

First Bank of Beverly Hills 23901 Calabasas Road, Suite 1050 Calabasas, CA 91302	For Office Use Only (AP2.2) Agent # 000420000 Merchant # _____ Sic # _____ Site # _____ Date Rec'd _____ Input _____ By _____
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MERCHANT APPLICATION
ALL QUESTIONS MUST BE COMPLETED

Business Name:	Doing Business As (Exact name must appear on Fictitious Name Statement):		
Physical Business Address (no P.O. Boxes):	City:	State:	ZIP:
Contact Name:	Federal Tax I.D. #		
Business Phone:	Business Fax:	Email:	
Sales Method: (Must =100%)	Retail (Card Swiped) _____%	Retail (Card Keyed - With imprint and signature) _____%	Mail/PhoneOrder _____%
	Internet _____%	Other (specify) _____%	
Have Credit Cards Been Accepted Before:	Yes <input type="checkbox"/> No <input type="checkbox"/>	If Yes, submit previous 3 months of processing statements.	
Structure of Business:	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> LLC	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
Has Business or any Principal Owner ever had a merchant account with FBBH: (If Yes, please include Merchant Account #)			
Month and Year this business started:			
Business Location:	<input type="checkbox"/> Home <input type="checkbox"/> Office <input type="checkbox"/> Other (specify)	How Long at This Location :	
Method of Processing (if approved):	<input type="checkbox"/> ETC (terminal)	<input type="checkbox"/> Software	Other <input type="checkbox"/>
Description of Product/Service Sold (if applicable, include all Web site addresses):			
Methods Used to Solicit Customers:			
Number of Days to Prepare Shipment for Delivery to Customer from Date of Order:			
Customer Refund Policy: <input type="checkbox"/> Refund within 30 days <input type="checkbox"/> Exchange Only <input type="checkbox"/> Other (specify)			

PERSONAL INFORMATION

EACH PRINCIPAL MUST COMPLETE (If there are more than 2 principals, make an add'l copy of this page).

Principal Officer #1			
Title:	% of Ownership:		
Social Security Number:	Date of Birth:		
Residence Address:			
City:	State:	Zip:	
Home Phone Number:	Driver's License Number:	State:	
Principal Officer #2			
Title:	% of Ownership:		
Social Security Number:	Date of Birth:		
Residence Address:			
City:	State:	Zip:	
Home Phone Number:	Driver's License Number:	State:	

REFERENCES

MAJOR TRADE REFERENCES:		
1) Company Name:	Contact:	Phone Number:
2) Company Name:	Contact:	Phone Number:
BANK REFERENCES:		
1) Bank Name:	Acct. Number:	Phone Number:
2) Bank Name:	Acct. Number:	Phone Number:

VISA/MASTERCARD FUNDS DEPOSIT INFORMATION

Upon merchant account approval, Merchant hereby authorizes Bank to initiate ACH credit and/or debit entries including any reversals or adjustments on original entries to the Bank Account. This authorization is to remain in full force and effect until FBBH has received written notification from Merchant of its termination in such time and manner as to provide FBBH a reasonable opportunity to act on it. ****ATTACH A VOIDED BUSINESS CHECK FROM THE ACCOUNT****

Bank Name _____ Branch _____

Bank Phone Number: (_____) _____ City/State _____

Transfer/ABA # (9 digits) _____ Account # _____

***SERVICES ORDERED**

Monthly Bankcard Volume:	\$	Average Ticket Size:	\$
** Retail Visa/MC Qualified Rate:	%	Inquiry Fee:	\$.30
** Mail Order/Internet Qualified Rate:	2.50 %	Monthly Minimum:	\$ 20.00
Application Fee:	\$	Monthly Statement Fee:	\$ 10.00
Internet Monthly Access:	\$	Other:	

* All other fees are listed in Article V of the Merchant Bankcard Service and Security Agreement.

**Reference Section 1.19 , 1.20 , 1.21 . A mid-qualified transaction will be assessed a one hundred ten basis point (1.10%) surcharge. A non- qualified transaction will be assessed a one hundred fifty basis point (1.50%) surcharge.

RESERVE AMOUNTS

Cash Reserve Amount Percentage	%	Revolving Cash Reserve Days	
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EXISTING MERCHANT ACCOUNT NUMBERS

AMERICAN EXPRESS	Card#
DISCOVER	Card#
OTHER (SPECIFY)	Card#

MERCHANTS EXISTING EQUIPMENT

TERMINAL(S)	MODEL	S/N	
SOFTWARE	TYPE	ETC Type	
NEW OR RECONDITIONED EQUIPMENT ORDERED			
WILL MERCHANT BE: check one	<input type="checkbox"/> PURCHASING	<input type="checkbox"/> LEASING	<input type="checkbox"/> E-PROGRAMMING
ITEM	TYPE / MODEL / VERSION	QUANTITY	PRICE
TERMINAL(S)			\$
PRINTER(S)			\$
PIN PAD(S)			\$
SOFTWARE			\$

MERCHANT SITE SURVEY REPORT

Type of Building: Shopping Center Office Building Residence Separate Building
Square Footage: 0-250 251-500 501-2,000 2,000+ The Merchant: Owns Leases
Landlord Name: _____ Contact Person: _____ Phone: (____) _____
Time at this Location: _____ Is Business Name Visible on Signage? Yes No (if no, attach copy of signed contract or explanation)
Additional Comments:

PLEASE SUBMIT WITH 2 PHOTOS. 1 SHOWING EXTERIOR AND SIGNAGE AND 1 SHOWING INTERIOR AND STOCK.
I HEREBY CERTIFY I PERSONALLY CONDUCTED THIS PREMISES INSPECTION DESCRIBED ABOVE.
Print Name: _____ Rep # _____ Signature: _____ Date: _____

First Bank of Beverly Hills
MERCHANT BANKCARD SERVICE AND SECURITY AGREEMENT

This Merchant BankCard Service and Security Agreement ("Agreement") is entered into between First Bank of Beverly Hills, a federal savings bank ("Bank"), and the undersigned merchant ("Merchant"). This Agreement shall be effective upon the date of Bank's written acceptance of Merchant's application and notification to Merchant of final approval.

Recitals

Merchant desires to establish a Merchant BankCard Service arrangement with Bank, and has completed a Merchant BankCard Service Application (or other application form approved by Bank) ("Merchant Application").

Agreement

The parties hereto agree as follows:

ARTICLE I - DEFINITIONS

The following terms shall have the meanings indicated:

- 1.1 AUDIOTEXT MERCHANT. A merchant that customers access via telephone or fax. The contact with the merchant and subsequent transactions are initiated by the customer.
- 1.2 AUTHORIZATION. The verification of a Card Transaction by an authorization center. Authorization may be requested either electronically or by telephone. When a point-of-sale Terminal is used, the request for Authorization is done electronically.
- 1.3 CARD TRANSACTION. A transaction for a sale, rental or service, or any credit thereon, by and between Merchant and a bona fide Mastercard or Visa card holder ("Cardholder"), evidenced by a sales slip ("Sales Slip") or a credit slip ("Credit Slip") that the Merchant presents to Bank for processing through the Interchange System. A Card Transaction may include transactions where the Cardholder's signature is not obtained or where the Sales Slip or Credit Slip does not contain a physical card imprint so long as the transaction has been authorized by the Cardholder.
- 1.4 CASH RESERVE AMOUNT PERCENTAGE. The percentage as set forth in the Services Ordered Section contained in the Merchant Application portion of this form ("Services Ordered") that Bank is entitled to withhold from each Sales Transaction and place toward the Merchant Cash Reserve Account.
- 1.5 CHARGEBACK. When a Sales Transaction is returned for debiting to the Merchant Bank Account by Bank because of nonconformity with federal, state, local or Interchange System laws, ordinances, rules or regulations; Cardholder dispute; or violation of any term or condition of this Agreement.
- 1.6 CHARGEBACK PERIOD. The entire period during which a Chargeback may occur under applicable (i.e., current and future) Visa and Mastercard rules and regulations.
- 1.7 CHARGEBACK RATIO. The Chargeback Ratio shall be calculated by dividing the number of Chargebacks received in any month by the number of sales during that month.
- 1.8 CHARGEBACK RIGHTS. The Chargeback rights of Bank are specified in Section 4.9 of this Agreement.
- 1.9 CREDIT TRANSACTION. A Card Transaction that results in a credit to the Cardholder's account and a debit to the Merchant Bank Account.
- 1.10 DISCOUNT FEE. A fee charged on all Sales and Credit Transactions that is payable by Merchant to Bank for processing Merchant's Card Transactions as specified in Section 4.5.
- 1.11 MERCHANT BANK ACCOUNT. A business checking account established by Merchant.
- 1.12 MERCHANT'S BUSINESS. The business in which Merchant is engaged, as set forth specifically in the Merchant Application.
- 1.13 MERCHANT CASH RESERVE ACCOUNT. An account established by Bank funded by:
 - (a) withholding and therein depositing the Cash Reserve Amount Percentage from each Sales Transaction and
 - (b) cash payment by Merchant of an amount equal to any required cash reserve amount set by Bank
- 1.14 MONTHLY TRANSACTION LIMIT. The maximum aggregate amount of all Sales Transactions Merchant may submit to Bank for processing in a month, as set forth in the Services Ordered Section.
- 1.15 PROFILING PARAMETERS. Cardholder profiles established by the Bank for use by Audiotext Merchants.
- 1.16 REVOLVING CASH RESERVE ACCOUNT DAYS. The number of days as set forth in the Services Ordered Section that each deposit shall be held toward the cash reserve amount.
- 1.17 SALES TRANSACTION. A Card Transaction that results in a debit to the Cardholder's account and a credit to the Merchant's account.
- 1.18 INQUIRY. Any computerized function or a direct phone call to processor from merchant for an attempt for an authorization.
- 1.19 QUALIFYING TRANSACTION.
 - (a) Any swiped transaction that is fully authorized, presented to the Bank within one (1) business day following the transaction date, sale amount equals the authorization amount, and is presented with complete electronic capture of all data.
 - (b) Any card not present/key entered transaction that contains authorization, address verification, invoice/order number, sale amount equals the authorization amount, mail/telephone order indicator is on, and is presented to the Bank within one (1) business day following the transaction date.
- 1.20 MID-QUALIFIED TRANSACTION.
 - (a) Any swiped transaction that is fully authorized, presented to the Bank two (2) business day following the transaction date, and is presented with complete electronic capture of all data.
 - (b) Any card not present/key entered transaction that does not contain address verification, invoice order/number, mail/telephone order indicator is off, or is presented to the Bank two (2) business days following the transaction date.
- 1.21 NON-QUALIFYING TRANSACTION.
 - (a) Any swiped transaction that is not fully authorized, presented to the Bank three (3) or more business days following the transaction date, or any Business, Corporate, Purchasing, or Foreign Card.
 - (b) Any card not present/key entered transaction that is not fully authorized, presented to the Bank three (3) or more business days following the transaction date, and any Business, Corporate, Purchasing, or Foreign Card.

ARTICLE II - TERMS AND CONDITIONS

2.1 MERCHANT BANK ACCOUNT; OTHER BANK ACCOUNTS; SECURITY THEREIN.

- (a) Merchant shall establish a Merchant Bank Account with Bank or any financial institution of Merchant's choice that can accept automated clearing house transactions. To secure Merchant's liability for potential Chargebacks, fees, fines and any other charges or liabilities of Merchant to Bank, Merchant hereby grants to Bank a security interest in all deposits, regardless of source, made to any Merchant Bank Account and business deposit accounts in the name of Merchant at any depository institution, and in the proceeds of any of said deposits.
- (b) Bank may enforce said security interest without notice or demand of any kind upon Bank's reasonable determination that any term or condition of this Agreement has been breached, by making an immediate withdrawal from or freezing any or all of said deposit accounts, taking possession of any deposits made to said accounts and/or taking any other lawful action. Bank's security interest shall remain after the termination of this Agreement so long as any Card Transaction processed by Merchant remains subject to Chargebacks, and so long as any fee, charge, or cost set forth in Article V of this Agreement remains unpaid by Merchant or could be incurred by Bank.

2.2 MERCHANT CASH RESERVE ACCOUNT.

- (a) The Merchant Cash Reserve Account shall be maintained at Bank to cover costs of monitoring Chargebacks, Credit Slips, and any other Merchant liabilities arising under this Agreement. Bank may increase the required cash reserve amount, the Revolving Cash Reserve Account Days, or the Cash Reserve Amount Percentage at any time in its sole discretion without prior notice to Merchant.
 - (b) Upon termination of this Agreement, the Merchant Cash Reserve Account shall be retained for a period not less than seven (7) months following cessation of Merchant BankCard Services for the Merchant or at the conclusion of the Chargeback Period, whichever period is greater, to cover any Chargebacks, Credit Slips, uncollected Discount Fees, other fees, fines or any other Merchant liabilities that may arise under this Agreement after the date of termination.
- 2.3 MERCHANT'S BUSINESS.** Merchant shall use the Merchant BankCard Service only for transactions undertaken in the ordinary course of Merchant's Business.
- 2.4 COMPLIANCE WITH CARD ASSOCIATION RULES.** Merchant shall comply with and conduct its credit card activities in accordance with all applicable (i.e. current and future) MasterCard and Visa rules and regulations. Merchant shall pay, reimburse, and indemnify Bank for Bank's payment of, any fines or assessments imposed by MasterCard or Visa that relate to the credit card activities of Merchant.
- 2.5 CREDIT AND FINANCIAL INFORMATION.** Merchant authorizes Bank to obtain, from time to time, credit, financial, and other information regarding Merchant from other persons or entities, such as credit reporting agencies. Merchant also authorizes Bank to respond to requests from others for information regarding Merchant.
- 2.6 ADVERTISING.** Merchant shall comply with all applicable MasterCard and Visa rules and regulations concerning the use of service marks and copyrights owned by MasterCard or Visa.
- 2.7 SETTLEMENT OF CARD TRANSACTIONS.** Merchant authorizes Bank to settle all Card Transactions electronically via the Automated Clearing House ("ACH").

ARTICLE III - CARD TRANSACTIONS

3.1 HONORING CARDS.

- (a) Merchant shall honor without discrimination all valid Mastercard and Visa cards ("Cards") when properly presented as payment by customers in connection with bona fide, legitimate business transactions in connection with Merchant's Business.
- (b) Merchant shall not require, through an increase in price or otherwise, any Cardholder to pay any surcharge at the time of sale or to pay any part of any charge imposed on Merchant by Bank. However, discounts for payment in cash are permitted.
- (c) Merchant shall not establish minimum or maximum Card Transaction amounts.

3.2 CARD EXAMINATION.

- (a) Merchant shall not engage in any Card Transaction (other than audiotext, mail order, telephone order, Internet, or preauthorized transaction) with a Cardholder who fails to present the Card that is intended to be used to complete the transaction.
- (b) Before honoring any Card, Merchant shall do all of the following, as applicable:
 - (i) Check the effective date (if any) and the expiration date on the Card. Merchant shall not honor any Card that is not yet effective or that has expired.
 - (ii) Examine any Card security features (such as holograms) included on the Card.
 - (iii) Seek Authorization as required by Section 3.3 of this Agreement.

3.3 AUTHORIZATION. Before honoring any Card, Merchant shall request Authorization from Bank's designated authorization center at all times.

3.4 COMPLETING THE CARD TRANSACTION RECORD ("Transaction Record"). Except as otherwise provided below, Merchant agrees to do all of the following when honoring a Card:

- (a) Include on the Sales Slip the transaction date, a description of the goods or services sold in detail sufficient to identify the transaction, and the price of the goods or services (including any applicable taxes);
- (b) Obtain the signature of the Cardholder on the Sales Slip after the total transaction amount is noted on the Sales Slip;
- (c) Compare the signatures on the Sales Slip and the signature panel of the Card, and if the Card has a photograph of the Cardholder, to ascertain that the customer resembles the person depicted in the photograph, and if either identification is uncertain or Merchant otherwise questions the validity of the Card, to contact Bank's authorization center for instructions;
- (d) Complete a conventional Sales Slip, including the Cardholder's signature and an imprint of the Card, or include an imprint of the Card directly on a blank portion of the printer slip produced by the electronic terminal if Merchant is using a magnetic stripe reading terminal in connection with a transaction and that terminal is unable to read the Card's magnetic stripe;
- (e) Deliver a true and complete copy of the Sales Slip to the customer at the time of delivery of the goods or performance of the services;
- (f) Include the following on the printer receipt if the transaction is initiated at a point-of-sale terminal:
 - (i) the Cardholder's account number;
 - (ii) Merchant's name;
 - (iii) Merchant's location;
 - (iv) the amount of the transaction; and
 - (v) the date of the transaction;
 - (vi) Authorization code;
 - (vii) Description of merchandise or services;
 - (viii) the Cardholder's name and signature;
 - (ix) the cards expiration date.

3.5 TELEPHONE ORDERS, MAIL ORDERS, PREAUTHORIZED ORDERS, INTERNET ORDERS, AND INSTALLMENT ORDERS.

(a) If a Card Transaction is made by telephone order ("TO"), mail order ("MO"), Internet order ("IO") or preauthorized order ("PO"), the Sales Slip may be completed without a customer's signature or a Card imprint, but Merchant agrees:

- (i) to imprint legibly on the Sales Slip, or capture electronically (Internet only) sufficient information to identify Merchant and the Cardholder, including: Merchant's name and address, the Card issuer's Interbank number and bank initials (if any), the account number, the expiration date and any effective date on the Card, the Cardholder's name, and address and any company name;
 - (ii) to print legibly on the signature line of the Sales Slip the letters "TO", "MO", or "PO" for MasterCard transactions and "Recurring Transaction" for Visa transactions, as appropriate;
 - (iii) for telephone and mail order transactions, to include the address verification service and the expiration date as part of any Authorization inquiry; and to transmit sale data to Bank or Bank's processor within two business days of the authorization date including Merchant's customer service number for any consumer complaint; and,
 - (iv) to be liable for the amount of any Sales Slip generated in a telephone, mail, or preauthorized order transaction that proves to be uncollectible for any reason whatsoever.
- (b) In any non-imprint transaction, Merchant shall be deemed to warrant the customer's true identity as an authorized user of the Card.
- (c) In connection with a recurring transaction (or preauthorized order) pursuant to which goods or services are delivered to or performed for a Cardholder periodically, Merchant agrees to do all of the following:

(i) Obtain a written request from the Cardholder to charge the recurring transaction to the Cardholder's account. The written request must specify the amount of the recurring transaction, the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect. Merchant shall retain the Cardholder's written request for as long as the preauthorized order is in effect and must provide a copy to Bank upon its request.

(ii) Obtain a subsequent written request from the Cardholder containing the same information as the original written request before renewing a preauthorized order.

(d) Merchant may offer Cardholders an installment payment option for its mail/telephone order merchandise subject to the following conditions:

(i) Merchant's promotional material must clearly disclose the installment terms, including but not limited to:

(A) whether the plan is available only for selected items or for the total amount of any order; and

(B) how shipping and handling charges and applicable taxes will be billed. The material also must advise Cardholders who are not billed in the transaction currency of the Merchant that the installment billing amounts may vary due to fluctuations in the currency conversion rates.

(ii) No finance charges may be added by Merchant. The sum of the installment transaction may not exceed the total sales price of the merchandise on a single-transaction basis.

(iii) Authorization is required for each installment transaction.

(iv) Merchant may not deposit any transaction with Bank until the merchandise is shipped. Subsequent installment transactions must be deposited at intervals of 30 days or more, or on the anniversary date of the transaction (i.e., the same date each month).

(e) In the event Merchant follows the above guidelines and procedures, any transaction in which the card and/or the cardholder is not present poses significant chargeback and/or unauthorized transaction risk to the merchant for which the merchant has no recourse.

3.6 RETURNS AND ADJUSTMENTS; CREDIT SLIPS.

(a) Merchant must maintain a policy of permitting refunds, exchanges, returns, or adjustments for persons making purchases through use of a Card.

(b) If Merchant accepts any goods for return, permits the termination or cancellation of any services, or allows any price adjustment (other than involuntary refunds required by applicable airline or other tariffs or otherwise by law), then Merchant shall not make any cash refund, but shall complete and deliver promptly to Bank a Credit Slip evidencing the refund or adjustment.

(c) Within ten (10) days of the effective date of this Agreement, Merchant shall provide Bank with a written description of Merchant's refund or return policy.

(d) Refund/cancellation policy must be printed on the signed sales draft in order to be considered valid.

3.7 CASH PAYMENTS. Merchant shall not receive any payments from a customer for charges included on any Transaction Record resulting from the use of any Card, nor receive any payments from a Cardholder to prepare and present a Credit Slip for the purpose of effecting a deposit to the Cardholder's account.

3.8 CASH ADVANCES. Merchant shall not make any cash advance to a Cardholder, either directly or by deposit to the Cardholder's account.

3.9 RELEASE OF CARDHOLDER ACCOUNT INFORMATION. Merchant shall not, without the Cardholder's prior written consent, sell, purchase, provide, or otherwise disclose the Cardholder's account information or other Cardholder personal information to any third party other than Bank, Merchant's agents, and processing organizations for the purpose of assisting Merchant in its business, or as required by law.

3.10 MONTHLY TRANSACTION LIMITATION. Merchant shall not process or submit Sales Transactions aggregating more than the Monthly Transaction Limit in any one month. Merchant may apply to Bank by formal written application for a greater Monthly Transaction Limit. Transaction Records submitted to Bank for processing in excess of the Monthly Transaction Limit will be rejected or the funds held as additional cash reserve amounts until the Chargeback Period related to those Transaction Records has fully expired, at Bank's option.

3.11 FINALITY OF SETTLEMENT. Payment of Sales Slips by Bank shall not be final so long as the related Sales Transaction is subject to Chargeback or Cardholder return. Bank may revoke any prior provisional settlement of a Sales Slip by making an immediate withdrawal without notice or demand. Merchant waives all notice of default or nonpayment and consents to all extensions or compromises given by Bank or the Interchange System to any Cardholders.

ARTICLE IV - PRESENTMENT, PAYMENT, AND CHARGEBACK

4.1 TRANSMISSION OF DATA. Merchant will transmit sales and credit data to Bank in the form of magnetic tape or electronic data, as acceptable to Bank. All sales and credit data transmitted shall be in a medium and format approved in advance by Bank and shall be presorted and organized according to Bank's instructions.

4.2 CHANGE IN TRANSMISSION METHOD. The means of transmission shall be exclusive unless Merchant gives Bank at least thirty (30) days' prior written notice of Merchant's desire to alter Merchant's medium of transmission to Bank and Bank approves.

4.3 PRESENTMENT OF TRANSACTION RECORDS.

(a) Upon Bank approval, Merchant may designate a third party as its agent ("Merchant's Agent") for the purpose of delivering sales and credit data captured at the point of sale ("Data-Captured Transaction"). If Merchant uses such agent:

(i) Merchant must provide satisfactory notice to Bank that Merchant chooses to exercise the option specified in this Section 4.3;

(ii) Bank's obligation to reimburse Merchant for Data-Captured Transactions is limited to the amount delivered by Merchant's Agent less the Discount Fee; and

(iii) Merchant is responsible for any failure by Merchant's Agent to comply with this Agreement and all applicable rules and regulations of MasterCard and Visa, and shall indemnify and hold Bank harmless for any damages caused thereby.

-For the purposes of Sections 4.3(b) and (c), use of "Merchant" includes Merchant's Agent.

(b) Merchant shall present all sales data relevant to a Sales Transaction to Bank within the lesser of three (3) bank business days or five (5) calendar days after the date of the Sales Transaction, except that:

(i) Merchant shall present no sales data until the goods have been shipped or the services have been performed and Merchant has otherwise performed all of its principal obligations to the customer in connection with the Sales Transaction; and

(ii) when Merchant requests and receives authorization for delayed presentment and legibly prints on the Sales Slip the authorization number and the words "Delayed Presentment," Merchant may present the sales data within the period permitted for delayed presentment (not to exceed thirty (30) calendar days).

(c) Merchant shall deliver all credit data relevant to a Credit Transaction to Bank within three (3) bank business days after the Credit Transaction date.

4.4 PROHIBITION AGAINST FACTORING AND OTHER PRACTICES. Merchant shall not present to Bank, directly or indirectly, any Transaction Record that:

does not result from a transaction between the Cardholder and Merchant;

(a) Merchant knows or should have known to be fraudulent or not authorized by the Cardholder;

(b) results from a transaction outside the normal course of Merchant's Business;

(c) contains the account number of a Card account issued to Merchant.

4.5 ACCEPTANCE AND DISCOUNT. Subject to the provisions of any warranty of Merchant hereunder and of any Chargeback Rights, Bank agrees to accept valid Transaction Records from Merchant during the term of this Agreement and to pay Merchant the total amount represented by the Transaction Records less all fees and charges. Any payment made by Bank to Merchant in connection with a transaction shall not become final until the expiration of the Chargeback Period.

4.6 RESERVE TO COVER CHARGEBACKS.

(a) At the sole option of Bank, Bank may withhold payment to Merchant of amounts otherwise payable under Section 4.5 that are reasonably determined by Bank to be necessary to cover future Chargebacks, credits and other charges that may result from Merchant's credit card activities. If Bank determines that the proceeds of Merchant's future credit card transactions are unlikely to cover anticipated Chargebacks and Credit Transactions (whether because this Agreement has been terminated or for any other reason), Bank also may prohibit the withdrawal by Merchant of some or all of Merchant's funds then held on deposit with Bank in the Merchant Bank Account or any other account Merchant has with Bank.

(b) Any Chargebacks shall first be charged to the Merchant Bank Account. If there are not sufficient funds in the Merchant Bank Account to cover the Chargebacks within twenty-four (24) hours after they are received by Bank, Bank shall have the right to withdraw enough funds from any other account Merchant has with Bank to cover the Chargebacks.

4.7 ENDORSEMENT. Merchant shall be deemed to have endorsed in Bank's favor any Transaction Records Merchant presents to Bank, and Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf.

4.8 PROHIBITED PAYMENTS. Merchant agrees that Bank has the sole right to receive payments on any Transaction Record transmitted by Merchant as long as:

(a) Bank has paid Merchant the amount represented by the Transaction Record less the fees permitted under the Agreement; and

(b) Bank has not charged such Transaction Record back to Merchant.

4.9 CHARGEBACK.

(a) Under any of the following circumstances, Bank may charge back to Merchant any Transaction Record that Bank has accepted, and Merchant shall repay Bank the amount represented by such Transaction Record:

(i) The Transaction Record (1) is illegible or the data contained therein is otherwise indiscernible; (2) is not endorsed, (3) is not delivered to Bank within the required time limits; or (4) is incomplete (i.e., missing any one of the following items: the account number, Card expiration date, Merchant description, transaction amount, or date, Cardholder signature, description of product or services, authorization code.)

(ii) The Card account number was listed on the Combined Warning Bulletin current on the transaction date and Merchant did not reject the transaction or receive prior Authorization for the transaction, as applicable.

(iii) A valid authorization number is not correctly and legibly included on the Transaction Record.

(iv) The Transaction Record is a duplicate of an item previously paid or is one of two or more Transaction Records generated in a single transaction in violation of this Agreement;

(v) The Cardholder disputes the execution of the Transaction Record; the sale, delivery, quality or performance of the goods or services purchased; or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Merchant but not posted to the Cardholder's account.

(vi) Bank determines that Merchant has violated any term, condition, covenant, warranty or other provision of this Agreement in connection with the Transaction Record or the transaction to which the Transaction Record relates.

(vii) Bank determines that the Transaction Record is fraudulent or that the related transaction is not a bona fide transaction in the ordinary course of Merchant's Business or is subject to a claim of illegality, cancellation, rescission, avoidance or offset for any reason whatsoever, including without limitation negligence, fraud or dishonesty on the part of Merchant or Merchant's agents or employees.

(viii) The Transaction Record arises from a mail or telephone order transaction that the Cardholder disputes entering into or authorizing or that involves an account number that never existed or that has expired and has not been renewed.

(ix) In any other situation in which a transaction has been charged back to Bank in accordance with the Chargeback rules established by MasterCard or Visa.

(b) Bank may charge back a transaction in accordance with this Section even if an Authorization was obtained.

(c) Merchant will be responsible for the verification of each Chargeback. Merchant must protest any Chargeback within ten (10) days of the date the original Chargeback was posted. If the Chargeback is not protested within the 10 days, the Merchant agrees to accept the item regardless of its accuracy or authenticity. The Merchant shall hold Bank harmless from any claim it may have as a result of any Chargeback if the Chargeback is not protested within the 10 days.

(d) Bank shall charge a per item handling fee for each Chargeback processed in an amount set forth in Article V ("Chargeback Fee"). Bank may from time to time, in its sole discretion and without notice, change the Chargeback Fee. If Merchant's Chargeback activities exceed the allowable chargeback ratio (defined in Section 6.3(a)), Merchant shall pay an additional per-item charge set by Bank for any costs of processing such excessive Chargebacks.

(e) Because Visa and MasterCard rules may not allow the reversal of a Chargeback in certain electronic transactions, Merchant agrees to accept all Chargebacks issued pursuant to Visa and MasterCard regulations.

4.10 VOLUME CONSTRAINTS. Merchant's aggregate monthly transactions shall not exceed the Monthly Transaction Limit.

4.11 PROFILING PARAMETERS FOR AUDIOTEXT MERCHANTS. The following are special requirements for Audiotext Merchants:

(a) Each audiotext service provider ("Service Bureau") and Audiotext Merchant shall obtain all Authorizations through the authorization system as required by the Bank.

(b) Each Service Bureau and Audiotext Merchant shall comply with the parameters and controls Bank has developed for Audiotext Merchants. Should any Service Bureau or Audiotext Merchant circumvent these rules, or fail to consistently follow these rules, it will be subject to immediate cancellation of all Merchant Card Services and privileges.

(c) Each Service Bureau and Audiotext Merchant shall comply with the Profiling Parameters and Authorization requirements, as amended from time to time by the Bank in its sole discretion.

4.12 CUSTOMER SERVICE. Merchant shall establish an 800 telephone customer service line to comply with Section 4.11. Merchant shall provide Bank with a complete list of all 800 telephone numbers that will generate the Sales Transactions that are transmitted to Bank for settlement.

ARTICLE V - FEES AND CHARGES - CALCULATION AND COLLECTION

5.1 FEES AND CHARGES. Merchant shall pay to Bank all applicable fees and charges described in the Services Ordered Section in effect at the time the same are incurred, including without limitation the following:

(a) Interchange System Fines and Penalties. The Interchange System may impose various fines or penalties upon Bank for Bank's violation of the Interchange System bylaws or rules. To the extent that Bank determines that Merchant is responsible for the violation, Merchant shall indemnify and hold Bank harmless for the fine or penalty, whether the violation occurs or fines or penalties are imposed during the term of this Agreement or after its termination, including, but not limited to any damages, fines, levies, assessments, costs, fees, interest or other sum.

(b) Legal Fees and Costs. Bank shall pass through to Merchant and Merchant agrees to pay all of Bank's legal fees and costs incurred in seeking legal advice in matters not in the ordinary course of the Merchant/Bank relationship described in this Agreement, including but not limited to, contract disputes, legal procedures, bankruptcy or other similar events. Merchant shall reimburse Bank for all such fees and costs, whether incurred during the term of this Agreement or after its termination.

(c) Watts Surcharge \$0.05 per inquiry.

(d) Voice Authorization \$0.55 per call.

- (e) Diners Club/Carte Blanche/Discover/American Express/JCB \$0.30 per inquiry.
- (f) Help Desk/Service Assistance \$1.50 per call.
- (g) Retrieval fee of \$5.00 per occurrence.
- (h) Address Verification \$0.05 each.
- (i) Chargeback fee of \$15.00 per Chargeback. However, if Chargebacks exceed two percent (2%) of the sales transactions processed in any given month, then Chargeback fee's will be \$25.00 per Chargeback. If Chargebacks exceed two and one half percent (2.5%) of the sales transactions processed in any given month, then Chargeback fee's will be \$35.00 per Chargeback.
- (j) Monthly Internet Access Fee of \$25.00 if CyberCash is used.
- (k) Monthly Internet Access Fee of \$15.00 if Paymentnet is used.
- (l) Documentation Retrieval Fee of \$2.00/page.

5.2 FINES.

- (a) Visa and MasterCard may charge Bank a Chargeback handling fee or fine when a Merchant exceeds certain thresholds set by Visa or MasterCard or violates other rules or regulations. Merchant shall pay and reimburse Bank for any charge or fine within twenty-four (24) hours from the receipt of notice of such charge or fine levied by Visa or MasterCard as a result of Merchant's credit card activity whether or not Merchant may have any right of protest against Visa or MasterCard regarding any such fines.
 - (b) MasterCard limits Bank's allowable number of audiotext Chargebacks to total audiotext transactions to 2.5% and may fine Bank (presently \$25) for each Chargeback above 2.5%. If any Audiotext Merchant's MasterCard Chargebacks to total MasterCard audiotext sales exceeds 2.5%, Merchant shall pay Bank an amount equal to MasterCard's rate of fine for each Chargeback over 2.5%.
- 5.4 COLLECTION OF FEES, CHARGES AND FINES.** Bank may collect any and all amounts owed to it by Merchant by:
- (a) setting off amounts against payments owed to Merchant;
 - (b) making a withdrawal without notice or demand from the Merchant Bank Account or any other deposit accounts Merchant has with Bank;
 - (c) invoicing the amount from time to time;
 - (d) taking any lawful collection measures, in court or otherwise, to collect such sums.

ARTICLE VI - TERMINATION

6.1 TERMINATION AT BANK'S SOLE DISCRETION. Bank may terminate this Agreement for any reason or no reason. Termination shall be effective thirty (30) days after written notice is sent to Merchant at Merchant's address as listed on the Merchant Application or as Merchant may have notified Bank in writing and is listed in Bank's records. Notice of termination shall be effective whether or not actually received by Merchant.

6.2 TERMINATION FOR BREACH.

- (a) In addition to Section 6.1, if Merchant breaches any term or fails to perform any of its obligations under the Agreement, or chooses not to accept any change to the terms and conditions of this Agreement made in accordance with the terms of this Agreement, Bank may, in its sole discretion, immediately terminate this Agreement without prior notice. Any failure by Merchant to comply with the Interchange System rules and regulations or federal, state or local law applicable to any aspect of any Card Transaction shall be an immediate breach of this Agreement and such breach shall authorize Bank to immediately terminate this Agreement without prior notice.
- (b) Merchant expressly acknowledges that a Terminated Merchant File ("TMF or Match System") is maintained by MasterCard containing the business name and names and identification of principals of merchants which have been terminated for one or more of the reasons specified in Visa or MasterCard operating regulations. Examples would be, but are not limited to, processing transactions for a business not indicated on Merchant Application, offering for sale items, products, or services other than which the merchant has been approved for, fraud, counterfeit drafts, unauthorized transactions, excessive chargebacks and retrieval requests, laundering, factoring another merchant's sales drafts or where a high security risk exists.

6.3 TERMINATION DUE TO OCCURRENCE OF SPECIFIED EVENTS. Bank also may terminate this Agreement effective immediately without prior notice from Bank if:

- (a) Merchant's Chargeback Ratio exceeds 1.0% at any time;
 - (b) Merchant materially misrepresents any data or information required by Bank in connection with Merchant's Application or at any other time;
 - (c) Merchant discontinues the operation of or materially changes Merchant's Business;
 - (d) all or substantially all of the assets or ownership of Merchant's business are sold, hypothecated, transferred or pledged;
 - (e) Merchant becomes insolvent;
 - (f) there is a substantial or material change in the form, management, operations or ownership of Merchant's business;
 - (g) there is a substantial change in Merchant's current credit standing;
 - (h) Bank is fined by Visa or MasterCard for Merchant's violations of their respective rules and regulations;
- Merchant shall notify Bank immediately upon the occurrence of any of the events or conditions covered by Section 6.2 or 6.3.

6.4 TERMINATION BY MERCHANT. Merchant may terminate this Agreement in its sole discretion for any reason by ceasing to process with Bank.

6.5 DUTIES UPON TERMINATION. Upon termination by either Bank or Merchant for any reason, the right of Merchant to participate in Card Transactions under this Agreement shall also terminate.

6.6 BANK'S RIGHTS UPON TERMINATION. Termination by Bank shall not affect Bank's rights under this Agreement as to Sales Transactions presented by Merchant before termination.

6.7 NO DUTY TO PAY UPON TERMINATION. If Bank exercises its right to terminate this Agreement, it shall have no duty to pay any Card Transactions from any sale, rental or service occurring after the termination is effective. Bank also shall have the right to return, unpaid, any and all Sales Transactions previously presented by Merchant but not yet irrevocably entered into the Bank's processing system or the Interchange System.

6.8 OUTSTANDING CHARGES, FEES, COSTS AND FINES. Merchant shall pay to Bank any and all charges, costs, and fees outstanding at termination; any and all post-termination charges; and any other charges, costs, fees or fines arising from Merchant's Card Transactions incurred beyond or after termination.

6.9 RETENTION OF RECORDS. Bank may retain any records, including unpaid Sales Transactions.

6.10 RETENTION OF FUNDS. All funds, deposits, securities and pledges held by or assigned to Bank shall remain held by Bank so long as any transactions are subject to Chargeback or for a period of time Bank deems necessary to prevent loss to Bank due to Chargebacks or otherwise.

ARTICLE VII - MISCELLANEOUS

7.1 IMPRINTERS AND TERMINALS. Merchant shall notify Bank before any change of the imprinted or programmed information.

7.2 FORMS. Merchant shall use only such forms or modes of transmission for sales data and credit data as are provided or approved in advance by Bank, and Merchant shall not use forms or equipment provided by Bank other than in connection with Card Transactions hereunder.

7.3 RECORDS. Merchant shall retain either the original or a legible microfilm copy of both sides of all Card Transactions for at least three (3) years after the date Merchant presents the transaction data to Bank.

7.4 REQUESTS FOR COPIES. If, for any reason, Bank requests paper Transaction Records, a legible microfilm copy thereof (in size comparable to the actual paper Transaction Records) and/or any other documentary evidence available to Merchant, Merchant shall provide such Transaction Records within five (5) days of receipt of Bank's request.

7.5 COMPLIANCE WITH LAW. Merchant shall comply with all laws applicable to Merchant, Merchant's business, and any Card transaction, including without limitation all state and federal, consumer credit and consumer protection statutes and regulations.

7.6 INDEMNIFICATION. Merchant shall hold Bank harmless from, and indemnify Bank against, all claims, losses, damages, and liabilities, including attorneys' fees and other costs of defense that relate to or result from any alleged violation by Merchant of any applicable law or regulation or any action of Merchant in connection with a Card transaction subject to this Agreement.

7.7 AMENDMENT. Bank may amend this Agreement at any time by mailing written notice to Merchant at least ten (10) days before the effective date of the amendment. The amendment shall become effective on the date specified unless Bank receives Merchant's notice of termination of this Agreement before such effective date.

7.8 LIABILITY. Bank's liability to Merchant with respect to any Card Transaction for any reason, including, without limitation, contract or tort (including negligence), shall not exceed the amount represented by the Transaction Record in connection with that transaction less any applicable fee attributable thereto, and Bank shall in no event be liable for any incidental or consequential damages whatsoever.

7.9 RIGHT TO MAKE CHANGES. Because Interchange Systems' rules; federal, state and local law; and the card transaction market change frequently and rapidly, the relationship between Bank and Merchant may change in the future. Bank, in its sole discretion, may change its policy, procedures or forms, or any term or condition of this Agreement or may terminate any service or discontinue its services entirely ("Change") upon reasonable notice to Merchant as set forth in Section 7.7. Merchant shall comply with any Changes which shall be deemed effective as of the date indicated on any notice of Change.

7.10 NOTICES. All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, certified, registered or first-class mail, and addressed as indicated on the Merchant Application. Notice of change of address shall be effective only when given in accordance with this Section. All notices (except as provided in paragraph 6.1) complying with this Section shall be deemed to have been received on the date of delivery or on the third (3rd) business day after mailing.

7.11 SUPPLEMENTARY DOCUMENTS. Reference to "this Agreement" includes any valid schedules, appendices and amendments hereto.

7.12 ENTIRE AGREEMENT. The parties intend that the terms of this Agreement, including any attached schedules and addenda, shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement, except the other agreements executed in conjunction with this agreement (collectively, the "Entire Agreement"). The parties further intend that the Entire Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceedings involving the Entire Agreement.

7.13 WAIVER. No failure to exercise and no delay in exercising any right, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

7.14 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Notwithstanding the foregoing, Merchant shall not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under this Agreement without the written consent of Bank. Any purported assignment, transfer, or delegation in violation of this Section 7.14 shall be null and void.

7.15 CHOICE OF LAW. The validity, interpretation, enforceability and performance of this Agreement shall be governed by and construed in accordance with the laws of the state of California. Any legal proceeding arising hereunder may be brought in California, and Merchant consents to such venue.

7.16 WAIVER OF JURY TRIAL. Merchant waives any right to have any dispute hereunder resolved by a jury.

CERTIFICATION

The undersigned company hereby certifies:

- By an officer signing below if a corporation
- By a partner signing below if a partnership
- By its owner if a sole proprietorship

The undersigned is authorized to act on behalf of the applicant ("Applicant"). Applicant agrees to the terms of the Merchant BankCard Service and Security Agreement ("MBSSA") referenced on the reverse side of this form and specifically incorporated herein. Applicant also warrants that the information contained in this Merchant Application ("Application"), including any attached financial statements, is true and complete. Applicant acknowledges that First Bank of Beverly Hills ("Bank") is relying on the information contained in this Application, including any attachments, in granting Applicant the status of Merchant (as that term is defined in the MBSSA). Applicant authorizes Bank, or Bank's agent, to investigate the credit and employment status of Applicant and the undersigned individual and to disclose to interested third parties Bank's experience, such as sales and chargeback information. Applicant agrees to inform Bank immediately of any matter that will cause a material change in Applicant's financial condition. Applicant acknowledges that the merchant discount rate is based on the accuracy of the Visa/Mastercard average ticket size and monthly volume figures contained herein. Applicant acknowledges that they may be negotiating with an independent sales representative of Bank, and (vii) and acknowledges that ANY EQUIPMENT SOLD BY BANK OR BANK'S INDEPENDENT SALES REPRESENTATIVE IS SOLD "AS IS" WITHOUT ANY WARRANTY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF FITNESS OR MERCHANTABILITY.

IN WITNESS WHEREOF, Bank and Applicant have caused their duly authorized representatives to execute this Agreement as of the date set forth below the signature of each.

Applicant 1 Dated: _____

Signature _____

Title: _____

Applicant 2 Dated: _____

Signature _____

Title: _____

FIRST BANK OF BEVERLY HILLS, a Federal Savings Bank

Dated: _____

By: _____

Its: _____

23901 Calabasas Road, Suite 1050, Calabasas, California 91302

PERSONAL GUARANTY

To induce Bank's acceptance of the MBSSA, the undersigned jointly and severally unconditionally and irrevocably guarantees performance and payment of the Merchant's obligations under the MBSSA. The undersigned waives all surety defenses, including without limitation any requirement that Bank first pursue Merchant, notice of default on demand, or notice and/or consent by the undersigned to any modification and/or waiver of the MBSSA by Bank with Merchant. The undersigned shall pay Bank any attorneys' fees and costs arising from Bank's enforcement of this guaranty.

Signature 1 _____,an individual

Signature 2 _____,an individual