goods have been shipped or the services have been performed and Merchant has otherwise performed all of its principal obligations to the customer in connection with the transaction.
- ❖ Merchant shall deliver all transaction records relevant to credit transactions to Bank within seven (7) bank business days after the transaction date.
- ❖ Merchant shall not present to Bank, directly or indirectly, any transaction record that Merchant knows or should have

known to be fraudulent or not authorized by the cardholder, that results from a transaction outside Merchant's normal course of business, that results from a transaction not involving Merchant, or that contains the account number of a Card account issued to Merchant.

**2.3 Acceptance.** Subject to the provisions of any warranty of Merchant hereunder and of any chargeback rights, Bank shall accept valid transaction records from Merchant during the term of this Agreement and pay Merchant the total amount represented thereon (less the Discount referred to on Schedule A, credit slips and Chargebacks) by crediting Merchant's designated deposit account therefor. Any payment made by the Bank to Merchant shall not be final but shall be subject to subsequent review and verification by Bank. Funds in such account shall be available for withdrawal as of the opening for business on the 3<sup>rd</sup> day after deposit thereof, provided that if Bank begins to receive a significant number of Chargebacks or complaints regarding Merchant which give Bank reasonable cause to believe or suspect that a significant amount (by number or dollar size) of transactions may subsequently be charged back, Bank may place an administrative hold on funds in the account and prohibit withdrawals there from until such time as Bank is provided with security for withdrawals or Bank otherwise in its sole judgment determines the risk of Chargebacks is acceptable. Merchant shall maintain in the designated deposit account such amount of funds as Bank may reasonably deem necessary to protect Bank from any risk of liability with respect to Chargebacks or fees and to pay Bank sums owed hereunder, such account to be so maintained until at least one hundred eighty (180) days following the termination of this Agreement.

**2.4 Endorsement.** Merchant shall be deemed to have endorsed in Bank's favor any transaction records Merchant presents to Bank and Merchant hereby authorizes the Bank to supply such endorsement on Merchant's behalf.

**2.5 Prohibited Payments.** Bank shall have the sole right to receive payments on any accepted transaction record as long as Bank has paid Merchant for the transaction record and has not charged it back to Merchant.

**2.6 Chargeback.** Under any one or more of the following circumstances, Bank may charge back to Merchant and may debit Merchant's designated deposit account for any transaction record that Bank has accepted (and set off against funds in such deposit account the amount of such chargeback):

- ❖ The transaction record or any material information on a sales slip (including but not limited to the account number, expiration date of the Card, merchant description, transaction amount, or date) is illegible, incomplete, or otherwise indiscernible, is not endorsed, or is not delivered to Bank within the required time limits.
- ❖ The account number is included in the Combined Warning Bulletin current on the transaction date and Merchant did not reject the transaction or receive prior authorization for the transaction, as applicable.
- ❖ The sales slip does not contain the imprint of a Card that was valid, effective, and unexpired on the transaction date, except that no imprint is required for sales slips generated electronically.

- ❖ The transaction was one for which prior authorization was required but prior authorization was not obtained, or a valid authorization number is not correctly and legibly included on the transaction record.
- ❖ The transaction record is a duplicate of an item previously paid, or is one of two or more transaction records generated in a single transaction in violation of this Agreement.
- ❖ The cardholder disputes the execution of the sales slip or other transaction record or the sale, delivery, quality or performance of the goods or services purchased, or alleges that a credit adjustment was requested and refused or that a credit adjustment as issued by Merchant but not posted to the cardholder's account.
- ❖ The price of goods or services shown on the transaction record differs from the amount shown on the copy of the sales slip delivered to the customer at the time of the transaction.
- ❖ Bank reasonably determines that Merchant has failed to follow procedures set forth in Schedule B, or has violated any term, condition, covenant, warranty, or other provision of this Agreement in connection with the transaction record or the transaction to which it relates.
- ❖ Bank reasonably determines that the transaction record is fraudulent or that the related transaction is not a bona fide transaction in Merchant's ordinary course of business or is subject to any claim of illegality, cancellation, remission, chargeback, avoidance, or offset for any reason whatsoever, including without limitation negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees.
- ❖ The transaction record arises from a mail, telephone, or preauthorized order transaction that the cardholder disputes entering into or authorizing, or which involves an account number that never existed or that has expired and has not been renewed.
- ❖ Merchant fails to provide any sales slip or credit slip to Bank in accordance with this Agreement.
- ❖ The issuer of the Card charges the sales slip back to Bank for any reason not otherwise listed above.
- ❖ Within a reasonable time following notice of chargeback of a transaction to Merchant, Bank shall return to Merchant any sales slip or other evidence of the transaction which had been delivered to Bank.
- ❖ Merchant shall reimburse Bank for any fee or charge imposed by or through MasterCard or VISA as a result of extraordinary chargeback activity or of any failure by Merchant to comply with the provisions of this Agreement or VISA and MasterCard rules.

**2.7 Sales Draft Storage and Retrieval.** VISA USA, and MasterCard International require the Bank to obtain and forward copies of sales or credit drafts to card issuers upon request. Merchant shall set up a system in accordance with the requirements of VISA USA and MasterCard International, to store and maintain sales drafts in such a manner so as to allow Merchant to forward, within twenty four (24) hours, copies of any sales draft requested by Bank on behalf of card issuer. Merchant understands that failure to respond to a retrieval request may result in a chargeback under VISA and MasterCard rules and regulations.

2.8 **Discount.** Bank shall be entitled to a discount for each transaction record accepted by Bank pursuant to this Agreement. The amount of the discount shall be determined by applying the discount rate in the amount set forth on Schedule A to the face amount of the transaction record, including any sales, use, or other tax included in the face amount. The discount may be collected by Bank by debit to Merchant's designated deposit account on a daily, monthly, or other basis, as determined by Bank. Bank shall have the unconditional right to adjust discount upon thirty (30) days written notice to Merchant.

### ARTICLE III – AMENDMENT AND TERMINATION

3.1 **Modifications.** From time to time Bank may amend any provision or provisions of this Agreement, including, without limitation, those relating to Merchant's floor limit or discount rate or to other fees payable by Merchant by mailing written notice to Merchant of the amendment at least 30 days prior to the effective date of the amendment and the amendment shall become effective unless Bank receives Merchant's notice of termination of this Agreement before such effective date. Amendments to Schedule B and amendments to this Agreement required because in VISA Bylaws and/or Operating Regulations, or the operating rules or regulations of any processor used by Bank in connection with the services provided by Bank hereunder, MasterCard Operating Rules and Regulations or in any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the requirement of VISA or MasterCard or with any law or judicial decision.

#### 3.2 **Term/Termination**

- ❖ This Agreement shall become effective upon the date this agreement is signed by Bank, which shall in all instances be the last party to sign this Agreement.
- ❖ The initial term of this Agreement shall commence and shall continue in force for one (1) year after it becomes effective. Unless Merchant notifies Bank with written notice 30 days prior to the expiration of the then existing term, the Agreement shall automatically renew for successive one (1) year terms.
- ❖ If Merchant chooses to terminate this Agreement prior to the end of the existing term, an amount equal to the average of the immediately preceding six months processing fees will be calculated and billed to Merchant for each of the months remaining in the existing term.
- ❖ This Agreement may be terminated by Bank without cause upon 30 days prior written notice to that effect.
- ❖ Should Bank have reasonable cause to believe or suspect that Merchant is not complying or does not intend to comply with the terms and conditions hereof or that an extraordinary dollar amount or number of transactions have been or are likely to be charged back to Bank, Bank need not provide Merchant with advance notice of the termination.
- ❖ Upon the effective date of any termination, Merchant's rights hereunder to enter into Card transactions, to deposit sales slips with Bank, and to use forms, promotional material, any other items provided by Bank hereunder and any of the MasterCard or VISA service mark or logos shall cease, but each party's obligations in connection with any transaction records accepted by Bank (whether before or

after such termination), including without limitation Merchant's chargeback obligations, shall survive such termination.

- ❖ In addition to Bank's rights under Section 2.3 hereof, if Bank terminates this Agreement without having to give Merchant advance notice, for the period during which any previously presented sales slips are subject to chargeback to Bank pursuant to the then effective operating regulations of the MasterCard or VISA system, as applicable, Bank shall have the right to suspend Merchant's right to withdraw any funds from any deposit account maintained by Merchant with Bank, including, without limitation, Merchant's designated deposit account, provided, however, that Bank shall not suspend such right in a fashion that would deprive Merchant of the use of its deposit account or accounts beyond the extent deemed necessary by Bank to assure Bank's ability to recover from Merchant, by exercise of Bank's right to setoff against such deposit account, each and every sales slip as to which there remains a potential chargeback right as against Bank under said operating regulations. Bank agrees to reinstate Merchant's right to withdraw funds from its deposit accounts upon delivery to Bank of a bond, a letter of credit, or another undertaking or collateral security reasonably believed by Bank to protect Bank's interests relative to such chargebacks.
- ❖ For purposes of Section 2.3 and this Section, Merchant acknowledges that because of the potential for damage to Bank in the event of a material breach or repeated breaches of this Agreement by Merchant because of chargebacks, the term "reasonable cause to believe or suspect" shall be determined solely in the Bank's good-faith judgment and without regard to the actual occurrence of a breach or Chargebacks.

### ARTICLE IV – MISCELLANEOUS

4.1 **Forms.** Merchant shall use only such forms or modes of transmission of sales data and credit data as are provided or approved in advance by Bank, and Merchant shall not use forms provided by Bank other than in connection with Card transactions hereunder unless Bank shall have previously given Merchant written consent for the use.

4.2 **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.

4.3 **Security.** Merchant agrees that all of its obligations under this Agreement shall be secured by all deposit accounts maintained by Merchant with Bank 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.

4.4 **Attorney Fees.** Should suit be brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other its costs and expenses of suit, including its attorney fees.

**4.5 Limitation of Liability; Indemnity**

- ❖ Bank’s liability to Merchant with respect to any Card transaction shall not exceed the amount on the sales slip in connection with that transaction less any applicable discount. Bank shall in no event be liable for any incidental or consequential damages whatsoever. Bank shall not be responsible for errors in the Combined Warning Bulletin.
- ❖ Merchant hereby agrees to indemnify and hold Bank harmless from any claim against Bank relating to any transaction involving Cards or sales transaction with Merchant or Merchant’s refusal to engage in such sales transactions as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, and Merchant shall reimburse Bank for all expenses and costs, including attorney fees, with regard thereto.

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

**4.7 Notices.** Notices to Merchant shall be deemed given when personally delivered or when deposited in the U.S. Mail,

postage prepaid. Addressed Notices to Bank shall be deemed given when received by Bank at its address shown below. The address of either party can be changed by notice to the other party.

**4.8 Compliance and Cooperation.** Merchant shall comply with and assist Bank in complying with all applicable laws, rules, regulations and provisions of MasterCard or VISA or processing center rules and to provide Bank such information and documents as Bank shall deem reasonably necessary. Merchant shall not disclose to any party other than Bank the name, address or account number of a Card used for any transaction without the cardholder’s consent.

**4.9 Fees.** Merchant agrees to pay Bank the fees indicated on Schedule A.

**IN WITNESS WHEREOF,** Bank and Merchant have caused their duly authorized representatives to execute this Agreement as of the date set forth below the signature of each.

Bank: **TIB–The Independent BankersBank**

Merchant: \_\_\_\_\_

Signature: **X**

Signature: **X**

Printed Name: **Greg Hughes**

Printed Name: \_\_\_\_\_

Title: **Vice President**

Title: \_\_\_\_\_

Address: **P.O. Box 560528**

Address: \_\_\_\_\_

City, State, ZIP: **Dallas, Texas 75356-0528**

City, State, ZIP \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_