



Credit Card Program Agreement - Dealer Terms

WELCOME!

Congratulations on your decision to offer, or continue to offer, financing to your customers through TD! In these Terms, unless otherwise specified, the terms "we," "us" or "our" refer to TD Bank, N.A., and the terms "you" or "your" refer to you, the dealer, the entity that we have approved to sign the Dealer Application.

This "Agreement" includes the Dealer Application and the documents listed in Section 8 of the Dealer Application, these Terms and all attachments and exhibits to these Terms, Instructions provided pursuant to these Terms, and any amendment to any of these items. Capitalized terms that are not otherwise defined in this Agreement have the meanings set forth in Section 18.

Pursuant to this Agreement, we may provide (a) open-ended revolving credit card financing for the purchase of goods and/or services from you to individuals we feel are qualified and (b) other related services to individuals and you, as determined by us in our sole discretion (collectively the "Program"). You agree to, and are bound by, this Agreement upon your signature of a Dealer Application, your signature of this Agreement (or an acknowledgement of acceptance through e-sign or other means if available), or upon your first submission to us of an Application, Sales Slip, or Credit Slip, whichever occurs earlier. We agree to, and are bound by, this Agreement upon our first acceptance and processing of an Application, Sales Slip, or Credit Slip from you.

1 General Program Administration

1.1 Establishment and management of the Program. Except as otherwise provided in this Agreement, we will establish and administer all aspects of the Program in our sole discretion.

1.2 Participation in the Program. We authorize you to, and you agree to, honor all Program Cards to purchase your goods and/or services through the Program (as more fully described in Section 4.8), and you agree to support the Program as instructed by us. Such authorization is limited to the extent provided in this Agreement and any Instructions we give you ("Instructions" include written policies and procedures, written direction, training or guidelines). You, your employees and your agents must comply with the terms of this Agreement and any Instructions we give you.

1.3 Accommodations to our Instructions. Upon your request, we will review our Instructions to you to determine, in our sole discretion, if we can make reasonably requested accommodations and allowances to the Instructions for your business needs, including your established operational systems and routines. Any accommodation granted by us must be in writing and signed by us. *We are not required to make any accommodation or allowance.*

1.4 Program Materials. "Program Materials" are any and all materials used to offer and support the Program, in any format and any media.

1.5 Use of Program Materials. You must only use Program Materials provided by us or approved in writing by us. You must use the Program Materials most recently provided and approved by us. Unless otherwise instructed by us, you must incorporate all changed Program Materials received from us upon your receipt of such Program Materials. You cannot modify the Program Materials without our prior written consent.

1.6 Employee and agent promotion/support of the Program. You must use qualified employees, and to the extent approved by us in writing, other qualified agents, in promoting and supporting the Program. You, your employees and such agents may inform individuals about the Program. You must ensure such information is accurate and consistent with our most recently provided or approved Program Materials. If your employees and/or your agents perform any of your obligations under this Agreement, such performance is subject to the same obligations this Agreement requires of you.

1.7 Employee and agent training. You will ensure your employees and agents who promote and implement the Program successfully complete training, including annual refresher and update training, related to the Program. We will provide to you access to the Program training materials. New employees and agents who may promote or implement the Program must be trained upon hire, and all employees and agents must be included in annual refresher and update training programs. You will maintain records of completion of all such training, and provide such records to us upon request.

1.8 Survival. This Section 1 will survive termination of this Agreement.

2 Program Promotion

2.1 Advertising. You will actively promote and support the Program in accordance with our Instructions. You will ensure that all advertising (in whatever media) you, your employees or any of your agents creates, conducts or approves that refers to or alludes to the Program (including any scripting) is complete, accurate, and legally compliant with all Applicable Laws. *You, your employees and your agents may not promote or implement the Program via phone or text message without our prior written consent. You, your employees and your agents may not indicate, directly or indirectly, that we endorse your products or services.*

2.2 Solicitation Materials. "Solicitation Materials" are any and all materials used to promote the Program to individuals, in any format and any media. All Solicitation Materials must be approved by us in writing prior to use. You, your employees and your agents will only use our most recently provided Solicitation Materials. You, your employees and your agents will not modify any Solicitation Materials provided by us without our prior written consent. For clarity, notwithstanding our approval of the content of any Program Materials, you are solely responsible for ensuring that all Solicitation Materials you, your employees and your agents use are complete, accurate and comply with Applicable Laws. You, your employees and your agents will incorporate all changes to our provided Solicitation Materials when received from us, unless otherwise instructed by us.

2.3 Merchant Employee and Agent Incentive Plans. If you wish to incentivize your employees or agents to promote or support the Program, you must notify us prior to the adoption and implementation of any such incentive plan. We shall have the right to approve any such incentive plans to the extent they relate to the promotion and support of

the Program. The payment of any monetary incentive based upon the opening of an Account is prohibited. Our review will include reasonable confirmation that your employees and agents are incentivized properly for accuracy and compliance with this Agreement and our Instructions, not merely for production. In the event that your employees or agents do not materially comply with this Agreement or our Instructions, you shall ensure that any related bonus or incentive is reduced or forfeited for such failure.

2.4 Survival. This Section 2 will survive termination of this Agreement.

3 Applications

3.1 Applications. An "Application" is a request from an individual for the establishment of an Account and the extension of credit under the Program. An Application is complete when all information and processes we may require in our sole discretion relating to the Application have been gathered and performed in accordance with our Instructions.

3.2 Application Channels. We will instruct you as to which business channels may be used to support Applications. In lieu of an Instruction, only paper Applications made available by us to you are approved for use.

3.3 Agency for purposes of Applications. Subject to this Agreement and our Instructions to you:

- 3.3.1 You may assist your customers in preparing and submitting completed Applications to us;
- 3.3.2 You agree to follow our Instructions related to the processing and submission of Applications;
- 3.3.3 You agree to act as agent for us, to the extent applicable, for the purpose of identifying and authenticating each individual who submits an Application; and
- 3.3.4 You agree to act as an agent for us, to the extent applicable, for the purpose of processing, submitting, and retaining Applications.

3.4 Processing Applications. To the extent we grant permission to you in writing, in our sole discretion, to support any Application channel, you are responsible for processing Applications and related information, as well as, delivering pursuant to our Instructions any Program Materials to the applicant. You must process and send to us such executed and completed Applications and related Program Materials in accordance with this Agreement and our Instructions. This includes all Applications, whether approved or declined. Such Applications and related Program Materials must be sent through a secure method designated by us and at your expense. You must make appropriate entries in your records reflecting the delivery to us of any Applications and such materials. We may provide additional Instructions or withdraw our permission in our sole reasonable discretion at any time during the term of this Agreement. You will provide all disclosures we have instructed you to provide. You will not assess any additional fee or charge to any applicant or customer who applies for the Program (as more fully described in Section 4.9).

3.5 Applicant Identification. Unless we instruct you otherwise, when processing an Application:

- 3.5.1 You must obtain two acceptable and valid identification documents as set forth in the current Acceptable Identification Document table. The current version of the Acceptable Identification Document table is provided in Exhibit 3.5 and may be updated from time to time by us;
- 3.5.2 You must verify each applicant's name, street address, city, state, and date of birth, and obtain their social security number;
- 3.5.3 You must accurately record the type of identification and the required information from the identification documents;
- 3.5.4 You must review and compare the photographs and signatures that appear on the identification documents to ensure that they are similar in appearance to the applicant's appearance and the applicant's signature on the Application; and
- 3.5.5 You will not process any Application if such identification document appears to be fraudulent or has expired.

3.6 Submission of paper Applications. To the extent we require a paper Application, you support such Application channel, and we do not instruct you otherwise, you must send us or our designated agent such paper Applications within seven (7) days of the date of signature of the Application or the date of the first transaction, whichever occurs first.

3.7 Reimbursement related to paper Applications. If we finance a purchase by an individual before we receive the paper original of the related Application from you, we may, in our sole discretion, require you to reimburse us any amount financed, plus interest and fees.

4 Accounts

4.1 Accounts. An "Account" is the legal relationship between an individual and us that is governed by a Cardholder Agreement, as well as, all amounts owed pursuant to the Cardholder Agreement. "Cardholder Agreement" means the documentation of the current terms and conditions of the Account between us and a Cardholder.

4.2 Cards. A "Card" is any device we provide to a Cardholder to access the associated Account. A Card may include, but is not limited to, physical cards, Account numbers, electronic form factors, cryptologic keys or any other access device we authorize. "Cardholder" means a person for whom we have established an Account and provided a Card, or as applicable, a person who is properly permitted to use such Account and Card.

4.3 Account Documentation. "Account Documentation" is any and all documentation related to a particular Account, in any format or media. Account Documentation may include, but is not limited to, Applications, Cardholder Agreements, Cards, checks and other forms of payment from Cardholders, and any other documentation or communications from or related to a particular Account.

4.4 Establishment of Accounts. We, in our sole discretion, will determine whether the individual meets our risk management criteria and whether to establish an Account in such individual's name. We make all such decisions, including credit decisions, in the State of Delaware. All Accounts are established in the State of Delaware. We may modify, from time to time and in our sole discretion, any risk management criteria. *We do NOT represent, warrant or guarantee any aspect of the risk management criteria. We do not make any representation on the level of approval rates.*

4.5 Account Ownership. We own all Accounts and the related receivables. Except to the extent you are required to purchase Accounts from us, you do not own the Accounts or the related receivables. We own all information related to applicants, Cardholders, and the Accounts. We may use such information for any purpose we deem appropriate. For clarity, you may independently collect information regarding your customers outside of the Program, and we do not own such information.

4.6 Security interest. You grant us a first priority continuing security interest in any right, title, or interest that you may now have, or may later be deemed to have, in:

- 4.6.1 the Accounts and related receivables;
- 4.6.2 the Reserve Account as defined in Section 11.11;
- 4.6.3 any goods charged to Accounts that have been returned to you but for which you have not properly submitted a credit, provided reimbursement to us, or both; and
- 4.6.4 the proceeds of all of the foregoing.

4.7 Security interest documentation. You authorize us to prepare and file any documentation required to evidence and enforce this security interest, including UCC financing statements, and you will sign any related documentation reasonably requested by us. This Section 4.7 and Section 4.6 will survive termination of the Agreement.

4.8 Honoring Cards. You are authorized and agree to honor all Cards in connection with bona fide credit transactions for the purchase of goods and/or services from you in all of your marketing channels, including stores, catalogs, and if applicable, via the internet, unless otherwise instructed by us.

4.9 No additional charges for opening or using an Account. *You must not charge individuals any fee or other cost for opening or using an Account. Such fees include, but are not limited to, participation fees, document fees, convenience fees and extended warranty fees. Standard manufacturer warranties included in the purchase price of the goods, bona fide shipping or delivery fees, and applicable sales taxes are not considered fees or costs for purposes of this Section 4.9.*

4.10 Collection on Accounts. You agree that we may pursue any collection procedures we deem appropriate for the Accounts, including charge off of uncollectible Accounts. You agree that your liabilities and obligations under the Agreement, or any other agreement between the parties, shall not be affected by any settlement, extension, forbearance or other action or inaction by us in connection with any Account or Card transaction, or the discharge or release of the obligations of any Cardholder by operation of law or otherwise.

4.11 Account purchase obligation. Upon our notification to you, you agree to immediately purchase from us any Account (including the related Cardholder Agreement and all related Account Documentation) with respect to which you have violated, or not complied with, any term, condition, covenant, warranty, or other provision of this Agreement, or any other agreement between the parties, or any of our Instructions or procedures. You must pay us the full unpaid balance on the Account, including accrued but unpaid interest and legally added fees as of the date of your purchase, plus any out-of-pocket expenses incurred by us in attempting to collect on the Account, including but not limited to reasonable attorneys' fees and out of pocket expenses.

5 Purchases

5.1 Purchase channels. We will instruct you as to which business channels may be used to transact Card purchases. Unless we instruct you otherwise, only paper Sales Slips are approved for transaction use.

5.2 Sales Slips. A "Sales Slip" is a document with the complete information of a purchase transaction by a Cardholder charged to an Account. We may, in our sole discretion, specify the minimum information that must be included on a Sales Slip and any information that must be submitted to us with a Sales Slip. We will use the amount set forth on a valid Sales Slip to advance funds to the Cardholder and to pay you in accordance with the settlement procedures contained in this Agreement.

5.3 Agency for purposes of Sales Slips. Subject to this Agreement and our Instructions to you:

- 5.3.1 You agree to follow our Instructions related to the processing and submission of Sales Slips;
- 5.3.2 You agree to act as agent for us, to the extent applicable, for the purpose of identifying and authenticating each Cardholder who wishes to make a Card transaction; and
- 5.3.3 You agree to act as an agent for us, to the extent applicable, for the purpose of processing, submitting, and retaining Sales Slips.

5.4 Processing Sales Slips. You must process a Sales Slip for every purchase transaction made with a Card and send the Sales Slip to us. You must also provide a true and complete copy of the Sales Slip to the Cardholder at the time of the transaction (in addition to any required disclosures as instructed by us).

5.5 Submission of Sales Slips. Sales Slips must be sent through a secure method designated by us and at your expense. You must make appropriate entries in your records reflecting the delivery to us of any Sales Slips. You must not process or submit to us a Sales Slip until the goods or services have been delivered, shipped or provided to the Cardholder. You must send a Sales Slip to us within thirty (30) days after we approved the related credit transaction, or within fourteen (14) days after the Sales Slip was executed by the Cardholder, whichever is less.

5.6 Untimely Sales Slips. If you fail to deliver to us any Sales Slip, including electronic Sales Slips, in accordance with the timelines contained in Section 5.5 or you fail to deliver to us a paper original of a Sales Slip within fourteen (14) days of our request as provided in Section 7.3.2, then you must, upon our demand, pay to us the amount represented by such Sales Slip which remains unpaid by the Cardholder plus all accrued but unpaid interest and added fees thereon, and we may Chargeback and assign the Sales Slip to you.

5.7 Rejection of Sales Slips. We may reject delivery of and refuse to process any Sales Slip if:

- 5.7.1 We have not received a completed and signed Application;
- 5.7.2 We have not approved such Application;
- 5.7.3 We have not established a related Account;
- 5.7.4 The Sales Slip does not comply with this Agreement and our Instructions to you; or

5.7.5 We determine, in our sole discretion, the Sales Slip poses unacceptable risk of loss or negative legal or regulatory action.

5.8 Cardholder identification during purchase. When processing a Card transaction and in accordance with our Instructions, we may require you to identify and authenticate a Cardholder prior to completing the transaction.

5.9 No delayed delivery/No pre-funding. Except as otherwise agreed to by us in writing:

5.9.1 You must deliver, ship or provide the goods or services to the Cardholder at the time of the transaction; and

5.9.2 You must not accept Cards to finance full or partial payment for the goods or services prior to delivery of any goods or the performance of any services being financed by the Cardholder.

5.10 Down payment/No split purchases. Prior to your delivery of the goods and/or services, the Cardholder must have paid any down payment stated in the Sales Slip in cash, unless otherwise specified, and no part of the purchase price may be loaned to the Cardholder or financed by any other creditor, except us, on the Cardholder's Account.

5.11 Warranty Contracts. Unless we authorize you to do so in writing, you may not process Card transactions for Warranty Contracts. "Warranty Contracts" are any extended warranties, service contracts, or similar arrangements. If we so authorize you to process Warranty Contracts as Card purchases, the terms in Exhibit 5.11 apply. For sake of clarification, nothing in this paragraph prohibits you from offering any standard manufacturer's warranty that is included with the purchase price of your goods.

5.12 Gift certificates and similar items. You may not process Card transactions for gift certificates, stored value cards (or reloads), or any other future service or delivery obligation without our prior written consent.

5.13 Gambling transactions. You may not process Card transactions for illegal gambling or internet gambling.

6 Returns and Adjustments

6.1 Credit Slips. A "Credit Slip" is the documentation of any adjustment to an Account transaction due to the return of any goods, termination or cancellation of any services, or price adjustment. A properly completed Credit Slip must contain, at a minimum, the following information:

6.1.1 Cardholder signature;

6.1.2 a brief description of the goods returned, services terminated or canceled, or refund or adjustment made (in sufficient detail to identify the original purchase transaction);

6.1.3 the date of the adjustment; and

6.1.4 the full amount of the refund or adjustment (not reduced by any acquisition charge you paid to us on the original Sales Slip and not to exceed the amount of the original transaction as reflected on the Sales Slip).

6.2 Agency for purposes of Credit Slips. Subject to this Agreement and our Instructions to you:

6.2.1 You agree to follow our Instructions related to the processing and submission of Credit Slips;

6.2.2 You agree to act as agent for us, to the extent applicable, for the purpose of identifying and authenticating each Cardholder who wishes to make a return, cancel services, or make a price adjustment to a prior Card purchase; and

6.2.3 You agree to act as an agent for us, to the extent applicable, for the purpose of processing, submitting, and retaining Credit Slips.

6.3 Processing returns and adjustments. With respect to transactions on Accounts, if you accept any goods for return, permit the termination or cancellation of any services, or allow any price adjustment, the following will apply:

6.3.1 You may not make any cash refund;

6.3.2 You may process a Credit Slip for a Cardholder only if you have previously completed the related purchase transaction with the same Cardholder;

6.3.3 You must complete and deliver to us a properly completed Credit Slip within 24 hours of your acceptance of a return, cancellation of services or price adjustment; and

6.3.4 You must deliver to the Cardholder a true and complete copy of the Credit Slip at the time the return, cancellation or adjustment is made.

6.4 Submission of Credit Slips. Credit Slips must be sent through a secure method designated by us and at your expense. You must make appropriate entries in your records reflecting the delivery to us of any Credit Slips.

6.5 Untimely Credit Slips. If you fail to deliver to us any Credit Slip, including electronic Credit Slips, in accordance with the timelines contained in Section 6.3.3 or you fail to deliver to us a paper original of a Credit Slip within fourteen (14) days of our request as provided in Section 7.3.2, then you must, upon our demand, pay to us the amount represented by such Credit Slip plus all accrued interest and added fees thereon, and we may Chargeback and assign the Credit Slip to you.

6.6 Receipt of Credit Slips. Upon our receipt of a properly completed Credit Slip:

6.6.1 We will credit the appropriate Account in an amount equal to the refund or adjustment (the "Refund Amount"); and

6.6.2 We may deduct the Refund Amount from other monies, if any, due to you.

6.7 Reimbursement for Refund Amounts. If we cannot obtain payment for Refund Amounts by setting off amounts owed to you pursuant to this Agreement, you must reimburse us for Refund Amounts owed to us. You must make such reimbursement within two (2) business days of your receipt of notice of such obligations.

6.8 Adjustments to Accounts. You do not have the right to make any adjustments to Accounts with respect to any fees or charges

imposed by us as a result of the return of any goods to, termination or cancellation of any services by, or price adjustment by you.

6.9 Return fees. You must not charge any fee, charge or cost for the return of, or adjustment to the sale of, any goods and services ("Prohibited Return Fee") without our prior written consent. Prohibited Return Fees include, without limitation, any return fee, membership fee or restocking fee. If applicable, you may charge a bona fide delivery fee associated with the original transaction if you could not reasonably avoid the costs of delivery to the Cardholder.

6.10 Return policy. You must maintain a fair and legally compliant return and exchange policy. You must clearly and conspicuously disclose to Cardholders any material restrictions or limitations on returns. Upon our request, you must provide us a copy of your current return policy.

7 Additional Processing Requirements

7.1 Record retention. In accordance with this Agreement and our Instructions, you must maintain electronic files and paper records of Applications, Sales Slips and Credit Slips. We may modify the retention requirements by providing you with Instructions.

7.2 Electronic processing. To the extent we authorize you to do so in writing, in lieu of sending the paper original of any Account Documentation, you may electronically process, encrypt and transmit to us or our agent all data required to appear or be input on Account Documentation. If we authorize you to use electronic processing, the terms in Section 7.3, and any other terms in this Agreement applicable to the electronic processing of certain Account Documentation, will apply.

7.3 Additional electronic processing terms. Except as otherwise provided in this Agreement, the following terms apply to electronic processing:

- 7.3.1 You must retain for a period of not less than six (6) years, as our custodian, any paper original of Applications, Sales Slips, Credit Slips, and other Account Documentation that we do not instruct you to send to us;
- 7.3.2 You must deliver to us, within fourteen (14) days of our request, the paper original of any Applications, Sales Slips, Credit Slips, and other Account Documentation that we instruct you to send to us;
- 7.3.3 Your electronic transmission to us or our agent of data contained in Account Documentation as provided in this section is treated for all purposes under this Agreement as if you had delivered a paper original of the Account Documentation containing such data;
- 7.3.4 You warrant that all data electronically transmitted to us or our agent with respect to Account Documentation accurately reflects the information contained in the paper original of such Account Documentation;
- 7.3.5 If an applicant or Cardholder's signature on any Account Documentation cannot be adequately captured via electronic means, as we may determine in our sole discretion, we may require you to submit paper copies of such completed materials; and

7.3.6 We may, at any time and in our sole discretion, require that you submit hard copies of any and all Account Documentation to us in addition to any electronic transmission of such materials.

8 Card Transaction Representations and Warranties

8.1 Card Transaction representations and warranties. With respect to each Sales Slip and Credit Slip (for purpose of this Section 8.1, each a "Card Transaction") (at the time of presentment and at all times thereafter) you deliver to us, you represent and warrant the following:

- 8.1.1 **Genuine.** Each Card Transaction is genuine and represents a valid payment obligation on or credit to an Account of a bona fide and competent Cardholder;
- 8.1.2 **Authorized.** We have specifically authorized the credit transaction represented by the Card Transaction;
- 8.1.3 **Not previously submitted.** The Card Transaction has not previously been submitted by you to us or to another credit vendor for purchase;
- 8.1.4 **Timely.** The Card Transaction is being timely sent to us;
- 8.1.5 **Perfected security interest.** At the time the Cardholder purchases the goods, the purchase money security interest in the goods covered by the Sales Slip is vested in us free and clear of any other liens or encumbrances, and you have taken all actions necessary to perfect such security interest;
- 8.1.6 **Free from liens.** The Card Transaction is free from liens (other than as provided in Section 8.1.5), setoffs, counterclaims and other defenses;
- 8.1.7 **Normal goods and services.** The goods or services purchased in the Card Transaction are of the type and the nature normally sold by you to the general public in the ordinary course of business and not as part of a going out of business sale or other liquidation, or in contemplation of an Insolvency Event as defined in Section 16.2.4;
- 8.1.8 **Bona fide transaction/Not liquidation.** The goods or services covered by the Card Transaction were purchased from you in a bona fide transaction;
- 8.1.9 **Genuine Cardholder Signature.** The signature on the Card Transaction is the signature of the Cardholder, is genuine and authorized, and is the same signature as on the Card and other valid identification examined by you;
- 8.1.10 **Warranty Contracts processed.** As applicable, you have sent all documents regarding the purchase of any Warranty Contracts purchased by the Cardholder to the entity issuing the Warranty Contract;
- 8.1.11 **No surcharge.** You did not charge a surcharge because the Cardholder paid by credit instead of cash or check, or impose any other fee for the Program and if you offer a discount to induce buyers to pay by cash or check rather than credit, you offer such discount to all prospective buyers and the availability of such discount is disclosed clearly and conspicuously; and
- 8.1.12 **Complied with Instructions.** You have complied with our instructions.

9 Inquiries and Disputes

9.1 Inquiry and Dispute policy and procedures. You must establish and maintain policies and procedures for identifying, capturing, reviewing, and addressing Inquiries and Disputes.

9.2 Inquiries and Disputes. An "Inquiry" is a request for information that does not contest, but nonetheless relates to, a Card transaction, any aspect of an Account or the Program, or Program related aspects of your business practices, such as your return policy. A "Dispute" is an assertion that the completeness or accuracy of any item of information related to a Card transaction, an Account or the Program, as well as the permissibility of any aspect of the Program or related aspects of your business practices is incorrect.

9.3 Processing an Inquiry. If an individual or Cardholder notifies you directly, or indirectly through us or any other entity, that the individual or Cardholder is making an Inquiry:

- 9.3.1 If the Inquiry was not provided to you by us, you must notify us within five (5) days of your receipt of the Inquiry;
- 9.3.2 You must conduct a reasonable search for responsive information (and provide such information to us);
- 9.3.3 You must make a good faith determination as to whether any information you find relates to the individual or Cardholder, as applicable; and
- 9.3.4 Unless we instruct you otherwise, you must fully respond to the individual or Cardholder, as applicable, and provide us a copy of your response within ten (10) business days of your receipt of the Inquiry.

9.4 Processing a Dispute. If an individual or Cardholder notifies you directly, or indirectly through us or any other entity, that the individual or Cardholder is making a Dispute:

- 9.4.1 If the Dispute was not provided to you by us, you must notify us within five (5) days of your receipt of the Dispute;
- 9.4.2 You must conduct a reasonable investigation into the Dispute (and provide the results of the reasonable investigation to us);
- 9.4.3 You must make a good faith determination as to whether any information you find relates to the individual or Cardholder, as applicable;
- 9.4.4 You must make a good faith effort to resolve the Dispute fairly;
- 9.4.5 You must cooperate with our requests in the resolution of the Dispute;
- 9.4.6 Unless the Dispute is in relation to a Chargeback we sent you or we instruct you otherwise, you must fully respond to the individual or Cardholder, as applicable, and provide us a copy of your response within ten (10) business days of your receipt of the Dispute; and
- 9.4.7 If the Dispute is in relation to a Chargeback we sent you, you must respond to us in accordance with Section 10.3 and to the individual or Cardholder as we may instruct you.

9.5 Additional information to be provided. You further agree, either as a result of an Inquiry or Dispute made directly by a Cardholder or indirectly by us or any other entity, that you will provide such information regarding prior transactions and sales as may be required in order to comply with Applicable Laws, including the Fair Credit Billing Act. Additionally, upon the request of any Cardholder, you will provide the Cardholder with our name and address.

9.6 Expedited response. You agree you will expedite any response regarding an Inquiry or Dispute, upon our request, to meet any response timeframe imposed by our regulatory authorities, regulatory guidance or Applicable Law.

9.7 Survival. This Section 9 will survive termination of this Agreement.

10 Chargebacks

10.1 Chargebacks. As provided in this Agreement, we may shift the financial liability for an Account transaction from us to you. Such shift and assessment of liability to you is a "Chargeback." The amount of the Chargeback includes the amount of the transaction related to the Chargeback (as shown on the Sales Slip or Credit Slip), plus all associated fees, including, but not limited to, finance charges, late fees, and fees for insufficient funds.

10.2 Our Chargeback right. We may chargeback to you any Account transaction that we reasonably determine to be the result of:

- 10.2.1 any individual or Cardholder Dispute that followed the Dispute Procedure in Section 10.3 and we determine is valid;
- 10.2.2 Third-Party Fraud, to the extent specified in Section 10.5 of this Agreement;
- 10.2.3 failure to follow our Instructions;
- 10.2.4 practices or procedures by you that we determine, in our sole discretion, pose an unacceptable risk of loss or negative legal or regulatory action; or
- 10.2.5 any breach of your obligations, representations and warranties under this Agreement.

10.3 Dispute Procedure for Chargebacks. When an individual or Cardholder notifies us that they are making a Dispute and we determine the Dispute may relate to your practices or procedures related to the Program, prior to charging the related transaction back to you, we will make reasonable efforts to provide you a copy of the Dispute and any applicable documentation in our possession regarding the Dispute. Upon our sending of the Dispute and supporting documentation to you, if you wish to contest the Dispute, you must respond to us with a statement and any evidence refuting the Dispute within ten (10) business days. Upon our receipt of your response or the expiration of the ten (10) business days without a response from you, we will review and consider your response (or lack thereof), and determine in good faith whether the individual or Cardholder's Dispute is valid.

10.4 Chargeback reasons. The following outlines common types of Chargeback reasons, categorized into broad groups:

- 10.4.1 Card authorization issues, including no account number verification, full authorization not obtained, expired Card;
- 10.4.2 cancellation and return issues, including failure to properly disclose material limitations of your return policy;
- 10.4.3 fraud, including acts by your employees or agents;
- 10.4.4 processing errors, including late presentment of Applications, Sales Slips, or Credit Slips, incomplete or incorrect Applications, Sales Slips, or Credit Slips, prohibited transactions, fees or charges;
- 10.4.5 non-receipt or improper delivery of goods and services;
- 10.4.6 quality of goods and services, including defective goods; and
- 10.4.7 non-receipt of information, including illegible documents.

Additional examples of when we would have a Chargeback right are contained in Exhibit 10.4.

10.5 Third-Party Fraud Chargebacks. We may Chargeback to you all losses that we reasonably determine are attributable to Third-Party Fraud during any Contract Year. As used in this Section 10, the following terms are defined as follows:

- 10.5.1 **Third-Party Fraud.** "Third-Party Fraud" means acts of fraud that are attributable to persons other than your employees, contractors or agents and which occur despite your compliance with your procedures, this Agreement, and our Instructions.
- 10.5.2 **Contract Year.** "Contract Year" is defined in Section 18. For purposes of calculating fraud losses, an incident of Third-Party Fraud will be attributed to the Contract Year in which we discover the fraud, or if the Agreement has expired or terminated at the time we discover the fraud, the last year of the Agreement.

10.6 Settlement and Payment of Chargebacks. After the conclusion of any applicable investigation or process described in this Section 10, we may determine in our sole reasonable opinion that a transaction should be classified as a Chargeback. Upon our classification of a transaction as a Chargeback, we may deduct from amounts owed to you under this Agreement the amount of the Chargeback less any amounts received by us on account of the transaction. If we cannot obtain payment by setting off amounts owed pursuant to this Agreement, you must reimburse us for amounts owed within two (2) business days of receipt of notice of such obligations.

10.7 Survival. This Section 10 shall survive termination of this Agreement.

11 Settlement and Payment

11.1 Settlement and payment initiation and processing. When you deliver a Sales Slip to us, the Sales Slip constitutes your request for us to accept the Sales Slip, to advance funds to the Cardholder, and to pay you. Subject to the terms of this Agreement, we will accept delivery of valid Sales Slips executed by Cardholders with Accounts in good standing, and upon such acceptance we will settle the transaction and, if applicable, pay you. Notwithstanding the foregoing, we may reject delivery of any Sales Slip for the reasons stated in Section 5.7 of this

Agreement. Similarly, when you deliver to us a Credit Slip, we will credit the appropriate Account in an amount equal to the Refund Amount and we may deduct the Refund Amount from other monies, if any, due to you.

11.2 Ownership of Sales Slips and Credit Slips. You agree and understand that we own all rights, title and interest in every Sales Slip and Credit Slip executed by a Cardholder in connection with credit transactions on Accounts, including the payment obligation represented by such Sales Slips and Credit Slips and the security interest in the goods covered by such Sales Slips, unless and until we Chargeback the Sales Slip or Credit Slip to you. You authorize us to do every act and thing necessary in our sole discretion to collect each Sales Slip and Credit Slip and to carry out the intent of this Agreement, including the right to endorse any check or draft, money order or other form of payment, payable to you in connection with any Sales Slip, Credit Slip or Account.

11.3 Payments on Sales Slips, Credit Slips, and Accounts. Except with respect to Sales Slips and Credit Slips which we have charged back to you and Accounts you have purchased pursuant to your obligations under this Agreement, you agree that you are not authorized to receive payments, and that we have the sole right to receive payments, on all Accounts and related Sales Slips and Credit Slips. You agree that you will not make an attempt to make any collections, or receive any payments, on any Account, Sales Slip or Credit Slip submitted to us.

11.4 Account payments made to you. Should any payment be made to you on any Sales Slip, Credit Slip or Account, you will receive such payment as agent for the Cardholder and will hold the payment for the sole benefit of us. Within three (3) days of your receipt of any such payment, you will remit the same to us in the form received for credit on the Account, together with the Cardholder's name and Account number and any correspondence accompanying the payment.

11.5 Power of attorney. You authorize us to execute or endorse on your behalf any instruments, or other documents with respect to goods purchased from you with a Card as attorney-in-fact for you. This power of attorney is irrevocable and coupled with an interest. In particular, you irrevocably constitute and appoint us as its attorney-in-fact to endorse your name on any payments received by us on Accounts. We authorize you to execute on behalf of us any instruments or other documents with respect to goods purchased from you with a Card, if necessary to perfect our security interest in such goods. You agree to promptly provide us a copy of all such documents executed on our behalf.

11.6 Settlement. In accordance with our settlement procedures and the financial terms that we communicate to you from time to time, we will pay you the total amount of the accepted Sales Slips less:

- 11.6.1 the total of any processing fees;
- 11.6.2 any Chargebacks;
- 11.6.3 any Credit Slips transmitted by you; and
- 11.6.4 any other amounts owed by you, or any of your affiliates, to us or any of our affiliates.

11.7 Integrated transactions. The parties acknowledge that settlement for Sales Slips, and as applicable, Chargebacks and Credit Slips each arise out of a single integrated transaction.

11.8 Insufficient settlement funds/Set-off/Recoupment. In the event that you owe us more than we owe you, you will pay us the difference immediately. You grant to us the right of set-off and recoupment to the fullest extent allowed by Applicable Law. We may apply any monies due and owing to you, reasonably expected to become due and owing to you, or in our possession belonging to you, against monies which become due and owing to us by you under this Agreement.

11.9 Bank account credit/debit authorization. You authorize us to initiate credits and debits to your designated bank account for any amounts due or owed under this Agreement. You will sign any documentation necessary to effectuate such authorization as reasonably requested by us.

11.10 Erroneous payments. In the event you are paid by us in error under any circumstance, you must repay us within five (5) days of notice of such to you.

11.11 Establishment of a Reserve Account. We may withhold settlement payments otherwise due to you to establish a non-interest bearing reserve account (the "Reserve Account"), in the amount of one half percent (0.50%) of total Program sales under this Agreement.

11.12 Reserve Account – Regular Adjustments. We may adjust the Reserve Account to three percent (3%) of the Account balances outstanding at the end of each Contract Year, as defined in Section 18. If the Reserve Account is less than three percent (3%) of the outstanding Account balances at the end of any Contract Year, we may withhold settlement payments otherwise due to you to make up the shortfall unless you send the additional funds to us within ten (10) days after we inform you of the shortfall in the Reserve Account.

11.13 Reserve Account – Additional Adjustments. We may increase the Reserve Account, by withholding additional settlement payments in an amount reasonably determined by us, if:

11.13.1 we determine that your financial condition has deteriorated;

11.13.2 you breach this Agreement;

11.13.3 we determine that the financing of Warrant Contracts has created an increased risk of losses; or

11.13.4 there is a significant increase in the volume of Inquiries, Disputes or Chargebacks.

11.14 Ownership of the Reserve Account. We will be the sole owner of the Reserve Account and may debit the Reserve Account for any amount owed to us by you. We will, however, pay you any remaining amounts in the Reserve Account by the time that the aggregate outstanding Account balances are zero.

11.15 Right to offset. We may offset any amounts we owe to you under this Agreement or any other agreement against any amounts you owe to us or any parent, subsidiary or other affiliate of ours. You may not offset any amounts you owe to us against any amounts we or any parent, subsidiary or other affiliate of ours owes to you.

11.16 Survival. This Section 11, and any other settlement and payment rights and obligations in this Agreement, will survive termination of the Agreement.

12 Confidential Information

12.1 Acknowledgement. In the performance of this Agreement, the parties acknowledge and agree that each party may be provided with or gain access to Confidential Information of the other party.

12.2 Recipients and Disclosers. For the purposes of this Section 12, each party will be deemed to be the "Recipient" with regards to the Confidential Information it accesses of the other party and the "Discloser" with regard to the party's own Confidential Information that is accessed by the other party.

12.3 Confidential Information. "Confidential Information" means all information, in any form, of a party that is:

12.3.1 information not generally known to the public;

12.3.2 information identified as being proprietary or confidential or that by the nature of the circumstances surrounding the disclosure or receipt, or by the nature of the information itself, would be treated as proprietary and confidential by a reasonable person; and

12.3.3 Nonpublic Personal Information and similar personally identifiable information of other individuals who apply for Accounts or are Cardholders.

For sake of clarity, the terms of this Agreement, the operation of the Program pursuant to this Agreement and all of our technology in connection with the Program are included in our Confidential Information and must not be disclosed to third-parties without our prior written consent.

12.4 Non-Confidential Information. Confidential Information does not include, and neither party shall have any obligation of confidentiality with respect to:

12.4.1 information that is in or comes into the public domain (except as result of a breach of this provision);

12.4.2 information that is received by Recipient from a third party not under an obligation of confidentiality with respect thereto;

12.4.3 information that is independently developed by the Recipient without use of or access to the Confidential Information of the Discloser; or

12.4.4 information that is approved in writing for disclosure by Recipient prior to any disclosure by the Discloser.

12.5 Safeguarding Confidential Information. The Recipient must take appropriate steps to ensure Confidential Information is safeguarded:

12.5.1 in accordance with industry accepted best practices and standards used or observed by comparable companies;

12.5.2 to at least the same extent as the Recipient would safeguard its own similar Confidential Information (but in no event less than a reasonable standard of care); and

12.5.3 by implementing and maintaining administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Confidential Information in accordance with Applicable Law.

12.6 Use of Confidential Information. Recipient may use Confidential Information of the Discloser only for the purposes of, and pursuant to the terms of, this Agreement. Recipient may only disclose Confidential Information to those employees, affiliates, agents, advisors, consultants and other representatives of Recipient ("Representatives") who have a need to know for the purposes of Recipient performing its obligations under this Agreement and who have a legally binding or ethical obligation to maintain the confidentiality of the Confidential Information of the Discloser. Such disclosure must be limited to only that which is necessary for the Recipient to perform its obligations under this Agreement. Notwithstanding the foregoing, you agree that we may share information about your participation in the Program with you distributor, manufacturer or professional association.

12.7 Disclosure of Confidential Information required by law. Recipient is permitted to disclose Confidential Information if required by Applicable Law. If not prohibited by Applicable Law, Recipient must promptly notify Discloser of any request to disclose Discloser's Confidential Information. Recipient will reasonably cooperate with and assist Discloser, at Discloser's request and expense, in so that Discloser may prevent or limit such disclosure. Notwithstanding the foregoing, if you intend to disclose the terms of this Agreement to any government authority, such as the Securities and Exchange Commission, you must provide us an opinion from reputable counsel at least 15 calendar days prior to such disclosure opining that the disclosure is required by Applicable Law and you must redact all sensitive information, or seek confidential treatment of such sensitive information, prior to the disclosure of the terms of this Agreement.

12.8 Special terms. Without limiting the foregoing, you agree that all capitalized terms used in this Section 12 or otherwise related to Nonpublic Personal Information and not otherwise defined in this Agreement will have the meanings set forth in the Office of the Comptroller of the Currency's "Privacy of Consumer Financial Information" Regulation (12 C.F.R. Part 40), as amended from time to time (the "Privacy Regulation"), and the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information" (12 C.F.R. Part 30), as amended from time to time (the "Safeguarding Guidelines"), issued pursuant to Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

12.9 Nonpublic Personal Information. "Nonpublic Personal Information," or "NPPI," has the same meaning as defined in 12 C.F.R. 40.3(n). For the sake of clarity but in no way limiting the definition contained in 12 C.F.R. 40.3(n), Nonpublic Personal Information includes personally identifiable information regarding our "Consumers" and "Customers," as defined in 12 C.F.R. 40.3, and any lists derived from such information that is not otherwise publicly available. For example, personally identifiable Application data for a Consumer who is not extended credit under the Program is contained within NPPI.

12.10 Acknowledgement of NPPI and similar obligations. You acknowledge that the Privacy Regulation and Safeguarding Guidelines govern the parties use, disclosure, privacy and security of NPPI. The personally identifiable information of other individuals who apply for Accounts or who are Cardholders, such as companies or other entities, that do not meet the definition of a "Consumer" or "Customer" as provided in 12 C.F.R. 40.3 must also be provided the same protections as this Agreement provides for NPPI.

12.11 NPPI covenants, representations, and warranties. You hereby covenant, represent and warrant with respect to any NPPI, or similar personally identifiable information of other individuals who apply

for Accounts or are Cardholders, obtained by you in connection with this Agreement, as follows:

- 12.11.1 You will comply with the terms and provisions of the Privacy Regulation, including, without limitation, the provisions regarding the sharing of NPPI;
- 12.11.2 You will comply with the terms and provisions of the Safeguarding Guidelines, including, without limitation, adopting, implementing and maintaining written policies and procedures to:
 - 12.11.2.1 ensure the security and confidentiality of NPPI and similar information of individuals;
 - 12.11.2.2 protect against any anticipated threats or hazards to the security or integrity of the NPPI and similar information of individuals; and
 - 12.11.2.3 protect against unauthorized access to or use of the NPPI and similar information of individuals that could result in substantial harm or inconvenience to any Consumer, Customer or covered individual;
- 12.11.3 Ensure that all use of NPPI and similar information of individuals is in compliance with this Agreement and any privacy disclosures made by us to any Consumer, Customer or similar individual;
- 12.11.4 Not disclose or use any NPPI or similar information of individuals except to perform your obligations under this Agreement, or as otherwise permitted by the Privacy Regulation and other Applicable Law;
- 12.11.5 Not make any changes to your security measures that would increase the risk of any unauthorized access;
- 12.11.6 Not disclose any NPPI or similar information of individuals to any other individual or entity; and
- 12.11.7 In using such NPPI or similar information of individuals, at all times comply with our privacy policy.

12.12 Response to threats to NPPI. In the event you know or reasonably believe that there has been any unauthorized access (or attempted unauthorized access) to NPPI or similar information of individuals in your possession or control that compromises (or threatens to compromise) the security, confidentiality or integrity of NPPI or similar information of individuals:

- 12.12.1 You must promptly notify us as soon as reasonably practicable, by telephone or e-mail confirmed by written notice, of such unauthorized access or attempted unauthorized access;
- 12.12.2 You must identify to us (at no cost to us) what specific NPPI or similar information of individuals may have been accessed, including (if applicable) the name and account number of each affected Consumer, Customer or similar individual;
- 12.12.3 You must take reasonable steps to remedy the circumstances that permitted any such unauthorized access to occur;
- 12.12.4 You must take reasonable steps to prohibit further disclosure of NPPI or similar information of individuals; and

- 12.12.5 You must reimburse us for any cost of remediating such breach, including, without limitation:
- 12.12.5.1 the cost of producing or mailing any notice required by Applicable Law, or that we reasonably determine should be provided, that informs the Consumer, Customer or similar individual of a security breach; and
- 12.12.5.2 the cost of any credit monitoring or other services to be provided to affected persons.

12.13 Confidentiality obligations and services to Cardholders. It is understood that the provisions of this Section 12 will in no way limit us from providing such information as is required relating to Cardholders, their balances and their addresses, in order for us to provide the appropriate credit and collection analysis and services as are required by us under this Agreement, including, but not limited to, submitting individuals' names, addresses and balances to credit bureaus for credit and collection purposes.

12.14 Duration of Confidential Information obligations. With the exception of NPPI, each party will hold and will cause its Representatives to hold, during the term of this Agreement and for three (3) years subsequent to the term (or any renewal thereof), in strict confidence all Confidential Information obtained by them with respect to the other party in connection with this Agreement, and will not release or disclose such Confidential Information to any other person except such party's Representatives with a need to know in connection with this Agreement. *Each party will hold and will cause its Representatives to hold NPPI in strict confidence and in accordance with this Agreement indefinitely.*

12.15 Ownership of Confidential Information. All Confidential Information will remain the exclusive property of the Discloser, and the Recipient has no rights, by license or otherwise, to use the Confidential Information except as expressly provided in this Agreement.

12.16 Return or destruction of Confidential Information. Upon the Discloser's written request, the Recipient will promptly return or destroy, and verify in writing its destruction of, all material, in any form, embodying Confidential Information of the Discloser. In carrying out any destruction, the Recipient will protect Confidential Information in accordance with the terms of this Agreement.

12.17 Retention of Confidential Information. Notwithstanding Section 12.16 and subject to the continued application of this Agreement's confidentiality obligations, a Recipient may retain:

- 12.17.1 any minutes of meetings, copies of notes, internal analyses, records and other materials that contain or reflect Confidential Information;
- 12.17.2 Confidential Information stored on Recipient's computer systems, e-mails, or other forms of electronic information retention and archival; and
- 12.17.3 Confidential Information required for regulatory, legal and compliance purposes.

12.18 Equitable relief. The parties acknowledge that unauthorized use or disclosure of Confidential Information may result in immediate and irreparable injury to a Discloser for which monetary damages may not be adequate. In addition to any other rights or remedies a party may have under this Agreement or in law, in the event that Recipient or any of

Recipient's Representatives uses or discloses, or is likely to use or disclose, any of Discloser's Confidential Information in breach of Recipient's obligations under this Agreement, Discloser shall be entitled to equitable relief. Such equitable relief includes temporary and permanent injunctive relief and specific performance.

12.19 Liability for third-party breaches. You are liable for any breach of the provisions of this Section 12, and any other confidentiality obligations contained in this Agreement, by any third-party to whom you have disclosed any Confidential Information, including NPPI.

12.20 Survival. The provisions of this Section 12, and any other confidentiality obligations contained in this Agreement, shall survive the termination of this Agreement. The failure by any party or its respective agents and representatives to comply with the requirements of this Section 12 is a material breach of this Agreement.

13 Use of Marks

13.1 General limitation on use of names and marks. Except as expressly permitted under this Agreement, neither party will directly or indirectly, use for any purpose (including advertising, promotion, or publicity), the name of the other party or any trademarks or service marks of the other party without the prior written consent of the other party.

13.2 Your name and marks. During the term of this Agreement and any extension thereof, you grant to us the right, license and privilege to use your name and trademarks, retail marks and service marks ("Dealer Marks") on Program Materials, specifically including, but not limited to, Cards, Solicitation Materials, Account Documentation, Applications, Cardholder Agreements, Sales Slips and other program related communications. Upon termination of this Agreement, you will purchase from us, at cost, all Program Materials remaining in our stock which have been customized with your name. Additionally, upon termination of this Agreement, we may continue to use Dealer Marks on Program Materials to service Accounts. We may also use your names and Dealer Marks in discussions with other parties about programs similar to the Program and to advertise our financial services to others.

13.3 Our name and marks. During the term of this Agreement and any extension thereof, and only upon our prior written consent, you may use the names "TD Retail Card Services, a division of TD Bank, N.A." or "Bank," provided, however such names shall be used only in connection with the Program, and only as such use, locations and formats have been previously approved in writing by us. Upon expiration or termination of this Agreement for any reason whatsoever, you must immediately cease the use of any of our name(s), trademarks, and service marks, and you will have no interest or right to use any such names, trademarks, and service marks for any purpose thereafter.

14 Procedures, Compliance and Audit

14.1 Adoption of policies and procedures. You will adopt and maintain comprehensive, current and accurate written policies and procedures related to the Program. We will provide to you the policies and procedures you must adopt and maintain pursuant to this Section 14.1. You must provide us with access to such written policies and procedures, upon request, on-site or as otherwise requested by us (including, but not limited to, the provision of copies or the availability of copies of such written materials through an internet portal).

14.2 Self-reporting of compliance issues. You will make commercially reasonable efforts to follow this Agreement, our

Instructions, the written policies and procedures related to the Program and all Applicable Law during the term of this Agreement. If you identify any instances of non-compliance with this Agreement, our Instructions, the written policies and procedures related to the Program, or Applicable Law (whether such instances are material or non-material) through your own observation, monitoring, testing or otherwise (including findings resulting from an internal audit), you agree to notify us within 24 hours of identifying any material instances and provide a monthly report, within ten (10) days after the close of the previous month, detailing both the material and non-material instances.

14.3 Audit, inspection, and monitoring. We have the right to audit, inspect and otherwise monitor your compliance with this Agreement through any reasonable means that we deem appropriate. You acknowledge that we may monitor and audit the promotion and administration of the Program, as well as your training and compliance with any Instructions we provide you and any policies and procedures required by this Agreement. You consent to our personnel monitoring and/or recording telephone conversations between you and our personnel in order to evaluate your compliance and the quality of our services. You acknowledge that we are subject to examination and audit by federal regulatory and banking agencies. You acknowledge that such agencies may require access to your locations, or may require us to access your locations, in order to examine and audit your performance of this Agreement. You will allow us, our agents and our regulators to: visit your locations upon reasonable advance notice to you; review and obtain copies of books and records related to the Program; and audit, test and monitor your (and/or your agent's) promotion and administration of the Program.

14.4 Remediation of compliance issues. In the event you, we or our regulators discover your non-compliance with this Agreement, our Instructions, the written policies and procedures related to the Program or Applicable Law, you must, in consultation with us, develop and provide to us a mutually agreeable written action plan to address such non-compliance. Such mutually agreeable action plan must be provided to us within five (5) business days after discovery of any material non-compliance issue or, for non-material issues, the first report of such issues in accordance with Section 14.2. The action plan must be instituted within ten (10) business days after the plan is approved by us. The timelines in this section may be extended upon the mutual agreement of the parties. For clarity, the timelines associated with such actions plans do not give you the right to cure such non-compliance. Regardless of any remediation or remediation plan, we reserve any right to terminate this Agreement as otherwise provided in this Agreement.

15 Term, Amendment, Suspension and Termination

15.1 Effective date. Unless this Agreement is provided as an amendment of a prior agreement between the parties (in which case, the effective date of this Agreement is the date specified in such amendment), upon our first acceptance and processing of an Application, Sales Slip, or Credit Slip, this Agreement will be deemed effective as of the date of your signature of a Dealer Application, your signature of this Agreement (or an acknowledgement of acceptance through e-sign or other means if available), or upon your first submission to us of an Application, Sales Slip, or Credit Slip, whichever occurs earlier.

15.2 Term. This Agreement shall continue until it is terminated in accordance with its terms.

15.3 Amendment. We may amend this Agreement at any time by mailing or providing written notice to you of any amendment at least ten

(10) days prior to the effective date of the amendment, and the amendment shall become effective on the date specified unless we receive your notice of termination of this Agreement before such effective date. You may not amend this Agreement.

15.4 Suspension. We may suspend this Agreement without notice if we determine, in our sole discretion, you have failed to follow this Agreement or our Instructions. We may also suspend this Agreement if there are irregular Card transactions, irregular Sales Slips, irregular Credit Slips, excessive Chargebacks, un-remedied compliance issues, or any other circumstance which, in our judgement, may increase our risk of loss, negative legal action, or negative regulatory action.

15.5 Termination by you. In addition to your right to terminate this Agreement in accordance with Section 15.3, you may terminate this Agreement without cause by providing us at least thirty (30) days prior written notice.

15.6 Termination by us. We may terminate this Agreement without cause by giving at least ten (10) days prior written notice to you. Additionally, we may immediately terminate this Agreement without notice if any of the following (the "Events of Default") occurs:

- 15.6.1 a material adverse change in your business or financial condition, including a bankruptcy petition or proceeding commenced by or against you;
- 15.6.2 any change in your ownership or control, or attempted assignment of this Agreement by you;
- 15.6.3 the sale of all or a substantial portion of your assets;
- 15.6.4 fraud, irregular Card transactions, irregular Sales Slips, irregular Credit Slips, excessive Chargebacks, un-remedied compliance issues, or any other circumstance which, in our judgement, may increase our risk of loss, negative legal or regulatory action;
- 15.6.5 any improper use or presentation of our names or marks by you;
- 15.6.6 you fail to follow our Instructions; or
- 15.6.7 you breach any term of this Agreement or you breach or misrepresent any of your representations or warranties with respect to this Agreement.

15.7 Effect of termination on prior Cardholder transactions. The termination of this Agreement does not affect the rights, liabilities or obligations of the parties with respect to Cardholder transactions entered into before the effective date of the termination. Upon the effective date of termination, your rights under this Agreement cease, but your obligations in connection with Program Materials, Applications, Sales Slips, Credit Slips and Accounts, including, without limitation, your Inquiry, Dispute, Chargeback, purchase, and indemnity obligations, shall survive such termination. During the period between the giving of a termination notice and the effective date of termination, you must cooperate in good faith to maintain levels of service as outlined in this Agreement to provide for an orderly termination.

15.8 Automatic stay does not prevent termination. In the event of the commencement of a bankruptcy proceeding either by or against you, we are not stayed from terminating this Agreement. You waive, to the extent legally permissible, the benefit of the automatic stay which might

otherwise arise in such proceeding. Upon any motion by us in any proceeding for relief from the automatic stay, you agree to not oppose in any way the granting of such relief.

15.9 Suspension/bankruptcy - Program participation revoked. In the event we suspend this Agreement in accordance with Section 15.4 or in the event of the commencement of a bankruptcy petition or proceeding either by or against you, you agree that you are no longer authorized to and you must not honor Cards issued by us, and you are no longer authorized to and you must not distribute, make available, process, complete or submit Applications.

16 Covenants, Representations, and Warranties

16.1 Covenants. In addition to any other covenants contained in this Agreement, you hereby covenant as follows:

- 16.1.1 Financial statements.** You will provide to us, at least once annually and upon our request, a copy of your most recent financial statement and/or annual report prepared in accordance with generally accepted accounting principles.
- 16.1.2 Compliance with Applicable Law and our Instructions.** You and your representatives and agents will perform all obligations and duties under this Agreement in compliance with Applicable Law including, without limitation, laws relating to privacy, data security, you, your business and the sale of goods and services. All aspects of the Program within your control, including, without limitation: distributing, making available, completing, processing and submitting of Applications; communications with individuals and Cardholders; and the processing of Sales Slips and Credit Sips will be in compliance with our Instructions, policies and procedures and all Applicable Laws, including, without limitation, the Safeguarding Guidelines. The obligations of this section 16.1.2 will survive termination.
- 16.1.3 License and registration.** You will obtain and maintain any license or registration necessary to the legal performance of this Agreement or any other agreement between the parties, including, without limitation, any license or registration applicable to consumer lending, commercial lending or credit insurance. If you breach this covenant, we may, in addition to any other remedy provided for in this Agreement or any other agreement between the parties, cancel or reduce any payments to you for which such license is required.
- 16.1.4 Taxes.** You will pay all assessments, taxes and other governmental charges on or relating to any equipment provided to you by us, and all sales taxes on goods or services sold by you. This obligation will survive termination of the Agreement.
- 16.1.5 Storage.** You will provide storage of any goods, originally purchased from you with a Card, that come into your possession at no cost to us.
- 16.1.6 Forward of any communication.** You will forward to us promptly after receipt, at any time during or following your participation in the Program, a copy of any legal proceeding, or a communication relating to an Account or a Card transaction received from, or on behalf of, a Cardholder or from a governmental or regulatory authority. This obligation will survive termination of the Agreement.

16.2 Representations and warranties. In addition to any other representations contained in this Agreement, you represent and warrant the following:

- 16.2.1 You, your goods, and your services.** At the time of presentment and all times thereafter, all information you provide to us relating to you or your goods or services are true and accurate, and all such goods and/or services will function and be performed in accordance with such information.
- 16.2.2 No conflict.** Neither this Agreement, nor the provision of the Program, will breach, conflict with, or violate any other understanding, license, instrument, contract, agreement or other commitment or arrangement to which you are a party or by which you are bound.
- 16.2.3 No infringement.** Your participation in and support of the Program including, without limitation, the use of the Dealer Marks, will not infringe on any intellectual property rights of any third party.
- 16.2.4 No Insolvency Event.** You are not subject to an Insolvency Event. An "Insolvency Event" means any event by which:
- 16.2.4.1** you have become insolvent or you generally fail to pay, or admit in writing your inability to pay, your debts as they mature or become due;
- 16.2.4.2** you have applied for, or consented to, the appointment of a trustee, receiver or other custodian for you, or you make a general assignment for the benefit of creditors;
- 16.2.4.3** you have commenced or had commenced against you any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings; or
- 16.2.4.4** you have taken any action for purposes of winding up or dissolving your business.
- 16.2.5 No adverse event.** No claim is pending or, to the best of your knowledge, threatened against you, which either in one instance or in the aggregate if determined adversely to you would materially and adversely affect your ability to perform your obligations under this Agreement.
- 16.2.6 Compliance with Applicable Law.** As of the Effective Date of this Agreement, you are in compliance with all Applicable Law, including applicable government standards necessary to consummate the transaction contemplated herein and to perform the obligations under this Agreement (including, but not limited to, obtaining all necessary licenses and certifications). No further state or federal license, registration, or approval is required for you to commence performance of your obligations under this Agreement.

17 General Terms

17.1 Indemnification. You shall reimburse us for all costs, including reasonable attorneys' fees, incurred by us in connection with enforcement by us of the provisions of this Agreement. You agree to indemnify, defend and hold harmless us, our affiliates and subsidiaries, their respective

officers, directors, employees, representatives and agents from any and all claims or defenses, losses, damages, expenses and/or liabilities including reasonable attorneys' fees and other reasonable court costs and costs of defense, arising from or relating to:

- 17.1.1 any action or inaction by you, your employees, or your agents with respect to any individual, any Cardholder, your business, any Program Materials, any Applications, any Sales Slips, and Credit Slips, or any electronic processing service;
- 17.1.2 any breach by you of any term, condition, covenant, warranty or other provision of this Agreement or any other agreement between the parties; or
- 17.1.3 any alleged violation by you of any Applicable Law, including, without limitation, violations caused by your, your employees, or your agents' incomplete compliance or noncompliance with our Instructions and/or procedures, whether or not the claimant ultimately prevails and whether or not the claim or defense is related to a transaction or the goods and/or services covered by a Sales Slip or Credit Slip.

17.2 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, WE DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE PROGRAM PROVIDED UNDER THIS AGREEMENT.

17.3 LIMITATION ON LIABILITY. OUR LIABILITY TO YOU WITH RESPECT TO ANY CARD TRANSACTION SHALL NOT EXCEED THE AMOUNT WHICH WE PAID YOU FOR THE APPLICABLE SALES SLIP OR CREDIT SLIP IN CONNECTION WITH SUCH TRANSACTION. WE SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES REGARDLESS OF THE FORM OF SUCH ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WE SHALL IN NO EVENT BE LIABLE FOR YOUR ATTORNEYS' FEES.

17.4 Assignment. You may not assign, in whole or in part, your rights and obligations under this Agreement. We may assign any or all of our rights and obligations under this Agreement. Subject to this section, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Each party agrees to notify the other party of any change in ownership or its name.

17.5 Subcontractors. We may delegate our duties under this Agreement to any subcontractors without notice to you. You may not delegate your duties to any subcontractors.

17.6 Entire agreement. This Agreement contains the entire agreement between the parties, and all prior representations, promises and conditions, whether oral or written, in connection with the subject matter hereof, are merged herein.

17.7 Waiver. Our rights, remedies and powers under this Agreement are cumulative. Any delay or failure by us to exercise any right, power or remedy which we may have at any time under the terms of this Agreement shall not constitute a waiver thereof by us, and no single or partial exercise by us of any right, power or remedy shall preclude other or further exercise thereof, or any exercise of any other rights, powers or remedies.

17.8 Governing 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 Delaware and applicable federal laws, rules and regulations.

17.9 Severability. The parties intend for every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

17.10 Independent contractors. Except as set forth in Sections 3.3, 5.3 and 6.2, you and we are at all times independent contractors in all matters relating to this Agreement and the Program. You and your employees are not our agents or our employees for any purpose except with respect to your requirement to act as agent for us pursuant to Section 3.4 and in promoting the Program. You and your employees have no power or authority, whether apparent, actual, ostensible or otherwise, to bind or commit us in any way. We and our employees are not your agents or employees for any purpose. We and our employees have no power or authority, whether apparent, actual, ostensible or otherwise, to bind or commit you in any way. This limitation set forth in this section is intended to include all state and federal statutes and regulations. It is further agreed that neither party will have any obligation or liability as a result of an imputed employment relationship. It is further agreed that each party will be responsible for any and all tax and insurance matters, employment or other expenses incurred by that party.

17.11 Section references. All references in this Agreement to a "Section" are references to the sections of this Agreement, unless this Agreement expressly states otherwise. The headings of the sections contained in this Agreement are for convenience of reference only and should not operate to reduce, limit or otherwise waive the Parties' rights and obligations under any section. The parties' rights and obligations should also not be reduced, limited or waived in the event of an error in the numbering of any section, in which event the Agreement should be construed as a whole and given its fair meaning.

17.12 Material provisions. The parties agree and acknowledge that all terms of this Agreement are material and the breach by either party of any of its obligations, covenants, representations, or warranties under this Agreement shall be deemed a material breach entitling the non-breaching party to pursue any rights and remedies available under this Agreement, including, without limitation, the rights to terminate under Section 15 of this Agreement.

17.13 Survival. The provisions of this Section 17 shall survive termination of this Agreement.

18 Additional Definitions

As used in this Agreement, the following terms have the meanings provided below:

"Applicable Law" means, with respect to any person, property, transaction, event or other matter, all (i) federal, state and local laws (including common law), statutes, rules and regulations; (ii) written or oral regulatory guidance, written or oral substantive recommendations, directives, written or oral opinions and interpretations, policies and guidelines of any Governmental Entity with jurisdiction over such person, property, transaction, event or other matter (in each case, as reasonably interpreted by the party to which such guidance, recommendation, directive, opinion, interpretation, policy or guideline applies); and (iii) rulings, injunctions, judgments, decrees and orders of any Governmental Entity or arbitrator; in each case applicable to the Program, the Accounts,

or the parties or their respective affiliates or assets, including any of the foregoing items referred to in clauses (i) through (iii) above that have been implemented or enacted but will become effective in the future.

"Contract Year" means each one year period during the term of this Agreement starting on the effective date of this Agreement.

"Governmental Entity" means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether national, federal, state, county, municipal, local or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; and (iv) any quasi-governmental or private body exercising any regulatory (including securities regulatory), expropriation or taxing authority under or for the account of any of the above.

19 Electronic Signature

To the extent you accept this Agreement via electronic means:

By selecting the "I Accept" button, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual/handwritten signature on this Agreement. By selecting "I Accept" using any device, means or action, you consent to the legally binding terms and conditions of this Agreement. You further agree that your signature on this document (hereafter referred to as your "E-Signature") is as valid as if you signed the document in writing. You also agree that no certification authority or other third party verification is necessary to validate your E-Signature, and that the lack of such certification or third party verification will not in any way affect the enforceability of your E-Signature or any resulting agreement between you and us. You are also confirming that you are authorized to enter into this Agreement. You further agree that each use of your E-Signature constitutes your agreement to be bound by the terms and conditions of this Agreement as they exist on the date of your E-Signature.

Exhibit 3.5
Acceptable Identification Document Table

TD RETAIL CARD SERVICES	Primary	Secondary
Acceptable Identification Documentation – TWO (2) PIECES OF ORIGINAL IDENTIFICATION ARE REQUIRED TO OPEN ANY ACCOUNT AND AT LEAST ONE MUST BE A PRIMARY FORM OF IDENTIFICATION (All Identification Must Be Valid & Unexpired)		
Both U.S. and Non-U.S Citizens		
Driver’s License – Must contain photograph and signature - Issued by a state, district, commonwealth, or territory of the U.S.	X	X
Driver’s License (Temporary) Must contain photograph and signature - Issued by a state, district, commonwealth, or territory of the U.S.	X	X
Driver Learner’s Permit – Must contain photograph and signature. Issued by a state, district, commonwealth, or territory of the U.S.	X	X
Non-Driver Identification Card - Must contain photograph and signature. Issued by a state, district, commonwealth, or territory of the U.S.	X	X
Bank Statement - Must be original and issued within last 2 months. Address must contain customer’s current residence. Bank Statements must NOT be statements issued by TD Bank.		X
Certificate of Marriage or Divorce - Must contain raised seal		X
Certified Birth Certificate – Must contain raised seal		X
CT, NJ, NY or PA State Benefits Identification Card – State issued document for welfare, Medicaid or food stamp recipients		X
Employer I.D. Card - Employment must also be independently verified - e.g. original paycheck stub, phone call, site visit		X
Federal, State or Local Government Identification Card – Must contain photograph - Issued to government employees		X
Major Credit Card (Only American Express, Diners Club, Discover, MasterCard or Visa are acceptable). Verify credit card is signed and unexpired.		X
Debit Card (Only Visa or Mastercard endorsed debit cards are acceptable). Verify debit card is signed and unexpired.		X
Store Issued Credit Cards- Verify the credit card is signed and unexpired. (Ex. Home Depot)		X
Pistol or Firearms Permit, Hunting License, or Fishing License - Issued by a state government		X
Senior Citizen Card Must contain a photograph. Issued by a state or local government		X
U.S. College/University Photo Identification Card AND Proof of Current Enrollment (e.g. acceptance letter, class registration or schedule, academic transcript, etc) This I.D. is acceptable for current students only.		X
Utility Bill - Must be original and issued by telephone, gas, electric or cable company within the last 2 months. Address must contain customer’s current residence.		X
United States Citizen		

U.S. Passport (must be valid)	X	X
U.S. Armed Forces Identification Card - With signature	X	X
Certified Certificate of Citizenship - Must contain raised seal		X
Certified Certificate of Naturalization - Must contain raised seal		X
Local Government I.D. Card –Must contain photo (e.g. state/county/sheriff photo ID card)		X
Medicaid Card - This is a state issued document which does not contain a photo		X
Medicare Card – This is a U.S. government issued document which does not contain a photo		X
U.S. Armed Forces Identification Card - Without signature		X
U.S. Citizen Identification Card – Must contain photo. Issued by U.S. government to U.S. citizens, native born and naturalized		X
Veterans Universal Access and Identification Card (VIC) - Must contain photo. Issued to veteran patients receiving care and services at Veteran Affairs healthcare facilities		X
Non-U.S. Citizens		
Alien Registration Card (“Green Card”) – Must contain photograph. Issued by U.S. government to permanent resident aliens	X	X
Foreign Passport with a Valid I-551 stamp - Passport must be in English language or be accompanied by certified translation	X	X
Permanent Resident Card – Must contain photograph. Issued by U.S. government	X	X
Refugee Travel Document – Also known as I-571	X	X
Certificate of Canadian Citizenship - Must contain photograph. Issued by Canadian government to proving Canadian citizenship.		X
Foreign Drivers License – Must contain photograph. Issued by foreign government.		X
Foreign National Identity Card – Must contain photograph. Identity card issued by foreign country (e.g. Cedula Card, Matricula Consular).		X
Temporary Resident Card – Must contain photograph – Issued by U.S. government to non-U.S. citizens which entitles the holder to reside and work in the U.S. until expiration date.		X
U.S. Employment Authorization Card - Must contain photograph – Issued to non-U.S. citizens allowing them to work in the U.S.		X

Exhibit 5.11

Additional Terms for Warranty Contracts

If we authorize you to offer Warranty Contracts in accordance with Section 5.11 of the Agreement, the following terms apply:

- Any third-party you wish to use to offer and support the Warranty Contracts (the "Marketer") must be specifically approved by us in writing prior to allowing Cardholders to finance the purchase of Warranty Contracts on their Accounts (the "Warranty Marketing Program").
- Only Marketer, as your agent, may offer and support Warranty Contracts to Cardholders.
- Warranty Contracts, and the performance of Marketer under the Warranty Contracts, must at all times be insured by an independent insurance company, which insurance company maintains at all times a Best A rating.
- From time to time, upon our request, you will provide us with proof satisfactory to us that Marketer continues to be adequately insured.
- In accordance with our instructions, Cardholders are allowed to finance the purchase of Warranty Contracts on their Accounts.
- All marketing of the Warranty Marketing Program is subject to review and approval in accordance with the requirements of Solicitation Materials and Marketing Plans as provided in this Agreement.
- The purchase of Warranty Contracts pursuant to the Warranty Marketing Program must be clearly and accurately documented on Sales Slips.
- You must send all documents regarding the purchase of any Warranty Contracts by a Warranty Contract Purchaser to the entity issuing the Warranty Contract prior to, or contemporaneous with, your submission of the related Sales Slip to us.
- Services provided pursuant to a Warranty Contract must be adequate and any additional repairs and services you or your Marketer provide to Warranty Contract Purchasers must be at your usual rate of charge.
- If an Cardholder who finances a Warranty Contract on an Account (a "Warranty Contract Purchaser") moves out of your service area (with the goods covered by a Warranty Contract), you must either arrange for warranty service to be performed by other qualified technicians or to refund the unearned portion of the charge assessed for the Warranty Contract.
- We may terminate the financing of a Warranty Marketing Program at any time, by providing thirty (30) days prior written notice to you.
- You agree and understand that all actions or inactions of Marketer with respect to a Warranty Marketing Program are attributable to you for the purposes of all of your covenants, agreements, representations and warranties in this Agreement. Your indemnification obligations in this Agreement apply to any action or inaction of Marketer as if such action or inaction were your action or inaction. The obligations under this Exhibit 5.11 survive the termination or expiration of this Agreement.
- If during the term of any Warranty Contract the Warranty Contract Purchaser goes into default on his/her Account, or we otherwise charge off the Account of such Warranty Contract Purchaser for any reason, you must reimburse us for the portion of the Warranty Contract unearned and unexpired at the time of the default or charge off. You guarantee every Warranty Contract, even if any such Warranty Contract is not immediately effective.

Exhibit 10.4

Additional Chargeback Reason Examples

The following, without limitation, are additional examples of when we would have a Chargeback right:

- The Cardholder refuses to pay for a charge because the Cardholder is not satisfied with the goods and or services purchased from you, including, without limitation, when the Cardholder asserts that obligations under an Warranty Contract have not been satisfied;
- The Cardholder disputes the execution or validity of the transaction or the delivery, quality, or performance of the goods or services;
- The Cardholder asserts that he or she did not authorize the transaction represented by the Sales Slip or did not authorize the transaction in the amount shown on the Sales Slip;
- The Sales Slip or Application are not completed to our reasonable satisfaction, for example, it is a duplicate of a transaction previously accepted by us, or the price of the goods or services shown on the Sales Slip differs from the amount on the receipt delivered to the Cardholder at the time of purchase;
- You did not obtain authorization from us for the transaction represented by the Sales Slip;
- We determine that you have violated or have not complied with any term, condition, covenant, warranty, or other provision of this Agreement or any other agreement between the Parties, any of our procedures or instructions, or Applicable Law in connection with the Sales Slip or the transaction to which it relates;
- We determine that the Sales Slip is fraudulent or the related transaction involves fraudulent activities by your employees, contractors, or agents;
- A transaction represented by a Sales Slip is not a bona fide transaction in your ordinary course of business or occurred in a "going out of business" sale or similar event unless we have been notified of such sale or event and transactions during such sale or event has been approved by us in its sole discretion;
- A transaction represented by a Sales Slip 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 you or any of your agents or employees;
- A transaction represented by a Sales Slip finances the purchase of (i) goods or services delivered on consignment; (ii) goods or services belonging to any liquidator or similar entity; or (iii) any goods or services that are provided for sale in violation of any applicable state or local law or regulation pertaining to "going out of business sales";
- We did not receive an Application in either paper or electronic format;
- The Sales Slip is submitted prior to acceptance of goods or services by the Cardholder;
- Goods are shipped or delivered to any third-party address or P.O. Box;
- Goods are shipped or delivered without requiring and securing a signed receipt from Cardholder;
- The Cardholder alleges that a credit adjustment was requested within the parameters of your documentable return policies and refused, or that a credit adjustment was issued by you but we did not receive the credit; or
- The individual or Cardholder alleges that you provided false or misleading information (e.g., misrepresentation about credit promotions), or that your acts or practices were unfair, deceptive, or abusive.