



AmeriFirst Home Improvement Finance
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MERCHANT FINANCING AGREEMENT

This Merchant Financing Agreement (the "Agreement") is between Merchant (hereafter identified) and AmeriFirst Home Improvement Finance, LLC, a Virginia corporation, a/k/a AmeriFirst Finance, LLC (together with its affiliates, subsidiaries, assigns or designees herein "AmeriFirst"). Merchant and AmeriFirst agree as follows:

1. DEFINITIONS. All capitalized terms used in the Agreement or in the Operating Instructions, certificate or other document in connection with this Agreement shall have the following meanings and the singular of such terms shall include the plural:

- a) "AmeriFirst" is AmeriFirst Home Improvement Finance, LLC, a Virginia corporation (together with its affiliates, subsidiaries, assigns or designees).
- b) "Account" is the obligation of a Buyer created by a Contract purchased by AmeriFirst or Loan Agreement.
- c) "Account Number" is a unique identification number assigned by AmeriFirst to an Account.
- d) "Affiliate" is a person or entity that directly, or indirectly, controls, or is controlled by, or is under common control with Merchant. For purposes of this definition of Affiliate, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting shares, by contract, or otherwise
- e) "Agreement" is this Merchant Financing Agreement and all amendments thereto.
- f) "Application" is the Merchant Application submitted by Merchant in connection with the Agreement
- g) "Buyer" is a customer of Merchant and the person or persons who has applied for credit with AmeriFirst.
- h) "Buyer Claim" is any claim made by a Buyer who entered into a Contract or Loan Agreement relating to the quality, cost, timeliness, workmanship or any other complaint regarding the Products sold by Merchant.
- i) "Buyer Information" is any personal information about a Buyer received in connection with an application for credit, whether included in a credit application or through use of the Account Number obtained from AmeriFirst, including, but not limited to, the applicant or co-applicant's name, address, social security number, date of birth, income information, Account Number and Account information.
- j) "Buyer Fraud" is defined in Section 10.
- k) "Contract" is a retail installment sales contract or similar evidence of a Buyer's obligation to pay arising from the Buyer's purchase of Products, whether in paper or electronic form, and including the terms and conditions of the Buyer's obligation and shall include any and all other documents referred to in or accompanying the Contract.
- l) "Merchant" is the person or entity identified on the signature page to this Agreement as the Merchant and in the Application.
- m) "Merchant Fraud" is defined in Section 10.
- n) "Finance Documents" are the credit application, Contract, Loan Agreement, Merchant work order, Security Agreement, disclosure statement, notice of right to cancel, sales charge slip, completion certificate, assignment, HUD-1A, good faith estimate, UCC-1 financing statement and such other forms and documents as AmeriFirst, in its sole discretion, shall deem appropriate or necessary in order for AmeriFirst to fund an Account.
- o) "Loan" is an advance of money by AmeriFirst in a closed end or open-end transaction to or for the benefit of a Buyer evidenced by and pursuant to a Loan Agreement.

- p) "Loan Agreement" is a written agreement between AmeriFirst and the Buyer containing the terms and conditions of the Loan and shall include any and all other documents referred to in or accompanying the Loan Agreement.
- q) "Loss" is defined in Section 8.
- r) "Operating Instructions" are any instructions or procedures that AmeriFirst communicates to Merchant and updates from time-to-time. (See Exhibit "A") All Operating Instructions now existing or hereafter issued are incorporated in this Agreement as if set forth herein. In the event there is any discrepancy between the Operating Instructions and this Agreement, this Agreement shall govern.
- s) "Products" are any goods, services or merchandise that Merchant offers, sells, provides or installed or that are offered, sold, provided or installed on behalf of Merchant.
- t) "Program" is the Merchant financing program that is contemplated by the Agreement for the purpose of arranging financing for Merchant's customers' purchases.
- u) "Repurchase Price" is the payoff balance due on an Account as of the date of determination including principal, interest, charges and fees (including attorneys' fee charged to the Account).
- v) "Reserve Account" is defined in Section 11.
- w) "Security Agreement" is the document or instrument creating or establishing the security interest in Secured Property for an Account together with any and all certificates of title or other evidences of Buyer's ownership of the security interest and shall include any and all other documents referred to in or accompanying the Security Agreement.
- x) "Secured Property" is the property, real and/or personal, including Products and related interests, securing repayment of an Account.
- y) "Work Order" is a sales contract or proposal for sale of Products between Merchant and a customer which includes a description of the goods, services and materials sold constituting the Products and the cash price for such Products.

2. AGREEMENT TO FUND ACCOUNTS AND CONDITIONS OF FUNDING. Subject to the terms and conditions of this Agreement, AmeriFirst agrees to fund Accounts with Merchant's Buyers for a price AmeriFirst shall from time to time establish. AmeriFirst may at any time, and, from time to time, in its sole discretion prospectively modify the terms and conditions with respect to the financing it may provide. AmeriFirst may suspend, and restart, any Program options from time to time as determined by AmeriFirst in its sole discretion. AmeriFirst may reject and accept credit applications in its sole discretion. AmeriFirst shall not be obligated to take any action under a credit application, including accepting or approving the credit application or making future credit available to a Buyer. Merchant acknowledges and agrees that AmeriFirst has sole authority to prescribe the terms and conditions of the Contract and Loan Agreement and the credit standards and criteria of current and prospective Buyers and that AmeriFirst may change form and content of the Contract and Loan Agreement and AmeriFirst's credit standards at any time without notice to Merchant. AmeriFirst has no obligation to approve any particular contract purchase or to approve loans or contract purchases meeting any particular set of requirements. AmeriFirst may withdraw any previously issued approval as determined by AmeriFirst in its sole discretion.

- a) Installment Sales. AmeriFirst may purchase Installment Sale Contracts from Merchant. Neither this Agreement nor any past conduct between Merchant and AmeriFirst will at any time obligate AmeriFirst to purchase any Contract from Merchant. When Merchant wants AmeriFirst to purchase a Contract, Merchant will contact AmeriFirst and provide AmeriFirst with the information that AmeriFirst determines it needs in order to decide whether the Buyer meets AmeriFirst's standards of creditworthiness. In the event that AmeriFirst determines it will purchase the Contract, it will communicate that decision to Merchant either orally or in writing. AmeriFirst reserves the right to cancel or modify the terms and conditions of its Contract purchase approval at any time prior to the time the Contract is purchased. Any cancellation or modification of the terms and conditions of Contract purchase approval shall be promptly communicated by AmeriFirst to Merchant either orally or in writing

3. Processing Applications. Merchant agrees:

- a) to process all credit applications in accordance with the Agreement and the Operating Instructions,
- b) to provide its locations and sales, finance and contact employees with the necessary equipment to process credit applications in accordance with the Agreement and the Operating Instructions,
- c) to use only the form of, or modes of transmission for, credit applications, work orders or other materials in accordance with the Operating Instructions,
- d) to provide all information required by AmeriFirst from time to time for approval of credit applications by telephone or other electronic transmission,
- e) in the event that AmeriFirst provides Merchant with an Internet address to process credit applications, it will be an address on a commercial site on the World Wide Web portion of the Internet accessible by Merchant. AmeriFirst shall own, manage and maintain such Internet site. AmeriFirst retains all right, title and interest in to the Internet site and Merchant's only rights to the Internet application is to use it in connection with its communications with AmeriFirst.

In addition, Merchant may, with a Buyer's prior written consent, perform the following on behalf of the Buyer:

- a) submit a completed credit application to AmeriFirst by such means as set forth in the Operating Instructions; and receive, and
- b) provide Finance Documents to the buyer.

Merchant shall with respect to each credit application:

- a) ensure all information requested on the credit application is complete and legible;
- b) obtain the signature or e-signature, as applicable, on the credit application of all prospective Buyers;
- c) provide the applicant the initial disclosures at the time of signing the credit application;
- d) verify the identification of the individuals applying for credit, which verification shall include obtaining a driver's license and social security number or another identification method authorized in the Operating Instructions as well as compliance with any and all Federal identification procedures peculiarly associated with the purchase.

4. MEANS OF PAYMENT. When Merchant requests that AmeriFirst purchase a Contract, Merchant shall submit such request to AmeriFirst with the originals of all Finance Documents that AmeriFirst may require from time to time, properly executed and completed in a form satisfactory to AmeriFirst as determined in AmeriFirst's sole discretion. Upon acceptance of the Finance Documents by AmeriFirst, AmeriFirst will, as promptly as possible but no later than three (3) banking days thereafter, mail a bank draft, ACH or wire funds directly to Merchant in an amount communicated to Merchant at the time of Contract final approval.

5. BUYER PAYMENTS. Merchant agrees that AmeriFirst has the sole right to receive payments on any Contract purchased by AmeriFirst. Unless specifically authorized in writing by AmeriFirst, Merchant agrees not to make any collections on any Contract and to hold in trust for AmeriFirst any payment received by Merchant with respect to any Contract and to deliver such payment to AmeriFirst together with the Buyer's name, Account Number, and any correspondence accompanying the payment within five (5) days of receipt by Merchant. Merchant agrees that Merchant shall be deemed to have endorsed in AmeriFirst's favor any Buyer payments by check, money order, or other instrument made payable to Merchant that a Buyer presents to AmeriFirst, and Merchant hereby authorizes AmeriFirst to supply such necessary endorsements on behalf of Merchant.

6. MERCHANT REPRESENTATIONS AND WARRANTIES. With respect to each Contract purchased by AmeriFirst pursuant to this Agreement, Merchant represents and warrants as follows:

- a) Merchant has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all requisite corporate, limited liability company or

partnership proceedings, and no other corporate, limited liability company or partnership proceedings are necessary to authorize the execution, delivery and performance of this Agreement. The execution, delivery and performance of this Agreement does not conflict with Merchant's organizational documents or any material agreement to which Merchant is a party. This Agreement has been duly executed and delivered by Merchant and constitutes the valid and binding obligation of Merchant, enforceable in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights or by general principles of equity. If a corporation or a limited liability company, Merchant is duly organized, validly existing, and in good standing under the laws of the state in which it conducts business. As to the Property sold by contract, Merchant is a licensed and duly authorized merchant in goods of the kind contractually financed for sale.

- b) Each Buyer has legal capacity and unencumbered lawful standing to enter into the Finance Documents executed by such Buyer, and such Finance Documents are and will be legally enforceable against the Buyer.
- c) Merchant has properly issued to each Buyer a valid and proper notice of right to cancel the transaction as required by applicable federal, state and local laws. No Buyer has canceled, and the time for each Buyer to cancel under law has expired.
- d) No obligation of any Buyer, guarantor or surety with respect to any Finance Documents was obtained by fraudulent or other illegal means.
- e) The Finance Documents, and terms and conditions thereof, and all of Merchant's dealings with the Buyer comply with applicable laws, rules and regulations. All other documents and information obtained or prepared by Merchant, Buyer and other parties and submitted to AmeriFirst, and all of Merchant's dealings with the Buyer in connection therewith comply with AmeriFirst's policies and procedures and all applicable federal, state, and local laws, ordinances and regulations. Merchant has at all times all applicable licenses, permits or similar authorization from all applicable governmental agencies required to engage in the activities contemplated by this Agreement.
- f) Merchant has complied and will comply with AmeriFirst's Operating Instructions, policies and procedures and all applicable federal, state, and local laws, ordinances and regulations, including, but not limited to, the Equal Credit Opportunity Act and all regulations promulgated thereunder as well as Federal, State and local laws pertaining to the purchase, sale and possession of firearms.
- g) Neither Merchant nor any of its agents or employees shall in any manner have been guilty of any civil or criminal fraud with respect to the creation of any Account or its funding by AmeriFirst. No Buyer was induced to enter into any of the Finance Documents by any false or misleading statement nor by any other misrepresentation, either intentional or negligent.
- h) Any down payment for the Products was received in cash and was not represented by or does not consist of the Buyer's deferred obligations. Every down payment provided in connection with an Account was made by the Buyer in the manner stated in the Finance Documents. No part of such down payment was loaned or provided directly or indirectly by Merchant, nor, to the best of Merchant's knowledge, was any portion of the down payment made from funds borrowed from any other person, and, no note, postdated check or other form of deferred obligation was taken in connection with such down payment. There is no refund or rebate due under the Contract, to the Buyer or any person or entity except as specified.
- i) The "Finance Charge" set out in the Finance Documents is the actual sum of all charges directly or indirectly charged and imposed on the Buyer as a condition for the extension of credit.
- j) Buyer has not obtained any right in or possession of the Products by fraud or unlawful scheme.
- k) All signatures on the Finance Documents are genuine.
- l) A completely filled in copy of the Finance Documents was delivered to the Buyer at the time of Buyer's execution thereof or as required by applicable law, and the Finance Documents have not been materially altered.

- m) The transfer of the Contract and any Secured Property related thereto to AmeriFirst is valid and enforceable against all of the bona fide Buyers associated with the Account and against Merchant's creditors.
- n) The Finance Documents are genuine, and arose from the bona fide sale of the Products described therein in the ordinary course of Merchant's business.
- o) The Products are free from liens and/or encumbrances, except as granted to AmeriFirst under the Security Agreement, as applicable, have been delivered into the possession of the Buyer named in the Contract, as applicable, and have been accepted by the Buyer as evidenced by a completion certificate signed by the Buyer after all work has been performed by Merchant.
- p) All information provided by Merchant to AmeriFirst in connection with the Contract, as applicable, is true and all information provided by Buyer to AmeriFirst in connection with the Contract, as applicable, is true to the best of Merchant's knowledge.
- q) To the best of Merchant's knowledge each Security Agreement, to secure debt, included in the Finance Documents has been properly signed and, if required, properly notarized, and contains a correct and accurate description of the property serving as security.
- r) To the best of Merchant's knowledge, the Finance Documents do not contain the forged or unauthorized signature of any Buyer or any guarantor or surety for such Buyer (the identity of each having been verified by Merchant) and at the time of execution of the Finance Documents each Buyer was of legal age and capacity to contract and no Buyer was deceased.
- s) Merchant has not, without AmeriFirst's prior written consent, given a credit to Buyer by reason of any matter connected with the transaction from which the Account arose, nor given an allowance nor has Merchant made any settlement with an Buyer which, directly or indirectly, affects the Buyer's liability on the Account.
- t) Upon funding of each Account, AmeriFirst will own the same free and clear of all claims, liens or encumbrances of Merchant's creditors whatsoever.
- u) The Merchant's transfer of the Contract and the corresponding Security Agreement is sufficient to transfer to AmeriFirst all right, title and interest of Merchant in the Account and in the Secured Property securing the Account. Each Contract and corresponding Security Agreement funded has been duly assigned or endorsed by Merchant to AmeriFirst;
- v) Each Account is (i) a valid and existing obligation of Buyer as of the date of funding by AmeriFirst, and (ii) the unconditional obligation of the Buyer free from all defenses, counterclaims, rights of set off and recoupment, arising from a breach of warranty, defective workmanship or materials, guarantee or representation relating to the Products provided by Merchant or by anyone on Merchant's behalf, whether in law or in equity, including but not limited to, any defenses based on the authority and capacity to contract of all persons and/or entities executing all Finance Documents in connection with such Account.
- w) Unless AmeriFirst is apprised to the contrary in writing, the Buyer is not in Merchant's employ or a member of the household of any of Merchant's employees.
- x) There have been no representations or warranties made to the Buyer which are not contained in the Finance Documents other than the manufacturer's or Merchant's standard warranties, and Merchant has no knowledge of any circumstances or conditions with respect to the Account, the Secured Property, or the Buyer or the Buyer's credit standing that can reasonably be expected to cause the Account to become delinquent or adversely affect the value of the Account;
- y) Merchant is not aware that any Buyer has filed or is reasonably expected to file voluntary petition in bankruptcy or has sought or is reasonably expected to seek protection under any bankruptcy law or under any state or federal law affecting creditor's rights.
- z) There is no claim, nor any litigation, proceeding, arbitration, investigation or material controversy pending to which Merchant is a party, which, if adversely decided, could have an adverse effect on any Account.

Each of the foregoing representations and warranties by Merchant (i) shall be deemed to be repeated by Merchant when the Finance Documents are prepared and at the time each Account is funded by AmeriFirst, (ii) shall survive the execution and delivery of this Agreement and the execution and delivery of the Finance Documents, and (iii) shall continue in full force and effect until all terms and

conditions of the Finance Documents and this Agreement have been fully performed. AmeriFirst may rely upon the foregoing representations and warranties of Merchant irrespective of any information or knowledge obtained by AmeriFirst of anything contrary to or inconsistent therewith.

7. MERCHANT COVENANTS.

- a) **Products.** Merchant shall have the sole responsibility for all Products, both goods and services, including warranty contracts and any representations and warranties made in connection with such Products, and Merchant agrees that it will make a good faith effort to resolve any disputes it may have with any Buyer concerning the Products and any representations and warranties with respect thereto. Merchant agrees that it shall provide to AmeriFirst, upon request, pertinent data relating to warranty contracts.
- b) **Applications Withdrawn.** If AmeriFirst obtains a credit report in connection with an application submitted to AmeriFirst by Merchant for credit approval, and the application is subsequently withdrawn, Merchant shall reimburse AmeriFirst for credit report fees incurred by AmeriFirst.
- c) **Insurance.** Merchant shall have in force at all times during the term of this Agreement the following policies (the "Merchant's Insurance"); (i) a builder's risk insurance policy with the standard conditions, (ii) public liability insurance with limits of liability equal to at least \$500,000 per occurrence, (iii) worker's compensation insurance as required by applicable state law, and (iv) automotive liability insurance with limits of liability equal to at least the minimums required by applicable state law.
- d) **Licenses and Permits.** Merchant shall obtain, maintain or keep in place all licenses and permits and approvals for the sale of the Products for each Account that are required by federal, state, county, municipal and local governmental agencies.
- e) **Records.** Merchant shall maintain paper copies or copies of electronic images of the credit applications, Contracts and other records pertaining to any transaction covered by the Agreement for such time and in such manner as AmeriFirst or any law or regulation may require, but in no event less than seven (7) years from the date of the Invoice in accordance with the terms of the Agreement and the Operating Instructions. Within fifteen (15) days, or such earlier time as may be required by AmeriFirst, of receipt of AmeriFirst's request, Merchant shall provide to AmeriFirst the actual paper credit application, Contract, or other transaction records, and any other documentary evidence available to Merchant and reasonably requested by AmeriFirst to meet its obligations under applicable law or otherwise to respond to questions, complaints, lawsuits, counterclaims or claims concerning Accounts or requests from Buyers, or to provide any information in connection with AmeriFirst's pursuit of bad debt tax refunds, deductions, credits, or audit offsets (including, without limitation, providing copies of Merchant's state sales and use tax returns), or to enforce any rights AmeriFirst may have against a Buyer, including, without limitation, litigation by or against AmeriFirst, collection efforts and bankruptcy proceedings, or for any other reason.
- f) **Cooperation.** In any proceeding or investigation before any court, tribunal, mediator, governmental agency, board or Better Business Bureau related to an Account, Merchant will cooperate with AmeriFirst by providing such documents and witnesses as AmeriFirst may reasonably request.
- g) **Inspections.** Merchant shall permit AmeriFirst to inspect the Products and Merchant's books and records with respect to all Accounts funded or to be funded by AmeriFirst, and AmeriFirst may withhold its funding of any Account until AmeriFirst has obtained verification from the Buyer that all Products have been delivered by Merchant.
- h) **Financial Information.** Merchant will furnish to AmeriFirst, within ninety (90) days of Merchant's year end or on request by AmeriFirst no more frequently than once every twelve (12) months, an annual financial statement setting forth Merchant's assets, liabilities, and income in accordance with generally accepted accounting principles. Merchant will also furnish such other financial statements and information regarding its business affairs and financial condition as AmeriFirst may from time to time in good faith require. Merchant authorizes AmeriFirst to obtain credit reports on Merchant and to obtain credit reports individually upon all principals, partners, and/or owners of Merchant, for the purpose of qualifying Merchant's business for participation in the

Program and for evaluating Merchant's business for continued participation in the Program. Merchant agrees that it is authorizing AmeriFirst to obtain credit reports and instructing any consumer reporting agency to provide such report now and in the future for the purpose of evaluating Merchant's business for future retention and participation in the Program. Merchant will immediately submit to AmeriFirst financial statements in the event of any unfavorable change in Merchant's financial condition and at any time upon request by AmeriFirst.

- i) Name or Organizational Change. Merchant shall immediately inform AmeriFirst of any change in its name, its address, its form of organization, its senior management personnel or its owners or their ownership interests.
- j) Change in Authority. Merchant shall immediately inform AmeriFirst of any suspension or revocation of its authority to transact business or of any licenses required for Merchant to conduct business in any location where Accounts have been or may be submitted to AmeriFirst for funding.
- k) Further Assurances. Merchant shall execute and deliver to AmeriFirst, upon AmeriFirst's request, such instruments and assurances as AmeriFirst may deem necessary for confirmation or perfection of this Agreement, any Security Agreement contemplated by this Agreement or any Account subject to this Agreement. Merchant understands and agrees that AmeriFirst may subject Merchant to an annual review and renewal in order to continue to do business with Merchant.

8. INDEMNITY.

(1) Merchant shall indemnify, defend (at Merchant's sole expense and with counsel selected or approved by AmeriFirst), and hold harmless AmeriFirst (and AmeriFirst's officers, directors, members, managers, employees and agents) (each an "AmeriFirst Indemnified Person") from and against any and all losses, claims, investigations, litigation, proceedings, liabilities, damages, administrative charges, and expenses (including attorney's fees) of any kind whatsoever (collectively a "Loss") directly or indirectly arising out of or related to Merchant's breach of any obligation owed to AmeriFirst or any third party, including but not limited to: (i) breach of any representation, warranty or covenant of Merchant contained in the Agreement; (ii) failure of Merchant to comply with any applicable federal, state, or local law, rule, regulation or ordinance; (iii) any Loss sustained by or threatened to AmeriFirst attributable in whole or in part to negligence, fraud, errors (whether negligent or not), omissions, or misconduct of Merchant, its employees, subcontractors, or agents; (iv) any Loss sustained by or threatened to AmeriFirst by reason of or attributable in whole or in part to Merchant's failure to perform any of its obligations to any party; and (v) any defect in any Products sold or provided by Merchant, or any breach of any express or implied warranty in connection with such Products. Merchant further agrees to reimburse each AmeriFirst Indemnified Person upon demand for any reasonable legal or other expenses (including expenses related to investigation, settlement, compromise or satisfaction) incurred in connection with any of the foregoing.

(2) AmeriFirst shall indemnify, defend (at AmeriFirst's sole expense and with counsel selected or approved by Merchant) and hold harmless Merchant (and Merchant's officers, directors, members, managers, employees and agents)(each a "Merchant Indemnified Person") from and against any Loss arising out of (i) the intentional or grossly negligent act or omission of AmeriFirst in the performance of its duties and obligations under the Agreement, and (ii) its failure to comply with the terms of the Agreement or any applicable federal, state, or local law, rule, regulation or ordinance.

(3) In the event that AmeriFirst or Merchant shall receive any claim or demand or be subject to any suit or proceeding of which a claim may be made against the other under this Section 8, the indemnified party shall give prompt written notice thereof to the indemnifying party and the indemnifying party will be entitled to participate in the settlement or defense thereof. In any case, the indemnifying party and the indemnified party shall cooperate (at no cost to the indemnified party) the settlement or defense of any such claim, demand, suit, or proceeding.

9. BUYER CLAIMS. In the event Merchant or AmeriFirst becomes aware of a Buyer Claim, the party receiving notice of a Buyer Claim shall immediately notify the other party of the nature and amount of the Buyer Claim. Merchant shall immediately undertake steps to cure or satisfy the Buyer Claim to the satisfaction of the Buyer. In the event Merchant does not fully address a Buyer Claim to the satisfaction

of the Buyer, as determined in AmeriFirst's sole discretion, within fifteen (15) business days following notice AmeriFirst shall have the right to chargeback the Account to Merchant under Section 10 and to require Merchant to repurchase the Contract or purchase the Loan, as applicable, for the Repurchase Price. AmeriFirst shall also have the right to be indemnified by Merchant for any cost incurred by AmeriFirst arising in connection with a Buyer Claim.

10. CHARGEBACKS.

(1) Merchant agrees that it will reimburse AmeriFirst, and AmeriFirst may chargeback Merchant, in each of the following events:

- a) AmeriFirst determines that (1) Merchant has breached or failed to fulfill its obligations under the Agreement, including, without limitation, the Operating Instructions, in connection with an Account or the transaction to which it relates, or an application for credit; or (2) the credit application or sale of Products is fraudulent or is subject to any claim of illegality, cancellation, rescission, avoidance or offset including, without limitation, negligence, fraud, misrepresentation, or dishonesty on the part of the Buyer ("Buyer Fraud") or Merchant, its agents, employees or franchisees ("Merchant Fraud");
- b) the Buyer disputes or denies the transaction, the execution of the Finance Documents or the delivery, quality, or performance of the Products purchased or any warranties thereto, or the Buyer has not authorized the transaction, or properly alleges that a credit adjustment was requested and refused by Merchant or that a credit adjustment was issued by Merchant but not posted to the Account due to Merchant's failure to submit the credit adjustment to AmeriFirst; or
- c) Buyer asserts any claim or defense against AmeriFirst as a result of any act or omission of Merchant in violation of any applicable law or covenant herein set forth.

(2) AmeriFirst may compromise and settle any claim made by any Buyer including but not limited to a Buyer Claim as described in Section 9 and including but not limited to the charge off and forgiveness of the balance due on the Account if such claim may give AmeriFirst a right to chargeback in accordance with the preceding paragraph. In the event of a chargeback to Merchant, Merchant shall bear all liability and risk of loss associated with such Account, without warranty by, or recourse or liability to AmeriFirst from and after the date AmeriFirst notifies Merchant that the Account has been charged back to the Merchant.

(3) The chargeback amount shall be the Repurchase Price plus any costs and/or expenses, including attorneys' fees and costs of litigation which AmeriFirst actually incurred. Merchant has authorized and does hereby authorize AmeriFirst to deduct that amount from the Reserve Account, if any, after notice to Merchant.

(4) Notwithstanding any chargeback, AmeriFirst shall retain possession of the Account and all rights to collect any amounts due on the Account until Merchant has paid to AmeriFirst the full chargeback amount. Until AmeriFirst has received the full chargeback amount, any additional costs and/or expenses, including attorneys' fees and costs of litigation incurred by AmeriFirst shall be added to the chargeback amount and any amounts collected by AmeriFirst shall be applied to reduce the chargeback amount.

11. RESERVE ACCOUNT. If AmeriFirst, in its sole discretion, determines that security is required from Merchant to protect AmeriFirst against losses resulting from chargebacks and breaches of any of the provisions of this Agreement, Merchant and AmeriFirst may enter into a Reserve Account Agreement which provides for the establishment of a Reserve Account. The Reserve Account Agreement, if any, is hereby incorporated by reference into and made a part of this Agreement.

12. MERCHANT OBLIGATION UNAFFECTED. Merchant's obligations under the Agreement are not affected by any settlement, extension, forbearance, charge off or variation in terms that AmeriFirst may grant in connection with any Account or by the release of the obligations of the Buyer by a court or by operation of law.

13. INFORMATION SECURITY.

- a) Merchant shall not disclose Buyer Information, including any nonpublic personal information (as defined in the Gramm-Leach Bliley Act of 1999, title V, its implementing regulations, and other similar laws and regulations) to (i) any third party or (ii) any employee, officer, partner or director of Merchant who is not engaged in the implementation and execution of the transactions related to the Program. Merchant shall not retain, in any format, electronic or otherwise, any Buyer Information beyond what is required pursuant to the Agreement. Without by implication limiting the foregoing, Merchant shall adopt and maintain a comprehensive privacy policy with respect to its handling of the personal information of individual consumers submitted by such consumers to Merchant via the Internet and Merchant's privacy policy shall be available on Merchant's Internet web sites.
- b) Merchant shall keep confidential and not disclose to any person or entity (except to employees, officers, partner or director of Merchant who are engaged in the implementation and execution of the Program) all information, software, systems and data, that Merchant receives from AmeriFirst or from any other source relating to the Program and matters that are subject to the terms of the Agreement and shall use, or cause to be used, such information solely for the purposes of the performance of Merchant's obligations under the terms of the Agreement.
- c) AmeriFirst will keep confidential and not disclose to any person or entity (except employees, officers, agents or directors of AmeriFirst, its subsidiaries or affiliates who are engaged in the implementation and execution of the Program) any information that AmeriFirst receives from Merchant which is designated confidential by Merchant. However, nothing in the Agreement shall limit AmeriFirst's rights to (i) report information regarding Buyers to consumer and commercial credit reporting agencies and credit bureaus to the extent permitted by the Finance Documents and other agreements with the Buyers, (ii) share Buyer Information with third-party service providers in the ordinary course of business for the purposes of administering the Program, (iii) disclose Buyer Information or any segment thereof to actual and potential third party lenders that are bound by customary confidentiality obligations with respect to such data, or (iv) in the event an Account or any part thereof is sold or assigned, AmeriFirst may disclose any information reasonably necessary or required to effectuate such sale or assignment.
- d) Merchant agrees that it has developed, implemented and will maintain at all relevant times contemplated by the Agreement effective information security policies and procedures that include administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of Buyer Information, (ii) protect against anticipated threats or hazards to the security or integrity of Buyer Information, (iii) protect against unauthorized access or use of Buyer Information, and (iv) ensure the proper disposal of Buyer Information. All Merchant personnel handling Buyer Information shall be appropriately trained in the implementation of Merchant's information security policies and procedures. Merchant shall regularly audit and review its information security policies and procedures to ensure their continued effectiveness and determine whether adjustments are necessary in light of circumstances including, without limitation, changes in technology, customer information systems or threats or hazards to Buyer Information.
- e) Merchant shall promptly notify AmeriFirst of any unauthorized access of Buyer Information and take appropriate action to prevent further unauthorized access while Buyer Information is in Merchant's possession or while it is in transit to AmeriFirst. Merchant shall cooperate with AmeriFirst, and shall pay all related expenses, provide any notices regarding such unauthorized

access to appropriate law enforcement agencies and government regulatory authorities, affected applicants, Buyers and customers as AmeriFirst, in its sole discretion, deems appropriate.

14. TERM AND TERMINATION.

- a) The Agreement shall be effective on the date of AmeriFirst's counter-signature of the Agreement and shall remain effective until either party gives the other party written notice of its decision to terminate the Agreement. The termination of the Agreement shall not affect the rights of either party to recover for breaches occurring prior thereto or with respect to provisions of the Agreement that by their terms continue after termination.
- b) Notwithstanding termination of the Agreement, the provisions of the Agreement will continue in force as to all applications for funding accepted or approved by AmeriFirst prior to termination.
- c) In the event of breach by either party, the non-breaching party will be entitled to exercise any and all rights and remedies as shall be available to it at law or in equity. The non-breaching party may exercise remedies concurrently or separately, and the exercise of one remedy will not be deemed either an election of such remedy or a preclusion of the right to exercise any other remedy.

15. NONWAIVER AND EXTENSIONS. AmeriFirst shall not by any act, delay, omission, or otherwise be deemed to have waived any rights or remedies hereunder. Merchant agrees that AmeriFirst's failure to enforce any of its rights under the Agreement shall not affect any other right of AmeriFirst or the same right in any other instance.

16. ACTIONS OF EMPLOYEES. Merchant is responsible for the actions of its employees. In the event employment of one of Merchants employees is terminated, Merchant will take reasonable steps to ensure that the former employee no longer has access to any Buyer Information or access to AmeriFirst's systems (including changing any passwords necessary to access such information or system).

17. ASSIGNMENT. Merchant may not assign the Agreement without the prior written consent of AmeriFirst; any purported assignment without such consent shall be void. AmeriFirst may assign the Agreement and any of the rights or obligations hereunder at any time. In the event of such assignment, the assignee shall have the same rights and remedies as AmeriFirst under the Agreement. Otherwise, the Agreement is binding upon the parties and their successors and assigns. Merchant acknowledges that AmeriFirst may enter into agreements with third-party financial institutions to provide financing under the Program and that such institutions may originate and own the Accounts contemplated hereby and may constitute "designees" hereunder.

18. INSURANCE. During the term of the Agreement and thereafter for so long as Merchant has any obligations to AmeriFirst, Merchant shall maintain at its expense general liability insurance and workers' compensation insurance in such amounts and in such forms as are commercially reasonable for a business of Merchant's nature. Insurance coverage shall be issued by a carrier rated "A VIII" or higher by A.M. Best or that otherwise is reasonably acceptable to AmeriFirst, whose approval will not be unreasonably withheld. If requested by AmeriFirst, AmeriFirst shall be named as an additional insured under each policy. If requested by AmeriFirst, Merchant shall provide AmeriFirst with a certificate of insurance evidencing such insurance coverage for herein and evidence of renewals thereof. Merchant shall notify AmeriFirst if any required insurance policy is not renewed within fifteen (15) days of non-renewal.

19. MERGER AND INTEGRATION. Except as specifically stated otherwise herein, the Agreement set forth the entire understanding of AmeriFirst and Merchant relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by the Agreement. The Agreement may not be modified, amended, waived or supplemented except as provided herein.

20. RIGHTS OF PERSONS NOT A PARTY. The Agreement shall not create any rights on the part of

any person or entity not a party hereto, whether as a third-party beneficiary or otherwise.

21. GOVERNING/SEVERABILITY. The Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska without reference to the conflicts of law provisions thereof. If any provision of the Agreement is found to be illegal, unenforceable or contrary to applicable law, such provision shall be deemed ineffective without invalidating the remaining provisions hereof.

22. INDEPENDENT CONTRACTOR. This Agreement does not and shall not be construed to establish a partnership, joint venture, agency relationship or other form of business association between Merchant and AmeriFirst.

23. NOTICES. All demands, notices and communications hereunder shall be in writing. Notices shall be and deemed to have been duly given (a) three business days from the date of mailing by regular first class U.S. mail; (b) one business day from the date of mailing by a commercial overnight mail carrier such as Federal Express or UPS; or (c) the business day on which notice is sent by facsimile with a date and time confirmation sheet that the fax went through to the other party. For purposes of this Section 23, Saturdays, Sundays and federal holidays shall be considered non-business days. All notices to AmeriFirst shall be sent to the address or fax numbers set forth below or to such other addresses or fax numbers as AmeriFirst may advise Merchant in writing. Notices to Merchant shall be sent to Merchant's address or fax number set forth in the Merchant's application for the Program or such other address and fax number as Merchant may advise AmeriFirst in writing.

If to AmeriFirst: AmeriFirst Home Improvement Finance, LLC
11171 Mill Valley Road
Omaha, NE 68154
FAX: 800-815-6793

24. DAMAGES.

MERCHANT SHALL BE LIABLE TO AMERIFIRST FOR ALL DAMAGES UNDER APPLICABLE LAW AND COSTS INCURRED IN ANY COLLECTION ACTION OR OTHER LEGAL PROCEEDING AMERIFIRST MAY BRING AGAINST MERCHANT (INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES, COURT COSTS, INTEREST, FILING FEES AND OTHER EXPENSES OF ANY KIND WHATSOEVER). TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL AMERIFIRST BE LIABLE TO MERCHANT OR ANY OTHER PERSON FOR ANY GENERAL, PUNITIVE, DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COVER DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF PERSONAL PROPERTY, OR ANY OTHER SIMILAR DAMAGE OR LOSS.

25. JURISDICTION.

ANY SUIT, COUNTERCLAIM, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT MUST BE BROUGHT BY MERCHANT IN STATE OR SUPERIOR COURT OF DOUGLAS COUNTY, NEBRASKA OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA; AND MERCHANT HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND ANY APPELLATE COURTS THEREOF FOR THE PURPOSE OF ANY SUCH SUIT, COUNTERCLAIM, ACTION, PROCEEDING OR JUDGMENT (IT BEING UNDERSTOOD THAT SUCH CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WAIVES ANY RIGHT TO SUBMIT ANY DISPUTES HEREUNDER TO ANY COURTS OTHER THAN THOSE ABOVE). NOTHING HEREIN CONTAINED SHALL PRECLUDE AMERIFIRST FROM BRINGING AN ACTION OR PROCEEDING RELATED TO THIS AGREEMENT IN ANY OTHER STATE OR PLACE HAVING JURISDICTION OVER SUCH ACTION.

26. WAIVER OF JURY TRIAL.

AMERIFIRST AND MERCHANT HEREBY KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THE AGREEMENT, ANY RELATED DOCUMENT OR UNDER ANY OTHER DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH, OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THE AGREEMENT, AND AGREE THAT ANY SUCH ACTION, SUIT, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY; THIS PROVISION IS A MATERIAL INDUCEMENT FOR AMERIFIRST AND MERCHANT ENTERING INTO THE AGREEMENT.

27. ENTIRE AGREEMENT. This Agreement contains all the terms, conditions and provisions agreed upon by the parties with respect thereto, and no modification or waivers hereof shall be made except in a writing signed by both parties.

28. EXECUTION OF AGREEMENT. This Agreement may be executed by facsimile or some other enforceable electronic signature, which shall be deemed an original.

29. MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of multiple counterparts, all of which shall constitute but one and the same original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by duly authorized individuals as of the day and year appearing with their signatures below.

EXHIBIT A

Summary of Certain Federal and State Consumer Protection and Licensing Laws that AmeriFirst Merchants Need to be Aware of:

The following is a brief summary of certain important consumer protections, disclosures and licensing laws that AmeriFirst Merchants must comply with. The laws addressed in this document are just a sample of the compliance obligations imposed on home improvement sales financing. As a sales organization offering financing options to your customers you are expected to comply with all requirements of applicable law. We recommend that you review this outline with all new employees who may be involved with the AmeriFirst financing programs, and any other financing program.

Federal Laws:

1. Equal Credit Opportunity Act and Regulation B

The Equal Credit Opportunity Act (ECOA) and Regulation B are intended to prevent discrimination against applicants for consumer credit. The prohibitions under these laws apply to any person who, in the ordinary course of business, regularly participates in a credit decision.

Prohibitions

Persons involved in a credit decision may not discriminate against any applicant with respect to any aspect of a credit transaction:

1. on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
2. because all or part of the applicant's income derives from any public assistance program; or
3. because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Liability

There are two principal theories of liability under ECOA and Regulation B: disparate treatment and disparate impact. In your relationship with customers you should avoid any appearance of disparate treatment or disparate impact.

1. Disparate treatment occurs when a creditor or its agent treats an applicant differently based on a prohibited basis (race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act).
2. Disparate impact occurs when a creditor or its agent employs facially neutral policies or practices that have an adverse effect or impact on a member of a protected class, unless it meets a legitimate business need that cannot reasonably be achieved by other means.

Spousal Considerations

Be cognizant of ECOA and Regulation B whenever you are suggesting or requesting action be taken by an applicant's spouse:

1. Under Regulation B, generally a creditor may not require the signature of an applicant's spouse or any other person (other than a joint applicant) on any credit instrument if the applicant qualifies for the amount and terms of the credit requested under the creditor's standards of creditworthiness. A common Regulation B violation is creditors who routinely require the applicant's spouse to be a co-signer.
2. If an applicant does not meet the creditor's standards of creditworthiness, then the creditor may condition approval of the credit application upon the applicant either (1) furnishing the signature of another person (cosigner, guarantor or similar person), but the creditor may not require that person to be the applicant's spouse, or (2) securing the credit extension with sufficient collateral to satisfy the creditor's standards. Therefore, if a creditor routinely requires spousal guarantees, for example, without first ascertaining whether an applicant or another third party is creditworthy, then the conditioning of the loan on the spousal guarantee violates Regulation B.

2. Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

Under the Dodd-Frank Act passed in 2012 and enforced by the Consumer Financial Protection Bureau ("CFPB"), various entities and service providers are required to refrain from committing unfair, deceptive or abusive acts or practices when dealing with consumer debt. Additionally, under the UDAAP Act, sales organizations such as yours, and sales practices may fall under the purview and oversight of state regulators and the Federal Trade Commission.

Prohibition on Unfair Practices

The Dodd-Frank Act prohibits conduct that constitutes an unfair act or practice. An act or practice is "unfair" when:

1. It causes or is likely to cause substantial injury to consumers;
2. The injury is not reasonably avoidable by consumers; and
3. The injury is not outweighed by countervailing benefits to consumers or to competition.

Prohibition on Deceptive Practices

The Dodd-Frank Act also prohibits conduct that constitutes a "deceptive act or practice." An act or practice is "deceptive" when:

1. The act or practice misleads or is likely to mislead the consumer;
2. The consumer's interpretation is reasonable under the circumstances; and
3. The misleading act or practice is material.

Prohibition on Abusive Practices

The Dodd-Frank Act also prohibits conduct that constitutes an "abusive act or practice." An act or practice may be considered "abusive" when it:

1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
2. Takes unreasonable advantage of –
 - a. a consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
 - b. a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or
 - c. a consumer's reasonable reliance on a covered person to act in his or her interests.

3. The Truth in Lending Act and Regulation Z

The Federal Truth in Lending Act and Regulation Z promulgated thereunder by the Consumer Financial Protection Bureau ("CFPB") are intended to promote the informed use of consumer credit by requiring disclosures to be provided about its terms and costs. Regulation Z also includes certain substantive consumer protections. Numerous disclosure requirements must be made at the time the transaction is consummated, including the APR; the repayment schedule; the Total of Payments; what the rights are to prepay the loan; whether the credit transaction is secured, and if so, by what? This is just a partial listing of the Regulation Z disclosure requirements.

The TILA and Regulation Z impose a range of penalties upon the creditor for faulty disclosure documents, even if unintentional. Class action penalties also may ensue for violations consisting of a "pattern or practice." In AmeriFirst's Merchant Financing Program, the applicable state form for the installment sales contract and disclosure to be used on your behalf is obtained by AmeriFirst from a national forms vendor who represents and warrants that the document complies with all applicable state and federal law. In many states, there are applicable state consumer protection laws that increase the disclosure burden or put additional restrictions in place that must be complied with (e.g., late charges; remedies upon default.)

Your obligation under the Merchant Financing Agreement is to deliver the properly completed TILA disclosures and sales contract to the customers after they have been approved for financing, at the time the transaction is signed or otherwise according to AmeriFirst's Operating Instructions.

If you have any questions about the TILA, Regulation Z or the disclosures that must be included on your combined sales purchase contract/disclosure form, please contact an AmeriFirst representative at 800-228-2179.

State Laws:

4. Home Improvement Repair; Home Improvement Financing Laws

- Most states require home improvement contractors to be certified or licensed by an agency in the state where they operate. Many state laws declare that contracts entered into with unlicensed entities are unenforceable, and as a result AmeriFirst may reject or sell back such contracts back to you if you are unlicensed. Procedures for contractors to obtain these licenses vary considerably from state to state.
- State and local licenses and registrations are typically required to be renewed by contractors annually with payment of a fee; this renewal process does not happen automatically. (Failure to pay a required renewal fee will result in the license going invalid or dormant.)

5. State "Door-to-Door" Sales Laws

Most states, as well as the Federal Trade Commission, have laws mandating a 3-day cooling-off period for sales of products or services where a salesperson has entered the home. These regulations allow consumers to cancel certain types of contracts during the cooling-off period.

When a customer signs a contract to purchase goods or services in his/her home, a copy of the purchase contract or receipt containing the salesperson's name must be provided. State mandated forms of "notice of cancellation" (2 copies) typically must be given to the home improvement purchaser which includes information about and the date by which the notice of cancellation must be sent for it to be effective.