

BrandSource Dealer Application Checklist



Dealer Application Instructions

Complete and sign the enclosed Dealer Application. All fields must be completed in order for the application to be processed.

- Section 1** Provide corporate name and trade name(s)/doing business as (DBA) name(s). If business is a sole proprietorship, provide owner as the "corporate name." The DBA name is printed as the dealer name on the customer's credit card and is limited to 19 characters, including spaces and punctuation.
 - Provide a copy of your state, city or county business license.
- Section 2** Provide additional store locations (if any). Use additional copies if you are adding more than (2) two stores, in addition to the main location listed in Section 1.
- Section 3** Indicate company type.
- Section 4** Provide bank name, including bank address and account information. This allows set up of automated banking deposits. Please provide two (2) supplier references.
- Section 5** Provide a voided check with company name and physical address. This is for the account you want us to fund. No starter checks, please. If checks are unavailable, please obtain and attach a letter from the bank (on bank letterhead) verifying the corporate name, physical address, account number and routing number.
- Section 6** Fill out this section to activate Citi/PAYware Verifone. This is your web based Point of Sale application and transaction processing method.
- Section 7** Provide Social Security Number and other requested information for each officer, general partner, member, majority owner or other principal.
 - These persons must sign the Dealer Application.**
 - If your business has been open for less than 2 years, provide 5 year work history for each person who signs the Dealer Application.

Fax Submission Instructions

- Retain the Merchant Services Agreement and Operating Regulations for your records.
Do not send them to us.
- Complete and sign the BrandSource Credit Card Dealer Application
- Fax the BrandSource Credit Card Dealer Application and voided check to **1-866-352-5204**

Questions

If you have any questions regarding the program, please contact your BrandSource District Manager or call Citi at 1-866-786-2026.



BrandSource Credit Card Dealer Application



This is an application to accept credit cards issued by Citibank, N.A. Refer to Dealer Application Checklist for instructions about completing and submitting this application. All fields must be completed in order for the application to be processed.

1

Dealer Information Application Date ____ / ____ / ____

Corporate Name				
Trade Name (DBA), if applicable (this is the name that will print on the card, 19 characters maximum)				
Address (physical)		Suite	City	State Zip
Phone Number	Fax Number	Federal Tax ID _____ - _____ - _____		
Date Business Established	Total Annual Sales	Estimate of Annual Sales on the BrandSource Credit Card* \$_____ *This number should encompass what is expected to be processed on the BrandSource Credit Card, not the total volume that is eligible to be processed on the BrandSource Credit Card.		
Email Address (This email address may be used to communicate program information regarding the Private Label Program.)				
Training Information				
Contact Name			Contact Phone Number	
Is this location open and can start-up materials be sent? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, expected open date:				
Equipment Options <input type="checkbox"/> Card Reader <i>In order to provide you with the appropriate equipment you will be contacted for more information.</i>				

2

Additional Store Location(s) (If applicable)

Are there more than two additional stores? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, photocopy Section 2 and list additional stores and include with this application.				
Store #2 Trade Name (DBA), if applicable (this is the name that will print on the card, 19 characters maximum)				
Email Address				
Address (physical)		Suite	City	State Zip
Phone Number	Fax Number	Store Location Name (example: Fair Oaks #2)		
Training Information				
Contact Name			Contact Phone Number	
Store #3 Trade Name (DBA), if applicable (this is the name that will print on the card, 19 characters maximum)				
Email Address				
Address (physical)		Suite	City	State Zip
Phone Number	Fax Number	Store Location Name (example: Maple Grove #3)		
Training Information				
Contact Name			Contact Phone Number	

3

Company Type

<input type="checkbox"/> S Corporation	<input type="checkbox"/> C Corporation	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other
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4

Settlement Bank Info, Reporting Options and Supplier References

Settlement Bank	Settlement Bank Fax	Routing Number/ABA	Account Number/DDA
Delivery Method By Fax	Fax Number:	Attn:	
List Supplier References Below			
Supplier Name	Phone Number	Fax Number	
Supplier Name	Phone Number	Fax Number	

5

Voided Check

A VOIDED CHECK OR BANK CERTIFICATION LETTER IS REQUIRED



6

Citi/PAYware Verifone Activation Request

Primary Website User (Administrator)		Position
First Name	Last Name	
Email Address	Preferred Username (8 characters maximum)	
Secondary Website User		Position
First Name	Last Name	
Email Address		

NOTE: In the event the Administrator/Owner leaves the company Citi will refer to the secondary contact to update Website Information and Password Resets.

Officers, General Partners, Members, Owners, or other Principals of the Dealer

Each person who signs this application (an "Authorized Signer") applies for and on behalf of Dealer to accept private label credit cards issued by Citibank, N.A. (together with its successors and assigns, "Bank") as contemplated by the Merchant Services Agreement previously received by Dealer having the same form number as this application (as amended from time to time, the "Agreement"). Each Authorized Signer agrees with Bank for and on behalf of Dealer that: (i) Dealer agrees to the terms and conditions of the Agreement **which contains limitation of liability, jury waiver and arbitration provisions** and (ii) the Agreement shall be effective and binding on Dealer if accepted by Bank.

Each Authorized Signer represents to Bank that all information contained in this application is true, accurate and complete and that he/she has authority to submit this application on behalf of Dealer. Dealer and each Authorized Signer hereby authorize Bank to obtain, verify and exchange with any person or entity information about Dealer and each Authorized Signer, including, without limitation, commercial and consumer credit reports. Dealer and each Authorized Signer hereby authorize any person or entity to furnish Bank any information that such person or entity may have or obtain about Dealer and each Authorized Signer. All of the above authorizations shall remain in effect until Bank rejects this application or, if Bank accepts the Agreement, until the Agreement is terminated and Dealer's obligations under the Agreement are satisfied.

7

Full Name		Title	Social Security Number	
Date of Birth (mm/dd/yyyy)	Home Address	City	State	Zip
If Home Address is less than 2 years, please provide previous address:				
Previous Address		City	State	Zip
Have you or any entity you have been affiliated with ever done business with Citibank, N.A. or its affiliates? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Have you or any entity you have been affiliated with ever filed bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If the answer to either of the two questions above is Yes, please explain. Use a separate sheet, if necessary.				
Signature		Date	Home Phone Number	
Full Name		Title	Social Security Number	
Date of Birth (mm/dd/yyyy)	Home Address	City	State	Zip
If Home Address is less than 2 years, please provide previous address:				
Previous Address		City	State	Zip
Have you or any entity you have been affiliated with ever done business with Citibank, N.A. or its affiliates? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Have you or any entity you have been affiliated with ever filed bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If the answer to either of the two questions above is Yes, please explain. Use a separate sheet, if necessary.				
Signature		Date	Home Phone Number	
Full Name		Title	Social Security Number	
Date of Birth (mm/dd/yyyy)	Home Address	City	State	Zip
If Home Address is less than 2 years, please provide previous address:				
Previous Address		City	State	Zip
Have you or any entity you have been affiliated with ever done business with Citibank, N.A. or its affiliates? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Have you or any entity you have been affiliated with ever filed bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If the answer to either of the two questions above is Yes, please explain. Use a separate sheet, if necessary.				
Signature		Date	Home Phone Number	

MERCHANT SERVICES AGREEMENT

THIS AGREEMENT (“**Agreement**”) is made by and between Citibank, N.A. (“**Bank**”), a national banking association located in Sioux Falls, SD, and the retail dealer who submitted the Dealer Application (hereinafter called “**Dealer**”).

Explanatory Statement

A. Bank issues to consumers private label credit cards for use at retail establishments and desires to offer to certain consumers the ability to use a Bank credit card with the Card Program name and logo appearing on such card for the purchase of appliances, electronics, furniture and any other goods or services normally offered by merchants participating in the Card Program (collectively, “**Authorized Goods**”) at certain merchants where Bank chooses to make the Account available for such purpose.

B. Dealer desires to offer consumers the convenience of using a Bank card with the Card Program name and logo appearing on such card in payment for Authorized Goods sold by Dealer.

C. Bank, directly or through its designee(s), operates and administers a merchant authorization and settlement program whereby, subject to certain conditions, Bank may authorize certain Bank credit card transactions to finance purchases from Dealer.

NOW, THEREFORE, Bank and Dealer agree as follows:

ARTICLE I - DEFINITIONS

Section 1.1 Definitions. Except as otherwise specifically indicated, the following terms shall have the meaning specified herein:

“**Account**” means a Card account.

“**Application**” means an application for a Card.

“**Authorization**” means permission from Bank to make a Card Sale.

“**Authorization Center**” means the facility designated by Bank at which Card Sales are authorized.

“**BrandSource**” means Associated Volume Buyers, Inc., a cooperative corporation incorporated under the laws of California doing business as BrandSource, and its successors and assigns.

“**Breach**” means an inaccuracy in, or any failure to perform or comply with, any representation, warranty, covenant, agreement or other provision of any kind.

“**Business Day**” means Mondays through Fridays except for holidays observed by the Federal Reserve Board.

“**Card**” means a credit card issued by Bank for use under the

Card Program, which may be used for purchases on an Account.

“**Card Program**” means the private label credit card program endorsed by BrandSource and provided by Bank under which Accounts will be established and Cards issued to Cardholders to finance purchases from Dealer and from any other merchants that Bank selects to participate in such program.

“**Card Sale**” means any sale of Authorized Goods that Dealer makes to a Cardholder pursuant to this Agreement that is charged to an Account.

“**Cardholder**” means (i) the person in whose name an Account is maintained and (ii) an authorized user of that Account.

“**Chargeback**” means the refusal of Bank to pay Dealer for a Card Sale or the return to Dealer and reimbursement of Bank of a Card Sale for which Dealer was previously paid.

“**Credit**” means a non-cash refund issued by Dealer to a Cardholder of all or a portion of the amount of a Card Sale.

“**Credit Plan**” means a credit plan under an Account made available by Bank for a Cardholder’s use.

“**Credit Slip**” means evidence of a Credit in paper form.

“**Dealer Application**” means the application by Dealer to Bank for Dealer to accept Cards and to participate in the Card Program, which application gave rise to this Agreement.

“**EAP**” means the method of processing Applications pursuant to which Dealer shall electronically transmit all necessary Application data (as determined by Bank) to Bank for a credit determination made in accordance with Bank’s Account issuance criteria. At Bank’s request, Dealer shall incorporate or permit Bank to incorporate the application necessary to perform EAP into Dealer’s software. Bank shall retain its proprietary rights to the application necessary to perform EAP.

“**Electronic Location**” means a Dealer location at which there is an Electronic Terminal.

“**Electronic Terminal**” means an electronic terminal or computer capable of communicating by means of an on-line or dial-up electronic link with Bank (whether routed through Bank’s facilities or otherwise) for processing Applications via EAP and with an Authorization Center to obtain Authorization. The Electronic Terminal(s) used by Dealer hereunder shall be one of those approved by Bank for use in the Card Program. Unless otherwise agreed by Bank, Dealer shall be solely responsible for the cost of the Electronic Terminal(s).

“**Governmental Authority**” means any federal, state, local, national, foreign or other government, governmental, regulatory or administrative authority, agency, instrumentality or commission or any court, tribunal, or judicial or arbitral body of competent jurisdiction.

“**Law**” means any existing or future federal, state, local, national, foreign or administrative law (including common law), treaty, statute, ordinance, regulation, requirement, regulatory guidance or bulletin, rule, code or order of any Governmental Authority, each as amended from time to time.

“**Merchant Discount Rate**” means a percentage that is used to calculate the Merchant Discount Fee. See Section 3.1.

“**Net Card Sales**” means the gross dollar amount of Card Sales made by Dealer during a calculation period less the total dollar amount of Credits and adjustments to Accounts with respect to the Card Sales made by Dealer during such calculation period.

“**NPI**” means “nonpublic personal information” as defined in the Gramm-Leach-Bliley Act and the regulations thereunder applicable to Bank, as amended from time to time.

“**Operating Regulations**” means the operating procedures of Bank for the Card Program (including advertising guidelines), as they may be amended from time to time. For purposes of this Agreement, the Operating Regulations shall be deemed an integral part of this Agreement and references to this Agreement shall be deemed to include the Operating Regulations.

“**Person**” means an individual, corporation, limited liability company, partnership of any kind, unincorporated association, joint venture, Governmental Authority, or other entity of any kind.

“**Related Persons**” means a party’s parent company, affiliates and subsidiaries, and such party’s and such parent company’s, affiliates’ and subsidiaries’ directors, officers, members, partners, managers, employees, agents, advisors and consultants.

“**Sales Data**” means Card Sales and Credits in electronic form submitted by Dealer to Bank.

“**Sales Slip**” means evidence of a Card Sale in paper form.

“**Settlement**” means the reimbursement to Dealer for Net Card Sales.

“**Settlement Account**” means the deposit account(s) at the financial institution(s) designated by Dealer as the account(s) to be debited and/or credited, as applicable, for the Settlement of Card transactions and the payment of any fees and charges or other amounts due hereunder. Dealer shall be solely responsible for all fees and costs associated with maintaining the Settlement Account.

“**Term**” means the period beginning with the Effective Date (as defined in Section 4.4(a)) and ending with the day this Agreement terminates.

Section 1.2 Construction.

(a) Unless the context otherwise clearly indicates, words used in the singular include the plural and words used in the plural include the singular.

(b) Unless the context clearly requires otherwise, the words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement, together with any exhibit to this Agreement, as a whole and not to any particular provision of this Agreement.

(c) References herein to a specific Section or Exhibit shall refer, respectively, to Sections or Exhibits to this Agreement, unless otherwise indicated.

(d) Wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “but not limited to” or “without limitation” unless the context requires otherwise.

ARTICLE II - ISSUANCE AND ACCEPTANCE OF ACCOUNTS AND CARDS

Section 2.1 Conditions of Opening Accounts. Subject to the terms and conditions of this Agreement (including the Operating Regulations), Bank shall receive Applications and approve or decline Applications in Bank’s sole discretion.

(a) Applicants. This Section 2.1(a) applies upon the Card Program becoming operationally available to Dealer. Dealer hereby grants Bank a right of first refusal with respect to all applications for consumer credit submitted by consumers to or through Dealer.

(b) Applications. Dealer must use Bank’s form of Application for all Applications Dealer provides to applicants for an Account. Any Applications transmitted to Bank are subject to review by Bank in its sole discretion. In the case of an Application transmitted by Dealer, Dealer shall be responsible for the following: (i) providing all information requested on each Application or which has been requested by Bank; (ii) obtaining valid government-issued identification in accordance with the Operating Regulations (including recording such identification on the Application) and verification of the individual(s) applying for the Account, including all information required in the Operating Regulations; (iii) obtaining the signature on the Application of all persons whose name will appear on the Account or who will be responsible for the Account; (iv) upon either approval or decline, sending the Applications (or if so provided in the Operating Regulations, the appropriate portion of the Applications) on a weekly basis to Bank at the designated address (or if a different time frame is specified in the Operating Regulations, in accordance with that time frame); and (v) entering the sale (if any) into Dealer’s Electronic Terminal. Unless instructed otherwise by Bank, Dealer shall also enter into the Electronic Terminal the Authorization code provided by Bank for the Card Sale.

Section 2.2 Honoring of Accounts and Cards.

(a) Conditions for Honoring Accounts and Cards. Subject to the terms and conditions of this Agreement (including the Operating Regulations), Dealer agrees to accept an Account or Card for payment of Authorized Goods in those instances when a Cardholder wishes to charge the purchase of such Authorized Goods to his/her Account, and Dealer shall not attempt to suppress or discriminate against use of a Card

by a Cardholder; provided, however, that nothing in this sentence shall be construed to require Dealer to accept an Account or Card if Dealer believes that use of the Account or Card may be unauthorized or fraudulent. Without limiting the generality of the foregoing, Dealer shall not require any applicant for an Account or a Cardholder, through an increase in price or otherwise, to pay any surcharge or other fee or amount for submitting an Application or for using the Account or Card in lieu of paying by other means; provided, however, that this Agreement shall not be construed to prohibit Dealer from offering discounts for the purpose of inducing Dealer's customers or prospective customers to pay by cash, check or similar means. Dealer shall accept Accounts and Cards at all of its locations for the purchase of Authorized Goods, provided the Sales Data resulting from such acceptance must be submitted to Bank in United States dollars.

(b) Commencement of Account and Card Acceptance. Acceptance of Accounts and Cards by Dealer under the terms of this Agreement shall commence upon execution of this Agreement by Dealer and acceptance of this Agreement by Bank, or as soon thereafter as reasonably practicable and shall continue until the termination of this Agreement.

Section 2.3 Acceptance of Accounts and Cards. During the Term and thereafter, Bank has the right in Bank's sole discretion to make Accounts and Cards available for use at other merchants selected by Bank. Dealer further covenants and agrees as follows:

(a) During the Term and thereafter, Dealer shall not accept an Account or Card for the purpose of advancing money to a Cardholder or paying money to a Cardholder for any amount that is included in a Card Sale;

(b) During the Term and thereafter, Dealer shall maintain a fair and reasonable adjustment and return policy with respect to each Card Sale; and

(c) Dealer shall obtain an Authorization for each Card Sale.

Bank has the right to grant or decline Authorizations in its sole discretion.

Section 2.4 Operating Regulations. The Operating Regulations may be amended by Bank in Bank's sole discretion from time to time upon thirty (30) days' prior written notice to Dealer; provided, however, that amendments that do not require major system or operational modifications and changes required for security measures shall be made as soon as possible following Dealer's receipt of notice thereof but in all events shall become effective within five (5) days of Dealer's receipt of notice thereof. Any amendments made to the Operating Regulations which are required by Law or by pending changes in Law may be made by Bank immediately. In the event of any conflict or inconsistency between the terms of this Agreement and those of the Operating Regulations, the terms of this Agreement shall control; provided, however that if the Operating Regulations or any part thereof expressly state that they or such part thereof control in the event of such conflict or inconsistency, the Operating Regulations or such part thereof (as the case may be) shall control.

Section 2.5 Completion of Sales Slips; Identification.

(a) General Requirements. (i) For each Card Sale, Dealer shall prepare a Sales Slip using a form that is acceptable to Bank. Each Sales Slip must be legible and fully completed with the following information: (A) the date and location (e.g., city/state) of the Card Sale; (B) a brief description of the Authorized Goods; (C) the total amount of the Card Sale, including tax; (D) the Account number (or, if requested by Bank, a truncated Account number); (E) the expiration date, if any, of the Card; (F) the Authorization number or code; (G) Dealer's merchant number; (H) merchant name; and (I) unique system-generated invoice number (*i.e.*, ticket number).

(ii) Dealer shall include all Authorized Goods purchased at one time in a single transaction on one Sales Slip or on continuous Sales Slips. This does not prohibit Dealer from accepting, via means of payment other than an Account, either partial payments or customer deposits.

(b) Cardholder's Signature. A Sales Slip must be signed by the Cardholder for each in-store Card Sale at the time the Card Sale is made and in the presence of an authorized representative or employee of Dealer. The signature on the Sales Slip must be reasonably similar to the signature appearing on the identification used to verify the Cardholder's identity as required by Section 2.5(c). After completion of the Card Sale, Dealer shall provide a legible and completed copy of the Sales Slip to the Cardholder. During the Term and thereafter, if (i) Dealer fails to obtain the signature of the Cardholder on a Sales Slip or the name of the person making the purchase does not match any of the authorized names on the Account and (ii) the Cardholder has not authorized the Card Sale or denies the validity of the Card Sale, the Card Sale shall be subject to Chargeback pursuant to Section 2.10.

(c) Identification for In-Store Card Sales. Whether or not a Cardholder presents a Card for a Card Sale, for each in-store Card Sale, Dealer shall take reasonable measures to verify that the Card Sale is authorized by a Cardholder, including verifying the valid government issued identification of the Cardholder and (unless prohibited by applicable Law or provided otherwise in the Operating Regulations) recording such identification on Dealer's copy of the Sales Slip, all as provided in the Operating Regulations; provided, however, that unless the Operating Regulations provide otherwise, such identification shall not be recorded on the Sales Slip if Dealer transmitted the Cardholder's Application to Bank on the same day that the Cardholder signs the Sales Slip.

Section 2.6 Authorization.

(a) General Requirements. Dealer shall obtain Authorization for each proposed Card Sale. For purposes of this Agreement, the purchase of one or more items or other Authorized Goods made by a Cardholder at one Dealer location at one time shall be deemed to constitute a single Card Sale.

(b) Obtaining Authorization. (i) Electronic Locations. To obtain Authorization for Card Sales made at Electronic Locations, Dealer shall utilize an Electronic

Terminal in accordance with procedures applicable for the use of such Electronic Terminal. At an Electronic Location, if a referral code is displayed on an Electronic Terminal, Dealer shall telephone Bank to obtain further instructions, using a toll-free telephone number provided by Bank for such purpose.

(ii) Non-Electronic Authorization. To obtain Authorization when Bank's electronic capability to provide Authorization or Dealer's electronic capability to obtain Authorization is not operational, Dealer shall contact Bank using a toll-free telephone number provided by Bank for such purpose. If the Authorization Center approves the Card Sale, Dealer shall be given an Authorization code or number, which must be recorded on the Sales Slip.

(c) Instructions. Dealer shall follow all reasonable instructions given by Bank's Authorization Center in connection with a Card Sale.

Section 2.7 Settlement of Card Transactions.

(a) Submission of Sales Data by Dealer. For each day in which Card Sales or Credits are charged or posted to an Account, Dealer shall submit Sales Data to Bank; provided, however, Dealer shall not submit Sales Data to Bank for a Card Sale unless the goods or services that are the subject of such Card Sale have been delivered or performed by Dealer in their entirety and as agreed to with the Cardholder. All such submissions shall be in Bank's form and format. Submissions of Sales Data must contain all of the information specified in this Agreement and the Operating Regulations. If all or a portion of the required data is not received by Bank or such data is unreadable, Bank shall not be required to process the Sales Data containing the missing or unreadable data, but shall promptly inform Dealer or its designated agent of the missing or unreadable data. Dealer shall be responsible for the loss, damage or destruction of Sales Data until the Sales Data is received by Bank or by Bank's designated processor.

(b) Obligation to Reimburse Dealer for Sales Data. Subject to Dealer's obligation to pay fees and Bank's rights of Chargeback, recoupment, setoff and any other rights under this Agreement or otherwise, Bank shall reimburse Dealer for all Card Sales properly submitted by Dealer and received by Bank. Bank shall pay Dealer an amount equal to the total amount of Card Sales submitted to, and received by, Bank less the amount of Credits, if any, submitted that Business Day by Dealer, plus or minus the applicable amount, if any, for other adjustments to the amounts so submitted. Bank shall not be required to reimburse Dealer for any Card Sale not submitted within sixty (60) days of the date of Dealer's delivery or performance of the Authorized Goods.

(c) Method and Timing of Settlement. For each electronic submission of Sales Data received in Bank's form and format by 5:00 P.M. Central Time on a Business Day at the location specified by Bank, Bank shall use commercially reasonable efforts to initiate the appropriate credit or debit to the Settlement Account, as applicable, through the Automated Clearinghouse Network (the "ACH Network") by the second (2nd) Business Day after receipt. With respect to each such submission of Sales Data received by Bank after 5:00 P.M. Central Time on a Business Day, Bank shall use commercially

reasonable efforts to initiate the appropriate credit or debit to the Settlement Account, as applicable, through the ACH Network by the third (3rd) Business Day after receipt. Unless otherwise agreed to in writing by Bank, Sales Data may not be submitted in paper form. Dealer hereby authorizes Bank and its designated agents and representatives to credit or debit the Settlement Account, as applicable, in accordance with this Agreement, and the rules and procedures of the applicable clearinghouse association and settlement institution. This authority shall remain in effect until seven (7) Business Days after Bank receives written notice from Dealer of its cancellation of such authorization; provided, however, that Dealer has provided Bank with a substitute Settlement Account; provided, further, that in the event of termination of this Agreement, Dealer agrees to maintain the Settlement Account with sufficient funds until such time as Dealer and Bank agree that all Chargebacks and other adjustments are processed and to permit Bank to credit and debit such Settlement Account until such time as all charges, Chargebacks, fees and other adjustments are settled as provided in this Agreement. Notwithstanding the foregoing, Bank shall have the right to delay both the cancellation of such authorization and the substitution if Dealer has committed a Breach of or has threatened to Breach this Agreement (including the Operating Regulations), if Bank needs additional time to verify that such cancellation and substitution are valid and duly authorized or if Bank has other reasonable grounds for such delay. Bank shall not be liable to Dealer for any delays in receipt of funds or errors in credit entries caused by Dealer or by third parties including a clearinghouse, Dealer's financial institution, or any agent of Dealer.

(d) Delayed Settlement. If Bank believes in good faith that (i) one or more Card Sales submitted by Dealer may constitute fraudulent or otherwise unauthorized transactions on the part of Dealer, (ii) Dealer may have otherwise committed a Breach of or has threatened to Breach this Agreement (including the Operating Regulations) or (iii) Dealer is or may become unable to perform all of its obligations under this Agreement (including the Operating Regulations), then Bank shall be entitled to retain all or any part of any settlement payments due Dealer as Bank believes is appropriate in its sole discretion until a reasonable time after the matter is resolved to Bank's satisfaction.

(e) Reserve. If Section 2.7(d)(i) or 2.7(d)(ii) applies and if Bank believes the amount (if any) then retained by Bank pursuant to Section 2.7(d) may not be sufficient to satisfy Dealer's liability to Bank therefor, then Bank shall be entitled to establish and fund a reserve by deducting funds from the Settlement Account equal to Bank's estimate of the dollar amount of such insufficiency. Bank shall be entitled to retain the appropriate amount of funds so reserved until a reasonable period of time after the matter is resolved to Bank's satisfaction.

Section 2.8 Cardholder Credits and Payments. Unless specifically required by Law, Dealer shall not give cash refunds to any Cardholder in connection with a Card Sale. For each Credit issued by Dealer, Dealer shall prepare and deliver to the Cardholder a Credit Slip which Dealer shall complete in accordance with the Operating Regulations. Unless otherwise

expressly agreed by Bank and Dealer, Dealer shall not accept payments from any Cardholder on any Account.

Section 2.9 Cardholder Disputes and Billing Error Notices.

Bank shall notify Dealer on a current basis when a Cardholder has (a) asserted a dispute as to Authorized Goods purchased on an Account or (b) filed an oral or written billing error notice relating to a Card Sale. Dealer agrees to investigate and make a good faith effort to resolve each dispute or billing inquiry referred to it by Bank or received directly from a Cardholder. Within fifteen (15) Business Days from the date Bank sends notice of a dispute or billing inquiry to Dealer, Dealer shall notify Bank in writing of the status thereof or the action Dealer shall take to resolve the dispute or billing inquiry. Dealer shall provide Bank with all such information as Bank may reasonably request in connection therewith.

Section 2.10 Chargeback Rights and Procedures.

(a) **Chargeback Rights.** If Dealer has committed a Breach of this Agreement (including the Operating Regulations), if at the end of the fifteen (15) Business Day dispute/billing inquiry resolution period specified in Section 2.9, the dispute or billing inquiry is not resolved (or Bank has not been informed of the resolution or the action Dealer shall take to resolve the dispute or billing inquiry), or if this Agreement (including the Operating Regulations) otherwise permits a Chargeback, Bank may process a Chargeback to Dealer for (at Bank's option) the unpaid amount of the Card Sale, the Account balance, or the disputed portion thereof.

(b) **Method of Recourse.** Bank is not required to pay for a Card Sale that is being charged back. If Bank has already paid Dealer for such Card Sale, Bank, at its sole discretion, may deduct the amount to be charged back from the Settlement Account or deduct such amount from a future payment to Dealer under this Agreement or otherwise. Any Chargebacks which are not paid by the aforesaid means shall be due and payable by Dealer immediately on demand.

(c) **Billing Errors or Disputes.** Notwithstanding anything to the contrary contained herein, in the event a Cardholder makes an oral or written billing error inquiry or alleges a dispute with respect to goods or services purchased from Dealer, Bank has the right of Chargeback against Dealer with respect to the Card Sale which is the subject of such inquiry or dispute.

Section 2.11 Representations and Warranties.

Dealer represents and warrants to Bank with respect to each Account, each Application Dealer transmits to Bank, each Sales Slip, all Sales Data, each Card Sale, and the Card Program, as applicable, as follows:

(a) the information set forth on each Application Dealer transmits to Bank is true, accurate and complete as provided by the applicant;

(b) the Sales Data for each Card Sale (i) accurately represents a bona fide sale made by Dealer in its ordinary course of business of only Authorized Goods and was not previously submitted to Bank, (ii) accurately represents the obligation of the Cardholder for the amount of the Card Sale

and does not involve any element of credit for any other purpose, (iii) does not involve the financing of a down payment or deposit with the Account and (iv) is not submitted on behalf of a third party;

(c) the Authorized Goods that are the subject of each Card Sale (i) are for personal, family or household use in their entirety and do not include any used goods (for this purpose, floor or demonstration models shall not be considered used goods) and (ii) are, prior to Dealer submitting the Sales Data therefor to Bank, delivered or performed by Dealer in their entirety and as agreed with the Cardholder;

(d) each Application, Sales Slip or other Account document received by Dealer and the Sales Data is free from any alteration not authorized by the Cardholder, and to the best of Dealer's knowledge, each signature on each such Application, Sales Slip or other Account document is genuine and not forged and is made by the person whose signature it purports to be;

(e) Dealer has no knowledge or notice of information that would lead it to believe that the enforceability or collectibility of the Sales Data is in any manner impaired; and

(f) Dealer has complied with this Agreement (including the Operating Regulations) and with all Laws (including advertising Laws) applicable to Dealer or Bank except to the extent non-compliance with Laws is the fault of Bank and is without fault of Dealer.

Section 2.12 Reports. Bank shall supply Dealer with a report on Business Days containing at least the following information to the extent not then previously reported by Bank: Card Sales, Credits, Merchant Discount Fees (as defined in Section 3.1(a)) and any other fees.

Section 2.13 Account Ownership. Each Account, any amount owed by a Cardholder under an Account (including principal, interest, fees, premiums and other charges) whether or not billed, and all contract rights with respect to an Account or any of the foregoing amounts, shall be deemed the property of Bank and not of Dealer. An Account may have more than one Card issued for it. Bank has the right to determine in its sole discretion the terms and conditions under which Accounts will be established and maintained.

ARTICLE III - FEES

Section 3.1 Fees.

(a) For each Card Sale made by Dealer, Bank shall charge, and Dealer shall pay, a fee equal to the Net Card Sales under the Credit Plan for that Card Sale multiplied by the Merchant Discount Rate for that Credit Plan (each such fee, a "**Merchant Discount Fee**"). The initial Merchant Discount Rates shall be set forth in documentation provided by Bank to Dealer prior to the first Card Sale. Bank may amend such documentation (including, by adding or deleting Credit Plans, changing terms of Credit Plans, amending minimum purchase requirements, increasing or decreasing any Merchant Discount Rates or other fees charged to Dealer and imposing new or additional fees) upon thirty (30) days' prior

notice to Dealer; provided, however, that any such amendment that is favorable to Dealer shall not require advance notice.

(b) For each day on which Dealer submits Sales Data, Bank shall determine the amount of Net Card Sales made by Dealer under each Credit Plan as reflected in the Sales Data and shall calculate the Merchant Discount Fee payable by Dealer on that amount in accordance with Section 3.1(a). Bank shall also calculate and charge any other fees payable by Dealer.

(c) Bank may deduct the amount of the Merchant Discount Fees or any other fees or amounts payable by Dealer pursuant to this Agreement or otherwise from the Settlement amount due Dealer, as applicable, or Bank may debit the Settlement Account therefor. If Bank elects the former and the Settlement amount due Dealer is insufficient to cover such Merchant Discount Fees, fees or amounts, Bank, at its option, may deduct such Merchant Discount Fees, fees or amounts, or any portion thereof, from subsequent amounts due Dealer or debit the Settlement Account or do both. Any amounts owed which cannot be paid by the aforesaid means shall be due and payable by Dealer immediately upon demand.

ARTICLE IV- MISCELLANEOUS

Section 4.1 Indemnification.

(a) Indemnification by Dealer. Dealer shall be liable to and shall indemnify and hold harmless Bank and its officers, employees, directors, agents, affiliates and subsidiaries from any losses, damages, claims or complaints (including reasonable attorney's fees and disbursements) incurred by Bank, its officers, employees, directors, agents, affiliates or subsidiaries arising out of: (i) any claim, complaint or setoff made by a Cardholder with respect to Card Sales or Credits submitted by Dealer pursuant to this Agreement; (ii) any wrongful act or omission of Dealer or Dealer's Related Persons in connection with the furnishing of any goods or services purchased by a Cardholder via a Card Sale; (iii) any claim by any Person for damages for the alleged injury to or death of any Person or the alleged destruction or damage to or loss of any property, allegedly caused by the goods and/or services that are the subject of any Card Sale, including by Dealer's, any manufacturer's or other Person's design defect, manufacturing defect, failure to adequately warn or negligence; (iv) any Breach by Dealer of this Agreement (including the Operating Regulations) or any other agreement to which Dealer and Bank are now or hereafter parties; (v) any claim, complaint or setoff arising from any insurance, warranty, extended service plan or other similar product sold or provided by Dealer in connection with a Card Sale and whether or not there was an additional charge therefor; (vi) any claim or complaint of any Person in connection with (A) the use of Dealer's or its parent's or any of its affiliates' names, marks or logo or (B) errors or misrepresentations concerning the Card Program in Dealer's advertisements or promotions relating to the Card Program; or (vii) any claim or complaint of any Person that Dealer or Dealer's Related Persons has violated any Law or the intellectual property rights of any Person.

(b) Indemnification by Bank. Bank shall be liable to and shall indemnify and hold harmless Dealer and its

officers, employees and directors from any losses, damages, claims or complaints (including reasonable attorney's fees and disbursements) incurred by Dealer or its officers, employees, or directors arising out of any claim or complaint by a Cardholder with respect to any wrongful act or omission of Bank in connection with such Cardholder's Account. Notwithstanding the foregoing, the indemnification by Bank shall not apply to any claim or complaint to the extent such claim or complaint relates to Dealer's failure to resolve a billing inquiry or dispute with a Cardholder or any other act or omission of Dealer.

(c) Notice of Claim. If Bank or Dealer shall receive any claim or demand or be subject to any suit or proceeding of which a claim may be made against the other under this Section 4.1, the indemnified party will, as a condition of being indemnified by the indemnifying party, give prompt written notice thereof to the indemnifying party. However, failure to comply with this Section 4.1(c) shall not relieve the indemnifying party of its indemnification obligations except to the extent such failure prejudices the indemnifying party.

Section 4.2 Card Program Promotion.

(a) Program Promotion. All materials in any media form (including store signage, print advertising, direct mail, television and radio scripts, Internet, etc.) used by Dealer for promoting the Card Program that have not been provided to Dealer by Bank must either be submitted to Bank for Bank's review and approval prior to their use or comply with Bank's published advertising guidelines (if any), as amended from time to time. No materials promoting the Card Program shall be used by Dealer following termination of this Agreement and any such materials shall be promptly returned to Bank or destroyed.

(b) Displaying Promotional Materials. Dealer shall prominently display at each of its locations approved advertising and promotional materials relating to the Card Program, including Applications. Dealer shall not display any advertising or promotional materials relating to any third party private label revolving consumer financing program or other program that would otherwise compete with the Card Program for the financing of the purchase of Authorized Goods.

(c) Limited License. Dealer hereby authorizes and grants Bank the right (but Bank does not have the obligation) to use the name, logo, trademark, service mark or other proprietary designation of Dealer (collectively, the "**Dealer IP**") on the Cards and in advertising, marketing, promoting and administering the Card Program, subject to Dealer's prior written approval for any use other than fair use, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Bank need not obtain such approval to use Dealer's name on a Card. Bank shall not be required to submit to Dealer for its review and approval materials bearing Dealer IP to the extent that the same materials have been previously approved by Dealer, unless Dealer gives Bank written notice that such approval is rescinded. Dealer represents and warrants to Bank that as of the Effective Date (as defined in Section 4.4(a)) and during the Term, Bank's use of Dealer IP in accordance with this

Agreement shall not violate the intellectual property rights of any Person.

(d) Bank shall not be obligated under any circumstances to replace or cancel any Cards issued by Bank even if they bear Dealer IP.

Section 4.3 Books and Records. Dealer shall retain an original copy of each Sales Slip and Credit Slip for one hundred and eighty (180) days following the date of the Card Sale and a microfilm or other copy thereof for a total of seven (7) years. Dealer shall send to Bank the original or a legible copy of any Sales Slip, Credit Slip or any other record relating to this Agreement retained by Dealer within twenty (20) days of a request from Bank.

Section 4.4 Acceptance and Term; Termination.

(a) Acceptance and Term. This Agreement shall be effective when accepted by Bank (the "**Effective Date**"), and shall continue thereafter until terminated as provided in this Agreement. Bank may accept this Agreement: (i) by executing and delivering this Agreement to Dealer or (ii) by notifying Dealer in writing that Dealer is enrolled in the Card Program or otherwise indicating that this Agreement is accepted by Bank. Bank's acceptance shall be effective when sent by Bank. However, Bank shall not be bound by any alterations made to this Agreement by Dealer prior to Bank's acceptance of this Agreement unless an authorized officer or agent of has initialed such alterations and thereafter delivered this Agreement to Dealer. Dealer represents and warrants to Bank that the execution, delivery and performance of this Agreement by Dealer do not and shall not (with or without the giving of notice and/or passage of time), violate the terms of, conflict with or result in a Breach of or constitute a default under, any agreement or order to which Dealer is a party or by which Dealer is bound.

(b) Termination. This Agreement may be terminated: (i) by Bank at any time during the Term, for any reason or no reason, upon thirty (30) days' prior notice to Dealer; (ii) by Dealer, at any time during the Term, for any reason or no reason, upon thirty (30) days' prior notice to Bank; (iii) by either Bank or Dealer immediately upon notice to the other party in the event the other party commits or threatens to commit a material Breach of this Agreement (including the Operating Regulations); (iv) by either Bank or Dealer immediately upon notice to the other party in the event the other party shall elect to wind up or dissolve its operation or is wound up and dissolved, becomes insolvent or repeatedly fails to pay its debts as they become due, makes an assignment for the benefit of creditors, is adjudicated as insolvent, or has a liquidator or trustee appointed over its affairs and such appointment shall not have been terminated and discharged within thirty (30) days thereof; (v) by Bank, immediately upon notice to Dealer, in the event Dealer suffers (A) an adverse change in, or an adverse effect upon, the business, operations, properties, assets, liabilities, reputation or condition (financial or otherwise) of Dealer or its parent, if any, and its subsidiaries and affiliates, taken as a whole or (B) a material impairment of the ability of Dealer to perform its obligations under this Agreement; (vi) by Bank, immediately upon notice to Dealer, if Bank determines in its sole discretion that Card Sales submitted by Dealer are subject to excessive

chargebacks due to fraudulent activity; (vii) by Bank, immediately upon notice to Dealer, in the event Dealer ceases to be a member in good standing of BrandSource; or (viii) by Bank in accordance with Section 4.10.

(c) Effect of Termination; Survival. Upon termination of this Agreement, Dealer shall remove all Applications and advertising for the Card Program from display at Dealer's locations and Bank will stop issuing Authorizations to Dealer. Effective upon termination of this Agreement, Bank has the right to shorten the expiration period of or revoke any one or more Authorizations in its sole discretion, and Bank may give Dealer notice of the same before, on or after termination. The termination of this Agreement shall not affect the rights and obligations of the parties with respect to transactions and occurrences which take place prior to the termination, except as otherwise provided in this Agreement or the Operating Regulations. Without limiting the generality of the prior sentence, any provision of this Agreement (including the Operating Regulations) that by its terms or nature survives the termination of this Agreement shall so survive. In addition, the following Sections of this Agreement shall survive termination: 1.1, 1.2, 2.4, 2.6(c), 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 3.1, 4.1, 4.2(d), 4.3, 4.4(c), 4.5, 4.6, 4.7(d), 4.9, 4.10, and 4.12 through 4.22 inclusive.

Section 4.5 Status of the Parties. In performing their responsibilities under this Agreement, Bank and Dealer are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venturer or an association for profit between Bank and Dealer. Further, notwithstanding anything contained in this Agreement to the contrary, any third party designated by Dealer to obtain Authorization or perform data capture, remittance, submission or Settlement functions hereunder shall be subject to the approval of Bank and shall be deemed to be the agent of Dealer for all such purposes and not the agent of Bank, and Dealer shall be fully liable for the fees, actions and/or inactions of any such third party with respect to the performance of such functions.

Section 4.6 Force Majeure. Bank shall not be liable to Dealer by reason of any failure in Bank's performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control of Bank. Such causes may include acts of God or of the public enemy, acts of civil or military authority, fires, strikes, unavailability of energy resources, delay in transportation, riots, terrorism or war.

Section 4.7 Confidentiality; Ownership of Information.

(a) Confidential Information. In connection with the Card Program or this Agreement, each party may have access to and receive certain confidential information about the other party, including such party's marketing philosophy and objectives, competitive advantages and disadvantages, NPI, financial results, technological development, sales volume(s), merchandise mix or other information of the business or affairs of the other party, its parent company, or its affiliates and subsidiaries, which that party reasonably considers confidential and/or proprietary (collectively, "**Confidential Information**"). Confidential Information shall not include information in the public domain

or generally know in either party's industry, information already known by the party receiving the information prior to commencing the discussion that led to this Agreement, information developed independently by the receiving party without reference to the other party's Confidential Information, or information lawfully obtained from a third party without an obligation of confidentiality. Each party agrees that it will keep confidential and not disclose to others the Confidential Information of the other party unless expressly permitted by this Agreement or consented to in writing by such other party. Notwithstanding the foregoing, a party may disclose Confidential Information of the other party to its Related Persons who have a legitimate need to know such Confidential Information. In addition, Bank may disclose Confidential Information of Dealer with BrandSource and its affiliates, BrandSource and its affiliates may disclose any information concerning Dealer (whether or not such information is owned by Dealer) to Bank, and each party and its Related Persons may disclose Confidential Information of the other party as required by Law, including by any subpoena, court order or regulatory request. Each party agrees to use not less than commercially reasonable efforts to safeguard and protect the Confidential Information of the other party. This Section 4.7(a) shall survive termination of this Agreement for three (3) years except that it shall survive in perpetuity with respect to Dealer's obligations regarding NPI.

(b) Privacy and Security. Dealer shall comply with all privacy, information security, data security, safeguarding and protection of information, disposal, destruction, security breach, financial fraud mitigation and similar Laws, in connection with applicants for Accounts, Cardholders or NPI, that are applicable to Dealer or Bank. Dealer shall (i) maintain standards relating to privacy and security of all NPI and Card Program transaction data that are no less stringent than the Payment Card Industry Data Security Standards adopted by the Payment Card Industry Security Standards Council, as amended from time to time; (ii) maintain an information security program designed to implement appropriate administrative, technical and physical safeguards to (A) ensure the security, confidentiality and integrity of NPI and Card Program transaction data; (B) protect against any anticipated threats or hazards to the security or integrity of NPI and Card Program transaction data; (C) protect against unauthorized access to or use of NPI and Card Program transaction data which could result in substantial harm or inconvenience to an applicant for an Account, a Cardholder or Bank; and (D) ensure the proper disposal of NPI and Card Program transaction data; and (iii) continually review and update its standards and information security program in a commercially reasonable manner to address newly identified or emerging security risks. Dealer shall promptly notify Bank in the event it becomes aware of any actual or suspected loss of, or unauthorized use, modification, destruction or disclosure of, or access to, NPI or Card Program transaction data (any of the foregoing, a "Security Breach"), and take such actions as are commercially reasonable or necessary, to assess the nature and scope of such Security Breach to prevent further Security Breaches. Bank shall have the sole right to determine whether to provide notice to affected Cardholders of any Security Breach, as well as the timing and form of such notice, and Dealer agrees to provide such cooperation as Bank may

reasonably request in connection with such notice to Cardholders. The cost and expense of any such notice to Cardholders shall be borne by Dealer. Bank and its regulator(s) shall have the right to review Dealer's and its service providers' security practices and procedures upon reasonable notice and to visit Dealer's and its service providers' facilities to evaluate Dealer's security processes and controls. Any deficiencies shall be promptly corrected by Dealer within timeframes that are satisfactory to Bank. This Section 4.7(b) shall survive the termination of this Agreement.

(c) Related Persons. A party to this Agreement shall cause its Related Persons to comply with Section 4.7(a) and Section 4.7(b) to the same extent such party is obligated to do so, and such party shall be responsible for any refusal or failure of any of its Related Persons to do so. This Section 4.7(c) shall survive the termination of this Agreement to the same extent that Section 4.7(a) or 4.7(b) (as the case may be) survive.

(d) Ownership of Information. All NPI and any other information obtained by Bank as a result of Applications or opening or maintaining Accounts shall be deemed the property of Bank and not of Dealer and may be used by Bank and any Person selected by Bank for any lawful purpose (including the marketing and sale of financial and non-financial products and services); provided, however, that without limiting Bank's ownership of any NPI or other information, Bank agrees that Dealer owns information relating to applicants for Accounts and Cardholders that Dealer lawfully develops independently of the Card Program. Dealer may use such information for any lawful purpose that is not a Breach of this Agreement or other agreement to which Dealer and Bank are now or hereafter parties.

Section 4.8 Dealer Application; Financial Information.

(a) Dealer represents and warrants to Bank that all information in the Dealer Application or otherwise provided by Dealer in connection with the Dealer Application is true, accurate and complete.

(b) Upon request by Bank, Dealer shall provide Bank with financial statements and such other financial information reasonably requested by Bank.

Section 4.9 Sales Tax and Similar Taxes.

(a) Dealer agrees that Bank may, at its own expense, file refunds or claim deductions during the Term with respect to sales tax or other similar tax paid on sales of tangible property related to any Accounts in states (and local jurisdictions) designated by Bank.

(b) Dealer and Bank agree that Bank is the party entitled to claim any refunds or deductions on any and all Accounts assigned to or originated by Bank. Dealer agrees that it has not and will not claim a deduction or refund with respect to any Accounts and hereby relinquishes to Bank all rights to the Accounts and all rights to claim such deductions or refunds. Dealer and Bank hereby make an irrevocable election that designates and entitles Bank (and not Dealer) to claim the deduction or refund with respect to any Accounts found worthless and charged off for income tax purposes.

(c) Dealer and Bank acknowledge that a state revenue department may disclose relevant confidential information to all parties involved in order to support and confirm the refunds or deductions. Dealer and Bank agree to furnish any and all documentation required or requested by a state revenue department that is necessary to support the refunds or deductions. Dealer shall provide Bank within sixty (60) days of Bank's written request all information reasonably requested by Bank to support or verify the refunds or deductions, including information contained in Dealer's state or federal income tax returns or from Dealer's computer systems. If a state requires an election form to be filed as a condition to receiving a refund or deduction, Dealer agrees to provide and execute an election form as is required by Bank or the state revenue department. Bank is entitled to retain 100% of all refunds or deductions received. This provision cannot be amended or revoked unless an amendment to this Agreement, signed by both Dealer and Bank, is filed with the state revenue department. Bank and Dealer agree that Bank shall file this Agreement as an election with the state revenue department pursuant to state Law.

Section 4.10 Assignability; Successors and Assigns. This Agreement and any of the rights, interests and obligations of Bank hereunder may be assigned to a parent, subsidiary or affiliate of Bank. Bank may assign or transfer all or any part of its rights, interests and obligations under this Agreement to any Person then having adequate resources and the ability to perform the assigned obligations. This Agreement and any rights hereunder may not otherwise be assigned or transferred (including by operation of law) without the prior written consent of the non-assigning party, which consent may be withheld in the non-assigning party's sole discretion. The rights and obligations of the parties hereto shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of each of them. Dealer shall notify Bank not later than twenty (20) days before it or its parent corporation, if any, agrees to merge or be consolidated into or transfer all or substantially all of either of their respective assets to another entity. In such event, Bank may, upon its receipt of Dealer's notice, terminate this Agreement upon ten (10) days' notice to Dealer.

Section 4.11 Amendment. Except as otherwise provided in this Agreement, Bank may amend this Agreement upon thirty (30) days' prior written notice to Dealer. Except as otherwise provided in this Agreement, neither this Agreement nor any of its provisions may be amended, modified or waived except in writing executed by a duly authorized officer or agent of the party to be charged therewith.

Section 4.12 Entire Agreement. This Agreement, including the Operating Regulations and any other exhibits or documents incorporated by reference, constitutes the entire agreement between the parties with respect to their subject matter, and supersedes all prior agreements, negotiations and communications on such subject matter.

Section 4.13 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of South Dakota, without regard to that State's conflict of laws principles.

Section 4.14 Applicable Law or Regulation. Changes in the performance of either party's obligations under this Agreement necessitated by a change of any applicable Law shall not constitute a Breach of this Agreement.

Section 4.15 Non-Waiver. The failure of either party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect.

Section 4.16 Severability. If any provision, or portion thereof, of this Agreement is held invalid, illegal, void or unenforceable by reason of any applicable Law or public policy, all other provisions of this Agreement shall nevertheless remain in full force and effect.

Section 4.17 Notices. Whenever notice or demand under this Agreement is given to or made upon either party by the other party, such notice or demand shall be given in writing, (i) by depositing it in the United States mail addressed to such party at its address as provided below, with postage thereon prepaid, (ii) by courier, nationally recognized overnight delivery service, or similar method, to the at the address set forth below. In addition, notice to or demand upon Dealer may be given via email or facsimile (or if applicable, via the website) as set forth below.

If to Bank: Citibank, N.A.
Attn: Citicorp Credit Services, Inc. (USA)
1000 N. West St.
Wilmington, DE 19808
Attn: Citi Retail Services/Sr. Vice
President

With a copy to: Citicorp Credit Services, Inc. (USA)
6460 Las Colinas Blvd., LCB-165
Irving, TX 75039
Attn: Legal Department/Citi Retail
Services

If to Dealer: At Dealer's address, email address or facsimile number set forth in the Dealer Application or at any other last known address, email address or facsimile number of Dealer.

Any notice or demand so sent in accordance with this Section 4.17 shall be deemed to have been given and received at the time it was sent.

Either party may change the address (and in the case of Dealer, email address and facsimile number) to which notice or demand shall be sent by giving written notice of such change to the other party in the manner provided herein.

Section 4.18 Captions. The captions used in this Agreement have been inserted for convenience and for reference only and shall not be deemed to limit or define the text of this Agreement.

Section 4.19 Joint and Several Liability. If two or more Dealers submitted one or more Dealer Applications to Bank jointly or under other circumstances such that they applied to Bank together, upon acceptance of this Agreement by Bank

each such Dealer shall be deemed to be a party to and a Dealer under this Agreement (including the Operating Regulations) with Bank which shall be deemed to be a single agreement between Bank on the one hand and each such Dealer on the other hand, and each such Dealer shall be jointly and severally liable to Bank under this Agreement (including the Operating Regulations).

Section 4.20 No Third-party Rights. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person not party to this Agreement.

Section 4.21 Limitation of Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE PRINCIPLES, OR FOR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES (EXCEPT TO THE EXTENT NECESSARY TO REIMBURSE THE INDEMNIFIED PARTY FOR (A) JUDGMENTS ACTUALLY AWARDED AGAINST SUCH INDEMNIFIED PARTY TO THIRD PARTIES PURSUANT TO A FINAL ORDER OF A GOVERNMENTAL AUTHORITY OF COMPETENT JURISDICTION IN RESPECT OF SUCH TYPES OF DAMAGES OR (B) ANY OUT-OF-POCKET AMOUNTS ACTUALLY PAID TO A THIRD PARTY IN CONNECTION WITH THE SETTLEMENT OF ANY CLAIM, SUBJECT TO SECTION 4.1(c)).

Section 4.22 Waiver of Jury Trial; Arbitration. (a) IN ANY SUIT OR ACTION ARISING UNDER, OUT OF, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT (INCLUDING THE OPERATING REGULATIONS) OR THE CARD PROGRAM, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EACH OF THE PARTIES HERETO KNOWINGLY AND WILLINGLY WAIVES AND SURRENDERS SUCH PARTY'S RIGHT TO TRIAL BY JURY AND AGREES THAT SUCH ACTION SHALL BE TRIED TO A JUDGE SITTING ALONE AS THE TRIER OF BOTH FACT AND LAW, IN A BENCH TRIAL, WITHOUT A JURY.

(b) If and only if the foregoing jury waiver is unenforceable with respect to a suit or action described in Section 4.22(a), this Section 4.22(b) shall apply as follows:

(i) Any controversy or claim arising under, out of, in connection with or relating to this Agreement (including the Operating Regulations) or the Card Program, whether based in contract, tort or otherwise, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules then in effect (the "Rules") and this Agreement.

(ii) The arbitral panel shall consist of three (3) neutral arbitrators selected in accordance with the Rules, subject, however, to the following additional requirements. Each arbitrator shall be (A) admitted to the bar of any state of the United States or the District of Columbia for at least ten

(10) years and (B) chosen from AAA's roster of arbitrators for Commercial Financial Disputes. From a list of arbitrators meeting the foregoing criteria and provided by AAA, each party shall select one (1) arbitrator. The two (2) arbitrators so chosen shall choose the third arbitrator who shall be the chair of the panel.

(iii) The arbitrators' award is final and binding on the parties unless a party notifies the AAA of an intention to appeal to a second arbitral panel within thirty (30) days of notice of the award. The appeal will be heard by a panel of three arbitrators, constituted in the same manner as the initial panel. The appeal shall be conducted on a de novo review basis. The award of the appeal panel shall be final and binding.

(iv) Any arbitration hearing will be held at a place chosen by the arbitral panel or AAA in the following city: (A) Chicago, Illinois if Dealer is the claimant, or if in the case of an appeal, Dealer is the party initiating the appeal; or (B) the same city as the U.S. District Court closest to Dealer's principal office if the Bank is the claimant, or if in the case of an appeal, Bank is the party initiating the appeal.

(v) Judgment on any final and binding award rendered by the arbitrators may be entered in any court having jurisdiction thereof and is subject to judicial review and enforcement as provided by the Federal Arbitration Act (as amended from time to time, the "FAA") or other applicable Law.

(vi) This Section 4.22(b) is governed by the FAA.

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