

**BUSINESS CAPITAL CORPORATION (BCC)**

This Agreement entered into this \_\_\_\_\_ of \_\_\_\_\_, 200\_\_ by and between **Business Capital Corporation (BCC)** and **(Merchant)**. This agreement shall only become effective upon acceptance and execution by BCC and execution by merchant of a credit card processing agreement with an approved processor.

**MERCHANT INFORMATION**

**Type of entity** (check one): Corporation  Limited Liability Company (LLC)  Limited Partnership (LP) Sole Proprietorship

**D/B/A Name** \_\_\_\_\_ **Corp. or Legal Name:** \_\_\_\_\_

**State of Organization:** \_\_\_\_\_ **Currently in Good Standing/Current:** Yes No **Federal ID# or SS#:** \_\_\_\_\_

**Date Business Started:** (mm/yy): \_\_\_\_\_ **Contact Name:** \_\_\_\_\_ **Position:** \_\_\_\_\_

**Physical Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Email address:** \_\_\_\_\_

**Bank Name:** \_\_\_\_\_ **City:** \_\_\_\_\_ **State:** \_\_\_\_\_

**ABA Routing:** \_\_\_\_\_ **ACCT #:** \_\_\_\_\_

**TERMS**

**I.** Merchant hereby sells and assigns to BCC as absolute owner thereof all of its current and future Visa/MasterCard credit card receivables by whomever processed, and all contract rights or other proceeds resulting therefrom (the "Receivables"), in the amount of \_\_\_\_\_ ("Contract Price"). The purchase price consideration for said Receivables shall be \_\_\_\_\_. Merchant as a material inducement for BCC to enter into this Agreement warrants that its future Visa/MasterCard receivables will be a minimum of \$\_\_\_\_\_ per week.

**II.** Merchant hereby authorizes BCC's designated Processor BCC to remit \_\_\_\_\_% per day of the merchant's Visa/MasterCard settlements to BCC until BCC receives payment in full of the Contract Price. If at any time Merchant's weekly Visa/MasterCard receivables is less than the specified weekly minimum, then merchant hereby expressly authorizes BCC to automatically deduct sufficient monies from Merchant's business checking account to replace the receivables that would have been available had Merchant processed the minimum receivables warranted. Additionally, if the amount being withheld does not meet the weekly minimum set forth in this Agreement, BCC reserves the right to increase the percentage without the consent of merchant. Merchant grants BCC right, title and interest in Merchant's assets securing Merchant's obligations, including processing receivables, to the extent of the Contract price, in the event of a default. Merchant also authorizes processor to share any credit information obtained in accordance with this contract.

**III.** The difference between the Contract Price and the purchase price is consideration for Merchant's access to BCC's Loyalty and Receivable Factoring Program and the services associated therewith. If any portion of the difference between the Contract Price and the purchase price is deemed to be interest by any entity, of competent jurisdiction, the amount collected shall not exceed the applicable maximum rate permitted by law and the balance refunded to the Merchant, but the balance of the transaction shall not be void. In no event shall the interest charged upon a default cause the amount by which the amount due exceeds the original principal amount advanced to exceed an amount that, if considered to be imputed interest, shall exceed the maximum rate allowable by law.

**PERSONAL GUARANTEE**

Guarantor in order to persuade BCC to enter into the Agreement, by signing below, unconditionally, jointly and severally guaranties to BCC the satisfaction in full of all obligations of the Merchant to BCC now or hereafter existing under this Agreement and under any amendment, modification, renewal, extension, substitution or replacement hereof and all expenses including, but not limited to, reasonable attorney's fees incurred by BCC in enforcing any rights hereunder. Guarantor further states that he/she will receive a benefit as a result of BCC entering into this Agreement and that such benefit is adequate consideration for this Guarantee. This guarantee is absolute, without unconditional and is revolving (continuing). BCC shall not be obligated to take any action against the Merchant or other security for Merchant's obligations prior to taking any action against the Guarantor.

**ASSIGNMENT OF CREDIT CARD PROCEEDS AND OTHER PROPERTY**

Merchant and Guarantor(s) in the event Merchant defaults on an obligation under this Agreement, grants and assigns to BCC, without necessity of legal action, all right, title and interest in all of Merchant's and Guarantor's property, whether real or personal, including but not limited to the proceeds of its credit card transactions paid for with a Visa or MasterCard credit card in the possession of any acquirer of credit card transactions, furniture, fixtures and equipment, business name, leasehold interest, inventory, company stock, receivables, credit card receipts (including Amex, Discover, Diners, etc) and the Merchants deposit accounts and Guarantor's personal checking accounts. This assignment shall attach to Merchant's property and funds only to the extent Merchant is obligated to BCC under the warranties, terms and conditions of this Agreement.

**BUSINESS CAPITAL CORPORATION (BCC)**

**MERCHANT**

**BUSINESS CAPITAL CORPORATION, INC.**

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

**GUARANTOR(S)**

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

SS# \_\_\_\_\_

SS# \_\_\_\_\_

**THIS AGREEMENT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS WHICH ARE INCORPORATED HEREIN**

## BUSINESS CAPITAL CORPORATION (BCC)

### MERCHANT AGREEMENT TERMS AND CONDITIONS CONTINUED

**I. SERVICE AGREEMENT** During the term of this Agreement, BCC through its designated credit card processor will, consistent with paragraph II., collect the proceeds of the Receivables sold. The amount of Receivables sold and/or assigned to BCC are set forth on page one of this Agreement.

### **II. PROCESSING, ADMINISTRATION AND TERM**

2.1. By execution of this Agreement, the Merchant hereby *warrants that as part of the consideration for this Agreement it will turn over its credit card processing to a credit card processor designated by BCC and that further this is an essential and integral part of the reasons why BCC has purchased the Receivables.*

2.2. Merchant Processing Agreement. The Merchant shall execute an agreement (the "Merchant Processing Agreement") acceptable to BCC, with a credit card processor acceptable to BCC (the "Processor"), to obtain credit card processing services. *Merchant warrants and agrees that all monies owed BCC shall become immediately due and owing should it process credit card transactions with any acquirer of credit card transactions other than one approved by BCC or should its weekly Visa/MasterCard receivables be less than the minimum warranted by Merchant.* The Merchant shall authorize the Processor to deduct the amounts payable to BCC in respect of the Receivables in accord with this agreement from the Visa/ MasterCard settlements which would otherwise be due to Merchant from the Processor and to pay such amounts to BCC pursuant to "BCC's instructions to the Processor. The authorization *may not be revoked* by Merchant without the written consent of BCC. *Merchant warrants that* the Processor may rely upon the instructions of BCC, without any independent verification, in making such deductions and payments, and the Merchant waives any claims for damages it may have against the Processor in connection with such acts. In the event of a default, merchant authorizes processor upon notice from BCC to pay all of Merchant's Visa/MasterCard settlements to BCC until the full purchase price and all Administrative Costs are paid.

2.3. Administrative Costs. BCC's costs in connection with its acquisition of the Receivables are varied and include, but are not limited to, administration and finance fees, payable management consultation, liaison activities between BCC's processor, Merchant and any BCC funding source, preparation and review of all necessary documentation, collection oversight, review of merchants credit information, filing fees, sales commissions, related financing charges *and collection costs.*

2.4. Term of Agreement. This Agreement shall be in full force and effect *to the extent of any initial or renewal outstanding obligations to BCC, except,* however, that the Merchant further agrees to keep the credit card processing with the processor designated by BCC for a minimum of two years from the date of this Agreement irrespective of whether Merchant has satisfied its obligations to BCC. The Merchant further agrees that during the term of this Agreement that its use of the credit card processor designated by BCC shall be exclusive and that Merchant shall not use any other credit card processor during the term of this Agreement. BCC may terminate this Agreement at anytime and in its sole discretion upon fifteen (15) days prior written notice. The termination of this Agreement shall not affect the Merchant's responsibility to satisfy all outstanding obligations to BCC at the time of termination.

### **III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

*The Merchant represents, warrants and covenants that as of this date and during the term of this Agreement:*

3.1. Financial Condition and Financial Information. The financial statements and bank card processing statements of the Merchant, copies of which have been furnished to BCC, represent the total credit card processing and financial condition of the Merchant at such dates and since the dates therein, there has been no material adverse change, processing volume, financial or otherwise, in such condition or operations. The Merchant shall furnish to BCC notice of any material adverse change, processing volume, financial or otherwise in such conditions or operations. **BCC reserves the right to cancel, with 15 days notice, if it is of the opinion that at any time during this Agreement, it is "at risk" of losing all or a portion of its purchased Receivables.**

3.2. Governmental and Card Association Approvals. The Merchant is in compliance and shall comply with all laws and has all requisite permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged all of which are in full force and effect. The Merchant is not on any card association derogatory list and is currently approved by all card associations to accept their cards.

3.3. Authorization. The Merchant, and the person(s) signing this Agreement on behalf of the Merchant, have full power and authority to enter into and perform the obligations under this Agreement, to sell future receivables and to incur the obligations provided for herein and therein, all of which have been duly authorized by all necessary and proper action.

3.4. Insurance. The Merchant will maintain property damage and other business insurance in such amounts and against such risks as are satisfactory to BCC and list BCC as an additional insured on all policies.

3.5. Change Name or Location. The Merchant will not conduct the Merchant's businesses under any name other than as disclosed to BCC or change its place(s) of business or its business assets. The Merchant shall also not sell its business without paying BCC in full the total sum of any outstanding balance. The Merchant hereby agrees that if it fails to pay said sum in full, in addition to all other remedies available, BCC shall also be entitled to injunctive relief including, but not limited to, enjoining the receipt to Merchant of any funds resulting from the sale of Merchant's business in the event all of merchant's obligations are nor satisfied in full.

## BUSINESS CAPITAL CORPORATION (BCC)

3.6. Credit Card Acceptance. Merchant agrees during the term of any agreement with BCC, Merchant will not use in any manner for any purpose a terminal or credit card accepting device that is connected to any processor or receiver of credit card transaction other than BCC's designated processor, without the express written consent of BCC. Merchant additionally agrees not to allow any event to occur which could have an adverse effect on Merchant's ability to use, accept or authorize credit cards for the purchase of the merchants services and products or terminate or change the credit card

Processor designated by BCC. Any violation of this **Agreement** will be deemed a material breach and causing all balances to be due and payable immediately and the Merchant to be placed on card associations combined terminated merchant list.

3.7. Merchant Processing Agreement. The Merchant will not modify the Merchant Processing Agreement or the Merchant's obligations under this Agreement, without BCC's prior written consent.

3.8. Transactional History. The Merchant acknowledges and agrees that the Processor may provide BCC with the Merchant's credit card history.

3.9. Indemnification. The Merchant indemnifies and holds the Processor, its officers, directors, employees and shareholders harmless from and against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred by the Processor resulting from (a) claims asserted by BCC arising for monies owed to BCC from the Merchant and (b) actions taken by the Processor in reliance upon information or instructions provided to the Processor by BCC.

3.10. No Liability. In no event will BCC or the Processor be liable for any claims asserted by the Merchant under any theory of tort, contract strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by the Merchant **and acquirer/processor is RELEASED from any such current of future claims**. Merchant will hold BCC and the Processor harmless from and against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred by BCC or the Processor resulting from claims asserted by Merchant.

3.11. Reliance on Terms. Sections 2.2, 3.8, 3.9 and 3.10 of this Agreement are agreed to for the benefit of the Merchant, BCC and the Processor, and notwithstanding the fact that the Processor is not a party to this Agreement, the Processor may rely upon their terms and raise them as a defense in any action. Any amendment to, or modification or deletion of, any of the aforementioned sections without the prior written consent of the Processor shall be of no effect.

3.12. No Prior Pledge of Security. By execution of this Agreement Merchant and its principals represent and warrant that each credit card transaction shall be for an actual bona fide sale and delivery of merchandise or rendition of service in the ordinary course of business, unencumbered title to which was in Merchant at the time of sale or rendition of services, that the Merchant's customer is and shall be unconditionally liable for the payment of the amount stated in the invoice and/or receipt according to its terms, whether or not sold, without offset, defense or counterclaim; that none of Merchant's Receivables or the goods or services sold that generate these Receivables are or shall be subject to any pledge, security interest or otherwise encumbered except to BCC or as BCC may approve in writing; and that Merchant is not in default to the United States or any state or local subdivision thereof in the payment or deposit of taxes.

3.13 Merchant Status. Merchant represents and warrants to BCC that Merchant is solvent and will continue to remain so, that Merchant is a corporation or other legal business entity organized and approved under appropriate state laws and that your records concerning the Receivables are and will be kept at your business address listed herein. Merchant warrants that this Agreement is a commercial business transaction and not a consumer transaction.

### IV. GRANT OF SECURITY INTEREST AND ASSIGNMENT

To secure prompt performance of all Obligations of the Merchant to BCC herein, Merchant hereby grants to BCC a security interest in all right, title and interest of the following property that is now or hereafter acquired or at any time used in connection with (without regard to the duration of the period of such use), or now or at any time relates to or arises as a result of, the operation of the business of Merchant: (i) all of the Merchant's inventory, including all goods, merchandise, raw materials, supplies and other tangible personal property, now owned or hereafter acquired, and all documents now and at any times covering or representing any of said property; (ii) all of Merchant's accounts, accounts receivables, contract receivables, contract rights, notes, drafts, acceptances, instruments, chattel paper and general intangibles including but not limited to any and all tax refunds, copyrights, proprietary rights, trade secrets, trade dress, customer lists, license rights, patent rights, franchise rights, trademarks together with any and all goodwill associated therewith, and all guarantees and suretyship agreements relating thereto and all security for payment thereof, now or hereafter existing or arising; and (iii) all of Merchant's equipment, including all furniture, furnishings, machinery, fixtures, storage shelves and other goods used in the conduct of Merchant's business, including but not limited to, all motor vehicles and rolling stock, now or hereafter acquired together with (a) all increases, parts, fittings, accessories, equipment, special tools and accessions now or hereafter attached thereto or used in connection therewith, and any and all replacements of all or any part thereof; (b) any profits now or hereafter acquired from or through any of the foregoing; (c) any products now or hereafter manufactured, processed, assembled or commingled from any of the foregoing; and (d) any and all proceeds received should any of the foregoing be sold, exchanged, collected or otherwise disposed of (all of which is hereafter called the "Collateral"). The term "Obligations" shall mean all obligations, indebtedness or liabilities of Merchant to BCC herein, now or hereafter existing, whether absolute or contingent, primary or otherwise, and whether for

principal, interest, fees, costs, expenses or otherwise, including all fees and expenses incurred in the enforcement or collection of amounts due herein as well as all costs, expenses and reasonable attorney's fees incurred both before and after a Default (as defined in Section 5.1 below) to the

## BUSINESS CAPITAL CORPORATION (BCC)

extent allowed by applicable law. Said terms used herein shall have the same meanings as such terms have under Article 9 of the Uniform Commercial Code, as amended from time to time, in the State of Missouri (the "UCC"). Merchant agrees to execute and deliver to BCC in a form acceptable to BCC any and all instruments, documents, stock certificates, stock powers, financing statements, assignments or other writing which BCC may reasonably deem necessary to carry out the terms of this Agreement to perfect BCC's security interest in the Collateral or to enable BCC to enforce its security interest in any of the foregoing. This Agreement shall also operate as a complete assignment to BCC of the property identified in this Section in the event of a default.

### V. DEFAULT

5. 1. Default. A Default shall include, but not be limited to, any of the following events: (a) The Merchant shall fail to perform or observe any other term, covenant or agreement contained in this Agreement; (b) Any representation or warranty made by the Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect; (c) The Merchant is unable to pay its debts, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Merchant seeking to adjudicate it a bankrupt or insolvent, or seeking

reorganization, arrangement, adjustment, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, or (d) The Merchant shall dissolve or liquidate, or be dissolved or liquidated, or cease to legally exist, or merge or consolidate, or be merged or consolidated with or into any other corporation or entity or shall sell substantially all of its assets.

5.2. Remedies Upon Default. Upon the occurrence of a Default, BCC may at its option: (a) terminate this Agreement, whereupon (i) any benefits shall terminate immediately and (ii) The Merchant shall immediately pay to BCC from its receipts the full amount of Receivables purchased and not yet repaid at the time of the breach plus reimbursement of expenses incurred by BCC and all collection costs (including court costs and attorney fees charged by BCC's attorneys in its locale), along with interest on all of the foregoing from the date of the default of this Agreement at the rate of 15% per annum or if such rate is not permitted then the highest rate permitted by law; and/or (b) exercise any or all of its rights or remedies of a secured party with respect to the Collateral under the UCC then in effect in the State of Missouri or other state with proper jurisdiction over the Collateral or this Agreement, including the right to require the Merchant upon written notice to promptly assemble the Collateral and to make it available to BCC at a place reasonably convenient to BCC. In that regard, the Merchant will make available to BCC the premises and facilities of the Merchant for the purpose of BCC taking possession of the Collateral or of removing or putting the Collateral in saleable form. The net cash proceeds resulting from the collection, liquidation, sale, lease or other disposition of Collateral shall be applied first to the expenses, including all reasonable attorneys' fees, of retaking, holding, storing and preparing for sale, selling, collecting, liquidating the Collateral, and then to the satisfaction of all outstanding amounts due hereunder, and the balance of the proceeds, if any, shall be paid to the Merchant. The Merchant and guarantor shall be jointly and severally liable to BCC and shall pay to BCC on demand any deficiency, which may remain after such sale, disposition, collection or liquidation of the Collateral. BCC shall not, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the liquidation of any of the Collateral. The Merchant and the Guarantor(s) agree to indemnify and hold harmless BCC against any claim, loss or damage arising out of the liquidation of any of the Collateral; and (c) The Merchant further agrees to permit BCC to obtain an injunction against Merchant operating its business until such time as the Merchant is no longer in default. BCC's rights, remedies and privileges under this Agreement and otherwise shall be cumulative and not alternative, and BCC's failure or delay in exercising any such right, remedy or privilege shall not be deemed a waiver of any obligation by Merchant or right, remedy or privilege by BCC.

### VI. MISCELLANEOUS

6. 1. Modifications; Amendments. No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by BCC.

6.2. Notices. All notices, requests, consents, demands and other communications hereunder shall be in writing and shall be delivered by mail, overnight delivery or hand delivery to the respective parties to this Agreement at the addresses set forth in on this Agreement.

6.3. Waiver Remedies. No failure on the part of BCC to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

6.4. No Deductions. All payments under this Agreement shall be paid by the Merchant to BCC without offset, deduction or withholding of any kind.

## **BUSINESS CAPITAL CORPORATION (BCC)**

6.5 Binding Effect; Governing Law and Jurisdiction This Agreement shall be binding upon and inure to the benefit of the Merchant, BCC and their respective successors and assigns, except that the Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of BCC which consent may be withheld in "BCC's sole discretion. BCC reserves the right to assign this Agreement or its entitlement to receipts with or without prior written notice to the Merchant. This Agreement together with all assignments and sales of Receivables hereunder shall be deemed made in Missouri and subject to the laws of the State of Missouri without reference to choice of law principles. At BCC's sole option, should any controversy arise out of this Agreement or in relation to or in connection with it or any actual breach thereof, said controversy must be submitted to the

Circuit Court for the Sixteenth Judicial Circuit, Jackson County, Missouri. The Merchant and its guarantor agree that any claim or cause of action by you against BCC or any of its officers, directors or employees arising out of or relating to in any way to this Agreement shall be barred unless asserted by the Merchant and/or guarantor by the commencement of an action or proceeding by the Merchant or guarantor within one year after the first act, occurrence or omission upon which such claim or cause of action is based. MERCHANT AND GUARANTOR(S) HEREBY AGREE TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF MISSOURI ON ALL DISPUTES OR CONTROVERSIES ARISING UNDER OR RELATING TO THIS AGREEMENT AND DESIGNATE THE SECRETARY OF STATE AS YOUR AGENT FOR SERVICE OF PROCESS.

6.6 Survival of Representations, etc. All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

6.7 Severability In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

6.8 Entire Agreement This Agreement embodies the entire agreement and understanding between the Merchant and BCC and supersedes all prior agreements and understandings relating to the subject matter hereof unless otherwise specifically reaffirmed or restated herein.

6.9 JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER.