# CARD ACCEPTANCE AGREEMENT FOR PARTICIPATING MERCHANTS

GE Money Bank, located at 170 Election Road, Suite 125, Draper, Utah 84020-6425 ("Bank") has established an open-end credit program for customers of dealers who participate in the program identified in the attached cover letter and/or dealer kit (the "Program"). Under the Program, customers may finance the purchase of goods and services provided by dealers who have applied to Bank and been approved for participation in the Program ("Merchant"). Under the Program, Merchant will process credit applications by which customers apply to Bank to establish credit accounts ("Accounts") and will accept credit cards issued under the Program ("Cards") all in accordance with the terms set forth below.

Bank also is a qualified member of Visa U.S.A., Inc. ("Visa") and MasterCard International, Inc. ("MasterCard") and, subject to the terms and conditions set forth below, is willing to provide authorization, processing and related merchant banking services to Merchant for such "Association"-branded credit cards and such other cards as Bank may, from time to time, decide to honor (including American Express and Discover branded credit cards) (collectively, "Bankcards" which, together with Cards, are collectively referred to as "Qualified Cards"). An "Association" is a group of Card issuer banks that facilitates the use of payment cards, such as the systems operated by MasterCard or Visa.

This Agreement supercedes and replaces in its entirety any previous agreement concerning the establishment of Accounts and the acceptance of Qualified Cards by Merchant. If Merchant is a new participant in the Program, this Agreement is effective upon Bank's approval of Merchant's application to participate in the Program. If Merchant is an existing participant under the Program, this Agreement will be effective when Merchant submits a transaction to or through Bank for processing fifteen (15) days or more after receipt of this Agreement (or Bank's having made this Agreement available to Merchant, including on a website designated by Bank), and once effective, its terms will apply to new transactions processed by Merchant as well as transactions processed under any predecessor agreement replaced hereby.

**1. Bank's Obligations.** Bank's obligations include the following:

(a) Establish and administer the Program in accordance with all applicable laws and the terms and conditions of this Agreement;
(b) Provide a point-of-sale process for Merchant to use to enter customer applications and Qualified Card transactions for authorization and processing;
(c) Provide to Merchant an "Operating Guide" which shall set forth instructions on how to submit and process transactions for Qualified Cards and any separate instructions applicable solely to Cards or Bankcards, as well as other relevant Program information;
(d) Provide to Merchant the approved forms of Account credit disclosures (credit applications, terms, privacy policies) and updates as they are published; and
(e) Contact Merchant in the event of any dispute requiring support from Merchant to resolve, which is made by an individual who has presented a Card (a "Cardholder") or a Bankcard (a "Bankcard Holder" and collectively with Cardholders, "Qualified Cardholder(s)") for the payment of goods or services.

**2. Merchant's Obligations.** Merchant's obligations include the following:

(a) Display point-of-sale signage relating to the Program which is distributed or approved by Bank;
(b) Promote, accept and process credit applications for Cards from and credit transactions with (i) consumer customers only for personal, family or household purposes, and (ii) commercial customers only for business and commercial purposes, in either case, in accordance with this Agreement and the Operating Guide and instructions from Bank (e.g., ensure that requested fields are completely filled out, verify identification, provide required terms and disclosures etc.), without discrimination of any kind;
(c) Honor without discrimination valid Qualified Cards as a method of payment for purchases and process transactions in accordance with the terms of this Agreement, the Operating Guide and the bylaws, rules, and regulations of an Association (including any amendments or updates, "Association Rules") and with such other procedures as Bank may from time to time prescribe for the authorization, processing, and settling of Qualified Card transactions; Merchant acknowledges that it received a copy of the Operating Guide;
(d) Process only bona fide charges and credits based on the sale of goods or services by Merchant in the ordinary course (and do not process cash advances or "rent-to-own" products); without the prior written consent of Bank, do not process transactions for products sold as part of any "going-out-of-business" or liquidation sale; ensure that each sale involving a Qualified Card is evidenced by a single complete record with the sale date and the sale amount, and other information as required by the Associations or by Bank and that no other credit provider has financed a portion of any sales transaction (other than a bona fide down payment or deposit); obtain prior to the delivery of the goods any down payment that may be required; transmit such transactions to Bank in the required format, as set forth in the Operating Guide; and, ensure that the corresponding information about charges and credits to Accounts (collectively, "Charge Transaction Data") is not submitted on behalf of a third party (including any liquidator or augmentation seller) and has not been altered in any manner not authorized by the Qualified Cardholder;
(e) Ensure that all information, about the Program (other than Bank's printed terms), and all Program advertising conducted by Merchant, provided or directed to prospective applicants, customers and Cardholders is complete, accurate and legally compliant, and refer prospective applicants and customers to the printed Program terms for detailed information;
(f) Deliver all goods and/or services covered by any charge processed under Section 3 hereof prior to the time the charge is processed;
(g) Promptly respond to, and fully cooperate with Bank in the resolution of, disputes concerning sales charged to a Qualified Card;
(h) Obtain an authorization code from Bank on all transactions prior to submission, and call Bank's voice authorization facility prior to completion of a transaction in any case involving suspicious or unusual circumstances, including those in which the signature on the sales slip does not match the signature on a Qualified Card;
(i) Pay all applicable fees (collectively "Merchant Fees") set forth on Bank's pricing schedule governing the Program and/or with respect to the submission of Charge Transaction Data relating to Bankcards;
(j) Maintain fair (as determined by Bank) and legally compliant refund, return and exchange policies, which are designed and reasonably expected to be easily understood by the average customer (it being agreed that any return policy that precludes reimbursement under any circumstances for services not rendered is deemed unreasonable) and ensure that any material restriction or limitation is clearly and conspicuously disclosed to customers in one or more documents signed by the customer and that such disclosure appears near the customer signature area of such documents;
(k) Comply in all respects at all times with applicable laws, the terms of this Agreement, the Operating Guide (as such Guide may be modified or updated from time to time by Bank), the Association Rules, and other bulletins provided to Merchant from time to time; and
(l) Wherever Merchant accepts Qualified Cards, it will inform the public of the Qualified Cards that it honors. However, Merchant may not indicate that any of the Associations endorses Merchant's goods or services.
(m) For each Program requiring Merchant to provide Bank with and perfect for the benefit of Bank a security interest in the product financed on an Account (as outlined in Operating Guide), Merchant will: (i) file and record all documents necessary to perfect a valid and enforceable first priority security interest for Bank in the Products purchased under each Account, and (ii) send Bank the filing receipts. In states where security interests are noted on the certificates of title or registration, Merchant will (x) complete the necessary forms and documents, (y) forward them, together with the appropriate fees, to the public officials/offices responsible for issuing the certificate of title of registration and (z) send to Bank evidence that Bank's security interest is noted on the certificate of title or registration. All required security interests shall be filed promptly after the Cardholder takes possession of the product, but in no event later than 20 days later.

**3. Settlement Process/Payment for Charges.**
(a) Merchant agrees to transmit to Bank, generally each day, but in no event later than two business days after the transaction date, complete and accurate Charge Transaction Data occurring since the immediately previous transmission, as provided in the Operating Guide. Additionally, as set forth in the Operating Guide, if Merchant provides home improvement goods or services, Merchant will deliver to Bank, by facsimile or other means: (i) the completed credit application (in case of the initial extention of credit); (ii) the sales slip with credit authorization noted on it; (iii) the work order or sales slip with evidence that any required federal and/or state law three-day rights of rescission have been given; (iv) a completion or delivery certificate; and (v) and other documentation Bank may reasonably require (together, the "Home Improvement Loan Documents"). Upon receipt of the Charge Transaction Data and any required documents (including the

Home Improvement Loan Documents if applicable), and provided Merchant is not in default under this Agreement, Bank will deposit to a bank account designated by Merchant the total amount of all charges reflected in such Charge Transaction Data (provided, that in the case of Bankcard transactions, Bank will facilitate the funds transfer between the various Associations and Merchant and, after Bank receives credit for such Charge Transaction Data, Bank will provide provisional credit to Merchant's account), less the total of (i) any credits reflected in such Charge Transaction Data, (ii) any amounts being charged back to Merchant, (iii) any Merchant Fees, which Bank may choose to deduct on a daily or monthly basis, in its discretion (and/or corrections to any such fees based on erroneous information submitted by Merchant), unless Bank elects to separately bill Merchant for such fees, and (iv) at Bank's option, any other amounts (including any fees) which may be owed, to Bank or to any of Bank's affiliates, by Merchant, by any of Merchant's affiliates, or under any other agreement or merchant number between Bank and Merchant. If at any time, the amount Bank owes Merchant is less than the amount Merchant owes Bank, (without regard to any Reserve Account established pursuant to Section 3(d) hereof), Merchant agrees to pay Bank the net difference (and Merchant acknowledges that Bank may delay presentation of further Charge Transaction Data to the Associations until Merchant makes a payment to Bank of an amount sufficient to cover the negative balance).

(b) Pricing relating to Merchant Fees (as well as any rebate or participation percentages available to Merchants) under this Agreement will be provided by Bank on pricing schedules, which Bank may distribute from time to time. If, within the timeframe set forth within the Operating Guide or any pricing schedule, any Account to which a rebate or participation percentage was paid to Merchant is: (i) paid in full, regardless of the funding source used to pay the Account in full, or (ii) in default (as evidenced by a copy of Bank's "Notice of Default"), or (iii) the Account is charged back to Merchant, then any and all of such rebate or participation funds paid by Bank shall be returned promptly to Bank following Bank's request. Unless otherwise expressly stated in the pricing schedule, pricing applicable to processing Bankcard transactions is based on all transactions qualifying under the Association Rules for the applicable Association interchange rates. For Charge Transaction Data that does not qualify, Association interchange fees provide for a "down-grade," and Bank will apply a higher rate for the non-qualifying transactions than the qualifying rate shown on the pricing schedule. Bank may modify the pricing schedule applicable to credit promotions under the Program or to Bankcard transactions in its discretion with notice to Merchant (including as a result of changes in Association fees (such as interchange, assessments and other charges)). Such new prices will be applicable to Merchant as of the effective date established by Bank.

(c) Merchant hereby authorizes Bank to initiate ACH credits and debits to Merchant's designated bank account for purposes of settling transactions hereunder, and making necessary adjustments and initiating payments due to Bank from Merchant hereunder. If applicable, such bank account may be the account utilized by GE Commercial Distribution Finance (including any successor or assignee thereof, "CDF") to settle obligations owing by Merchant to CDF under its floor plan financing agreement with CDF, in accordance with the terms and procedures for the auto-settlement function set forth in the Operating Guide. In such case, Bank may setoff amounts due either Bank or CDF against amounts due Merchant hereunder or under Merchant's agreement with CDF. Merchant is solely liable for all fees and costs associated with such ACH Account and for all overdrafts. Bank will not be liable for any delays in receipt of funds or errors in ACH Account entries caused by third parties, including but not limited to delays or errors by any Association or Merchant's bank.

(d) If Bank determines in its sole discretion that Merchant's financial condition has deteriorated, if Merchant breaches this Agreement, or if Bank experiences an unusual volume or nature of disputes and/or chargebacks, returns or credits relating to charges submitted by Merchant (based on Bank's experience with Merchant and/or other dealers), then Bank may withhold from the settlement payments otherwise due Merchant an amount Bank deems necessary to fund a non-interest bearing reserve account (the "Reserve Account"). Bank shall be the sole owner of the Reserve Account (if any), and may (but need not) debit the Reserve Account from time to time to satisfy any amounts owed by Merchant to Bank. Bank will return to Merchant any amounts remaining in the Reserve Account no later than one year after termination of Merchant's participation in the Program (the "Final Liquidation Date").

(e) Bank reserves the right to refuse to process any Charge Transaction Data presented by Merchant (i) unless a proper authorization/approval code is recorded, (ii) if Bank determines that the Charge Transaction Data is or will become uncollectible from the Qualified Cardholder to which the transaction would otherwise be charged, or (iii) if Bank determines that the Charge Transaction Data was prepared in violation of any provision of this Agreement, the Operating Guide or the Association Rules. Merchant acknowledges that receipt of an authorization/approval code for a Bankcard transaction indicates only that credit is available for the Bankcard transaction at the time the authorization is given, and it does not constitute a representation from Bank or from a Bankcard Holder's issuing bank that a particular Bankcard transaction is in fact a valid or undisputed transaction entered into by the actual Bankcard Holder or an authorized user of the Bankcard.

(f) Merchant will not (i) process any charge for more than the sale price of the goods or services (provided that Merchant shall include in the transaction amount any taxes imposed by law (such taxes shall not be separately collected)), (ii) impose any surcharge on transactions made using a Qualified Card, (iii) require the Qualified Cardholder to pay any part of any charge assessed by Bank to Merchant, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction charged to a Qualified Card, or (iv) set a dollar amount above or below which Merchant refuses to honor otherwise valid Qualified Cards.

(g) Merchant will not accept any payments from a Cardholder for charges billed on an Account (or any payment on a Bankcard), and will instead refer the Cardholder to Bank's payment address. If for any reason, Merchant inadvertently accepts a Cardholder payment, Merchant will hold such payment in trust for Bank and will immediately forward such payment to Bank for processing. Additionally, Merchant hereby grants Bank a limited power of attorney to cash and retain for its own account any Cardholder payments on Accounts which are erroneously made out to Merchant.

**4. Credit Applications.** Merchant will follow all procedures provided to it by Bank in taking and submitting to Bank credit applications for Cards, will ensure that all credit applications are signed in person by the applicant, and will provide to each applicant at the time the credit application is submitted a complete and current copy of the applicable terms and conditions and privacy policy that applies to the Account. Bank may, in its sole discretion, approve or decline any application submitted. Bank may also decline to pay or credit settlement proceeds to Merchant as would otherwise be required under Section 3 above if Bank determines that (i) Merchant has falsified the application in any respect; (ii) Merchant knows or reasonably should have known that the application contains false information; (iii) any information on the physical application does not match the information transmitted to Bank; (iv) the identification or verification requirements have not been satisfied; or (v) any other required procedures have not been met (an application meeting the description set forth in any of (i) through (v) above or that otherwise does not meet all of the requirements of this Section or the Operating Guide will be considered a "Defective Application"). If proceeds of any transactions have been credited to Merchant's account prior to Bank's discovery of any of the defects set forth above, Bank may charge back the amount of any or all transactions charged on the Account.

**5. Chargeback Rights**

(**a**) **Bank's Right to Chargeback**. Bank will bear all credit losses associated with purchases financed on Accounts (and the issuer of the applicable Bankcard will bear the credit losses incurred on Bankcards). However, Bank may charge back to Merchant any transaction on a Qualified Card when one or more of the following occurs:

(i) The Qualified Cardholder disputes the charge, if Bank has given Merchant an opportunity to respond and Bank determines that the Qualified Cardholder's dispute is valid.

(ii) The Qualified Cardholder refuses to pay, based on an assertion of a dispute about the quality of the merchandise or services purchased from, or any act or omission by Merchant, including any alleged breach of warranty provided by or through Merchant.

(iii) The charge(s) are incurred on an Account opened upon submission of a Defective Application.

(iv) The charge does not fully comply with any of (w) this Agreement (or any representations, warranties and covenants set forth herein), (x) the Operating Guide, (y) the Association Rules, and/or (z) applicable law.

(v) The charge is disputed, and Merchant cannot supply a copy of the underlying sales receipt, the Home Improvement Loan Documents, if applicable, or the Card application within seven (7) days of Bank's request (or such other period as may be required by an Association).

(vi) Bank determines that (x) any charge does not represent a bona fide sale (including without limitation fraud arising from fraudulent activities of Merchant's employees) by Merchant, or involved acts of fraud by any party, or (y) Merchant did not obtain an authorization/approval code as provided for in Section 2(h).

(vii) The goods or services purchased have not been delivered, provided or shipped.

(viii) The Qualified Cardholder alleges that the Merchant provided false or misleading information (e.g., incorrect information about credit promotions).

(ix) Any credit is submitted where there is no corresponding charge transaction.

(x) Any disputed or fraudulent charge or credit relates to a transaction where the Qualified Cardholder was not physically present at Merchant's location (e.g., by telephone or via Internet).

(xi) Any disputed or fraudulent charge or credit relates to a transaction where the Qualified Cardholder did not physically present the credit card (or other approved manifestation of an Account provided by Bank) or Merchant failed to obtain a physical imprint or electronic record of the Qualified Card (Merchant acknowledges that, under these circumstances, the fact that an authorization/approval code was obtained does not mean that a particular Qualified Card transaction is in fact a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Qualified Card).

(xii) The transaction was submitted to Bank more than thirty (30) days after it occurred.

(xiii) If the Program is associated with a named sponsor and any charge to an Account is submitted after Merchant is no longer an authorized participant in the sponsor's dealer network.

(xiv) With respect to any purchase transaction (or credit) relating to a Bankcard, there is any other applicable chargeback reason provided for under the Association Rules.

(xv) For each Program requiring Merchant to provide Bank with and perfect for the benefit of Bank a security interest in the product financed on an Account (as described in Section 2(m)), Merchant fails to (i) complete the steps necessary to perfect a valid and enforceable first priority security interest for Bank in the product financed on an Account within 20 days after the Cardholder takes possession of the product, or (ii) send all required documentation in respect of the foregoing within 120 days after the Cardholder takes possession of the product.

**(b) Excessive Chargebacks.** If Bank determines, in its sole discretion, that Merchant is receiving an excessive amount of chargebacks or attempted chargebacks, in addition to Bank's other remedies under this Agreement, Bank may take either or both of the following actions: (1) review Merchant's internal procedures relating to acceptance of Qualified Cards and notify Merchant of new procedures Merchant should adopt in order to avoid future chargebacks; and/or (2) notify Merchant of the imposition of a charge (or a new rate with respect to such a charge for processing chargebacks). Merchant also agrees to pay any and all Association fees and fines assessed against Merchant or against Bank relating to Merchant's violation of the Agreement, the Operating Guide or the Association Rules with respect to Bankcard transactions or with respect to excessive chargebacks on Bankcards under this Section.

**(c) Claims of Qualified Cardholders**. Merchant has full liability for the amount of any Charge Transaction Data for which Merchant's ACH Account has been provisionally credited and which is thereafter the subject of a chargeback. Merchant may subsequently resubmit Charge Transaction Data applicable to Bankcard transactions for a second presentation, but only in accordance with Association Rules. Once a chargeback becomes irreversible under Association Rules, Merchant shall not resubmit into interchange any such transaction even with the consent of the Bankcard Holder. Merchant may not resubmit transactions financed on Accounts under the Program under any circumstances.

**6. Provision of Processing Terminals/General Purpose Credit Card Processing.**

(a) Bank will provide a point-of-sale process, which may include processing terminals or other means (each, a "**Terminal"**), to be used for the electronic authorization and monetary settlement of Card applications and Qualified Card transactions (and which shall not be used to process other credit transactions without Bank's consent). Bank may also supply Merchant with a manual credit card imprinter, for use in the event the Terminal malfunctions. Any Terminal or imprinter provided to Merchant will remain Bank's property, and Merchant will return them to Bank at Bank's request. However, during the time Merchant has possession of the Terminal, Merchant will bear any personal property, use or excise taxes assessed on the Terminal. If Merchant fails to timely return any Terminal upon Bank's request following the termination of this Agreement, Merchant shall pay to Bank a fee, as determined by Bank from time to time. Merchant will be responsible for any damage or repair to a Terminal or imprinter provided to it by Bank, and Merchant will safeguard the Terminal and imprinter and use them only in accordance with applicable instructions and specifications. Bank specifically does not grant to Merchant any intellectual property rights associated with the Terminal or other point-of-sale equipment, software or peripherals.

(b) In order to process Bankcard transactions through Bank, Merchant must have requested such services (i) through Merchant's initial credit application with Bank, or thereafter, either (ii) through a separate written request to Bank, or (iii) by submitting a general purpose credit card transaction to Bank through a Terminal (**provided**, that such submission shall only serve as Bank's consent for Merchant to continue Bankcard processing if Bank provides an authorization to such transaction). Merchant's request to receive Bankcard processing services is separate from its right to receive Card processing services under the Program and is subject to separate consent by Bank. Merchant's use of the Terminals or point-of-sale process to process Bankcard transactions may be terminated at any time by Bank.

**7. Ownership of Accounts and Information.** Merchant acknowledges that Bank owns all Accounts and Cards, and all information concerning Cardholders, applicants and Accounts obtained in connection with the Program (collectively, "**Cardholder Information"**), and that Merchant has no ownership rights therein. Accordingly, Merchant will not represent itself as the owner of, or the creditor on, any Account or Cardholder Information. As a precaution, to confirm Bank's ownership of Accounts and related documentation, Merchant hereby grants to Bank a first priority continuing security interest in any right, title or interest that Merchant may now have or may hereafter be deemed to have in the Accounts and related documentation, in the Reserve Account, and in any goods charged to Accounts which have been returned to Merchant but for which Merchant has not submitted a corresponding credit transaction to Bank. Merchant authorizes Bank to prepare and file any documentation required to evidence and enforce this security interest, including UCC financing statements, and will sign any related documentation requested by Bank, including without limitation, any intercreditor agreements necessary to ensure that none of Merchant's other creditors asserts any claim on the Accounts, the Reserve Account or any related documentation.

**8. Merchant's Representations, Warranties and Covenants.** Merchant represents, warrants and covenants as follows:

(a) Merchant will forward to Bank promptly after receipt, at any time during or following Merchant's participation in the Program, a copy of any legal proceeding, or a communication relating to an Account or a Bankcard transaction received from a Qualified Cardholder or from a governmental or regulatory authority.

(b) Without Bank's consent, Merchant will not permit the sale of extended warranties, service contracts, gift certificates, stored value cards (or reloads), or any other future service or delivery obligation (including any pre-paid membership (periodic or lifetime) or similar product), to be charged to Accounts.

(c) Merchant will issue a credit to an Account (and not give any Qualified Cardholder cash) in connection with any return or exchange of merchandise or services originally charged to the corresponding Qualified Card; such credit shall be included in the next business day's transmission of Charge Transaction Data; the amount of such credit cannot exceed the amount shown as the total on the original charge slip, except by the exact amount required to reimburse the Qualified Cardholder for postage that the Qualified Cardholder paid to return merchandise; and, Merchant shall not issue a credit to any Qualified Cardholder unless Merchant shall have previously completed a retail charge transaction with such Cardholder on the corresponding Qualified Card.

(d) On behalf of Bank, Merchant shall (i) store (in accordance with the security requirements set forth below) original documentation of each Card transaction for at least one year from the date of the respective transaction (or such other period as may be required by an Association); (ii) retain copies of all charge and credit slips, original completed Card applications, and copies of all Charge Transaction Data submitted to Bank, for at least twenty-five (25) months and thereafter continuously unless after retaining such documents for the twenty-five month period Merchant offers to ship such documents to Bank and Bank authorizes Merchant to destroy them instead; and (iii) provide any or all of these records to Bank promptly, but no later than seven (7) business days following Bank's request.

(e) Merchant is in compliance with, and will continue to comply with, all applicable laws, rules and regulations, including but not limited to: laws relating to (i) its sales of merchandise and services; (ii) the advertising or sale of products and services on credit; (iii) point-of-sale practices and representations made by Merchant's employees and representatives; and (iv) laws relating to privacy and data security, including without limitation, the requirement to have and maintain a written data security policy.

(f) Merchant will provide only truthful and complete information to Cardholders regarding Accounts, and will take no action to prevent any amounts charged to any Qualified Card from being valid and enforceable against the applicable Qualified Cardholder.

(g) Merchant will properly code all promotional charges and will make any corrections necessary in the event of mistakes and disputes regarding promotions.

(h) Merchant is and will at all times remain solvent, duly organized, validly existing and in good standing under the laws of its state of formation, will not violate its organizational documents or materially violate any agreements it has with third parties, and will advise Bank promptly of any condition or default under any agreement Merchant has with any third party that may materially affect Merchant's prospects, continued operations, or property.

(i) Any and all information previously furnished by Merchant to Bank, or any information subsequently furnished by Merchant, including information provided in Merchant's credit application or registration for participation in the Program, is or shall be true and correct in all material respects when furnished.

(j) With respect to any transaction for which a Qualified Card is not physically presented, such as in any on-line, mail, telephone or pre-authorized transaction, Merchant must (i) have notified Bank in writing of Merchant's intention to conduct such transactions, and Bank must have agreed to accept them, and (ii) have reasonable procedures in place to ensure that each Qualified Card sale is made to a purchaser who actually is the Qualified Cardholder or the authorized user of the Qualified Card.

(k) For a Bankcard sale where the Bankcard Holder pays in installments or on a deferred payment plan, a separate sales authorization has been obtained and a separate sale record has been prepared for each installment transaction or deferred payment on the date(s) the Bankcard Holder agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Bank for processing, shall be deemed to be a part of the original Bankcard sale.

(l) Merchant will not submit a Qualified Card transaction for the purpose of (i) disbursing cash (or scrip) to the Qualified Cardholder, or (ii) refinancing an existing debt.

(m) Merchant will not require (i) a Qualified Cardholder to complete any postcard or similar device that includes the Qualified Cardholder's name, account number, Qualified Card expiration date, signature, or any other related account data when any such information would be in plain view when mailed, or (ii) request an account number from a Qualified Cardholder for any purpose other than as payment for the sale of Merchant's goods and/or services.

(n) Bank will send Merchant any request for information by a Bankcard Holder or Bankcard issuer relating to a claim or complaint concerning a Bankcard sale made by Merchant (a "Retrieval Request") that Bank cannot satisfy with the information in Bank's files. In response, Merchant shall provide a written response by certified or overnight mail or by confirmed fax (or by other means as agreed by Bank) setting forth the results of its investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within seven (7) business days after Bank notifies Merchant of such Retrieval Request (or such shorter time as the Association Rules may require and of which Bank notifies Merchant). Merchant acknowledges that its failure to fulfill a Retrieval Request in accordance with Association Rules may result in an irreversible chargeback.

**9. Cardholder Information/Confidentiality and Data Security.**

(a) From time to time, Bank will make available to Merchant, or Merchant may capture in the course of operations under the Program, certain fields of Cardholder Information, in connection with Bank's operation of the Program. Merchant agrees in each such instance to use the Cardholder Information only on behalf of Bank for purposes of promoting sales under the Program, and only in accordance with applicable law and Bank's privacy disclosures to Cardholders. Merchant also agrees not to transfer or disclose Cardholder Information to any third party without Bank's prior written consent. While Merchant may not make use of Cardholder Information provided to Bank in connection with applications for the Program, nothing in this paragraph is intended to restrict Merchant's use of its own customer list in any way, which list may include information about Cardholders that Merchant obtains on its own in the course of providing goods or services to Cardholders. Any Cardholder Information provided to Merchant by Bank may not be used to augment Merchant's own customer files, even where Merchant transmitted this information to Bank on Bank's behalf.

(b) Merchant will not sell, purchase, provide, or exchange information pertaining to Bankcard transactions, including, without limitation, any Bankcard Holder's name, address, phone number, date of birth, or Bankcard account number, or any CVV2 or CVC2 magnetic stripe data, AVS or PIN data, or any other Bankcard transaction or related information (collectively, "Bankcard Information" and together with Cardholder Information, "Qualified Cardholder Information"), to any third party, other than (i) to the applicable Association, (ii) as required by applicable law or court order, or (iii) to any entity that process, stores or transmits Bankcard Information on Merchant's behalf (a "Service Provider") (if any) and then, only for the purpose of assisting Merchant in performing its obligations hereunder.

(c) Merchant and Bank will each have a written policy that implement and maintains appropriate administrative, technical and physical safeguards to (i) protect the security, confidentiality and integrity of Qualified Cardholder Information, in accordance with applicable law, (ii) ensure against any anticipated threats or hazards to the security or integrity of Qualified Cardholder Information; and (iii) protect against unauthorized access to or use of Qualified Cardholder Information which could result in substantial harm or inconvenience to any Qualified Cardholder or applicant. Without limiting the foregoing, (x) Merchant is prohibited from storing CVV2 or CVC2, magnetic stripe track data, or AVS and PIN data, and (y) Merchant will store all media containing "Permitted Customer Information" (which is limited to the Qualified Cardholder's name, the Card or Bankcard account number, and the Qualified Card expiration date, if any) in an unreadable format and in an area limited to selected personnel on a "need to know" basis only. Prior to discarding any material containing Qualified Cardholder Information, Merchant agrees to destroy it in a manner rendering the Qualified Cardholder Information unreadable.

(d) Merchant and Bank will be responsible for the acts and omissions of any third party (other than transfers to or on behalf of the other party) to whom it transfers, provides access, or discloses Qualified Cardholder Information. Additionally, Merchant and Bank will each ensure that any third party (other than the other party) who obtains access to Qualified Cardholder Information through it, directly or indirectly, signs a written contract including strict restrictions on transfer or disclosure, requirements that the Qualified Cardholder Information be used only for the specific purpose for which it was disclosed (which purpose must be in connection with Merchant's permitted uses hereunder) and data security provisions corresponding to paragraphs 9(c) and (e). Merchant will notify Bank in advance if Merchant decides to engage a Service Provider that will have access to Qualified Cardholder Information. If any Association requires an audit of Merchant or any of Merchant's Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, Merchant agrees to cooperate with such audit and agrees to pay for all costs and expenses related to such audit, including all of Bank's costs relating to such audit, including attorney's fees. Bank may engage third parties to perform some or all of Bank's obligations under this Agreement, including, without limitation the servicing and administration of Accounts, and may share information with such third parties as needed to perform their contracted functions.

(e) In addition to the preceding provisions of this Section 9, Merchant agrees to comply with all security standards and guidelines that may be published from time to time by an Association, including, without limitation, the Payment Card Industry Data Security Standards ("PCIDSS"), the Visa Cardholder Information Security Program ("CISP"), and the MasterCard Site Data Protection ("SDP") program. All Service Providers used must be recognized by Visa as CISP compliant Service Providers and all payment applications used must be recognized by VISA as compliant with the Payment Application Best Practices ("PABP"). Merchant understands that failure to comply with the Association rules, including PCIDSS, CISP, SDP or other Association "Security Guidelines", or the compromise of any Qualified Cardholder Information, including account information, may result in an Association (or Bank) discontinuing Merchant's ability to process Bankcard transactions, as well as assessments, fines, and/or penalties by the Association, and Merchant agrees to indemnify and reimburse Bank immediately for any assessment, fine, or penalty imposed on Bank due to any such event or Merchant's breach of this Section and any related loss, cost or expense incurred by Bank.

(f) In addition to any other provisions of this Agreement, Merchant shall notify Bank immediately upon discovery or notification of any actual, potential or threatened security breach (i.e., unauthorized access or use) involving or which may involve any information about Bank's customers. Merchant shall also provide Bank with a detailed description of the incident, the type of customer information that was the subject of the security breach, the identity of the affected customers, and any other information Bank may request concerning the customers or the details of the breach, as soon as such information can be collected or otherwise becomes available. Merchant agrees to take action immediately, at its own expense, to investigate the incident and to identify, prevent and mitigate the effects of any such security breach, and to carry out any recovery necessary to remedy the impact. Merchant also agrees to bear any cost or loss Bank may incur as a result of the breach, including without limitation, the cost of notifying customers if required by applicable law, rule, or regulation or Bank reasonably determines notification should be provided.

**10. Merchant Information.** The information furnished by Merchant to Bank in its application for participation in the Program and thereafter is complete and accurate and fairly presents the financial condition and business of Merchant. Merchant will also provide Bank from time to time upon request a copy of Merchant's prepared financial statements and such other financial information prepared by Merchant in the ordinary course as Bank may reasonably request. Bank shall not disclose such financial information to any unaffiliated third party. Notwithstanding anything in the foregoing to the contrary, Bank may share information about Merchant's participation in the Program with sponsors and manufacturers whose products and services are sold by Merchant and financed under the Program. Additionally, Merchant will provide Bank with information of any change of control involving Merchant, or any change in Merchant's name, business structure or form, principal office, or state of incorporation, before or when the change occurs. Merchant information may be shared by Bank with its affiliates and with the Associations subject to the provisions of this Agreement and Association Rules. With prior notice and during Merchant's normal business hours, representatives of Bank may visit Merchant's business premises and may examine only that part of Merchant's books and records that pertain to Charge Transaction Data and Qualified Card sales and credits.

**11. No Consequential Damages.** Except with respect to indemnification of third party claims, and confidentiality/security obligations, set forth herein, (i) in no event shall either party be liable to the other for any special, incidental or consequential damages arising from the other party's actions under this Agreement, and (ii) both parties waive any claim for punitive damages arising from the other party's actions under this Agreement.

**12. Indemnification.**

(a) Merchant agrees to indemnify, defend and hold harmless Bank and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, any costs, expenses or reasonable attorneys' fees incurred by any indemnified party), to the extent arising out of any claim, complaint, or chargeback (i) made or claimed by a Qualified Cardholder with respect to any sale made by, or Charge Transaction Data submitted by, Merchant, (ii) made or claimed by any person or entity with respect to the products or services sold or provided by Merchant, or the advertising

or promotion involving such goods or services; (iii) caused by Merchant's noncompliance with the terms or covenants of this Agreement or with any provision of applicable law, including without limitation, the failure of any representation, warranty or covenant made by Merchant to be true and correct when made or deemed made, (iv) caused by Merchant's failure to comply in any material respect with the terms of the Operating Guide or Association Rules; (v) caused by any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant, (vi) the acquisition by Merchant from Bank, in connection with a charge or credit to an Account, of a Cardholder's Account number by telephone or by some other means, (vii) caused by circumstances relating to Merchant that create harm to or loss of goodwill to Bank or to an Association.

(b) Bank agrees to indemnify, defend and hold harmless Merchant and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, any costs, expenses or reasonable attorneys' fees incurred by any indemnified party) to the extent arising out of any claim or complaint based on (i) the failure of Bank's cardholder terms and conditions or Privacy Policy to comply with applicable law; (ii) an applicant's claim that Bank wrongfully declined his or her credit application; or (iii) Bank's material breach of this Agreement.

(c) The indemnity provided under this Section 12 shall survive the termination of this Agreement.

**13. Term/Termination.**

(a) Bank may terminate Merchant's participation in the Program, and this Agreement, at any time, if (i) Merchant breaches this Agreement or any agreement between Merchant and an affiliate of Bank, (ii) Bank determines that (x) Merchant's financial condition has deteriorated or Merchant otherwise ceases to meet Bank's Merchant underwriting criteria, or (y) there are an excessive number of disputes between Merchant and Qualified Cardholders, (iii) the Program is associated with a particular sponsor and either Merchant is no longer a participant in the sponsor's network or Bank's agreement with Sponsor is terminated, (iv) Merchant undergoes a change of control, (v) Merchant or any person owning or controlling Merchant's business is or becomes listed in the MATCH file (Member Alert to Control High-Risk merchants) maintained by Visa and MasterCard, (vi) any Association notifies Bank that it is no longer willing to accept Merchant's Charge Transaction Data, or (vii) Bank determines that circumstances relating to Merchant have or could create harm to or loss of goodwill to an Association or Bank. Bank may also terminate this Agreement or Merchant's participation in the Program, without cause upon fifteen (15) days written notice to Merchant. Merchant may terminate this Agreement without cause on fifteen (15) days' prior written notice to Bank. This Agreement will automatically terminate if a petition in bankruptcy is filed involving Merchant or if Merchant advertises, sends notice of or initiates any "going-out-of-business" or liquidation sale to which Bank has not consented in writing. Merchant acknowledges that if Bank terminates this Agreement for cause, Bank may place Merchant on the MATCH File (or any similar or successor reporting service) and Merchant shall indemnify and hold Bank harmless as a result of such placement.

(b) Notwithstanding termination by either party (i) the terms of this Agreement will continue to apply to any Accounts established or Qualified Card transactions occurring, prior to the effective termination date (by way of example, settlement, returns, submission of credits, and processing of chargebacks), (ii) without limiting the provisions of clause (i), the provisions of Sections 3(d), (3g), 5, 6, 7, 8(d), 9, 11, 12, 13(d) and 14 will survive such termination, and (iii) Bank may use Merchant's name and marks for purposes of liquidating, administering or collecting Accounts.

**14. Miscellaneous.**

(**a) Assignability.** Merchant may not assign this Agreement, or its rights or obligations hereunder without the prior written consent of Bank. Bank may, without Merchant's consent, assign this Agreement to an Affiliate, transfer or securitize all or any portion of the Accounts or any related rights or interests therein. Bank may also use subcontractors to perform obligations of Bank hereunder, but any such subcontracting will not relieve Bank of its obligations to Merchant hereunder.

**(b) Amendment.** This Agreement may be amended (or a new agreement substituted for it) by Bank by sending a notice of amendment to Merchant, and Merchant's submission of Charge Transaction Data to Bank after the stated effective date will constitute Merchant's agreement to the amendment. Unless an amendment expressly states otherwise, the amendment shall be effective as to all Accounts whether established or incurred before or after the effective date of such amendment.

(**c) Nonwaiver; Remedies Cumulative.** No delay by any party hereto in exercising any of its rights hereunder, or in the partial or single exercise of such rights, shall operate as a waiver of that or any other right. No right under any provision of this Agreement may be waived except in writing and then only in the specific instance and for the specific purpose for which such waiver was given. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided for by law or in equity.

**(d) Governing Law.** This Agreement and all rights and obligations hereunder, including, but not limited to, matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Utah. THE PARTIES HERETO WAIVE THEIR RIGHT TO REQUEST A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING IN ANY COURT OF LAW, TRIBUNAL, OR OTHER LEGAL PROCEEDING ARISING OUT OF OR INVOLVING THIS AGREEMENT, OR ANY DOCUMENT DELIVERED IN CONNECTION HEREWITH, OR RELATING TO ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**(e) Further Assurances.** Each party hereto agrees to execute all such further documents and instruments and to do all such further things as any other party may reasonably request in order to give effect to and to consummate the transactions contemplated hereby.

**(f) Notices.** Except as set forth in the next sentence, all notices must be given in writing and either hand delivered, mailed first class, postage prepaid, or sent via overnight courier (and will be deemed to be given when so delivered or mailed), in the case of Merchant, to the address set forth in the Merchant Application, and in the case of Bank, to the attention of Merchant Services, GE Capital Sales Finance, 950 Forrer Blvd., Kettering, OH 45420, or, in either case at such other address as shall be designated by such party in a written notice given to all other parties in accordance with the terms of this Section 14(f). In lieu of the foregoing notice requirement, Bank may elect to provide notice to Merchant hereunder via facsimile or e-mail at the facsimile number or e-mail address set forth in the Merchant Application (and such notice will be deemed to be given when so sent).

(**g) Exchange of Information.** Merchant authorizes Bank at any time to order or obtain a consumer or commercial credit report on Merchant and personal credit reports on the principals of Merchant (owners, partners, members, etc.). Subsequent reports may be ordered in connection with updating, reviewing, or continuing this Agreement. Bank may exchange information about Merchant or any of the other persons listed above in this Section 14(g) with other financial institutions, credit, trade associations or any Association. Additionally, Merchant hereby authorizes Bank to audit and monitor its administration and promotion of the Program through anonymous requests to open or use Accounts under the Program and by other means.

**(h) Financial Accommodation.** Merchant acknowledges that this Agreement is a financial accommodation contract for the benefit of Merchant, which means that it is not intended to be subject to assumption by a debtor in possession in bankruptcy.

**(i) Value-Added and Insurance Programs.** Bank and Bank's affiliates may market or may authorize third parties to market (i) additional products and services to Cardholders, via direct mail, billing inserts and otherwise and may finance such products or services on Qualified Accounts, and (ii) additional credit and financial products and services (including without limitation a general purpose bankcard) to customers at the point of sale or as a companion product for an established Account. Merchant will have no rights with respect to any proceeds of such additional products and services.

**(j) Force Majeure.** Neither party shall be deemed to be in breach of this Agreement if it fails to make any payment or perform any other obligation and such failure is a result of a force majeure event. As used herein, "force majeure event" shall mean any of the following: acts of God, fire, earthquake, acts or war or terrorism, explosion, accident, nuclear disaster, riot, material changes in applicable laws or regulations, including but not limited to a change in state or federal law, or other event beyond a party's reasonable control, rendering it illegal, impossible or untenable for such party to perform as contemplated in, or to offer the Program on the terms contemplated under, this Agreement.

**(k) Merchant Marks.** Merchant hereby grants Bank a nonexclusive license to use its name, trademarks, logos and other marks ("Marks") in connection with the administration and operation of the Program, and in connection with the liquidation of Accounts created pursuant hereto, during and after the term of this Agreement.

**(l) Press Release.** Merchant agrees not to issue any announcement concerning the Program or Merchant's relationship with Bank in a press release or other communication to the general public without Bank's prior written consent.

**(m) Credit Approval**. With respect to any credit approval mechanism or process employed by Bank in connection with the Program, Merchant acknowledges that it is a "service provider" for Bank for purposes of communicating credit decisions to Merchant's customers.

**(n) Call Monitoring.** With respect to any service or similar calls Merchant may make to Bank or Bank's service center(s), Merchant acknowledges that such calls may be monitored or recorded by Bank for quality assurance or other compliance purposes.

**(o) Entire Agreement.** This Agreement, together with the Association Rules, Operating Guide (which are made a part of this Agreement for all purposes), and the schedules and appendices, if any, attached hereto, is the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements whether written or oral. This Agreement supersedes any prior agreement between the parties, including the Existing Agreement, and will govern all prior transactions, including all transactions previously submitted to Bank, regardless of the date of submission. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.

**(p) No Internet Gambling.** Merchant shall not permit any Cards to be used to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.