

Control #

1. Business Information

Type of Business:

- Sole Proprietorship
- Corporation
- Partnership
- Medical or Legal Corporation
- Association/Estate/Trust
- Tax Exempt
- Government
- Limited Liability Company
- Other

Industry (Restaurant, Hotel, etc.): _____

Type of Goods or Services Sold: _____

Type of Application:

- Single Location
- Multiple Locations (Chain)
- Additional Chain Location

Number of Locations _____

Type of Business Location:

- Retail Storefront
- Internet Storefront
- Business Office
- Residence
- Bank
- Other

Years at Main Location _____

Bank Referral _____

3. Business Checking

Bank Name	Checking Account #	Transit Routing #	Years Open
Bank Address	City	State	Zip

4. Business Owners/Officers/Partners

Name of Primary Owner/Officer/Partner	Social Security #	Percent Owned	Phone #	Owner/Officer Since
Residence Address	City	State	Zip	Title
Name of Secondary Owner/Officer/Partner	Social Security #	Percent Owned	Phone #	Owner/Officer Since
Residence Address	City	State	Zip	Title

5. Transaction Information

Refund Policy: Refund in 30 Days or Less No Refund/Exchange Exchange Only N/A

<input type="checkbox"/> Visa® / MasterCard®	Total Monthly Sales:	Monthly Visa/MC Sales:	Avg Ticket:	% of MOTO:
<input type="checkbox"/> American Express®	SE #	ESA %	<input type="checkbox"/> Split Dial	
<input type="checkbox"/> Discover/Novus®	Merchant #:	RAP %	<input type="checkbox"/> Debit Cards FCS # for EBT:	
<input type="checkbox"/> Diners®/Carte Blanche®	Merchant #:	<input type="checkbox"/> Check Authorization Service Name of Provider:		
<input type="checkbox"/> JCB®	Merchant #:	Merchant #:	Check %	

6. Product Selection

	Device	Make	Model	Quantity	Rent/Buy Own
<input type="checkbox"/> Dial Terminal	Terminals				
	Printers				
	Pinpads				
	Imprinters	Standard			
<input type="checkbox"/> Internet	URL Address:				
<input type="checkbox"/> Personal Computer	POS Partner 2000 (Win 98 / NT4, 32 BIT, TCP / IP)				
<input type="checkbox"/> DialPay	Transaction Authorization & Capture by Telephone				
<input type="checkbox"/> Other Product	Name of Vital Certified Product:				

7. Dial Terminal Features

Phone Training for Merchant? Yes No

<input type="checkbox"/> Access Code (# to dial out of business): <input type="checkbox"/> Auto Batch Close HR: MIN: <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> Reset Reference # Daily <input type="checkbox"/> Receipt Header Line 4: <input type="checkbox"/> Receipt Header Line 5: <input type="checkbox"/> Receipt Footer:	<input type="checkbox"/> Invoice # Prompt On <input type="checkbox"/> Fraud Control On <input type="checkbox"/> Password Protect On	<input type="checkbox"/> Terminal Reminder to Check Totals (VeriFone only) HR: MIN: <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> Tip Option On <input type="checkbox"/> Clerk Enabled
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By signing the Merchant Application, Merchant understands the rates and fees stated below correspond to the volume and average ticket indicated on page 1 of the Application. In the event Merchant's actual activity is less than the volume and average ticket on page 1, Merchant is subject to an increase in rates and fees.

Business Name (as shown on Application)	Contact Name	Phone Number
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1. Visa/MasterCard Rates & Fees Visa Payment Options: Credit/Business Cards Consumer Debit/Prepaid Cards Both

<input type="checkbox"/> Fixed Rate: \$25 Minimum Discount, Non-Qual Assessment, Fixed Discount Rate	Rate	%
<input type="checkbox"/> Interchange: \$25 Minimum Discount, Actual Interchange, Per Item Fee	Per Item	¢
<input type="checkbox"/> Combination: \$25 Minimum Discount, Non-Qual Assessment, Fixed Discount+Per Item	Rate	% + Per Item ¢

Priced as: Retail Moto Hotel Supermarket

2. Other Transaction Fees

Diners/Carte Blanche	¢
Discover/Novus	¢
JCB	¢
American Express	¢
Debit Cards	¢
Check Verification	¢
Dial Pay Authorization & Capture	¢
Internet Provider Transaction Fee	¢

3. Miscellaneous Fees

New Account Application (One Time)	\$
New Account Setup (One Time)	\$
Internet Service Setup (One Time)	\$
Internet Provider Monthly Service Fee	\$
Chargebacks (per Chargeback)	\$
Help Desk (Monthly)	\$
Merchant Statement (Monthly)	\$
Web Reporting (Monthly)	\$

4. Equipment/Software Fees

Device	Rent or Purchase	Per Item	Quantity	Total
Terminal/Printer Set				
Terminal/Printer/Pinpad Set				
Terminal				
Printer				
Pinpad				
Imprinter				
PC Software License				
Monthly Support (Merchant Owned Equipment)				

5. Third Party Disclosure

Names of companies associated with Merchant who have access to transaction information. Failure to disclose this information can result in account cancellation.

Subtotal	
Sales Tax (if necessary)	
Total	

Merchant Signatures

By submitting this Merchant Account Application, Merchant: 1) Certifies that all information provided in this Application is correct, 2) Understands additional information may be needed before this Application can be fully evaluated, 3) Has reviewed and accepted all terms of the attached Merchant Agreement and Pricing Schedule, 4) Authorizes credit and debit entries to Merchant's business checking account, 5) Agrees to notify Stearns Bank NA if any information in this Application changes, 6) Understands that incomplete or inaccurate information may result in account denial or cancellation, 7) Agrees that in the event the Merchant Agreement is modified, continuing to process transactions constitutes acceptance of the revised Merchant Agreement, 8) Authorizes the request of consumer and business credit reports from consumer and business credit reporting agencies, and verification of all information contained in this Application.

Printed Name Owner/Officer/Partner 1	Signature	Date
Printed Name Owner/Officer/Partner 2	Signature	Date

For Processor & Bank Use

When visiting the merchant's place of business, please answer the following questions and sign below.

Address of location inspected <input type="checkbox"/> Business Address <input type="checkbox"/> Mailing Address <input type="checkbox"/> Other:	
Does name posted at business match business name on application?	Are store hours posted?
Does location have appropriate business signage?	Did you view merchant's inventory?
Was inventory consistent with merchant's type of business?	# of employees:
Does inventory appear to be adequate for the sales volume indicated on the application?	

Bank Name	Bank Representative Name	Bank Representative Phone #	Bank Representative Signature
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This agreement is between Stearns Bank NA ("Bank"), a Minnesota corporation and a business ("Merchant") that has requested payment processing services through Bank. Merchant understands that submission of a Merchant Account Application is 1) subject to approval by Bank and, 2) signifies Merchant's acceptance of the terms of this Merchant Agreement and Pricing Schedule.

1. **Card Acceptance:** Merchant agrees to accept payment options in accordance with association, network, and issuer guidelines. Merchant desires to accept the following payment options: [] Credit/Business Cards, [] Consumer Debit/Prepaid Cards, [] Both. If an option is not specified, Bank will assume Merchant desires to accept Both. In the event Merchant desires not to accept Credit/Business Cards or Debit/Prepaid Cards, Merchant is responsible for notifying Bank. Bank will notify Visa. Merchant is responsible for examining cards and indicating non-acceptance to cardholders as appropriate. If Merchant desires not to accept Credit/Business Cards or Debit/Prepaid Cards but then submits those payment types for transaction processing, the transactions will be subject to appropriate interchange and other normal transaction fees.
2. **Payment Processing:** Merchant agrees to process payments as instructed in operating cards and guides provided by Bank in conjunction with payment processing solutions.
3. **American Express:** By signing the Merchant Account Application, Merchant represents that the information Merchant has provided on the Merchant Account Application is complete and accurate. Merchant understands that the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to the business entity indicated in the Merchant Account Application along with the welcome letter upon approval of such business entity to accept the American Express Card by American Express Travel Related Services Company, Inc. By accepting the American Express card for the purchase of goods and/or services, Merchant agrees to be bound by the Terms and Conditions.
4. **Payment Solutions:** Merchant agrees to use the payment processing solution for which the merchant has applied and to notify Bank of any changes, including the addition or deletion of payment options and the addition or deletion of terminals or other equipment. If Merchant uses a payment solution not provided by Bank, Merchant is solely responsible for all risks associated with using such solution.
5. **Card Verification: Merchant agrees to follow proper card acceptance procedures.**
 - For Merchants, described as merchants who operate their business from a retail establishment, procedures include an examination of cards to verify the presence of appropriate card marks, cardholder signature, and valid start and expiration dates.
 - For Internet or MOTO Merchants, described as merchants who provide goods and services through the Internet or through Mail Order or Telephone Order (MOTO), the use of AVS (Address Verification Service) is required for all transactions processed.
6. **Card Present/Not Present: Merchant understands the card must be present at the time of a transaction in order for the merchant to perform the transaction.**
 - Merchant can process transactions in which cards are not present (for example, telephone, mail order, internet sales) only 1) For Merchants, if Merchant has notified Bank prior to processing such transactions, 2) For Internet or MOTO Merchants, if Merchant operates in a Card Not Present environment and notified Bank of this environment on the Merchant Account Application.
 - Internet and MOTO Merchants must observe best practices established for internet and direct marketers, including disclosure of Merchant's physical address and customer service phone number and hours of operation.
 - Merchant understands that when a card is not present at the time of a transaction, a higher degree of risk exists that can result in higher transaction fees, possible chargebacks, and potential merchant account cancellation in the event of excessive chargebacks or fraudulent transactions.
7. **Authorization:** Merchant understands that an authorization must be obtained for each transaction, regardless of dollar amount, and included on the sales receipt.
 - In the event of the failure of electronic point-of-sale equipment, Merchant agrees to obtain voice authorizations as instructed in operating cards and guides provided by Bank.
 - Merchant understands that an authorization is not a guarantee of payment, but an indication that at the time of the authorization, the card account is open and has available funds.
 - Merchant agrees not to accept a card or submit a transaction for settlement when authorization is denied.
 - Merchant will not try to gain an authorization by splitting the amount of a transaction into smaller, separate amounts.
8. **Sales Receipts:**
 - Sales receipts must include the following information: 1) Merchant name, 2) Type of transaction, 3) Value of the transaction, 4) Date of the transaction, 5) Terminal location where the transaction occurred, 6) Account number of the cardholder, and 7) Authorization number.
 - If Merchant uses an electronic printer connected to an electronic point-of-sale device, Merchant must obtain the cardholder's signature on the printed sales receipt.
 - If Merchant uses an electronic printer but keys the card number into the terminal, Merchant must: 1) Obtain the cardholder's signature on the electronic printer receipt, 2) Imprint the card on a sales draft using an imprinter and Bank supplied imprinter plate, 3) Complete the entire imprinted sales draft, 4) Obtain the cardholder's signature on the imprinted sales draft.
 - Internet Merchants must provide customers with a sales confirmation through e-mail. The sales confirmation must include the following: 1) Merchant name, 2) Type of transaction, 3) Description of the items purchased and their value, 4) Date of the transaction and date shipped, 5), Truncated Account number of the cardholder, and 6) Authorization number.
 - In all cases, Merchant is responsible for ensuring the legibility and completeness of sales receipts and sales confirmations.
9. **Back-Up Procedures:** When Merchant is unable to obtain electronic authorization due to malfunctioning equipment, communication interruption or other circumstances, Merchant shall handle authorizations in accordance with back-up procedures outlined in the operating guide. All non-bankcard authorizations shall be handled in accordance with the guidelines of the issuing companies of those cards.
10. **Cardholder Signatures:** Merchant is responsible for obtaining the cardholder's signature on each sales receipt and verifying the signature on the sales receipt matches the signature on the card. Cardholder signatures are required on all sales receipts unless Merchant has arranged with Bank to process transactions in which cards are not present. If Merchant is presented with an unsigned card, Merchant shall request further identification for verification. For Internet and MOTO Merchants, cardholder signatures are not applicable, but Merchant must have made previous arrangements with Bank to process transactions for which cards are not present.
11. **Returns:** Merchant agrees to clearly disclose Merchant's return policy to cardholders and to honor the return policy as disclosed.
 - For Merchants, clear disclosure consists of displaying applicable refund options on sales receipts near the signature area and in type at least ¼ inch high.
 - For Internet Merchants, the return policy must be clearly displayed at the merchant's internet-based store.
 - For MOTO Merchants, transactions fulfilled as telephone orders cannot be protected by any restrictive return policies, as proper written disclosure cannot be made at time of purchase.
 - In the case of returns in which Merchant extends a refund for purchases made with a charge card, Merchant shall not make any cash refunds but process a credit transaction according to instructions provided by Bank in operating cards and guides. Merchant must complete a credit voucher signed by the cardholder at the time of a return.
 - Merchant understands that when credits are issued, Merchant's designated business checking account is debited for the credit amounts.
 - Per item transaction fees apply to credits as well as purchases.
12. **Settlement:** Merchant agrees to balance and submit transactions for settlement each business day. Merchant understands that by not submitting transactions for settlement each business day, a higher degree of risk exists that can result in higher transaction fees and possible chargebacks.
13. **Payments:** All payments to Merchant for authorized transactions shall be made through the Automated Clearing House (ACH) and to the business checking account designated by Merchant in the Merchant Account Application. The time between the day of a transaction and payment to Merchant is dependent on when transactions are submitted and processed for settlement, when payments are processed by the ACH, and when Merchant's bank receives and processes payments from the ACH. Payments owed Merchant may be made in full, less discount, credits, chargebacks, fees, and other adjustments. Payments owed to Bank may be deducted from incoming transactions or debited against Merchant's designated business checking account at a time determined by Bank.
14. **Business Checking:** Merchant authorizes Bank, in accordance with this agreement, or other obligations owed to Bank, or its agents, to initiate credit and debit entries to Merchant's business checking account, or any other account maintained by Merchant at any financial institution that receives ACH files. This authority shall remain in effect until Bank has received written notification from Merchant of Merchant's termination of this agreement, Merchant has satisfied all payments owed to Bank, and all transactions submitted by Merchant have exceeded dispute and chargeback time limitations.
15. **Sales Receipt Storage:** Merchant agrees to store and maintain sales receipts for at least 2 years following the date of transaction. At the end of this period, Merchant shall destroy the records, leaving no legible information.
16. **Equipment:** Merchant must possess appropriate equipment for processing transactions in accordance with their merchant account, i.e. properly installed and programmed terminals, magnetic stripe readers, PIN pads, printers, etc.
17. **Bank-Provided Equipment:** Upon Merchant's request, Bank shall provide terminals and related equipment to Merchant for a fee. Bank shall be responsible for the maintenance of Bank provided equipment provided Merchant pays for all maintenance or repairs required as a result of Merchant's negligence or misuse of equipment. Merchant shall notify Bank immediately concerning any noticeable malfunction of or damage to the equipment. Equipment is the sole property of Bank and Merchant has no interest or property rights.
18. **Retrieval Request:** Merchant agrees to mail or fax copies of sales receipts to Bank within 24 hours of receiving a retrieval request from Bank. Merchant understands that failure to respond to a retrieval request within the time period with a copy of the transaction and proof of delivery to Bank shall constitute a waiver of all rights of Merchant to dispute the chargeback. This may result in higher transaction fees and termination by Bank of Merchant's account. For Merchants, the sales draft must be legible, accurate, complete, and signed by the cardholder. For Internet Merchants, a facsimile of the e-mail sent to the cardholder must be provided. For MOTO Merchants, the sales receipt completed by Merchant must be provided.

- 19. Chargebacks:** Merchant agrees to pay Bank for transactions successfully challenged by cardholders or card issuers in accordance with association guidelines relating to chargebacks and to permit Bank to debit Merchant's designated business checking account or other account as a result of chargebacks.
- Chargebacks can be caused by, but not limited to: 1) Illegible or incomplete sales drafts, 2) Duplicate sales drafts from the same transaction, 3) Cardholder disputes regarding the product, service, or price, 4) Merchant violations of association agreements, 5) Unauthorized transactions, 6) Transactions performed with counterfeit, altered, or expired cards.
 - Merchant authorizes Bank at its discretion to establish a reserve account held by Bank with an amount determined by Bank to be used to offset chargebacks.
 - Bank has the right to increase or decrease the amount of the reserve account depending on Merchant's chargeback activity or other risk factors determined Bank.
 - In the event of termination of Merchant's account by Merchant or Bank, Bank has the right to have a reserve account remain in effect for Merchant for at least 180 days following the date of termination of Merchant's account.
 - If Merchant owes Bank amounts under the terms of this agreement and fails to pay in full within 24 hours of a request by Bank, Bank has the right to consider amounts as uncollected and can initiate collection procedures, which may include the use of outside collection agents.
 - Merchant shall be responsible for any expenses incurred by Bank or their agents in an effort to collect amounts owed by Merchant.
 - In the event that Bank incurs fines from the associations due to excessive chargebacks, Merchant is responsible for such fines and authorizes Bank to debit merchant's designated business checking account accordingly.
- 20. Merchant Warranties:**
- Merchant warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended periodically, including the Federal Truth-in-Lending Act and Regulation Z and further to comply with all card association rules including, without limitation, the requirements of Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP) as well as any other security guidelines or requirements established by the card associations.
 - Merchant warrants that each transaction presented by Merchant to Bank for payment 1) Is a valid transaction completed in accordance with association and network regulations and according to instructions provided in operating cards and guides provided by Bank, 2) Is submitted following the delivery of merchandise or services to cardholders as described in the sales receipt, 3) Was completed by Merchant identified in the Merchant Account Application and no other entity, 4) Has not imposed, directly or indirectly, separate or additional fees or surcharges to the cardholder, and 5) Is not subject to any lien.
 - Merchant warrants that 1) To the best of Merchant's knowledge, the cardholder involved in a transaction has no reason to dispute the transaction, 2) In the event of a cardholder or card issuer dispute, Merchant shall hold Bank harmless.
 - Merchant warrants and agrees that without the cardholder's written consent, Merchant shall not sell, purchase, exchange, or disclose a cardholder's account number or other information to any third party for any reason other than to Merchant's agents for the purpose of assisting Merchant in the delivery of merchandise or services as part of the transaction, or to Bank, the card associations or networks, or pursuant to a government request.
- 21. Fraud/Factoring:** Merchant shall not accept, deposit, process, or enter into Merchant's terminal, a fraudulent sale, or any sale made by any other merchant. If Merchant does so, Bank can immediately terminate Merchant's account, place payments owed to Merchant on hold for at least 180 days, and add Merchant to the Terminated Merchant File. This action may result in preventing the Merchant from accepting card payments again or establishing another merchant account.
- 22. Payment Withholding:** In the event Bank believes fraud by Merchant has occurred or Merchant fails to provide funds for debits due to chargebacks, credits, or fees, Bank may hold all payments owed to Merchant for submitted transactions until Merchant fulfills financial obligations to Bank. Merchant understands that payments to Merchant's account that result from submitted transactions are provisional and may be debited from Merchant's account in accordance with association and network rules. If Merchant ceases to do business and does not claim funds held under this provision within 180 days, Bank may retain these funds.
- 23. Terminated Merchant File:** Merchant understands that Bank can add Merchant to the Terminated Merchant File if Merchant fails to comply with the terms of this Agreement or the provisions of the association rules.
- 24. Discount/Fees:** "Discount" refers to a percentage of the gross transactions processed by Merchant. "Interchange" refers to amounts assessed by the associations for the processing of transactions. "Fees" refers to amounts charged for any other purposes, including per transaction fees, chargeback fees, equipment use fees, or fees for other miscellaneous services.
- Amounts owed by Merchant to cover discount, interchange, or fees, are identified in a Pricing Schedule provided in conjunction with this Agreement.
 - Bank has the right to modify the amounts as necessary to offset any increase in costs experienced by Bank due to: association or network changes in rules, regulations, or operating procedures; any additional requirements imposed by federal or state government agencies or regulatory authorities; increases in telecommunication or other operating costs; or other increases in costs associated with providing services to Merchant under the terms of this Agreement.
 - Merchant agrees to pay the fees and charges identified in the Pricing Schedule, incorporated herein, and understands the Pricing Schedule may be modified, amended, or supplemented in accordance with this Agreement.
 - Merchant understands that Bank agrees to provide at least 30 days advanced written notice to Merchant in the event of changes to the Pricing Schedule.
- 25. Initial Discount:** Merchant understands that initial discount rates assessed by Bank are based on Merchant's projected sales volume, average transaction amount, and card acceptance practices. If Merchant's actual sales volume and average transaction amount are less than Merchant's projected sales volume and average transaction amount, Bank reserves the right to adjust discount rates to reflect Merchant's actual sales volume and average transaction amount without 30 days advanced written notice.
- 26. Merchant Account Application:** Merchant warrants that all information provided in the Merchant Account Application is complete and accurate. Merchant understands that if Bank finds information provided in the Merchant Account Application to be inaccurate, Bank has the right to immediately terminate Merchant's account. Merchant understands that discount rates, interchange, and other fees are based on sales volumes and average ticket identified by merchant in the Merchant Account Application. Should Merchant's actual sales volumes and average ticket vary from information provided in the Merchant Account Application, Merchant agrees that Bank can adjust discount, interchange, and fees accordingly, without prior notice to Merchant.
- 27. Billing:** Merchant must notify Bank of any billing error within 60 days of the billing date.
- 28. Term:** The initial term of this Agreement shall be for three years, subject to approval by Bank, and shall renew for each successive one-year term unless either party provides the other with 30 days written notice prior to the expiration of the current term. Bank may terminate this Agreement at any time without notice.
- 29. Termination:** If Merchant terminates this Agreement before the end of the initial three-year term, Bank may charge merchant a \$300 early termination fee. Upon termination of this Agreement, Merchant agrees to pay all amounts owed to Bank by Merchant, including the early termination fee if warranted. Bank can debit amounts owed to Bank by Merchant from Merchant's business checking account. Bank shall have the right to terminate this Agreement at any time without cause or notice.
- 30. Indemnity:** Merchant agrees to indemnify and hold harmless Bank from any claims, damages, costs, fees, and expenses, including reasonable attorneys' fees and expenses arising from 1) Merchant's provision, failure to provide, or alleged failure to provide, goods or services to cardholders, 2) Merchant's breach of terms or warranties set forth in this Agreement, 3) Any action by any federal or state agency, authority, or regulatory body involving Merchant, 4) Any claim for funds owed by Merchant. Merchant acknowledges liability for the actions, or failure to act, of Merchant's employees and agents in regard to this Agreement.
- 31. Force Majeure:** Both parties will be released from liability if unable to perform as specified due to wars, riots, acts of God, etc. Bank liability to Merchant shall not exceed the amount of the sales draft and Bank shall not be liable for any incidental or consequential damages. Bank accepts no responsibility other than authorization and electronic capture services for non-bankcards. For check authorization, validation, or guarantee service, Bank accepts no responsibility other than programming the electronic equipment to connect Merchant to 3rd-party vendor.
- 32. Notices:** Notices to Merchant will be sent to the same address provided by Merchant for the delivery of billing statements or other communications.
- Merchant shall notify Bank in writing at least 30 calendar days prior to any change in Merchant's name or location.
 - Notices to Bank must be written and will be deemed received when delivered in person or by other means providing a record of receipt from the U.S. Postal Service or other express mail or Messenger service.
 - Notices to Bank must be sent to: Stearns Bank NA, 4191 2nd Street South, St. Cloud, MN 56301.
- 33. Arbitration:** Any controversy or claim between or among the parties hereto will be determined by binding arbitration in accordance with the Federal Arbitration Act, applicable state law, and an arbitration administrator determined by Bank. Judgment on any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Agreement applies in any court having jurisdiction over such action in the state of California.
- 34. Assignment:** Merchant may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written permission of Bank. Any such assignment or delegation does not limit Merchant's obligations, indemnities, or liability to Bank. This Agreement is binding upon the parties hereto and to their respective successors and assigns.
- 35. Amendment:** Bank has the right to amend any of the terms of this Agreement provided Bank provides written notice to Merchant at least 30 calendar days prior to the effective date of the amendment. Continuing to process transactions constitutes Merchant's acceptance of amendments.
- 36. Attorney's Fees:** If a legal or arbitration proceeding is commenced in connection with any dispute under this Agreement, the prevailing party, as determined by the court or arbitrators, will be entitled to recover from the other attorneys' fees, costs, and in-house expenses incurred in connection with such action or proceeding.
- 37. Governing Law:** This Agreement shall be governed by the laws of the State of California and shall, in addition, be subject to the by-laws and operating regulations of the card associations and networks. Merchant shall indemnify and hold Bank harmless for any costs, fees, or expenses, which Bank may incur in enforcing its rights hereunder.
- 38. Miscellaneous:** If any court finds any portion of this Agreement invalid or unenforceable, the remaining provisions shall remain in force.
- 39. Guarantee:** The owners or officers, as indicated in the Merchant Account Application, individually and collectively agree to guarantee to Bank, its agents and successors, the prompt and complete payment of all debts and obligations that result from the establishment of an account under the terms of this Agreement. The guarantee will remain in effect until all said debts and obligations are paid in full, notwithstanding the termination or amendment of this Agreement.
- 40. Bank:** Merchant e-Solutions is a registered service provider for Columbus Bank and Trust, Columbus, GA. Bank may be contacted at: P.O. Box 23019, Columbus, GA 31902-3019 or at (706) 649-4900. Bank is the only entity approved to extend acceptance of card payments directly to Merchant.