



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



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

<b>Agent Name:</b> _____ <b>Agent #:</b> _____		<b>Merchant #:</b> _____ <b>MCC:</b> _____	
Merchant Name (DBA Or Trade Name)		Corporate/Legal IRS Filing Name	
Location Address		Corporate Address (If Different)	
City	State	Zip	City
Contact Name	Contact Email Address	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)	

<b>TYPE OF BUSINESS:</b> Individual/Sole Proprietor    Corporation    Government    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 _____	<b>NATURE OF BUSINESS:</b> Retail    Mail/Phone Order    Internet    Restaurant Lodging    QRS    Face to Face Seasonal Sales    Yes    No    If yes, please check high volume months: J F M A M J J A S O N D
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<b>Method of Acceptance:</b> (totals to equal 100%)		Monthly Card Volume: \$ _____    Average Ticket: \$ _____
Credit Cards Swiped: _____%	Key Entered: _____%	American Express Volume: \$ _____    High Ticket: \$ _____
MO/TO: _____%	Internet: _____%	AMEX SE # (if applicable): _____
URL: _____ <i>*Must disclose all URLs linked to this merchant account for processing</i>		

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

- What percentage of sales are to:    Business Consumers \_\_\_\_\_%    Individual Consumers \_\_\_\_\_%
- Method of Marketing:    Newspaper/Magazine    Television/Radio    Internet    Direct Mail, Brochure and/or Catalog    Outbound Telemarketing Sales    Other: \_\_\_\_\_
- Percentage of products sold via:    Telephone Orders \_\_\_\_\_%    Mail/Fax Orders \_\_\_\_\_%    Internet Orders \_\_\_\_\_%    Other \_\_\_\_\_%
- Who's processing the order?    Merchant    Fulfillment Center    Other: \_\_\_\_\_
- Who enters credit card information into the processing system?    Merchant    Fulfillment Center    Consumer    Other: \_\_\_\_\_
- 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:

- 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? \_\_\_\_\_
- After charge authorization, how long until product ships? \_\_\_\_\_ days    d. Who ships the product?    Merchant    Fulfillment Center
- Product shipped by:    U.S. Mail    Other: \_\_\_\_\_    f. Delivery receipt requested?    Yes    No

<b>Does Merchant use an independent service that stores, maintains, or transmits cardholder information:</b>	No	Yes (If yes, please provide information below)
Name: _____	Phone Number: _____	
<b>Does Merchant use fulfillment house to fulfill product:</b>	No	Yes (If yes, please provide information below)
Name: _____	Phone Number: _____	
<b>Have Merchant or Owner/Principals ever filed Business Bankruptcy and/or Personal Bankruptcy:</b>	No	Yes (If yes, please explain below)
(required) <b>Explanation:</b> _____		

**BANK DISCLOSURE:**

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

Important Bank Responsibilities:

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

Merchant Information: Refer to this Merchant Application above.

Important Merchant Responsibilities:

- Complying with Cardholder data security and storage requirements.
- Maintaining fraud and Chargebacks below established thresholds.
- Reviewing and understanding the Agreement.
- 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 customer (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:						Based upon ISO's review, does Merchant have the appropriate facilities, equipment, inventory, personnel and license or permit to operate their business?  No Yes
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+		

**BANK ACCOUNT INFORMATION\*\*:**

Attach voided check for the Account where funds are to be deposited      Checking Account      Savings Account      Bank Name: \_\_\_\_\_

Legal or DBA Name: (as it appears on the Business Account) \_\_\_\_\_      Transit # (ABA Routing): \_\_\_\_\_

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:		Tiered	Interchange Cost) Plus	Dual Pricing	Surcharge	Flat Rate				
<b>CARD FEES:</b>				<b>OTHER FEES</b>						
<b>TIERED</b>	Credit	Check Card	Amex	Pin Debit	Monthly Customer Service Fee	\$_____	Gateway Per Item Fee	\$_____	Pre-Arbitration Fee	\$_____
Qualified Rate	_____%	_____%	_____%	_____%	Voice Authorization Fee	\$_____	Gateway Monthly Fee	\$_____	Paper Statement Fee	\$_____
MID Qualified Rate	_____%	_____%	_____%	_____%	Monthly PCI Fee	\$_____	Wireless Setup Fee	\$_____	Pin Debit EBT/FNS Per Item Fee	\$_____
NON Qualified Rate	_____%	_____%	_____%	_____%	Govt Compliance Fee	\$_____	Monthly Wireless Fee	\$_____	EBT/FNS Number	#_____
Auth Fee	\$_____	\$_____	\$_____	\$_____	Batch Fee	\$_____	Retrieval Request Fee	\$_____	EBT Cash Only	
<b>INTERCHANGE (COST) PLUS</b>										
Auth Fee	\$_____	\$_____	\$_____	\$_____	Chargeback Fee	\$_____	AVS Fee	\$_____	Same Day Funding	Yes No
<b>DISCOUNT METHOD:</b>										
Daily Discount		Monthly Discount		Setup Fee	\$_____	ACH Return Fee	\$_____	Monthly Fee	\$_____	
				Annual Fee	\$_____	Breach Protection Fee	\$_____	Same Day Funding Discount	_____%	
				Annual PCI Fee	\$_____	CB Reversal Fee	\$_____	Monthly URL Monitoring Fee (per URL)	\$_____	
						Monthly Minimum	\$_____			

<b>AXP Fee Disclosures:</b>			
<b>Assessment A Fee</b> <small>(Applies to Gross AXP Card Volume)</small>	<b>Non-Swipe A Fee</b> <small>(Applies to Gross AXP Card-Not-Present Volume)</small>	<b>Data Quality Fee</b> <small>(Applies to All AXP transactions that do not meet quality standards)</small>	<b>Inbound Fee</b> <small>(AXP International Assessment Fee)</small>
0.165%	0.30%	0.75%	1.00%

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:

**PRODUCT FEES:**

<b>APEXNow</b>											
1. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____			
2. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____			
3. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____			
MPOS \$_____		Smart MPOS \$_____		Lite \$_____		Terminal \$_____		Plus \$_____		Register Lite \$_____	
								Register Plus \$_____		Register Premium \$_____	

**Other Equipment**

1. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____
2. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____
3. Model:	QTY:	Ownership:	New	Reprogrammed	Swapped	Free Terminal <sup>(1)</sup>	Price (Per Unit)	\$_____

**APEXOnline (Monthly) - Requires E-Commerce MID**

Basic: \$0	Standard: \$24.99	Advanced: \$79.99	Pro: \$299.99
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**APEX Gateway**

Email:	QTY:	Monthly Fee: \$	Trans Fee: \$	Setup Fee: \$
VAR Contact Name:		Integration Partner Email:		
Additional Options:	WooCommerce	APEX ACH <sup>(2)</sup> \$_____	APEXConnect	
External Tech Support		Tech Support Provided by:		

**Other Gateway/Mobile**

Name:	QTY:	Setup Fee: \$	Monthly Fee: \$	Trans Fee: \$	Ownership: New	Reprogram
Email:						

**Terminal Applications**

i.e. Retail, Restaurant, Lodging, etc.

**Entitlements**

i.e. EBT

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**TERMINAL COMMUNICATION METHOD**

IP Based-DHCP	IP Based-Static	Cellular	Dial-Up
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**APPLICATION OPTIONS**

Auto Close <sup>(3)</sup>	Time:	Other Terminal Setup Info:						
Pin Debit	AVS	CVV2	Invoice	Restaurant Table #'s	Restaurant Server #'s	Restaurant Tip	Retail Tip	Tip at Time of Sale

**EQUIPMENT DEPLOYMENT**

Ship Equipment:	Yes	No	Delivery:	Next Day	Second Day	Ground	Other: _____	
Ship to:	DBA Address	Legal Address	Other: _____					

**PAYMENT**

**EQUIPMENT TOTAL**

Merchant Paying for Equipment/Shipping		Agent Paying for Equipment/Shipping		\$ _____
Bill to Statement	ACH	Bill CC on File <sup>(3)</sup>	Bill Against Residual <sup>(4)</sup>	+Shipping and Taxes

**SIGNATURE**

**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.

**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.

Notes: (1) Must include a signed Free Terminal Addendum form (2) Merchant agrees to T&Cs upon logging into APEX Gateway (3) Agent must complete electronic CC authorization form (4) Agent must have a minimum of \$1,500 in monthly residuals

Other Notes: \_\_\_\_\_

**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 EQUIVOCAL 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: \_\_\_\_\_



## ADDITIONAL DOCUMENTS

Please provide the additional supporting documentation to complete the application process.

ATTACH VALID COPY OF OWNER'S DRIVER'S LICENSE: \_\_\_\_\_

ATTACH ADDITIONAL SUPPORTING DOCUMENTS: \_\_\_\_\_