AFS
AGILE FINANCIAL SYSTEMS

Rev 19 LLC (dba Agile Financial Systems)
2535 E. Southlake Blvd, #140
Southlake, TX 76092
817-754-1675 | www.go-afs.com

Merchant Application & Agreement

Avidia Bank

42 Main Street
Hudson, MA 01749
978-562-2222

Agent Name:_____ **Agent #:**_____			**Merchant #:** _____ **MCC:** _____		
Merchant Name (DBA Or Trade Name)			Corporate/Legal IRS Filing Name		
Location Address			Corporate Address (If Different)		
City	State	Zip	City	State	Zip
Contact Name	Contact Email Address	Customer Service Phone Number	Business Telephone	Federal Tax ID #	

Does this location currently accept payment cards?

☐ Yes ☐ No

Has merchant or owners/ principals ever been terminated from accepting payment cards from any payment network for this business or any other business? ☐ Yes ☐ No (If yes, please explain reason for termination)

_____

TYPE OF BUSINESS:

☐ Individual/Sole Proprietor ☐ Corporation ☐ Government ☐ Private State: _____

☐ Partnership ☐ LLC ☐ Non-Profit (Provide evidence of 501(c)(3) Status)

Public Traded-Stock Symbol _____ Years in Business _____ Months in Business _____

Product or Service being offered _____

NATURE OF BUSINESS:

☐ Retail ☐ Mail/Phone Order ☐ Internet ☐ Restaurant

☐ Lodging ☐ QSR ☐ Face to Face

☐ Other: _____

Seasonal Sales ☐ Yes ☐ No If yes, please check high volume months: J F M A M J J A S O N D

Method of Acceptance: (totals to equal 100%)

Credit Cards Swiped: _____% Key Entered: _____%

MO/TO: _____% Internet: _____% URL: _____

Monthly Card Volume: $ _____ Average Ticket: $ _____

American Express Volume: $ _____ High Ticket: $ _____

AMEX SE # (if applicable): _____

MO/TO QUESTIONNAIRE: COMPLETE THIS SECTION IF PROCESSING LESS THAN 75% CARD-PRESENT TRANSACTIONS:

1. What percentage of sales are to: Business Consumers _____% Individual Consumers _____%
2. Method of Marketing: ☐Newspaper/Magazine ☐Television/Radio ☐Internet ☐Direct Mail, Brochure and/or Catalog ☐Outbound Telemarketing Sales ☐Other: _____
3. Percentage of products sold via: Telephone Orders _____% Mail/Fax Orders _____% Internet Orders _____% Other _____%
4. Who's processing the order? ☐Merchant ☐Fulfillment Center ☐Other: _____
5. Who enters credit card information into the processing system? ☐Merchant ☐Fulfillment Center ☐Consumer ☐Other: _____
6. If credit card payment information is taken over the Internet, is payment channel encrypted by SSL or better? ☐Yes ☐No

If yes, please provide the following:

a. Do you own the product/inventory? ☐Yes ☐No b. Is the product stored at your business location? ☐Yes ☐No If No, where is it stored? _____

c. After charge authorization, how long until product ships? _____ days d. Who ships the product? ☐Merchant ☐Fulfillment Center

e. Product shipped by: ☐U.S. Mail ☐Other: _____ f. Delivery receipt requested? ☐Yes ☐No

Does Merchant use an independent service that stores, maintains, or transmits cardholder information: ☐No ☐Yes (If yes, please provide information below)

Name:_____ Phone Number:_____

Does Merchant use fulfillment house to fulfill product: ☐No ☐Yes (If yes, please provide information below)

Name:_____ Phone Number:_____

Have Merchant or Owner/Principals ever filed Business Bankruptcy and/or Personal Bankruptcy: ☐No ☐Yes (If yes, please explain below)

(required)
Explanation: _____

BANK DISCLOSURE:

Member Bank Information: **Avidia Bank, 42 Main Street, Hudson, MA 01749 Phone 978-562-2222**

Important Bank Responsibilities:

1. Avidia Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a Merchant.
2. Avidia Bank is responsible for educating merchants on pertinent Visa and MasterCard Network Rules with which Merchants must comply.
3. Avidia Bank, not the ISO, must hold, administer and control all reserve funds derived from settlement.
4. Avidia Bank, not the ISO, must hold, administer and control settlement funds for all Merchants.
5. Avidia Bank must be a party to the Agreement.

Merchant Information: Refer to this Merchant Application above.

Important Merchant Responsibilities:

1. Complying with Cardholder data security and storage requirements.
2. Maintaining fraud and Chargebacks below established thresholds.
3. Reviewing and understanding the Agreement.
4. Complying with the Network Rules.

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

Merchant Name: _____

Merchant Signature/Title: _____ Date: _____

PRINCIPAL/BENEFICIAL OWNERS:

Principal/Beneficial Owner #1:

First: _____ Middle Init: _____ Last: _____ SSN: __ __ __-__ __ __-__ __ __ __ Date of Birth: __ __-__ __-__ __ __ __

Title: _____ Home Address: _____

City: _____ State: _____ Zip: _____ Email Address: _____ Home Phone: __ __ __-__ __ __-__ __ __ __

% Ownership: _____ Controlling Interest ☐ Yes ☐ No DL #/State:* _____ DL Issue Date: _____ DL Expiration Date: _____

Principal/Beneficial Owner #2

First: _____ Middle Init: _____ Last: _____ SSN: __ __ __-__ __ __-__ __ __ __ Date of Birth: __ __-__ __-__ __ __ __

Title: _____ Home Address: _____

City: _____ State: _____ Zip: _____ Email Address: _____ Home Phone: __ __ __-__ __ __-__ __ __ __

% Ownership: _____ Controlling Interest ☐ Yes ☐ No DL #/State:* _____ DL Issue Date: _____ DL Expiration Date: _____

Principal/Beneficial Owner #3

First: _____ Middle Init: _____ Last: _____ SSN: __ __ __-__ __ __-__ __ __ __ Date of Birth: __ __-__ __-__ __ __ __

Title: _____ Home Address: _____

City: _____ State: _____ Zip: _____ Email Address: _____ Home Phone: __ __ __-__ __ __-__ __ __ __

% Ownership: _____ Controlling Interest ☐ Yes ☐ No DL #/State:* _____ DL Issue Date: _____ DL Expiration Date: _____

Principal/Beneficial Owner #4

First: _____ Middle Init: _____ Last: _____ SSN: __ __ __-__ __ __-__ __ __ __ Date of Birth: __ __-__ __-__ __ __ __

Title: _____ Home Address: _____

City: _____ State: _____ Zip: _____ Email Address: _____ Home Phone: __ __ __-__ __ __-__ __ __ __

% Ownership: _____ Controlling Interest ☐ Yes ☐ No DL #/State:* _____ DL Issue Date: _____ DL Expiration Date: _____

Controlling Position (If Not a Principal Owner Listed Above)

First: _____ Middle Init: _____ Last: _____ SSN: __ __ __-__ __ __-__ __ __ __ Date of Birth: __ __-__ __-__ __ __ __

Title: _____ Home Address: _____

City: _____ State: _____ Zip: _____ Email Address: _____ Home Phone: __ __ __-__ __ __-__ __ __ __

% Ownership: _____ Controlling Interest ☐ Yes ☐ No DL #/State:* _____ DL Issue Date: _____ DL Expiration Date: _____

*Driver's License is required for person(s) signing the Merchant Application. We may ask for additional, if needed.

CERTIFICATION OF BENEFICIAL OWNER(S)

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

By signing below, I attest that I have accurately provided the name, address, date of birth and Social Security Number (SSN) for the following individuals (i.e., the **beneficial owners**):

(i) Each individual, if any, who owns directly or indirectly, 25 percent or more of the equity interests of legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); **and**

(ii) An individual with significant responsibility for managing the legal entity costumer (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of "beneficial owner" may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (i.e., one individual under section (ii) and four 25 percent equity holders under section (i)).

I, the undersigned _____, certify that all of the information furnished above, with regard to information for each individual, if any, who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above is complete and accurate.

Signature: _____ **Date:** _____

SITE INSPECTION:

Merchant: ☐ Owns ☐ Rents

Building Type: ☐ Shopping Center ☐ Office Building ☐ Industrial Building ☐ Residence ☐ Stand Alone

Area Zoned: ☐ Commercial ☐ Industrial ☐ Residential

Square Footage: ☐ 0-500 ☐ 501-2500 ☐ 2501-5000 ☐ 5001-10000+

Based upon ISO's review, does Merchant have the appropriate facilities, equipment, inventory, personnel and license or permit to operate their business?

☐ No ☐ Yes

Comments: _____

BANK ACCOUNT INFORMATION:

Attach voided check for the Account where funds are to be deposited ☐ Checking Account ☐ Savings Account Legal Name (that appears on the account) _____

DBA Name: _____ Transit # (ABA Routing):_____ Bank Name: _____

Account # (DDA): _____ Re-enter Account # (DDA): _____

By providing the above referenced information, you are authorizing Bank to initiate ACH debit and credit transactions to said account.

DISCOUNT RATES & FEES:

FOR COST PLUS PRICING, ALL PAYMENT NETWORK INTERCHANGE WILL BE CHARGED AS PASS-THROUGH, IN ADDITION TO THE DISCOUNT RATE SPECIFIED BELOW. CHECK CARD NETWORK COSTS WILL BE CHARGED AS PASS-THROUGH ON ALL PRICING STRUCTURES. FOR PIN DEBIT TRANSACTIONS WITH AUTH FEE ONLY AND/OR COST PLUS PRICING, ALL PIN DEBIT NETWORK FEES WILL BE CHARGED AS PASS-THROUGH, IN ADDITION TO THE DISCOUNT RATE SPECIFIED BELOW.

TYPE OF APPLICATION: ☐ Regular ☐ Cash Discount ☐ Surcharge ☐ Flat Rate

CARD FEES:

TIERED	Credit	Check Card	Amex	Pin Debit
Qualified Rate	_____%	_____%	_____%	_____%
MID Qualified Rate	_____%	_____%	_____%	_____%
NON Qualified Rate	_____%	_____%	_____%	_____%
Auth Fee	$_____	$_____	$_____	$_____
INTERCHANGE (COST) PLUS	_____%	_____%	_____%	_____%
Auth Fee	$_____	$_____	$_____	$_____

OTHER FEES:

Monthly Customer Service Fee	$_____	Voice Authorization Fee	$_____	Pre-Arbitration Fee	$_____
Annual PCI Fee	$_____	Gateway Monthly Fee	$_____	Monthly URL Monitoring Fee (per URL)	$_____
Monthly PCI Fee	$_____	Gateway Per Item Fee	$_____	Pin Debit EBT/FNS Per Item Fee	$_____
Govt Compliance Fee	$_____	Paper Statement Fee	$_____	EBT/FNS Number	#_____
Batch Fee	$_____	Monthly Wireless Fee	$_____	EBT Cash Only ☐	
Chargeback Fee	$_____	Retrieval Request Fee	$_____	Same Day Funding ☐ Yes ☐ No	
Early Termination Fee	$_____	AVS Fee	$_____	If Yes:	
Setup Fee	$_____	Per Item Fee	$_____	Monthly Fee	$_____
Annual Fee	$_____	ACH Return Fee	$_____	Same Day Funding Discount	_____%
Monthly Minimum	$_____	Breach Protection Fee	$_____		

AXP Fee Disclosures:

Assessment A Fee (Applies to Gross AXP Card Volume)	Non-Swiped A Fee (Applies to Gross AXP Card-Not-Present Volume)	Data Quality Fee (Applies to All AXP transactions that do not meet quality standards)	Inbound Fee (AXP International Assessment Fee)
0.15%	0.30%	0.75%	0.40%

You, as Merchant, have the option of accepting MasterCard credit cards, Visa credit cards, American Express credit cards, credit cards issued by the Discover® Network, MasterCard signature debit cards (MasterMoney Cards) or Visa signature debit cards (Check Cards), or debit cards issued by the Discover Network. Merchant may elect to accept any or all of these card types for payment. If Merchant does not specifically indicate otherwise, the Merchant Application will be processed to accept ALL MasterCard, American Express, Discover Network, and Visa card types.

Elected Visa, Discover Network, American Express or MasterCard Card types **NOT** to accept:

_____

CONTINUING PERSONAL GUARANTY PROVISION ("GUARANTY") - PERSONAL GUARANTOR (Capitalized terms not defined in this Guaranty have the meanings set forth in the Terms and Conditions)

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

Principal #1: _____ Principal #2: _____

Printed Name: _____ Date: _____ Printed Name: _____ Date: _____

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. **What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.**

MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE

(Capitalized terms not defined in this Acceptance Section have the meanings set forth in the Terms and Conditions: https://go-afs.com/merchant-terms-conditions/**)**

By executing this Merchant Application ("Merchant Application"), on behalf of the merchant described above ("Merchant"), the undersigned authorized individual(s) each, jointly and severally, represents, warrants, acknowledges and agrees that: (i) all information supplied by Merchant to Rev 19 LLC dba Agile Financial Systems ("ISO") and Avidia Bank Corporation ("Bank") and contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application; (ii) if Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Merchant Application have the requisite legal power and authority to complete and submit this Merchant Application on behalf of Merchant and to make and provide the acknowledgments, authorizations and agreements set forth herein on behalf of Merchant and individually and to bind Merchant to the terms of this Merchant Application, the Guaranty and the attached Terms and Conditions, as may be amended from time to time (collectively, the "Agreement"); (iii) the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining, a merchant account for Merchant with the Bank and Bank and ISO will rely on the information provided herein in its approval process and in setting the applicable discount rate, approved average ticket, and approved monthly Card volume; (iv) Bank is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of Merchant and each person listed on this Merchant Application; (v) Bank will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction, Merchant agrees to pay such fees in accordance with the terms of the Agreement; (vi) the Agreement will not take effect until Merchant has been approved by Bank and a merchant identification number has been issued to Merchant; and (vii) Merchant and the undersigned have received, read and understood the Agreement, and Merchant agrees to be bound by the terms of the Agreement. Merchant acknowledges that this Agreement is being submitted to Bank, as the member bank of the Card Networks, and ISO is also a party to this Agreement. Merchant acknowledges that ISO will rely on the representations and warranties set forth in this Agreement and unless otherwise specified or prohibited by the Network Rules or Law, ISO will have certain rights under this Merchant Application and Agreement.

PCI COMPLIANCE TERMS AND CONDITIONS

Merchants are required to be PCI compliant and maintain compliance while your merchant account is open. Merchants that have not validated PCI compliance will be enrolled in our PCI Assistance Program at $29.95 per month starting at 60 days after the date the account was approved or 60 days after compliance has expired. If PCI compliance is not validated after being approved 180 days or compliance has expired, the merchant will be assessed the Proactive Security Fee (PSF) at $49.95 per month until account is compliant. If assistance is needed with completing the SAQ for compliance, please contact our Customer Support team.

For Merchants leveraging APEXNow please find Terms and Conditions here: https://go-afs.com/apexnow-terms

MERCHANT:

Principal #1: _____

Print Name: _____ Date: _____

Principal #2: _____

Print Name: _____ Date: _____

BANK:

By: _____ Date: _____

Name and Title: _____

Rev19 LLC (dba Agile Financial Systems):

By: _____ Date: _____

Name and Title:

☐ By checking this box, Merchant opts out of receiving future commercial marketing communications from American Express. In addition:

- You may continue to receive marketing communications while American Express updates its records to reflect your choice.
- Opting out of commercial marketing communications will not preclude you from receiving important transactional or relationship messages from American Express.
- American Express may use the information obtained in the Merchant application at the time of setup to screen and/or monitor Merchant in connection with Card marketing and administrative purposes.

APEXNow

POS Setup and Order Form

Merchant Information

DBA Name
(Up to 23 characters):

Equipment

1. Model	QTY:	Ownership: ☐ New ☐ Reprogrammed ☐ Swapped ☐ Free Terminal***	Price (Per Unit)
2. Model	QTY:	Ownership: ☐ New ☐ Reprogrammed ☐ Swapped ☐ Free Terminal***	Price (Per Unit)
3. Model	QTY:	Ownership: ☐ New ☐ Reprogrammed ☐ Swapped ☐ Free Terminal***	Price (Per Unit)
4. Model	QTY:	Ownership: ☐ New ☐ Reprogrammed ☐ Swapped ☐ Free Terminal***	Price (Per Unit)

Application Options

☐ Auto Close Time: ☐ Pin Debit ☐ AVS ☐ CVV2 ☐ Invoice ☐ Dial Up ☐ IP ☐ Cellular 4G/5G

☐ Surcharge or ☐ Cash Discount

Fee _____%

As an **optional** feature, you can set a minimum ticket value that will prompt the solution to apply a fixed dollar amount as a service fee as opposed to a percentage. For example, you can set the solution to charge $0.25 for all transactions below $5 and 3.5% for all transactions above $5. To enable this function, include the minimum transaction amount threshold and the fixed service fee you would like included.

Minimum Transaction Threshold: $_____ Fixed Amount: $_____

Equipment Deployment

Ship Equipment: ☐ Yes ☐ No | Delivery: ☐ Standard ☐ Next-Day Air ☐ Ground ☐ Other:

Ship to:

Terminal Application, Tip/Tax (Optional)

☐ **Retail Mode** ☐ **Retail w/tip** ☐ **Restaurant** ☐ **Other** _____

Tip Mode Options:

☐ Restaurant: This allows for a tip screen to be combined with the signature screen, or on receipt, after a transaction has completed.

☐ In-line: This mode prompts for a tip before a transaction is completed. Only one transaction, with the total sale amount, will be sent for processing.

☐ Tip on Receipt

Prompt for # of Guests: Set the number of guests at which the automatic gratuity amount below is automatically added to the check.

Auto Gratuity # of Guest Threshold: _____

Auto Gratuity Amount: _____ **%**

For example: If you have a party of 8 or more the auto gratuity is 18%

Configurable Tips: Configured tips will display on screen and on receipt for easy selection by the customer.

Tip Level 1: _____ %

Tip Level 2: _____ %

Tip Level 3: _____ %

Sales Tax: Enabling sales tax calculations will require a sales tax rate. The entered rate will calculate automatically on all transactions.

Sales Tax Rate: _____ **%**

Remote Clerk Management

Please list the admin that will have access to the software, he/she will be setup in MPMP. Please list the user's name, and the user's preferred 4-digit PIN. Usernames should only contain letters, character limit is 12. PIN cannot start with a '0'. If no PIN is provided below, one will be auto assigned and can be changed after the initial setup.

User Name: | User's Role: Admin | Preferred 4-digit PIN:

APEXNow

ApexNow Pricing (Per Month)

☐ ApexNow	☐ ApexNow MPOS	☐ ApexNow Smart POS	☐ ApexNow In-Store Mobile	☐ ApexNow POS	☐ ApexNow Register
$ _____	$ _____	$ _____	$ _____	$ _____	$ _____

☐ Order Ahead	$_____ Per Device	☐ ApexNow Semi-Integration	$_____ Per Device
☐ Support for Kitchen Printer	$_____ Per Device	☐ Email & Text Receipts	$_____ Per Device
☐ Cash Discount or Surcharge	$_____ Per Device	☐ Cellular Comm One-Time Fee	$_____ Per Device
☐ Gift Card* COMING SOON	$_____ Per Device	☐ Cellular Comm Monthly Fee	$_____ Per Device

ApexNow Total: $ _____

***Credit/Debit/Cash sale, tip/tax/transaction/user reporting, customizable receipts, and tip wizard included in all ApexNow Products.**

Payment		**Equipment Total:**
☐ Merchant Paying For Equipment	☐ Agent Paying For Equipment	$
☐ Credit Card* ☐ Bill To Statement ☐ ACH	☐ Bill CC on File ☐ Bill Against Residual**	+ Shipping and Taxes

* Merchant must be complete authorization form

** Agent must have a minimum of $500 in monthly residuals

*** Must include a signed equipment addendum form

User Acceptance

This Equipment Order Form is subject to the end user license agreement (the "Agreement") available at https://go-afs.com/apexnow-terms, which is hereby incorporated by reference. The undersigned has carefully read and agrees to the terms of the Agreement. The undersigned represents and warrants that he or she is authorized to execute this Equipment Order Form on behalf of the entity set forth above ("Merchant") and to bind Merchant to all of the terms and conditions set forth herein and in the Agreement.

Signature: _____ Print: _____ Date: _____

Notes:

AFS
AGILE FINANCIAL SYSTEMS

EQUIPMENT TERMS AND CONDITIONS IMPORTANT - READ CAREFULLY

1. **FREE EQUIPMENT AGREEMENT** – Subject to these terms and conditions (this "Agreement"), Agile Financial Systems - AFS ("Company") agrees to provide Merchant listed in the attached free equipment order form (the "Order Form") the hardware described in the Order Form (the "Equipment") solely for the purpose of processing transactions in accordance with the merchant agreement entered into between Merchant and Company (the "Merchant Agreement"). So long as Merchant is not in breach of this Agreement or the Merchant Agreement, the Equipment will be provided free of charge to Merchant for the term of the Merchant Agreement.

2. **TERM** – The term of this Agreement will run coterminous with the term of the Merchant Agreement. In the event of termination of the Merchant Agreement, this Agreement will automatically terminate. In addition, either party may terminate this Agreement upon thirty (30) days prior written notice. Company may terminate this Agreement immediately upon a breach by Merchant of any term, condition or covenant set forth herein that is not remedied within ten (10) days after written notice thereof is sent to Merchant. Termination of this Agreement shall not limit Company from pursuing any other available remedies.

3. **EFFECT OF TERMINATION; SURVIVAL** – Upon termination of this Agreement, Merchant will return the Equipment, including all cables, to Company, at Merchant's cost, free and clear of all liens, and in good condition and repair, reasonable wear and tear excepted. If such Equipment is not received by Company within ten (10) days after such termination, then Merchant shall be liable to Company for a replacement fee of $2,000. Further, upon any breach of this Section, Merchant will be liable, and Company will have the right to automatically charge Merchant's merchant account (as set forth in the Merchant Agreement) for Company's reasonable costs and expenses related to such Equipment, including costs and expenses for repair, protection and preservation of the Equipment and all reasonable attorneys and collection fees and expenses in connection with defending or enforcing Company's rights and remedies under this Agreement. All terms and any sections of this Agreement that are logically intended and required to survive expiration or termination of this Agreement to achieve their intent, shall survive without limitation.

4. **TITLE; OWNERSHIP** – Title to the Equipment will at all times remain with Company. Notwithstanding any other provision set forth herein, the Company or its third party licensors are and shall remain the sole and exclusive owners of the proprietary software and other intellectual property rights contained in the Equipment (the "Software"), including any amendments, modifications, derivative works, revisions, changes or other improvement thereto. Merchant has no right to use, make, sublicense, modify, transfer, rent, lease, sell, display, distribute or copy originals or copies of the Software, or to permit anyone else to do so. In addition, Merchant agrees to not (i) reverse engineer, unencrypt, disassemble, decompile or otherwise translate the Software or allow anyone else to do it, or (ii) remove any patent, copyright or trademark or other intellectual property notices that may appear on any part of the Software or Equipment.

5. **COVENANTS** – During the term, Merchant (i) shall maintain the Equipment in good condition and repair, reasonable wear and tear excepted, (ii) use the Equipment in compliance with all applicable laws, regulations and ordinances, (iii) shall promptly notify Company of the occurrence of any events which materially and adversely affect the value of the Equipment, including if it is stolen, and (iv) shall not, without the prior written consent of Company, sell, assign, exchange, lease, tend, license the use of, pledge, encumber, grant a security interest in or dispose of the Equipment. The Equipment is the property of Company. Therefore only Company is permitted to program the Equipment. Neither Merchant nor any third party shall program the Equipment without the written consent of Company. If the Equipment program is altered by anyone other than Company, Merchant will be responsible for all damages including fraud arising from such action. If the Equipment is damaged, then Merchant shall be responsible for all repair fees associated with the Equipment. Merchant shall not permit any repairs to the Equipment unless authorized by Company. If the Equipment is lost, then Merchant shall be responsible for its cost to be calculated at fair market value as determined in the sole discretion of Company. Such amount shall not exceed $395.

6. **GOVERNING LAW; WAIVER OF JURY TRIAL** – The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Texas (without regard to conflicts of laws principles). The parties hereby consent to the sole and exclusive jurisdiction to the state and federal courts located in Tarrant County, Texas for any dispute arising out of this Agreement.

7. **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY.

8. **DISCLAIMER OF WARRANTY** - EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER RELATED TO THE EQUIPMENT OR ANY OTHER MATTER, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE OR WORKMANSHIP.

9. **LIMITATION OF LIABILITY** - NOTWITHSTANDING ANY OTHER PROVISION IN THESE TERMS, COMPANY WILL NOT BE LIABLE TO MERCHANT OR ANY THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY THEORY OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES. IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY HEREUNDER FOR ANY AND ALL CAUSES, WHETHER ARISING OUT OF NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED $100

10. **INDEMNIFICATION** – Merchant agrees to defend, indemnify, and hold harmless Company, its subsidiaries, affiliates, and its and their respective officers, directors, employees, sub-contractors, suppliers, agents and representatives (collectively, the "Company Entities"), against any claim, demand, cause of action, or proceeding related to this Agreement ("Claim") brought by any party as a result of any breach of your obligations under this Agreement. You further agree to defend, indemnify, and hold the Company Entities harmless from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) that may result or arise from any Claim.

11. **LIMITATION OF REMEDIES** – MERCHANT ACKNOWLEDGES AND AGREES THAT ITS SOLE REMEDY, IN THE EVENT OF ANY DISPUTE, CLAIM OR ACTION, ARISING OUT OF OR IN ANY WAY RELATED TO OR RESULTING FROM THIS AGREEMENT OR OTHERWISE SHALL BE THE RETURN OF THE EQUIPMENT TO COMPANY.

12. **ENTIRE AGREEMENT** – This Agreement constitutes the entire agreement between the parties and shall supersede all previous communications, representations, agreements or understandings, either oral or written, between the parties with respect to the subject matter hereof.

13. **NOTICES** – All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first class mail, postage prepaid, sent to the addresses set forth herein.

14. **MODIFICATIONS; SEVERABILITY** – Company reserves the right to make changes to this Agreement at any time. If any term or condition of this Agreement shall be deemed invalid, void, or for any reason unenforceable, that term or condition shall be deemed severable and shall not affect the validity and enforceability of any remaining term or condition.

15. **NO ASSIGNMENT** – Merchant may not assign this Agreement without the prior written consent of Company and any attempt to do so without such consent shall be void.

DBA: _____

Model _____ **QTY** _____

AGREED:

Merchant Signature: _____

Printed Name:_____

Title _____ **Date:** _____