



Please read this entire document. Complete every section that applies to you based on the instructions provided. This application must be signed and dated.

Card Not Present (CNP) Merchant Documentation Required

For all merchants processing \$50,000 or less monthly

- ☐ Signed and completed merchant application form with personal guarantee
- ☐ Two consecutive months' processing statements dated within the last 90 days
- ☐ Void check showing legal name and company address/letter from financial institution confirming bank details
- ☐ Completed MOTO/Internet Questionnaire
- ☐ If applying for e-commerce, website must be fully functional and must contain, at a minimum: Secure Payment Page, Return/Refund Policy, Terms and Conditions, Privacy Policy, Shipping Policy, Currency of Transaction, Contact Information and a complete description of goods/services sold. You must also include a non-expiring user name and password.
- ☐ Completed Visa CISP and MC self-assessment questionnaire, if applicable
- ☐ 501(c) for non-profit organizations
- ☐ If MOTO, copies of any brochures, ads, or catalogs, as applicable, and a complete description of your business model, including but not limited to target market, advertising, description of goods and services being sold, return policy, and a description of how orders are placed, processed, and fulfilled

For merchants processing over \$50,000 a month, the following additional information is required:

- ☐ Three consecutive months' processing statements dated within the last 90 days
- ☐ Three consecutive months' bank statements dated within the last 90 days
- ☐ Two (2) years of financials (P&L and balance sheet). If business is less than two (2) years old, provide reporting for time period in business.
- ☐ Two (2) years of personal financial statements and tax returns for all principals (not required for publicly traded or non-profit organizations)

Card Present (POS) Merchant Documentation Required

- **Restaurant businesses processing \$100,000 or less monthly**
- **Future-delivery merchants processing \$25,000 or less monthly**
- **All other card-present merchants processing \$70,000 or less monthly**

- ☐ Signed and completed merchant application form with personal guarantee
- ☐ Previous processing statement dated within the last 90 days
- ☐ Void check showing merchant's legal name and company address
- ☐ 501(c) for non-profit organizations

For merchants processing over the above thresholds, the following additional information is required:

- ☐ Two consecutive months' processing statements dated within the last 90 days
- ☐ Copies of two months of bank statements or a bank deposit account reference
- ☐ Copies of two years of financial statements and/or tax returns for the merchant

PLEASE NOTE

- **Each item listed above is required before your application can be accepted.**
- **Once the application has been completed and signed and the required documentation gathered, please email or fax the complete package to:**
 - **Card Not Present (CNP) –**
 - **Card Present (POS) –**

NOTES/EXCEPTIONS: This section is reserved for Sales Rep use only



1800 West Loop South, Suite 1440
Houston, TX 77027
Tel (866) 826-8003
sales@optimalpayments.com

Optimal Payments
Merchant Application & Agreement

101 Crossways Park West Woodbury,
NY USA 11797
Merchant Services Division •
Tel (800) 328-9155



Merchant Name (DBA or Trade Name) _____			Corporate Legal Name (If different) _____		
Location Address _____			Corporate Address (If different) _____		
City _____	State _____	Zip _____	City _____	State _____	Zip _____
Contact Name _____		Contact Email _____			
Contact Telephone # _____		Contact Fax # _____		Customer Service # _____	
Federal Tax # _____	Information to Appear on Cardholder's Statement (Max. 25 characters, including phone number and spaces) Business Name _____ Phone # _____			Company Web Site _____ (If applicable)	
Monthly Payment Card Volume \$ _____	Average Ticket Amount \$ _____	Highest Ticket Amount \$ _____	Does This Location Currently Take Payment Cards? <input type="checkbox"/> No <input type="checkbox"/> Yes Will You Be Keeping Your Account? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Leaving Current Processor? _____		
Do You Need the Ability to Process Recurring Transactions? <input type="checkbox"/> No <input type="checkbox"/> Yes		Fully Describe the Product or Service Being Offered. _____ _____ _____			
Years in Business _____ Years Processing (If different) _____					
Ownership <input type="checkbox"/> Corporation <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Government <input type="checkbox"/> Non-Profit (Must provide 501-C, or other proof) <input type="checkbox"/> LLC State: _____					
Principals (Must equal at least 51% of ownership)					
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Home Address _____ City _____ State _____ Zip _____ Date of Birth (dd/mm/yy) _____ Home Phone _____ Cell Phone _____ Email Address: _____					
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Home Address _____ City _____ State _____ Zip _____ Date of Birth (dd/mm/yy) _____ Home Phone _____ Cell Phone _____ Email Address: _____					
Have Merchant or Owners/Principals Ever Had a Processing Agreement Terminated by a Bank? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Termination _____					
Have Merchant or Owners/Principals Ever File for <input type="checkbox"/> Business Bankruptcy <input type="checkbox"/> Personal Bankruptcy If Yes, Indicate Year _____					
Depository Bank Account Information Attach voided check for the account listed. Name must match legal or DBA name listed on check. By providing the following referenced information, you are authorizing Bank to initiate ACH debit and credit transactions to said account.		Account Type <input type="checkbox"/> Checking <input type="checkbox"/> Savings Routing # _____ Account # _____		Method of Card Acceptance (Total must equal 100%) Credit Card Swiped _____% MOTO _____% Internet _____% If MOTO or Internet, will you be using a non-Optimal Payments Gateway? If so, please name: _____	
Key Supplier References (List two contacts below) Trade _____ Name _____ Contact # _____ Trade _____ Name _____ Contact # _____			Other Cards Accepted (Indicate account number for existing accounts below) American Express _____ <input type="checkbox"/> Apply Other _____		
Complete Section below if You Will Be Using a POS Processing Terminal					
Equipment Status (Select one) P Purchase L Lease C Customer Owned	Qty _____	Equipment Type Terminal, PIN Pad, Software, etc.	Merchant Type (Select one) Re Restaurant L Lodging S Supermarket C Car Rental R Retail	Model Code and Name	Unit Price w/o Tax
P C L			Re L S C R		
Dial Access Code <input type="checkbox"/> 9 <input type="checkbox"/> 8 <input type="checkbox"/> None <input type="checkbox"/> Other (Specify _____)		Processor/Network <input type="checkbox"/> TSYS/ Vital <input type="checkbox"/> CardSystems <input type="checkbox"/> Global <input type="checkbox"/> Paymentech <input type="checkbox"/> Other (Specify _____)			
Training: <input type="checkbox"/> Optimal <input type="checkbox"/> Sales Rep Best Time to Call _____ a.m./p.m. ET		Additional Comments (Please Provide Details if You Are Using an Integrated POS System)			
Site Inspection Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Rents Building Type <input type="checkbox"/> Shopping Center <input type="checkbox"/> Office Building <input type="checkbox"/> Industrial Building <input type="checkbox"/> Residence Estimated Square Footage <input type="checkbox"/> 0-500 <input type="checkbox"/> 501-2500 <input type="checkbox"/> 2501-5000 <input type="checkbox"/> 5001+			Based upon your review, does Merchant have the appropriate facilities, equipment, inventory, personnel and license or permit to operate their business? <input type="checkbox"/> No <input type="checkbox"/> Yes Inspector Comments _____		
By signing here, inspector is certifying he/she has visited the location and information provided is true and correct to the best of his/her knowledge: Inspector Name _____ Inspection Date _____ Signature _____					

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Merchant Application and Agreement Acceptance

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

As provided in Section 4.01, the term of this Agreement shall be three (3) years; Merchant may terminate this agreement, in accordance with the procedures of Section 4.01, without cause or penalty within 45 days after the Agreement becomes effective, after which time termination or abandonment of the Agreement without cause may result in assessment of Early Termination Fees.

The Merchant on whose behalf this Application is being submitted acknowledges that this Application is being submitted to Merrick Bank as the Sponsor Bank by Optimal Payments Corp. ("ISO") which shall be a party to this Merchant Agreement. Merchant acknowledges that ISO and Bank shall rely on the representations and warranties set forth in this Application for Merchant Agreement and unless otherwise specified or prohibited by Association or applicable law, ISO shall have all the rights of BANK under this Application and Agreement.

Merchant

Principal #1 _____ Title _____

Print Name _____ Date _____

Principal #2 _____ Title _____

Print Name _____ Date _____

By signing above Merchant further acknowledges that they have read, understand and agree to be bound by the terms of PCI Compliance as described on this site: www.visa.com/cisp.

Bank

By _____ Date _____

Name and Title _____

ISO

By _____ Date _____

Name and Title _____

Continuing Personal Guaranty Provision – Personal Guarantor

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

Principal #1 _____

Principal #2 _____

Print Name _____ Date _____

Print Name _____ Date _____

Bank Disclosure

Member Bank Information: Merrick Bank, 101 Crossway Park West, Woodbury, NY 11797 • Phone (800) 328-9155
Important Bank Responsibilities:

- (1) Merrick Bank is the **only entity** approved to extend acceptance of Visa products directly to a Merchant.
- (2) Merrick Bank is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
- (3) Merrick Bank is responsible for all funds held in reserve that are derived from settlement.
- (4) Merrick Bank is responsible for and must provide settlement funds to the Merchant.
- (5) Merrick Bank must be a principal (signer) to the Merchant Agreement

Merchant Information: Refer to Merchant Application
Important Merchant Responsibilities:

- (1) Ensure compliance with cardholder data security and storage requirements.
- (2) Review and understand the terms of the Merchant Agreement.
- (3) Maintain fraud and chargebacks below thresholds.
- (4) Comply with Visa Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member - Merrick Bank - is the ultimate authority should the Merchant have any problems.

Merchant's Signature: _____ Date: _____

Corporate Resolution

1. _____, the duly elected, qualified and acting _____ of _____, a _____ (the "Company"), do hereby certify as follows:
Corporate Secretary Officer Title Legal Corporate Name of Co. Incorporation Status

The following resolutions were duly adopted by the board of directors/managing member(s)/general partners (circle one) of the Company: WHEREAS, the Company desires to enter into a Merchant Agreement (the "Merchant Agreement") with Merrick Bank Corporation, a Utah industrial loan corporation ("Bank") and ISO, a Delaware Corporation, a copy of which Merchant Agreement is attached hereto as Exhibit "A"; WHEREAS, pursuant to the terms of the Merchant Agreement, Bank and ISO will provide certain credit card financing and processing for VISA and/or MASTERCARD credit card purchases made by the Company's customers; WHEREAS, pursuant to the terms of the Merchant Agreement, (a) the Company may be required to establish a Reserve Account (as defined in the Merchant Agreement) and (b) Bank may require the Company to direct certain funds relating to credit card purchases to such Reserve Account; WHEREAS, pursuant to the terms of the Merchant Agreement, Bank may require the Company to execute instruments evidencing Bank's security interest in the Operating Account (as defined in the Merchant Agreement) and Reserve Account; and WHEREAS, pursuant to the terms of the Merchant Agreement, the Company is required to comply with strict requirements concerning the processing of credit card transactions and the sale of the Company's products. NOW, THEREFORE, BE IT RESOLVED, that the Merchant Agreement by and among the Company, Bank and ISO, pursuant to which Bank and ISO shall act as the Company's exclusive provider of VISA and/or MASTERCARD credit card financing and processing services, is hereby approved and adopted in the form attached to these resolutions, together with such additions, changes or modifications as may be deemed necessary, advisable or appropriate by the officer(s) executing or causing the same to be completed; and RESOLVED FURTHER, that in connection with the Merchant Agreement, the appropriate officer(s) of the Company is/are hereby authorized to establish (a) an Operating Account into which funds from credit card sales by the Company will be directed, and (b) if necessary, a Reserve Account into which funds from credit card sales by the Company may be directed by Bank in accordance with the provisions of the Merchant Agreement; RESOLVED FURTHER, that the Company hereby grants Bank a security interest in the funds held by the Company in the Operating Account and Reserve Account, and the appropriate officer(s) of the Company is/are hereby authorized to execute all documents reasonably required by Bank to perfect such security interests; RESOLVED FURTHER, that the appropriate officer(s) of the Company is/are hereby authorized to enter into such additional agreements, and take such additional actions as may be reasonably required by Bank or ISO in connection with the Merchant Agreement; and RESOLVED FURTHER, that the Secretary/managing member/general partner (circle one) of the Company is hereby authorized to deliver to Bank and ISO a Certificate (i) identifying the officers of the Company, (ii) verifying the signatures of such officers, and (iii) certifying a copy of these resolutions, and Bank and ISO are hereby authorized to rely on such Certificate until formally advised by a like certificate of any changes therein, and is hereby authorized to rely on any such additional certificates.

2. Each person listed below (an "Officer") (i) holds the office in the Company indicated opposite his or her name on the date hereof; (ii) the signature appearing opposite his or her name is the genuine signature of each such officer; (iii) each such Officer, acting individually, is authorized to execute and deliver the Merchant Agreement and each of the agreements and documents contemplated by the Merchant Agreement (collectively, the "Transaction Documents") on behalf of the Company; and (iv) each such Officer, acting individually, is authorized to perform the Company's obligations under the Transaction Documents on behalf of the Company.

3. Name	Officer Title	Signature
_____	_____	_____
_____	_____	_____

In Witness Whereof, I have executed this Certificate this _____ day of _____, 20____.

Sign _____
Corporate Secretary and Print Officer Title





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SCHEDULE A – PRICING

Merchant will accept the following cards (Retail Only) ☐ Credit & Debit ☐ Debit Only ☐ Credit Only - Discount/Transaction Charged ☐ Daily ☐ Monthly (Retail Only) See below for minimum charges

Blended Discount Rates (Visa/MC)	E-Commerce/MOTO	Retail	Per Transaction Fees	E-Commerce/MOTO	Retail
Qualified ¹	%	%	Visa/MC (These fees are for all submitted authorizations)	\$	\$
Mid-Qualified ²	%	%	Visa/MC MID-Qualified ³	\$	\$
Non-Qualified ⁴	%	%	Visa/MC Non-Qualified ⁵	\$	\$
Bundled Rate ⁶	%	%	Discover [®] Network	\$	\$
Offline/Debit Card	NA	%	Amex	\$	\$
			Debit/AMT (PIN Based)	NA	\$
Discover Network Bundled Rate ⁷	%	%	EBT	NA	\$
			3D Secure	\$	NA
Set-up Fees	E-Commerce/MOTO	Retail	Other Fees (If Applicable)	E-Commerce/MOTO	Retail
Application (Non-refundable)	\$	\$	Per Chargeback	\$	\$
Recurring Billing Setup	\$	NA	Per Authorization	NA	\$
Mobile POS Comm. Service Setup	NA	\$	Per Voice Authorization	NA	\$
Amex Application Handling	\$	\$	Per ACH	\$	NA
			Per failed ACH	\$	NA
Monthly Fees	E-Commerce/MOTO	Retail	Per Transaction Address Verification Service	\$	\$
Account Maintenance	\$	\$	Per Secure Gateway Transaction	\$	NA
Online Reporting	\$	\$	Per Mobile Terminal Transaction	NA	\$
Minimum Processing	\$	\$	Per Transaction Batch	NA	\$
Secure Gateway	\$	\$	Annual Membership	\$	\$
Recurring Billing	\$	NA	Annual Equipment Warranty	NA	\$
Statement	NA	\$	Other, Specify:	\$	\$
Mobile Terminal Service	NA	\$			
Optimal Merchant Club	NA	\$	Special Terms		
Discount Fee for Monthly Charges	NA	%			

SCHEDULE B – CARDS, SERVICES AND EQUIPMENT/SOFTWARE

As of the date of this Agreement, Merchant has requested and Bank has approved Merchant's use of the following services:

- Authorization services for Visa, MasterCard, Discover Network, American Express, Diners Club, and JCB
- Transaction processing services for Visa, MasterCard, and Discover Network
- Cardholder Address Verification

Merchant hereby authorizes Optimal Payments to apply for American Express and Discover Network merchant accounts on their behalf. Merchant shall be subject to the respective terms and conditions (including but not limited to fees and charges) of the American Express and Discover Network agreements related to the processing of those card brands. The services provided by the Authorization Center will be available to Merchant 24 hours a day, 7 days a week. Every effort will be made to keep the system operational except for normal maintenance, which will occur during normally off-peak hours.

SCHEDULE C – RESERVES, SECURITY DEPOSIT, AND TRANSACTION SETTLEMENT

RESERVES

Card Not Present

Following the seventh (7th) month of operation (and every month thereafter) the reserves generated from the first (1st) month of operation (and every month thereafter) will be forwarded to the Merchant. Unless otherwise required by Bank, the amount of the Reserve Account shall be _____% of the total of all approved and settled Transactions, over the previous six (6) month period, unless increased in accordance with Section 3.05 and this Schedule. In the event of termination, all reserves shall be held until the beginning of the 7th month, rather than repaid each month.

The amount of the Reserve Account shall be amended if the percentage of Chargebacks exceeds 1% of overall processing volume.

Card Present

Unless otherwise required by Bank, the amount of the Reserve Account shall be _____% of the total of all approved and settled Transactions to a maximum of \$_____, unless increased in accordance with Section 10 and this Schedule. In the event of termination, all reserves shall be held until the beginning of the 7th month.

The amount of the Reserve Account shall be amended if the percentage of Chargebacks exceeds 1% of overall processing volume.

TRANSACTION SETTLEMENT

Card Not Present/Card Present

Transactions will be settled _____ (e.g., X times per week) and _____ days (business ☐ or calendar ☐) in arrears.

¹ Value represents the qualified rate applied to all transactions

² Value is applied above true interchange, assessments and bank costs for Mid-Qualified transactions, unless indicated by checking this box ☐, in which case it is charged in addition to the "Qualified Rate" for any Mid-Qualified transactions

³ Charged in addition to the "Per Visa/MC Transaction Fee" for any Mid-Qualified transactions

⁴ Value is applied above true interchange, assessments and bank costs for Non-Qualified transactions, unless indicated by checking this box ☐, in which case it is charged in addition to the "Qualified Rate" for any Non-Qualified transactions

⁵ Charged in addition to the "Per Visa/MC Transaction Fee" for any Non-Qualified transactions

⁶ Value represents discount rate to be charged on all transactions, regardless of qualification level

⁷ We recommend that the Discover Network Bundled Rate is the same as the VI/MC Qualified Rate



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MOTO/Internet Questionnaire

1. Will you accept payment for products/services on your Web site? ☐ Yes ☐ No ☐ I do not have a Web site.
If No, go to 2. Otherwise, provide the name of your SSL provider (e.g., Verisign, Thawte, Entrust, Other – specify) _____
2. What % of your products/services will be sold/delivered in the following markets (total must equal 100%)?
North America _____ % Europe _____ % Other Markets _____ %
3. What percentage do you sell to Business _____ % Consumers _____ %
4. Briefly outline your return policy. ☐ Greater than 30 Days ☐ Less than 30 Days ☐ No Returns ☐ Other (Please Specify) _____
If No Returns, why are refunds not provided? _____ (If no refunds, go to 9)
5. What percentage of refunds (to your total monthly sales) is usual? _____ %. How many days does a refund usually take? _____ days
6. Do you refund 100% of the purchase price? ☐ Yes ☐ No If No, please provide further details. _____
7. Describe in detail products/services sold, including pricing. *Use separate sheet if necessary.* _____
8. When do you charge the customer? ☐ Shipment/Completion of Service ☐ Order
9. In the case where a product is shipped, is the shipment traceable? ☐ Yes ☐ No Is a delivery receipt requested? ☐ Yes ☐ No
10. Please state the normal "turnaround time" from when you receive the order to the customer receiving the goods/service: _____ days
11. Do you take advance deposits (a percentage of the full value or a fixed part-payment paid in advance)? ☐ Yes ☐ No
If Yes, what % of the final price is paid as a deposit? _____ % / What fixed deposit is taken? _____
12. Where is your product warehoused? Address _____ City _____ State/Zip _____
13. Do you own the product/inventory at the time of sale? ☐ Yes ☐ No
14. Are there any other companies involved in accepting, shipping, or fulfilling the service or product or the billing of the customer?
☐ Yes ☐ No. If Yes, who are they and what do they do? *Use separate sheet if necessary* _____
15. How do you advertise? (Catalogs, magazines, TV, Internet, etc. List all that apply). _____
16. Who enters credit card information into the processing system? ☐ Consumer ☐ Fulfillment Center ☐ Merchant ☐ Other _____
17. Is your processing seasonal (mild fluctuations can be answered as No)? ☐ Yes ☐ No If Yes, please check the busiest months.
☐ Jan ☐ Feb ☐ Mar ☐ Apr ☐ May ☐ June ☐ Jul ☐ Aug ☐ Sept ☐ Oct ☐ Nov ☐ Dec
18. Do you take payments for memberships, subscriptions or packages? ☐ Yes ☐ No. If Yes, please provide the usual breakdown of transactions (by % of total sales) and their respective price points:

Membership/Subscription Period	Package (i.e., 10 credits or 5 passes)	Price Point	Percentage of Sales
Weekly <input type="checkbox"/>			%
Monthly <input type="checkbox"/>			%
Quarterly <input type="checkbox"/>			%
Six-Monthly <input type="checkbox"/>			%
Annually <input type="checkbox"/>			%
Other <input type="checkbox"/>			%

19. If memberships or subscriptions are sold, how do you manage the recurring payments? ☐ Optimal's RB Module ☐ Other _____
20. If packages or memberships are sold, what is the average amount of time it takes a customer to use up their packages? _____
21. Do you capture the following items with every transaction?
 - Consumer Billing Address (AVS): ☐ Yes ☐ No. If No, please explain why. _____
 - CVV (Card Validation Value) from back of card: ☐ Yes ☐ No. If No, please explain why. _____
22. Do you perform VBVMCSC (Verify by Visa/MasterCard Secure Code) with each transaction? ☐ Yes ☐ No.
If No, are you interested in implementing this fraud mitigation tool? ☐ Yes ☐ No
23. If you would like us to decline transactions when there is no match on these features, please select: ☐ AVS ☐ CVD ☐ VBVMCSC
24. If you would like us NOT to decline but to send you the responses on each transaction, please select: ☐ AVS ☐ CVD ☐ VBVMCSC



TERMS AND CONDITIONS

The Bank and Merchant agree as follows:

Subject to the requirements of applicable Card Association rules, ISO and Merrick Bank may and hereby do allocate certain of their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and ISO or Bank may jointly or individually assert or exercise the rights or remedies provided to the Bank hereunder. For purposes of this Agreement, Bank and ISO are collectively referred to hereinafter as the "Bank" and Merrick.

ARTICLE I - DEFINITIONS

- 1.01** "Account" means a commercial checking or demand deposit account maintained by Merchant referred to in Section 5.16 for the crediting of collected funds and the debiting of fees and charges under this Agreement.
- 1.02** "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve Board.
- 1.03** "Agreement" means these terms and conditions, any supplementary documents referenced herein, and valid schedules and amendments to the foregoing.
- 1.04** "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.05** "Card" means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc., Visa International, Inc., or MasterCard International, Inc. ("Bank Card"); or (ii) any other valid credit card accepted by Merchant by agreement with Bank.
- 1.06** "Card Association" means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., or any other Card Issuers that provide Cards accepted by Merchant by agreement with Bank.
- 1.07** "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
- 1.08** "Card Not Present (CNP)" means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.09** "Cardholder" means the person whose name is embossed upon the face of the Card.
- 1.10** "Cardholder Information" means any non-public, sensitive information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social security number, driver's license or other identification number or credit or debit card number, or other bank account number.
- 1.11** "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.12** "Company" or "Merchant" means the business entity or sole proprietor that has authorized this Agreement to be signed and is fully responsible for abiding by all provisions of the Agreement as now written or as may be modified in the future.
- 1.13** "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.14** "Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.15** "ISO" means the Independent Sales Organization or Member Service Provider sponsored by Merrick Bank and providing limited services to the Bank and on behalf of the Bank to Merchant and which is a party to this Agreement as specified.
- 1.16** "Mid- or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant's standard card industry code and which may be charged fees as set forth in Schedule A.
- 1.17** "Officer" means the person or persons duly authorized by the Company to sign this Agreement and obligate the Company to fully abide by all provisions of the Agreement as now written or as modified in the future.
- 1.18** "Sales Draft" means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.
- 1.19** "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment through the use of any Card and which is presented to Bank for collection.
- 1.20** "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE II - CARD ACCEPTANCE

- 2.01** **Honoring Cards.** Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Association rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. Merchant may not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a Cardholder to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to Cardholders for cash purchases. Merchant may not engage in a Transaction (other than a mail, Internet, telephone order, or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
- 2.02** **Advertising.** Merchant will prominently display the promotional materials provided by Bank in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the Bank's direction. Merchant may use promotional materials and Marks only during the term of this Agreement and will immediately cease use and return any inventory to Bank upon termination thereof. Merchant may not use any promotional materials 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.
- 2.03** **Card Acceptance.** When accepting a Card, Merchant will follow the steps provided by Bank for accepting Cards and will: (a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, Internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement; and (g) make a Card Imprint, if the Transaction is not based upon a mail, Internet, phone or pre-authorized order.
- 2.04** **Authorization.** Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Bank may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization or approval code has been recorded on the Sales Draft; (b) if Bank determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; (c) if Bank has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement; or (d) if Merchant submits any travel and entertainment card ("T&E") transaction for processing by Bank without a valid agreement with the respective T&E Card company, such as American Express® or Discover®. For the T&E Card transactions designated on Schedule A, upon transmission of such Sales Data by Merchant, Bank will forward the Sales Data to the appropriate T&E Card company on Merchant's behalf. Payment of the proceeds due Merchant will be governed by whatever agreement Merchant has with that T&E Card company, and neither ISO nor the Bank bears any responsibility for the performance of the T&E card company nor is responsible for providing support to the Merchant for such services. If Merchant's agreement with a T&E Card company requires the T&E Card company's consent for the Bank to perform the limited processing services contemplated by this Agreement, Merchant is responsible for obtaining that consent Merchant will use, and may not circumvent, fraud identification tools requested by Bank, including Address Verification System processing and CVV2 processing, and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under this Agreement.
- 2.05** **Retention and Retrieval of Cards.** Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this section do 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.



- 2.06 Multiple Transaction Records; Partial Consideration.** Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery, or advance deposit; or (c) for delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.
- 2.07 Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders.** Unless Merchant has been approved by Bank to accept mail, Internet or telephone orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Bank determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom held as provided in Article IV. Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by mail, Internet or telephone nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.
- 2.08 Lodging and Vehicle Rental Transactions.** Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction must include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 2.09 Returns and Adjustments; Credit Vouchers.** Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered will be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant will disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (a) no refund, or less than a 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 be 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. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. Any change in Merchant's return or cancellation policy must be submitted in writing to Bank not less than 14 days prior to the change. Bank may refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank has not been notified as required herein.
- 2.10 Cash Payments.** Merchant may not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a deposit to the Cardholder's Card account.
- 2.11 Cash Advances; Scrip Purchases.** Merchant may not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and may not accept any Card at a scrip terminal, and either action will be grounds for Bank's immediate termination of this Agreement.
- 2.12 Duplicate Transactions.** Merchant may not deposit duplicate Transactions. Bank may debit Merchant for any adjustments for duplicate Transactions and Merchant is liable for any Chargebacks resulting therefrom.
- 2.13 Deposit of Fraudulent Transactions.** Merchant may not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Bank may: (a) immediately terminate this Agreement; (b) withhold funds and demand an escrow as provided in this Agreement; (c) report Merchant to Visa and MasterCard under Section 4.04. Merchant's employees' actions are chargeable to Merchant under this Agreement.
- 2.14 Collection of Pre-existing Debt.** Merchant may not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal check or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
- 2.15 Data Security/Personal Cardholder Information.** Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Bank or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.
- (a) **Safeguards.** Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (i) ensure the confidentiality of Cardholder Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (iii) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (iv) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant or Bank in accordance with applicable federal and state laws, rules, regulations and guidance.
- (b) **Compliance with Card Association Rules.** Merchant represents, warrants and covenants that it is and will remain throughout the term of this Agreement in compliance with Card Association bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("PCI"), MasterCard's Site Data Protection Program ("SDP") and Visa's Customer Information Security Program ("CISP"), in effect and as may be amended, supplemented or replaced. Merchant will cause all of its service providers, subcontractors and agents to comply with PCI, SDP and CISP requirements at all times. Merchant will report any non-compliance immediately to Bank. To accomplish the foregoing, Merchant will encrypt all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.
- (c) **Annual Certification.** Merchant will provide an annual certification to Bank if requested by Bank (in a form acceptable to Bank) certifying compliance with the data security provisions of this Agreement, including compliance with applicable Card Association requirements such as PCI, SDP and CISP. Merchant will provide annual certifications for Merchant's service providers, subcontractors and agents.
- (d) **Information Use Limitations.** Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in this Agreement, without Bank's prior written consent. Merchant may, however, disclose Cardholder Information to its service providers, subcontractors and agents who have a need to know such information to provide the Services described in this Agreement, provided that those individuals or entities have assumed confidentiality obligations in accordance with this Agreement, or as may be required by legal process or applicable federal and state laws, rules, regulations and guidance and have entered into a written agreement with Merchant containing Merchant's and such individuals' or entities' agreement to the foregoing data security provisions including compliance with Card Association rules, regulations or bylaws.
- (e) **Response to Unauthorized Access.** Merchant will notify Bank within 24 hours after it knows of any breach in security resulting in an unauthorized access to Cardholder Information. Merchant will provide any assistance that Bank, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence and compiling information to enable Bank and the issuing bank(s) or the Card Associations to investigate the incident and provide assistance and cooperation to: (i) file suspicious activity reports (as applicable); (ii) notify their regulators (as applicable); and (iii) notify the affected Cardholder (as required). Unless the unauthorized access was due to Bank's acts or omissions, Merchant will bear the cost of notifying affected Cardholder.
- (f) **Miscellaneous.** Merchant may not make a claim against Bank or hold Bank liable for the acts or omissions of other merchants, service providers, Card Associations, financial institutions or others that do not have a written contractual relationship with Bank or over which Bank has no control. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in this Agreement. This Section 2.15 and each of its subsections will survive this Agreement's termination. Merchant may not store in any system or in any manner discretionary Card read data including without limitation CVV2 data, PIN data, address verification data or any other information prohibited by Card Association rules.
- 2.16 Compliance with Card Association Rules.** Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association rules and regulations. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file ("MATCH"). With respect to MasterCard or Visa USA, Merchant may not: (a) accept Cardholder payments for previous Card charges incurred at the Merchant location; (b) establish a minimum or maximum transaction amount as a condition for honoring a Card; (c) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (d) add any surcharge to transactions; (e) add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (f) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system); (g) request or use an account number for any purpose other than as payment for its goods or services; (h) disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (i) disburse funds in the form of cash, unless: (i) Merchant is a lodging or



cruise line merchant disbursing cash to a Cardholder, (ii) Merchant is dispensing funds in the form of travelers checks, Cards, or foreign currency, or (iii) Merchant is participating in the Card Association cash back service; (j) accept a Card for the purchase of scrip; (k) accept a Card for manual cash disbursement; (l) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; or (m) enter into a Transaction that represents collection of a dishonored check. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

- 2.17 Merchant's Business.** Merchant will notify Bank immediately if it intends to (a) transfer or sell 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; (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; (e) alter in any way Merchant's approved monthly volume, average, or maximum ticket; or (f) change its return policies or to use another fulfillment house different from those identified in Merchant Application. Merchant will notify Bank promptly in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Bank's exercise of all its rights and remedies provided by this Agreement. If any change listed above occurs, Bank may immediately terminate this Agreement.
- 2.18 Merchant's Warranties.** Merchant represents and covenants that: (a) all information contained in the Merchant Application or any other documents delivered to Bank in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers; (b) Merchant has power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations; (e) each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement; (f) each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby; (h) Merchant has complied with Bank's procedures for accepting Cards, and the Card Transaction itself does not involve any element of credit for any other purposes other than as set forth in this Agreement, and is not subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC §1601) or other relevant state or federal statutes or regulations; and (i) any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

- 3.01 Acceptance.** Bank will accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection thereof and reassignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Association. Bank will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.
- 3.02 Endorsement.** By presenting Sales Drafts to Bank for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and constitutes an endorsement by Merchant to Bank of such Sales Drafts. Bank may supply such endorsement on Merchant's behalf.
- 3.03 Prohibited Payments.** Bank may receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically unauthorized in writing by Bank, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Bank and promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.
- 3.04 Chargebacks.** Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Association regulations, or a Card issuer or Bank determines that Merchant has in any way failed to comply with Card Association regulations or Bank's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase. Section 2.03 notwithstanding, Bank may charge back the amount of a Card sale for which the Cardholder disputes authorizing the charge if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a sale Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on Schedule A. Bank will send Merchant any requests received from Issuing Banks or the Associations resulting from Merchant's transactions ("Retrieval Request") if the Bank cannot satisfy the inquiry with the information retained by Bank concerning any Card sale. In response to the Retrieval Request Merchant must provide by certified or overnight mail or by confirmed fax or scanned documents (or by other means as agreed by Bank) the results of Merchant's investigation of such Retrieval Requests and include legible copies of any documentation required by the Retrieval Request within seven (7) business days after the Bank dispatched the Retrieval Request to Merchant (or such shorter time as the Card Association rules may require and of which Merchant will be notified). Merchant acknowledges that failure to fulfill a Retrieval Request in accordance with Card Association rules may result in an irreversible Chargeback. Merchant has full liability if any Sales Data for which Bank has given Merchant's Operating Account (as defined below) provisional credit is the subject of a chargeback. Merchant may be allowed to resubmit applicable sales data for a second presentation of a response to a chargeback in accordance with the Card Association rules. To the extent that Bank has paid or may be called upon to pay a Chargeback or refund/adjustment for or on the account of a Cardholder and Merchant does not reimburse Bank as provided in this Agreement, then for the purpose of Bank obtaining reimbursement of such sums paid or anticipated to be paid, Bank has all of the rights and remedies of such Cardholder under applicable federal, provincial or local law and Merchant authorizes Bank to assert any and all such claims in Bank's own name for and on behalf of any such Cardholder customer individually or all such Cardholder customers as a class.
- 3.05 Chargeback Reserve Account.** Notwithstanding anything to the contrary in this Agreement, Bank may establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing chargeback reserve account (the "Reserve Account"), or demand other security or raise any discount, transaction or other fees. This account may be established at any time or for any reason if, in the Bank's reasonable consideration, Bank suspects Merchant's transaction processing history is or perhaps will create liabilities for refunds, chargeback reimbursements or Card Association fines that will be owed to Bank by Merchant and the Bank determines, in its sole but reasonable consideration, such obligations may not be collectible from Merchant in a timely manner without such Reserve Account being established or the amounts within the Reserve Account increased. Specific examples of conditions that might prompt the Bank to establish or increase the balances in a Chargeback Reserve Account might include, but will not be limited to: (a) Merchant engaging in any charge processing that creates an overcharge to a Cardholder by duplicating charges; (b) Merchant engaging in any activity designed by Merchant to circumvent a "call center" message when attempting to process a transaction; (c) Merchant breaching this Agreement, violating any representation, covenant or warranty herein, or violating any applicable Card Association rule or applicable law; (d) Merchant's application is in any way inaccurate or becomes inaccurate subsequent to Bank's approval of the application; (e) Merchant changes its type of business without Bank's prior written approval; (f) fraud, Merchant processes an unauthorized charge, or other action that violates Bank's applicable risk management standards or is likely to cause a loss; (g) Merchant has Chargebacks exceeding a percentage of total transactions, total settlement amounts that could exceed the limits for chargeback or fraud transactions permitted by the Card Associations or as such limits as are established by the Bank in any period (h) creating an excessive numbers of requests from consumers or card issuing banks to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminating this Agreement for any reason. Once the Reserve Account is established, collected funds will be placed in the Reserve Account. Before releasing funds after this Agreement is terminated, Merchant will pay any equipment cancellation fees and any outstanding charges, losses or amounts, and Chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank may require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. Once established, unless Bank determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable period thereafter during which Cardholder disputes may remain valid under applicable Card Association rules. **The provisions of this Agreement relating to account debits and credits apply to the Reserve Account and survive this Agreement's termination until Bank terminates the Reserve Account. Any balance remaining after chargeback rights have expired and all of Bank's other expenses, losses and damages have been paid will be disbursed to Merchant.**

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

- 4.01 Term.** This Agreement will be effective once Bank accepts it and, unless otherwise terminated, will continue for three years with automatic two-year renewals thereafter until Merchant provides written notice of non-renewal given not less than 30 days before the end of the then-current term.
- 4.02 Termination.**
- (a) **Without Cause.** Bank may terminate this Agreement, without cause, upon 30 days advance written notice to Merchant.
- (b) **For Cause.** Bank may terminate this Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Bank reasonably determines that any of the following conditions exists: (i) Merchant has violated any provision of this Agreement; (ii) there is a material adverse change in Merchant's financial condition; (iii) if any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Bank, including if Application information, was false, incomplete or misleading when received; (v) at any time during the term of this Agreement, Merchant has had a monthly ratio of Chargebacks to total transactions or dollar value exceeding Card Association or Bank

requirements; (vi) an overdraft in the settlement account exists for more than three days; (vii) Merchant or any of Merchant's officers or employees has been involved in processing transactions arising from fraudulent or otherwise unauthorized transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under this Agreement or applicable law; (ix) Merchant has failed to pay Bank in a timely manner any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under its settlement account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with this Agreement was not true or accurate when given; (xii) Merchant has defaulted on any agreement it has with the Bank; (xiii) Bank is served with legal process seeking to attach or garnish any of Merchant's funds or property in Bank's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Association rules are amended in any way so that the continued existence of this Agreement would cause Bank to be in breach of those rules; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association; (xvii) termination is necessary to prevent loss to Bank or Card Issuers; (xviii) Merchant's type of business indicated on the Application or as conducted by Merchant could endanger the Bank's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with the Bank and that relationship is terminated, (xx) Merchant appears on any Card Association's security reporting; or (xxi) Bank's security for repayment becomes impaired. If a notice of Merchant's intent to discontinue using Bank's services is received from Merchant by Bank prior to 30 days before the end of the then-current Term of the Agreement, or if Merchant ceases normal processing activity (defined as the average processing for the previous 6 month period) or the Merchant enters an Agreement with another processor during the initial or additional terms of this Agreement, such circumstances will be material breaches of this Agreement ("Early Termination") and the Merchant will be subject to the relevant provisions of Section 4.04, below.

4.03 Effect of Bankruptcy. Any account or security held by Bank will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, this Agreement may not be assumed or enforced by any other person and Bank will be excused from performance hereunder.

4.04 Effect of Termination. When termination becomes effective, the parties' rights and obligations existing under this Agreement survive. If this Agreement is terminated, regardless of cause, Bank may withhold and discontinue the disbursement for all Cards and other Merchant Transactions in the process of being collected and deposited. 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 MATCH file maintained by Visa and MasterCard. **Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring listing on the MATCH file.** Merchant waives and will hold harmless Bank from any claims that Merchant may raise as a result of Bank's MATCH file reporting. Merchant will also immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate this Agreement. Further, Merchant will return all Bank property, forms, or equipment. All obligations for Transactions prior to termination (including paying for Chargebacks and Bank's expenses relating to Chargebacks) survive termination. Bank is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Bank will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Bank. In consideration for the special terms offered merchant, the Bank's cost of initiating and administering the Merchant's processing privileges and for other good and valuable consideration which hereby is acknowledged by Merchant, the parties agree that if this Agreement is terminated before completion of the initial term of this Agreement for any reason other than material uncured breach by Bank, Merchant hereby agrees Bank may debit Merchant's Account for liquidated damages ("Cancellation Fees") for Early Termination and de-conversion of the Merchant's processing services by Merchant. Upon any Early Termination, Merchant agrees to return all POS processing equipment in a complete and entirely undamaged condition and in the original packaging, within 7 business days following the date of Termination or ceasing transaction processing and agrees to pay a shipping and restocking charge of no less than \$200 to the Bank. If all POS equipment is not returned within the time allowed, ISO and Bank will be entitled to debit the Merchant's Account for the full cost of all equipment when the equipment was new, plus a restocking charge of at least \$200 (or \$600 for any mobile POS equipment). In addition, the Merchant agrees to pay Bank's actual costs and attorneys', accountants' or investigators' fees (if any) plus the greater of: i) the number of remaining months in the Agreement after notice of termination or discontinuation of processing by Merchant, times \$35.00 per month; or ii) 0.5% times the average Visa USA and MasterCard International monthly amounts settled to the Operating Account (as defined below) during the prior six months (or, if less than six full months have elapsed, then all previous months' amounts settled to the Operating Account (as defined below).; or iii) a flat termination fee of \$500.00. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's rights of termination are non-cumulative.

ARTICLE V - MISCELLANEOUS

5.01 Account Monitoring. Merchant acknowledges that Bank will monitor Merchant's daily deposit activity. Bank may upon reasonable grounds suspend 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 promptly following suspension. Bank is not liable to Merchant for any loss, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

5.02 Forms. Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Bank, and Merchant may not use such forms other than in connection with card transactions.

5.03 Indemnification. Merchant will defend, indemnify and hold Bank and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including attorneys' fees and costs ("Damages"), asserted against or incurred by Bank arising out of, relating to or resulting from, either directly or indirectly: (a) a breach of the security of the system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of this Agreement, including, but not limited to, the data security provisions by Merchant, or any service provider, subcontractor or agent of Merchant; (c) the negligence, gross negligence or willful misconduct of Merchant in the performance of its obligations under this Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable federal and state laws, rules, regulations and guidance and Card Association rules by Merchant; and (e) all third party claims arising from the foregoing. Notwithstanding the preceding, Merchant is not liable to Bank if Damages are caused by, related to or arise out of Bank's negligence, gross negligence or willful misconduct, or Bank's breach of this Agreement. Merchant will promptly reimburse Bank for any assessments, fines, fees or penalties imposed by the Card Association in connection with this Agreement, including the data security provisions, and authorizes Bank to deduct any such sums from amounts to be cleared and settled with Merchant.

5.04 Records. In addition to any records Merchant routinely furnishes to Bank under this Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least two years after the date Merchant presents the Transaction to Bank.

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

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

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

5.08 Security Interest. To secure payment of Merchant's obligations under this Agreement, Merchant grants to Bank a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Bank for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from this Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with the Bank or any institution other than Bank, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under this Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Bank or any institution other than Bank, including the Reserve Account; (e) all deposits and all other property and funds deposited by Merchant or withheld by Bank, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing, if Bank reasonably determines that Merchant has breached any obligation under this Agreement, or that proceeds of Merchant's future card sales are unlikely to compensate the Bank for anticipated Chargebacks, credits, fees or fines and adjustments, as reasonably determined by Bank (whether or not this Agreement has been terminated or for any other reason), Bank may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under this Agreement or those rights available under applicable laws, including the Utah Uniform Commercial Code, or in equity. In addition to the collateral pledged above, Bank may, in its reasonable discretion, require Merchant to furnish such other and different security as Bank deems appropriate in its sole discretion to secure Merchant's obligations under this Agreement. Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Bank or financial institutions other than Bank, pending Bank's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank. Merchant will execute any documents and take any actions required to comply with and perfect any security interest under this paragraph, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Bank's written consent before it grants a lien or security interest in that pledged collateral to any other person.

5.09 Modifications to Agreement. This Agreement is subject to amendment to conform with Card Association regulations, as amended from time to time. From time to time Bank may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least 30 days prior to the effective date of the amendment, and the amendment will become effective unless Bank receives

Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision.

- 5.10 Warranty Disclaimer.** BANK MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND BANK EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5.11 Limitation of Liability.** Bank's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges. **Bank is not liable for any incidental or consequential damages whatsoever.** Merchant waives all claims against Bank for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Bank of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Bank harmless from any claim relating to any Sales Draft paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that Bank may incur as a result of Merchant's breach of this Agreement. Further, Merchant will reimburse Bank for all expenses and costs, including attorneys' fees, with regard thereto.
- 5.12 Waiver.** Bank's failure to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.13 Written Notices.** All written notices and other written communications required or permitted under this Agreement will be deemed delivered immediately when hand-delivered or sent via facsimile and the sender obtains a fax confirmation receipt, and upon mailing when sent first class mail, postage prepaid, addressed as follows:
- a) Optimal Payments Corp. 1800 West Loop Boulevard South, Suite 1440, Houston, TX 77027, Attn: Chief Operating Officer, FAX 514-380-2760.
- b) If to Bank: Merrick Bank Corporation, 10705 South Jordan Gateway, Suite 200, South Jordan, UT 84095, Attn: Fred Horn, Facsimile: 516-576-8741
- c) If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.
- 5.14 Choice of Law; Jurisdiction.** New York law governs this Agreement. Any claim or cause of action arising out of this Agreement against Bank must be initiated and maintained exclusively in the state or federal courts located in Nassau, New York.
- 5.15 Entire Agreement; Assignability.** This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Bank and Merchant. This Agreement may not be assigned, directly or by operation of law, without Bank's prior written consent. This Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.
- 5.16 Deposit Account.** Merchant will at all times maintain an Account at a bank that is a member of the Federal Reserve ACH system and will provide Bank with proper authorization to debit the Account (the "Operating Account"). All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement will 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 and other amounts due which may arise under this Agreement, and Merchant will 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.
- 5.17 Credit and Financial Inquiries; Additional Locations; Inspections.** Bank may make, at any time, any credit inquiries which it may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. Upon Bank's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's approval. Any party to this Agreement may delete any location by providing notice as provided herein. Merchant will permit Bank, at any time and from time to time, to inspect locations to confirm that Merchant has adhered to or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph may be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. Bank, its internal and external auditors, and its regulators may audit compliance with this Agreement, compliance with federal and state laws, rules, regulations and guidance applicable to the services, Card acceptance and Transaction processing, and data security provisions, including Card Association compliance. Merchant will make available its records maintained and produced under this Agreement, and Merchant's facilities will be made accessible, upon notice, during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.
- 5.18 Marketing of Non-Bankcard Services by ISO.** From time to time, ISO may offer to Merchant certain additional products and services which may or may not be related to the processing of credit card Transactions. In the event of such offers, Merchant shall indicate its desire to ISO to decline such offers or be deemed to have accepted the offers and be liable for payment therefore. Bank shall have no responsibility or liability to Merchant for performance of such non-credit card transaction services if provided by ISO or a third party, and ISO and Merchant shall enter separate legal Agreements pertaining to such services, if any.
- 5.19 Force Majeure.** The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or governmental regulation, or priority, or any other similar cause beyond either party's reasonable control.
- 5.20 No Third Party Beneficiary.** No other person or entity may be deemed to be a third party beneficiary of this Agreement.