

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE		PROOF OF CLAIM
Indicate the Debtor against which you assert a claim by checking the appropriate box below. <b>(Check only one Debtor per claim form.)</b> <input checked="" type="checkbox"/> Cynergy Data, LLC – (Case No. 09-13038) <input type="checkbox"/> Cynergy Data Holdings, Inc. – (Case No. 09-13039) <input type="checkbox"/> Cynergy Prosperity Plus, LLC – (Case No. 09-13040)		
Name of Creditor (the person or other entity to whom the debtor owes money or property):  AUTO STAR MEMBERSHIP  Name and address where notices should be sent: Name ID: 8455323      Pack No. 410  AUTO STAR MEMBERSHIP JONATHAN PARKS 3109 KNOX STE 716 DALLAS, TX 75205  <div style="text-align: right;">Telephone No. <u>214 453 3700</u></div>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ (if known)  Filed on: _____
Name and address where payment should be sent (if different from above):    <div style="text-align: right;">Telephone No. _____</div>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>300.00</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or charges		<b>5. Amount of claim Entitled to Priority under 11 U.S.C. § 507(a).</b> If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.
<b>2. Basis for Claim:</b> <u>CASH Deposit For Reserve Fund to Secure Transaction Services For Merchant Account</u> (See instruction #3a on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commission (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier -- 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507(a)( ): <u>Fiduciary Responsibility</u> Amount entitled to priority: <u>\$ 300</u>
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>5323</u>  <b>3a. Debtor may have scheduled account as:</b> <u>United Financial Services</u> (See instruction #3a on reverse side.) <b>3b. Creditor Tax ID #</b> <u>26 0811307</u>		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: _____  Value of Property: \$ <u>300.00 CASH Deposit</u> Annual Interest Rate: _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____      Basis for Perfection: _____  Amount of Secured Claim: \$ <u>300</u> Amount Unsecured: \$ _____		
<b>6. Section 503(b)(9) Claim Amount:</b> _____ <input type="checkbox"/> Check this box if your claim is for the value of goods received by the debtor within 20 days before the date of commencement of the case (11 U.S.C. § 503(b)(9)). Include the amount of such claim in the space for "Section 503(b)(9) Claim Amount" above.		
<b>7. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>8. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENT MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		
Date: <u>1-5-10</u>  <b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		<div style="text-align: center;"> <b>RECEIVED</b>   <b>JAN 12 2010</b>   <b>KURTZMAN CARSON CONSULTANTS</b> </div>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



0913038091218163656001638

**Jonathan W. Parks**  
Chief Executive Officer

**United Financial Services, Inc.**

3109 Knox, Suite 716 Dallas, TX 75205

Office: (214) 295-5849 Fax: (214) 540-4506 Cell: (469) 774-0331

Email: [jparksone@gmail.com](mailto:jparksone@gmail.com)

**" In order to succeed, one  
must be willing to sacrifice  
what they are for what they  
can become." JWP**

Jonathan Parks

<JParks\_Reserve amounts.xlsx>

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Jonathan Parks &lt;jparksone@gmail.com&gt;

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**reserve amounts**

4 messages

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**Mike Mathews** <MMathews@epaydata.com>  
To: "JPARKSONE@GMAIL.COM" <JPARKSONE@gmail.com>

Mon, Dec 14, 2009 at 3:26 PM

Reserve amounts are contained in the attached spreadsheet.

Thanks!

**Mike Mathews**

Client Relations



3025 S. Parker Rd. #610 Aurora, CO 80014  
Office (303) 872-1300 Fax (303) 872-1399

Toll Free (877) 872-1333  
[mmathews@epaydata.com](mailto:mmathews@epaydata.com)  
[www.epaydata.com](http://www.epaydata.com)



**House of Publ Xchange.xls**  
31K

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**Jonathan Parks** <jparksone@gmail.com>  
Reply-To: jparksone@gmail.com  
To: Mike Mathews <MMathews@epaydata.com>

Mon, Dec 14, 2009 at 6:19 PM

Hello Mike.. I think you sent the wrong account info.. we are not House of Publishing.. hahaha! Thanks for getting me the right info.. btw.. any word from Cynergy on CRedicare911?

[Quoted text hidden]

—  
Jonathan Parks  
United Financial Services, Inc.  
Benefits Marketing Alliance, Inc.  
Office: (214) 453-3700

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**From:** Jonathan Parks [mailto:[jparksone@gmail.com](mailto:jparksone@gmail.com)]  
**Sent:** Monday, December 14, 2009 5:20 PM  
**To:** Mike Mathews  
**Subject:** Re: reserve amounts

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**Mike Mathews**

Client Relations

<image001.jpg>

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Office (303) 872-1300 Fax (303) 872-1399

Toll Free (877) 872-1333  
[mmathews@epaydata.com](mailto:mmathews@epaydata.com)  
[www.epaydata.com](http://www.epaydata.com)

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Jonathan Parks  
United Financial Services, Inc.  
Benefits Marketing Alliance, Inc.  
Office: (214) 453-3700  
Fax: (214) 540-4560  
Cell: (469) 774-0331

"In order to succeed, one must be willing to sacrifice what they are for what they can become",

Fax: (214) 540-4560  
Cell: (469) 774-0331

"In order to succeed, one must be willing to sacrifice what they are for what they can become", Jonathan Parks

---

**Mike Mathews <MMathews@epaydata.com>**  
To: "jparksone@gmail.com" <jparksone@gmail.com>

**Tue, Dec 15, 2009 at 8:45 AM**

I am very sorry for that, I must have attached the wrong spreadsheet. Anyhow, the reserve info for your account is now attached. Whitney made a tweak to one of you authorize.net accounts yesterday, but after emailing Gary, the tests he ran did NOT go through. In short, we thought we had the issue fixed, but now it appears that I need to revisit this morning. I will be in touch once I have this all figured out.

Thanks!

**Mike Mathews**

Client Relations



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[mmathews@epaydata.com](mailto:mmathews@epaydata.com)  
[www.epaydata.com](http://www.epaydata.com)

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**Subject:** Re: reserve amounts

[Quoted text hidden]

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 JParks\_Reserve amounts.xlsx  
10K

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Jonathan Parks <jparkson@gmail.com>  
To: Mike Mathews <MMathews@epaydata.com>

Tue, Dec 15, 2009 at 9:48 AM

Thanks Mike! Make it a great day!

Jonathan Parks  
CEO  
United Financial Services, inc  
Benefits Marketing Alliance  
3109 Knox Suite 716  
Dallas, TX 75205  
Office (214)453-3700  
Fax (214)540-4560  
Cell (469)774-0331

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Thanks!

**Mike Mathews**

Client Relations

<image001.jpg>

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Office (303) 872-1300 Fax (303) 872-1399

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[mmathews@epaydata.com](mailto:mmathews@epaydata.com)  
[www.epaydata.com](http://www.epaydata.com)

Jonathan Parks

<JParks\_Reserve amounts.xlsx>


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MID	DBA	Reserve Percentage	Reserve Amount
3899000001230380	Auto Star Membership	10	\$ 1,484.98
3899000001246147	Benefits Marketing Alliance	5	\$ 135.36
3899000001246154	Benefits Marketing Alliance	5	\$ 5,531.23
3899000001246196	Credicare 911	5	\$ 31.45
3899000001163573	Credicare 911	10	\$ 4,732.06

~~THE~~ THE ABOVE ARE AMOUNTS ON DEPOSIT WITH Cynergy

Per Epay data -

Thank you -  
  
 Jonathan Parks

The Funds listed above were a good faith deposit. The Debtor had a Fiduciary responsibility to not co-mingle our good faith deposits with any other Funds, as the Funds deposited were for a required reserve to cover any merchant losses. These Funds were not to be used for any other Purpose. See Attached Contracts, etc.

Thank you!

MERCHANT APPLICATION



Merchant # \_\_\_\_\_

☐ New Location ☐ Additional Location

3025 S. Parker Road • Suite 610 • Aurora, CO 80014

Tel: 303-872-1300 • Fax: 303-872-1399 • www.epaydata.com

ISO#: \_\_\_\_\_

► Business Information

Legal Name: <b>UNITED FINANCIAL SERVICES INC</b>			Name of Account (Doing Business As): <b>Vantage America Auto Star</b>		
Legal Address: <b>1201 WARBROOK ROAD #121</b>			Physical Street Address (No P.O. Box): <b>Same</b>		
City: <b>ARLINGTON</b>	State: <b>TX</b>	Zip: <b>76015</b>	City:	State:	Zip:
Phone #: <b>( 214 ) 295-5849</b>		Contact: <b>JONATHAN PARKS</b>	DBA Phone #: <b>( )</b>		
Must Choose One Mailing Address: <input type="checkbox"/> DBA Address <input checked="" type="checkbox"/> Legal Address		E-Mail Address: <b>jparksone@gmail.com</b>	Website Address: <b>www.</b>		
Federal Tax # <b>260811307</b>	# of Locations <b>1</b>	Years in Business <b>1</b>	Years Owned Business <b>1</b>		
Place of Legal Formation: <b>Delaware</b>			Country of Primary Business Operations: <b>USA</b>		
Bank Reference: <b>WELLS FARGO BANK</b>		Contact: <b>CUSTOMER SERVICE</b>	Phone #: <b>( 800 ) 225-5935</b>		

► Owners or Officers • Individual Ownership Must be Equal to or Greater than 50%

Name: <b>1. JONATHAN PARKS</b>	Title: <b>CEO</b>	Date of Birth: <b>01161962</b>	Applicant's SS #: <b>[REDACTED]</b>	% Equity Ownership: <b>100</b>
Residence Address: <b>2014 ROYAL CREST DR</b>	City: <b>MANSFIELD</b>	State: <b>TX</b>	Zip: <b>76063</b>	# Years: <b>1</b>
US Government Issued ID#: <b>[REDACTED]</b>	Type of ID: <b>DRIVERS</b>	Expiration Date: <b>mm/dd/yyyy</b>	Country of Citizenship (if not US):	Home Phone: <b>(817) [REDACTED]</b>
Name: <b>2.</b>	Title:	Date of Birth: <b>mm/dd/yyyy</b>	Applicant's SS #:	% Equity Ownership:
Residence Address:	City:	State:	Zip:	# Years:

US Government Issued ID#:	Type of ID:	Expiration Date: <b>mm/dd/yyyy</b>	Country of Citizenship (if not US):	Home Phone: <b>( )</b>
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► Business Profile

Type of Ownership: ☐ Sole Proprietor ☐ Assoc/Estates/Trusts ☐ Joint Venture ☐ Government  
☒ Corporation (Privately Traded) ☐ Corporation (Publicly Traded) ☐ Medical or Legal Corp  
☐ Partnership ☐ Tax Exempt Org ☐ Single Member LLC ☐ Multi Member LLC ☐ Civic Assoc  
☐ Limited Partnership ☐ Political Org ☐ Other: \_\_\_\_\_

Type of Goods or Services Sold: **MEMBERSHIP PLANS** SIC Code: **7997**

Do you currently accept Discover @ Network/Visa/Mastercard? ☒ Yes ☐ No  
 (If yes, you should submit 3 current months' statements.)

Has Merchant or any associated principal disclosed below filed ☐ Yes ☒ No Date: **mm/dd/yyyy**  
 bankruptcy or been subject to involuntary bankruptcy?

► Sales Profile

Merchant Type:	Discover Network/Visa/MasterCard Sales Profile (Be Accurate):
<input type="checkbox"/> Retail	Card Swipe <b>0 %</b>
<input type="checkbox"/> Restaurant	Manual Key Entry with Imprint, Card Present <b>0 %</b>
<input type="checkbox"/> Lodging	Mail Order/Telephone <b>80 %</b>
<input type="checkbox"/> Service	Internet <b>20 %</b>
<input type="checkbox"/> Internet	Total = <b>100 %</b>
<input type="checkbox"/> Home Based	
<input checked="" type="checkbox"/> Other	

► Business Trade Suppliers • List Two

Name: <b>CORPORATE OFFICE</b>	Address: <b>CLEARWATER FL 33756</b>	Contact: <b>JIM HERRON</b>	Phone #: <b>( 727 ) 724-3444</b>
Name: <b>WELLS FARGO BANK</b>	Address: <b>ARLINGTON TX 76017</b>	Contact: <b>CUSTOMER SERVICE</b>	Phone #: <b>( 800 ) 225-5935</b>

► Merchant Site Survey Report • To Be Completed by Sales Representative

Merchant Location: ☐ Retail Location with Store Front ☒ Office Building ☐ Internet ☐ Residence ☐ Other \_\_\_\_\_

Area Zoned: ☐ Commercial ☐ Industrial ☐ Residential Square Footage: ☐ 0-250 ☐ 251-500 ☒ 501-2,000 ☐ 2,001+

Does the amount of inventory and merchandise on shelves and floor appear consistent with this type of business? ☒ Yes ☐ No  
 If No, explain: \_\_\_\_\_

The Merchant: ☐ Owns ☐ Leases the Business Premises Landlord Name & Phone #: \_\_\_\_\_

Further Comments by Inspector (Must Complete)

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.

Verified and Inspected by: \_\_\_\_\_ Office #: \_\_\_\_\_ Representative #: \_\_\_\_\_ Representative Signature: \_\_\_\_\_ Date: **mm/dd/yyyy**

X

X

White Copy - Bank • Pink Copy - Merchant

05/02/08

# ► Discover Network / Visa / Mastercard Standard Retail / High Risk Retail Rates

Merchant Chooses to accept the following:

VS/MC Discount (Other Cards) Discount Rate: \_\_\_\_\_ %  
 VS/MC Discount Rate for Debit Cards: \_\_\_\_\_ %  
 Discover Network Card Discount Rate: \_\_\_\_\_ %  
 AMEX Discount Rate: \_\_\_\_\_ %

## ► Fees

VS/MC Transaction Fee: \_\_\_\_\_ Per Item  
 Non-Bankcard Transaction Fee: \_\_\_\_\_ Per Item  
 Statement Fee: \_\_\_\_\_ Monthly  
 VIMAS Online Service: \_\_\_\_\_ Monthly  
 Monthly Minimum: \_\_\_\_\_ Monthly  
 Annual Fee: \_\_\_\_\_ Per Year  
 Debit Transaction Fee Plus Network Fees: \_\_\_\_\_ Per Item  
 EBT Transaction Fee: \_\_\_\_\_ Per Item  
 EBT Statement Fee: \_\_\_\_\_ Monthly  
 Batch Fee: \_\_\_\_\_ Per Batch  
 Manual Imprinter: QTY: \_\_\_\_\_ One Time  
 Chargeback Fee: \_\_\_\_\_ Per Item  
 ACH Reject Fee: \$25.00 Per Item  
 Retrieval Fee: \$5.00 Per Item  
 Voice Authorization Fee: \$0.95 Per Call  
 Gateway Access Fee: \_\_\_\_\_ Monthly  
 AVS Surcharge: \_\_\_\_\_ Per Item  
 Early Termination Fee: \_\_\_\_\_ One Time  
 Others (please specify): \_\_\_\_\_

# ► Mail / Phone / Internet / Touchtone Rates

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate: 3.25 %  
 VS/MC Debit Card Discount Rate: 3.25 %  
 Discover Network Card Discount Rate: \_\_\_\_\_ %  
 AMEX Rate: \$5.95 Monthly

## ► Fees

VS/MC Transaction Fee: .22 Per Item  
 Non-Bankcard Transaction Fee: .30 Per Item  
 Statement Fee: \$10.00 Monthly  
 VIMAS Online Service: .0 Monthly  
 Monthly Minimum: \$25.00 Monthly  
 Annual Fee: \$55.00 Per Year  
 MOTO/Internet Surcharge: .05 Per Item  
 AVS Surcharge: .05 Per Item  
 Batch Fee: .30 Per Batch  
 Manual Imprinter: QTY: \_\_\_\_\_ One Time  
 Chargeback Fee: \$25.00 Per Item  
 ACH Reject Fee: \$25.00 Per Item  
 Retrieval Fee: \$5.00 Per Item  
 Voice Authorization Fee: \$0.95 Per Call  
 Gateway Access Fee: \_\_\_\_\_ Monthly  
 Early Termination Fee: \$495.00 One Time  
 Others (please specify): \_\_\_\_\_

1) I/We understand and agree to the following: that my/our discount rate as stated above will be charged on all electronically authorized payment card transactions that are in batches closed daily (qualified rate);  
 2) and that all payment card transactions that do not meet the requirements stated in number 1 above may be charged up to 2.19% + .10¢ higher than my/our discount rate. Discover Network/Visa/Mastercard business transactions may be charged up to 2.19% + .10¢ above qualified rate  
 Do you use a third party to process or transmit Cardholder data? ☐ Yes ☒ No. Give name/address: (examples include, but not limited to hosting companies, shopping carts, Loyalty Programs, Electronic Data Capture) Please identify any Software used for storing transmitting or processing Card Transactions or Authorization requests \_\_\_\_\_

## ► Merchant Benefits Club

☐ Yes, I want to participate in the optional Merchant Benefits Club which includes equipment support and replacement for an additional \$9.50 per terminal per month. Initials: X

## ► American Express

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions.

CHECK ONE: ☐ Retail - \$0.10 Trans Fee + 0.30% CNP Downgrade ☐ Services, Wholesale & All Other - \$0.15 Trans Fee

Signature: X

Date: mm/dd/yyyy

## ► Debit/Credit Authorization • Include a voided check or bank letter verifying bank account information.

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation.

DDA:

ABA Routing:

**INVESTIGATIVE CONSUMER REPORT:** An investigative or consumer report may be made in connection with application. MERCHANT authorizes BANK or any of its agents to investigate the references provided or any other statements or data obtained from MERCHANT, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

AVERAGE TICKET SIZE: 29.95 - 39.99

AVERAGE MONTHLY VOLUME: \_\_\_\_\_

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4c and 13b of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.

**IMPORTANT NOTICE:** All information contained in this application was completed, supplied and/or reviewed by the undersigned Merchant. Processor shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of Processor and/or Bank of America, N.A., Charlotte, NC. By signing below you are agreeing to the provisions stated within this merchant application, on the reverse side (the Merchant Agreement) and acknowledge receipt of the merchant operating guide. Those provisions must be read before signing. By signing below, you agree to the terms on the front and back of this MERCHANT Processing Agreement and the merchant operating guide.

## ► Individual Guaranty • No Titles

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the indorsement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

AGREED AND ACCEPTED

X \_\_\_\_\_ M/A 9-8-08  
 #1 From Application - Signature Date  
 X mm/dd/yyyy  
 #2 From Application - Signature Date

## ► For All Businesses • Business Resolution

The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the here within named business. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

United Financial Services Inc  
 Print Legal Name of Merchant Business  
 X \_\_\_\_\_ 9-8-08  
 #1 From Application - Signature Date  
 X mm/dd/yyyy  
 #2 From Application - Signature Date  
 X mm/dd/yyyy  
 Accepted by Processor Date  
 X mm/dd/yyyy  
 Accepted by Bank of America, N.A., Charlotte, NC. Date

In Association with Bank of America, N.A., Charlotte, NC

► 05/02/08



*Copy of a  
merchant  
letter*

109-15 14th Avenue  
Suite 200  
College Point, NY 11356  
(718) 463 - 6200 Fax : (718) 463 - 6685

UNITED FINANCIAL SERVICES INC  
1201 W ARBROOK RD SUITE121  
ARLINGTON TX 76015

June 24, 2008

Merchant Number: 3899000001163573

Dear JONATHON

Welcome! As our newest merchant customer, we would like to thank you for allowing us to provide your business with credit card processing services. We are happy that you have joined with thousands of merchants nation wide who recognize the importance of offering payment acceptance alternatives at their business. We are confident that you will be impressed with our prompt service and dedication to you, our customer. Listed below is specific information regarding the billing of your merchant account. Please review it carefully for accuracy. If you have any questions regarding these fees, or if you need technical assistance, please contact us at the number above. We want you to feel confident in knowing all of your processing needs will be met.

Once again, thank you for your business and welcome!

Sincerely,

Client Services

#### IMPORTANT INFORMATION REGARDING YOUR ACCOUNT

Based upon our credit criteria, your business has been approved with the following conditions :

##### Special Conditions:

Approve Level 2, 0 Day Delay, strong credit, 10% reserve, \$50,000 volume/ \$35.00 Avg., ticket -will review account and make adjustments as necessary-WG

##### Fees

VS/MC Credit Discount Rate	3.25%	MOTO Internet Surcharge	0.05
VS/MC Check Discount Rate	3.25%	AVS Surcharge	0.05
Per Transaction Fee	\$0.22	Internet gateway Fee	
Non-Bankcard Transaction Fee	\$0.30		
Statement Fee	\$10.00	<b>ACTIVITY</b>	
Monthly Minimum Fee	\$25.00	Average Ticket Size	\$35.00
Debit Transaction		Average Monthly Visa/Master Volume	\$50000.00
EBT Transaction Fee			
EBT Statement Fee		<b>SALES PROFILE</b>	
Annual Fee	\$55.00	Percentage of Swiped Transactions	0%
Amex Discount Rate	**	Maximum Percentage Key Entered Transactions (w/imprint)	0%
Discover Discount Rate	**	Maximum Percentage Mail/Phone Order Transactions	80%
		Maximum Percentage Of Internet Transactions	20%

Should you have any further questions, please feel free to contact us at the above number.

\*\* A separate welcome letter describing all fees will be mailed to you directly from each institution.

**Legal Notice:** The fees above are the fees that will be charged to you. Other fees may also apply. For a list of these fees please reference your merchant Processing Agreement. If you disagree with these fees you may terminate the merchant Processing Agreement by notifying us in writing within 7 days of the date of this letter.

copy of a reserve Add.



# ePayData

## Merchant Reserve Acknowledgement

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, and its agents including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

N/A A. Certified check made payable to ePayData, Inc. in the  
Initials amount of \$ \_\_\_\_\_.

Initials B. Withholding 5 % from each gross deposit.

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward funds to replenish the reserve account IF any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 180 days after termination of the MPA, the terms of the MPA will govern.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

United Financial Services d-b-a Benefits Marketing Alliance  
Business Legal name or D.B.A.

(Signature)

Jonathan Parks  
(Printed Name)

Its: President / Owner (circle one)

9-25-08  
(Date)



you change the Designated Account, this authorization will apply to the new account.

## 7. Security Interests, Reserve Account, Recoupment and Set-Off.

### A. Security Interests.

i. **Security Agreement.** This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by mailing an immediate written notice to the secured assets. Upon receipt of this security interest, Processor and Bank will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy court automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

### B. Reserve Account.

i. **Establishment.** You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with same sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account for any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section. It determines such action is reasonably necessary to protect its interests.

ii. **Authorizations.** Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. **Funds.** Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall not have sole control of the Reserve Account. Cynnyng will not use to confirm Discover Network Operating Regulations for reserve accounts and the applicable timelines.

iv. **Assessments.** In the event of a bankruptcy proceeding and the determination by the court that this Agreement is reasonable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. **Recoupment and Set Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

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

### A. Fees and Other Amounts Owed Bank.

A. **Fees and Taxes.** You will pay Processor and Bank fees for services, taxes and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business days or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.1, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer its obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

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

C. **Merchant Supply/Replacement Program.** You are responsible for purchasing all supplies required to properly process Card transactions (sales slips, printer rolls, etc.). If you elect to participate in CD's Supply/Replacement Program, you understand that you are entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. Quantity of supplies provided is at the discretion of CD. Enrollment in CD's Supply/Replacement Program also entitles merchant to free related replacement equipment after CD has collected 3 monthly payments from you (you are responsible for all shipping costs). A separate program is required for each terminal you may have. If your terminal type is unavailable, at CD's discretion, a substitute may be provided. CD may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent. Maintenance is not available for any wireless terminals. Please note: Discover Network will provide Cynnyng decals and signage free of charge for placement with all merchant locations.

### 9. Application, Indemnification, Limitation of Liability.

A. **Application.** You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship, partnership, etc.), type of goods and services provided and how sales, are completed (i.e., by telephone, mail, or in person at place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. **Indemnification.** You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those resulting from any bankruptcy proceeding.

C. **Limitation of Liability.** Any claim by Processor or Bank under this Agreement, whether to you or any other party, whether the basis of the liability shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against each fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor nor Bank nor its agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. **Performance.** Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank disclaim all implied, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all warranty warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the, fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

10. **Representations and Warranties.** You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

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

B. **Entity Power.** Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. **No Litigation or Termination.** There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. **Transactions.** All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. **Rule compliance.** You will comply with the Laws and Rules.

### 11. Audit and Financial Information.

A. **Audit.** You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

### B. Financial Information.

i. **Authorizations.** You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

ii. **Documents.** You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

### 12. Third Parties.

A. **Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

B. **Use of Terminals Provided by Others.** You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorized designees ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. **Debit Network Requirements.** In order to inform Cardholders that Debit Cards may be accepted at your location, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval

by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademark.

### 13. Term and Termination

A. **Term.** The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. **Termination.** The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time by notice and without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without notice) if (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In either case, Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended as of the date of such suspension and BAMS or CID will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability as a result of any such suspension or termination.

### C. Action upon Termination.

i. **Terminated Merchant File.** You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. **Designated Account.** All obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account sufficient funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

iii. **Equipment.** Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

iv. **Early Termination.** If you terminate this Agreement before the end of the Initial Term, you will immediately pay Bank, as discovery costs, an early termination fee equal to \$495. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination. Other remedies Bank or Processor may have under this Agreement still apply.

14. **Compliance With Laws And Rules.** You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Discover Network, MasterCard, Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

### 15. Use of Trademarks and Confidentiality.

A. **Use of Trademarks.** Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or any other card's promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or materials must include other appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

### B. Confidentiality.

i. **Cardholder Information.** You will not disclose to any third party Cardholder's account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information confidential and secure, including but not limited to account numbers, card expirations, and TID's in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholder's account numbers, card expirations, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not reuse or store magnetic strips, Discover Network CID or CVV2 data after authorization.

ii. **Prohibitions.** You will not use for your own purposes, will not disclose to any third party, and will retain in strict confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BSN information, you must only use this BSN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BSN information to any third party without prior written permission from Visa.

iii. **Disclosures.** You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

C. **Return to Bank.** All promotional materials, advertising displays, signage, Sales Drafts, credit memoranda and other items supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

### 16. General Provisions.

A. **Entire Agreement.** This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. **Governing Law.** This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Processor agree to submit to the personal jurisdiction of courts located in Queens County, New York.

C. **Exclusivity.** During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

D. **Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or withdrawal in the last of the pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. **Assignability.** This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. **Notice.** Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) six calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. **Bankruptcy.** If your business fails, including bankruptcy, insolvency, or other cessation of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must return that information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Laws or Rules.

H. **Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. **Amendments.** Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increase imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the change, you will be deemed to assent to the new fees.

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

K. **Independent Contractors.** Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. **Employee Actions.** You are responsible for your employees' actions while in your employment.

M. **Survival.** Sections 4.A, 4.B, 7.A, 8, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.

N. **Bank Contact.** You may contact Bank at the following address and telephone number:

Bank of America, N.A.  
2231 Durbin Lane  
Louisville, KY 40265-0001