

IRRITROL IRRIGATION

(Part of The Toro Company)

BUSINESS APPLICATION

A. BUSINESS INFORMATION

GE RECORD#

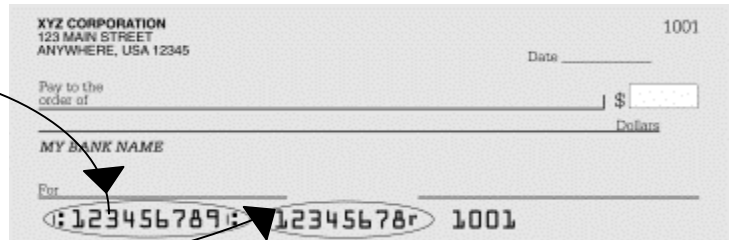
Business Name / DBA (Doing Business As) Name:		Federal Tax ID # (EIN #):	
Corporate or Legal Name (If different than above):		Email Address:	Years in Business:
Business (DBA) Address (Street, City, State, Zip):		Total Business Annual Sales: \$	Projected Annual Sales with GE: \$
Business (DBA) Phone #:	Business (DBA) Fax #:	Percentage of "face to face" transactions at Store Front Location: %	
Number, if any, needed to dial outside line: (For example, must dial "9" to dial out)		Do you have more than one (1) location that you want to enroll? If Yes, Please complete Section F.	

B. PRINCIPAL INFORMATION (Must be President, Owner, or Partner ONLY)

Principal Name:	Principal Title:	Principal Social Security Number:
Principal Home Address (Street, City, State, Zip): Physical Address only.		Principal Home Telephone Number:

C. BANKING INFORMATION:

Bank Transit Number (See image to right):
Bank Account Number (See image to right):
No Personal Accounts.



D. PRIMARY DISTRIBUTOR:

	Contact:
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E. TERMS & CONDITIONS

This Business Application is submitted to obtain merchant processing privileges on behalf of the person or entity listed in Section B on this page hereof ("application") ("Contractor") and I/we (hereinafter the individuals signing below are referred as "I" or "my" or "me") certify that I have read the above provisions and all information provided herein is true and correct. I have the power and authority to execute and deliver this Application and to enter into and consummate the Business Agreement(s) ("Business Agreement(s)") on behalf of the Contractor, and I have been duly authorized to bind the Contractor, by my signature below, to all terms and conditions of the Business Agreement(s). The number shown on this form is the correct taxpayer identification number for the entity. I acknowledge that this Application is subject to approval by GEMB. By signing below, I authorize and/or confirm as follows:

- (i) I authorize GE Money Bank ("GEMB") or its agents, to retain possession of this Application, to rely on the information and statements herein to check and verify both my credit and employment history and the credit history of the Contractor and any of its other principals, officers, partners, or directors, to secure follow up credit reports, and to exchange information about the entity and this account with creditors, credit bureaus, and other proper persons;
- (ii) By submitting this application, Contractor agrees that GEMB and GE Commercial Distribution Finance (GECDF) may share any and all Contractor information provided or obtained in connection with this application, including subsequent Contractor financial information provided to, or obtained by, either GECDF or GEMB and may use such information for all purposes in connection with the evaluation and administration of any credit facility requested by or provided to Contractor.
- (iii) I authorize the Contractor's bank and any other listed references to release and/or verify information to GEMB at any time;
- (iv) I certify, represent, and acknowledge that the Contractor has agreed to abide by all terms and conditions of the Business Agreement(s) and that if and when GEMB approves this Application, upon receipt of notice of such approval, the Contractor will, without further action, be bound to all of the terms and conditions of the Business Agreement(s) and any operating guides which shall be issued by GEMB from time to time.
- (v) Contractor agrees that only genuine Toro products and services are eligible to be financed under this program and products or services directly competitive to those offered by The Toro Company are not eligible for financing. GEMB and/or The Toro Company will conduct follow up audits with consumers to validate compliance. Failure to comply may result in the termination of Contractor's eligibility to offer this financing plan.
- (vi) I certify, represent and warrant that this Application has been duly executed and delivered by me on behalf on behalf of the Contractor, and that the execution and delivery of this Application and the consummation of the transactions contemplated by the Business Agreement(s) have been authorized by all necessary corporate action and do not and will not conflict with the organizational documents of the Contractor.



Carefully read the GE Money Bank Business Agreement(s) and the Signature Statement above prior to signing this Application, since your signature below will bind the Contractor to such GE Money Bank Business Agreement(s). Each of the undersigned hereby certifies that he/she has read the Signature Statement above, that the statements therein are true and correct, and that he/she is authorized by the Contractor to sign this application and to bind the Contractor, by his/her signature below, to all of the terms and conditions of the GE Money Bank Business Agreement(s).

By: X _____

Authorized Signature

Date

F. ADDITIONAL LOCATIONS

Additional Location Name:		Additional Location Name:	
Location Address (Street, City, State, Zip):		Location Address (Street, City, State, Zip):	
Location Fax: (____) ____ - ____	Location Phone: (____) ____ - ____	Location Fax: (____) ____ - ____	Location Phone: (____) ____ - ____
Email Address:	Federal Tax ID # (EIN #):	Email Address:	Federal Tax ID # (EIN #):
Bank Transit # (if different): _____	Bank Account # (if different):	Bank Transit # (if different): _____	Bank Account # (if different):
Number, if any, needed to dial outside line: (For example, must dial "9" to dial out) _____		Number, if any, needed to dial outside line: (For example, must dial "9" to dial out) _____	

Fax to: Client Services Acquisition 1-877-401-4896

200-555-00

ACCOUNT AND CARD ACCEPTANCE AGREEMENT FOR PARTICIPATING TORO IRRIGATION CONTRACTORS

GE Money Bank, located at 4246 South Riverboat Road, Suite 200, Salt Lake City, Utah 84123-2551 ("Bank") has established in connection with, among others, The Toro Company ("Sponsor") an open-end consumer credit program for customers of contractors who participate in such program (the "Irrigation Program"). Under the Irrigation Program, consumer customers may finance the purchase and installation of Toro irrigation products and, in conjunction therewith, landscaping-related products and services, in each case, provided by contractors which sell, among other things, Toro branded products and which have applied to Bank and been approved for participation in the Irrigation Program ("Contractor"). Contractor will process credit applications by which consumer customers apply to Bank to establish consumer credit accounts ("Accounts") and will accept credit cards issued under the Irrigation Program ("Cards"), all in accordance with the terms set forth below.

This Agreement supercedes and replaces in its entirety any previous agreement concerning the establishment of Accounts and the acceptance of Cards by Contractor under the Irrigation Program. If Contractor is a new participant in the Irrigation Program, this Agreement is effective upon Bank's approval of Contractor's application to participate in the Irrigation Program. If Contractor is an existing participant under the Irrigation Program, this Agreement will be effective when Contractor submits a transaction under the Irrigation Program to or through Bank for processing thirty (30) days or more after receipt of this Agreement, and once effective, its terms will apply to new transactions processed by Contractor in connection with the Irrigation Program, as well as to transactions processed under any predecessor agreement replaced hereby.

1. Bank's Obligations. Bank's obligations will include the following:

- (a) Establish and administer the Irrigation Program in accordance with all applicable laws and the terms and conditions of this Agreement;
- (b) Provide a point-of-sale process for Contractor to use to enter customer applications and Account transactions for authorization and processing;
- (c) Provide to Contractor an "Operating Guide" ("Operating Guide") which shall set forth instructions on how to submit and process, as well as other relevant Irrigation Program information;
- (d) Provide to Contractor the applicable approved forms of credit disclosures (credit applications, terms, privacy policies) and updates as they are published;
- (e) Contact Contractor in the event of any dispute requiring support from Contractor to resolve, which is made by a customer of Contractor who establishes an Account ("Accountholder"); and
- (f) Use commercially reasonable efforts to pay Contractor, within two Bank business days after Bank's receipt of charge information, the settlement amounts set forth under Section 3 hereto.

2. Contractor's Obligations. Contractor will honor Accounts and the Card as a method of payment for purchases of Toro irrigation products and related services and will process transactions in accordance with the terms of this Agreement and the Operating Guide. Contractor's obligations include the following:

- (a) Where appropriate, display point-of-sale signage relating to Irrigation Program which is distributed or approved by Bank;
- (b) Promote, accept and process credit applications for Accounts only from consumer customers and only for personal, family or household purposes, and in accordance with this Agreement and the Operating Guide (e.g., ensure that requested fields are completely filled out, verify identification, provide required terms and disclosures etc.), without discrimination of any kind;
- (c) Process only bona fide charges and credits for the purchase and installation of Toro irrigation products and, in conjunction therewith, landscaping-related products and services, in each case, sold and/or performed by Contractor and transmit them to Bank in the required format, as set forth in the Operating Guide;
- (d) Ensure that all information about the Irrigation Program (other than the Bank's printed terms), and any and all Irrigation Program advertising conducted by Contractor, provided or directed to prospective applicants, customers and Accountholders is complete, accurate and legally compliant, and refer prospective applicants and customers to the applicable printed Irrigation Program terms for detailed information;
- (e) Deliver or complete, as the case may be, all products and related services covered by any charge processed under Section 3 hereof prior to the time the Charge Transaction Data is submitted by Contractor to Bank;
- (f) Promptly respond to, and fully cooperate with Bank in the resolution of, disputes concerning sales charged to an Account;
- (g) Obtain an authorization code from Bank on all transactions prior to submission, and call the Bank's voice authorization facility prior to completion of a transaction in any case involving suspicious or unusual circumstances, including those in which the signature on the sales slip does not match the signature on the Card;
- (h) Pay all applicable fees set forth on Bank's pricing schedule ("Contractor Fees");
- (i) Maintain fair and legally compliant return and exchange policies, and ensure that any material restriction or limitation is clearly and conspicuously disclosed to customers;
- (j) Comply in all respects at all times with state and federal laws and regulations related to in-home solicitations and sales (to the extent applicable and permitted by Bank);
- (k) Comply in all respects at all times with state and federal laws and regulations (including the Telephone Consumer Protection Act, Regulation B and Regulation Z) related to telemarketing solicitations and sales (to the extent applicable and permitted by Bank);
- (l) In the event a credit application is taken over the phone, disclose to the customer that a credit report will be requested for the purposes of evaluating credit on his/her behalf;
- (m) Timely provide Bank, at Bank's request, with copies of any telemarketing scripts, if any, used in connection with any telemarketing solicitations and sales under the Irrigation Program and, at Bank's reasonable request, amend such telemarketing scripts to conform with any applicable laws;
- (n) Comply in all respects at all times with state and federal laws and regulations which govern the sales and installation of irrigation systems, other irrigation products and any related services;
- (o) Comply in all respects at all times with all other applicable laws, the terms of this Agreement, the Operating Guide (as such Guide may be modified or updated from time to time by Bank), and other bulletins provided to Contractor from time to time.

3. Settlement Process/Payment for Charges. (a) As part of Contractor's obligations to Bank in connection with the Irrigation Program, Contractor agrees to transmit to Bank, each day, but generally no longer than two business days after the transaction date, complete information about all charges and credits to Accounts ("Charge Transaction Data") occurring since the immediately previous transmission, as provided in the Operating Guide. In addition, with respect to the sale and installation of irrigation systems or other irrigation products under the Irrigation Program, as a condition precedent to Bank's obligation to settle with Contractor, Contractor agrees to provide Bank with: (i) the Accountholder's original credit application (required for initial purchase only); (ii) the original completed sales slip or work order including evidence that any required federal and/or state three-day rights of rescission, notice of right to cancel or rescind has been given; (iii) a completion or delivery certificate; and (iv) any other documents Bank may reasonably require (the "Supporting Documents"). Bank, at its discretion may obtain by telephone or other means the Accountholder's (or applicant's) confirmation that any products or services purchased under the Irrigation Program were delivered, installed or otherwise performed to the Accountholder's satisfaction. Upon receipt of such Charge Transaction Data and, if required, Supporting Documents, and provided Contractor is not in default under this Agreement, Bank will deposit to a bank account designated by Contractor the total amount of all charges reflected in such Charge Transaction Data, less the total of (i) any credits reflected in such Charge Transaction Data, (ii) any amounts being charged back to Contractor, (iii) any Contractor Fees, which Bank may choose to deduct on a daily or monthly basis, in its discretion (and/or corrections to any such fees based on erroneous information submitted by Contractor), unless Bank elects to separately bill Contractor for such fees, and (iv) at Bank's option, any other amounts which may be owed by Contractor to Bank (including any fees) or by Contractor to any of Bank's affiliates. In addition to the foregoing, Contractor acknowledges and agrees that Bank, in its discretion, may deduct from any other amounts due Contractor under the Program any amounts which may be owed by Contractor to Bank (including any fees) or by Contractor to any of Bank's affiliates. If at any time the amount Bank owes Contractor is less than the amount Contractor owes Bank (without regard to any Reserve Account established pursuant to Section 3(b) hereof), Contractor agrees to pay Bank the net difference. Contractor hereby authorizes Bank to initiate ACH credits and debits to Contractor's designated bank account for purposes of settling transactions hereunder, and making necessary adjustments and initiating payments due to Bank from Contractor hereunder. Bank shall provide Contractor with a monthly statement of standard deductions that are made by Bank on a monthly basis (such as any Contractor Fees that are debited on a monthly basis) prior to debiting Contractor's designated bank account for such monthly amounts. Pricing under this Agreement will be provided by Bank on pricing schedules, which Bank may distribute from time to time.

(b) If Bank determines in its sole discretion that Contractor's financial condition has deteriorated, if Contractor breaches this Agreement, or if Bank experiences an unusual volume or nature of disputes and/or chargebacks, returns or credits relating to charges submitted by Contractor (based on Bank's experience with Contractor and/or other contractors), then Bank may withhold from the settlement payments otherwise due Contractor an amount Bank reasonably deems necessary to fund a reserve account (the "Reserve Account") to cover amounts Contractor may owe to Bank from time to time. Bank shall be the sole owner of the Reserve Account (if any), and may (but need not) debit the Reserve Account from time to time to satisfy any amounts owed by Contractor to Bank. However, Bank will return to Contractor any amounts remaining in the Reserve Account no later than one year after termination of Contractor's participation in the last Irrigation Program to which this Agreement applies (the "Final Liquidation Date").

(c) Contractor will not process any charge for more than the sale price of the purchase and installation of Toro irrigation products and related landscaping products and services (including taxes) or impose any surcharge on transactions made under the Irrigation Program, and will not require the Accountholder to pay any part of any charge assessed by Bank to Contractor, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction charged to an Account. Additionally, Contractor will not accept any payments from an Accountholder for charges billed on an Account, and will instead refer the Accountholder to the Bank's payment address. If for any reason, Contractor inadvertently accepts an Accountholder payment, Contractor will hold such payment in trust for Bank and will immediately forward such payment to Bank for processing. Additionally, Contractor hereby grants Bank a limited power of attorney to cash and retain for its own account any Accountholder payments on Accounts which are erroneously made out to Contractor.

4. Credit Applications. Contractor will follow all procedures provided to it by Bank in taking and submitting to Bank credit applications for Accounts under the Irrigation Program, will ensure that all such credit applications are signed in person by the applicant, and will provide to each applicant at the time the credit application is submitted a complete and current copy of the applicable terms and conditions and privacy policy that apply to the applicable Account. Bank may, in its sole discretion, approve or decline any application submitted. Bank may also decline to pay or credit settlement proceeds to Contractor as would otherwise be required under Section 3 above if Bank determines that (i) Contractor has falsified the application in any respect; (ii) Contractor knows or reasonably should have known that the application contains false information; (iii) any information on the physical application does not match the information transmitted to Bank; (iv) the identification or verification requirements have not been satisfied; or (v) any other required procedures have not been met (an application meeting the description set forth in any of (i) through (v) above or that otherwise does not meet all of the requirements of this Section or the Operating Guide will be considered a "Defective Application"). If proceeds of any transactions have been credited to Contractor's account prior to Bank's discovery of any of the defects set forth above, Bank may charge back the amount of any or all transactions charged on the Account.

5. Chargeback Rights of Bank. Bank will bear all Accountholder credit losses. However, Bank may charge back to Contractor any transaction when one or more of the following occurs:

- (a) The Accountholder disputes the charge, including without limitation, based on an assertion of a dispute about the quality of the merchandise or services purchased, or any act or omission by Contractor, including any alleged breach of warranty provided by or through Contractor, if Bank has given Contractor an opportunity to respond and Bank determines that the Accountholder's dispute is valid.
- (b) The charge(s) are incurred on an Account opened upon submission of a Defective Application.
- (c) The charge does not fully comply with any of (i) this Agreement (or any representations, warranties and covenants set forth herein), (ii) the Operating Guide and/or (iii) applicable law.
- (d) The charge is disputed, and Contractor cannot supply a completed and/or executed copy of the underlying sales receipt, any of the Supporting Documents (in the case of a sale or installation of irrigation systems or other irrigation products) or the application within ten days of Bank's request.
- (e) The Bank determines that any charge does not represent a bona fide sale (including without limitation fraud arising from fraudulent activities of Contractor's employees) by Contractor.
- (f) The products or services purchased have not been delivered or performed as of the date of the submission of the related Charge Transaction Data to Bank.
- (g) The Accountholder alleges that the Contractor provided false or misleading information (e.g., incorrect information about credit promotions).
- (h) Any credit is submitted where there is no corresponding charge transaction.
- (i) Any disputed or fraudulent charge or credit relates to a transaction which was conducted by telephone, through the Internet, or by mail.
- (j) Any disputed or fraudulent charge or credit relates to a transaction where the Accountholder did not physically present the credit card.
- (k) The Accountholder asserts any claim or defense against Bank as a result of any act or omission of Contractor allegedly in violation of any applicable law, statute, ordinance, rule or regulation.
- (l) Any representation or warranty made by Contractor hereunder proves to be false or inaccurate in any respect, as determined by Bank.
- (m) The transaction was submitted to Bank more than thirty (30) days after it occurred.
- (n) Any charge is submitted after Contractor is no longer an authorized participant in Sponsor's contractor network.

If the full amount or any portion of any charge is charged back to Contractor pursuant to this Agreement, Bank will assign, without recourse, all rights to payment for the amount charged back to Contractor. In its reasonable discretion, Bank may compromise and settle any claim made by any Accountholder involving a charge back right against Contractor. In the event of such compromise or settlement, Bank shall adjust the Accountholder's Account and Bank's right to charge back shall be limited to the actual amount so compromised.

6. Provision of Authorization and Settlement Processing. Bank will provide a point-of-sale process to be used for the electronic authorization and monetary settlement of Account and/or Card applications and transactions.

7. Ownership of Accounts and Information. Contractor acknowledges that Bank owns all Accounts and Cards, and all information concerning Accountholders, applicants and Accounts obtained in connection with the Irrigation Program (collectively, "Accountholder Information"), and that Contractor has no ownership rights therein. Accordingly, Contractor will not represent itself as the owner of, or the creditor on, any Account or Accountholder Information. As a precaution, to confirm Bank's ownership of the Accounts and related documentation and to ensure repayment to Bank of any and all amounts due hereunder (including as a result of any recharacterization of Bank's ownership interest in the Accounts), Contractor hereby grants to Bank a continuing security interest in any right, title or interest that Contractor may now have or may hereafter be deemed to have in the Accounts and related documentation, in the Reserve Account, and in any goods charged to Accounts which have been returned to Contractor but for which Contractor has not submitted a corresponding credit transaction to Bank. Contractor authorizes Bank to prepare and file any documentation required to evidence and enforce this security interest, including UCC financing statements, and will sign any related documentation requested by Bank, including without limitation, any intercreditor agreements necessary to ensure that Bank has a first priority security interest, and that none of Contractor's other creditors asserts any claim on the Accounts, the Reserve Account or any related documentation.

8. Contractor's Representations, Warranties and Covenants. Contractor represents, warrants and covenants as follows at all times from the date of this Agreement through the date of termination of Contractor's participation in the last Irrigation Program to which this Agreement applies, except as otherwise provided below:

- (a) Contractor will forward to Bank promptly after receipt, at any time during or following Contractor's participation in the Irrigation Program, a copy of any legal proceeding, or a communication relating to an Account received from an Accountholder or from a governmental or regulatory authority;
- (b) Contractor will not permit the sale of extended warranties, service contracts, gift certificates, stored value cards (or reloads), or any other future service or delivery obligation, to be charged to Accounts other than such extended warranties and service contracts as Bank may approve in writing from time to time; provided that Bank may revoke its approval to charge the sale of any such extended warranties or service contracts at any time upon notice to Contractor;
- (c) Contractor will issue an Account credit (and not give any Accountholder cash), and include the credit in the next day's transmission of Charge Transaction Data, in connection with any return or exchange of merchandise or services originally charged to any Account;
- (d) On behalf of the Bank, Contractor shall (i) retain copies of all charge and credit slips, original completed Account applications, Supporting Documents and copies of all Charge Transaction Data submitted to Bank, for at least thirty-six (36) months and thereafter continuously unless after retaining such documents for the thirty-six month period Contractor offers to ship such documents to Bank and Bank authorizes Contractor to destroy them instead; (ii) retain for forty-eight (48) months from the date of each purchase made on an Account, in electronic or tangible form, a record of such purchase, showing the amount of sales, use or excise tax included in the purchase, and the street address of the physical location (except for Internet sales, which must be identified as such) where the purchase was made, (iii) provide any or all of these records to Bank promptly, but no later than three (3) business days following Bank's request;
- (e) Contractor is in compliance with, and will continue to comply with, all applicable laws, rules and regulations, including but not limited to: laws relating to (i) its sales of merchandise and services; (ii) the advertising or sale of products and services on credit; (iii) point-of-sale practices and representations made by Contractor's employees and representatives; (iv) privacy and data security; and (v) telemarketing and home solicitations and sales (to the extent applicable and permitted by Bank);
- (f) Contractor will provide only truthful and complete information to Accountholders regarding Accounts, and will take no action to prevent any amounts charged to any Account from being valid and enforceable against any Accountholder;
- (g) Contractor will properly code all promotional charges and will make any corrections necessary in the event of mistakes and disputes regarding promotions;
- (h) Contractor will comply in all respects at all times with any federal or state law or regulation governing the sale and installation of irrigation systems and related services, including without limitation, any federal or state law or regulation governing the financing of such sales, installations and services;

- (i) Contractor is and will at all times remain solvent, duly organized, validly existing and in good standing under the laws of its state of formation, will not violate its organizational documents or materially violate any agreements it has with third parties, and will advise Bank promptly of any condition or default under any agreement Contractor has with any third party that may materially affect Contractor's prospects, continued operations, or property; and
- (j) With respect to each sale or installation or any Toro irrigation product sold by Contractor which is financed by Bank under the Irrigation Program, Contractor represents and warrants as follows:
 - (i). the application, charge, credit slip or work order and the Supporting Documents (together, the "Documents") and the transaction have been executed and conducted in compliance with all federal, state and local laws;
 - (ii). the facts set forth in each Document are true and Contractor knows of no material misrepresentation in the Documents;
 - (iii). all parties to any transaction are not minors and have legal capacity to contract;
 - (iv). all products were sold, delivered and/or installed by Contractor to the Accountholder in a workmanlike manner;
 - (v). the Accountholder has received the necessary notice of right to rescind under federal and/or state law, as provided by Bank;
 - (vi). Contractor has conveyed full and complete title to the products subject only to the rights of the Accountholder which exists by virtue of the Account;
 - (vii). there have been no representations or warranties made to the Accountholder which are not contained in the sales slip or work order other than a manufacturer's or Contractor's standard warranties; and in the event a manufacturer or Contractor breaches a standard warranty, Contractor will cure the breach within fourteen (14) days of notice of the breach;
 - (viii). Contractor shall, within three (3) business days of its receipt, provide Bank with a copy of any written complaint from any customer related to any sales slip;
 - (ix). Contractor agrees to waive any mechanic's or materialman's lien with respect to the installation of any irrigation system or other irrigation product;

Notwithstanding Section 8(b) above, Contractor agrees that if, after obtaining the prior written consent of Bank, which consent shall be in Bank's sole discretion, Contractor sells, offers to sell, arranges, gives or may give (with or without cost) any warranty, including extended manufacturer's warranty, "free" checkups, free servicing, trade in or credit for non-use of any warranty (excepting manufacturer's warranty), then, in addition to Bank's indemnity rights under Section 12 below, Contractor agrees to fully indemnify Bank for any losses relating to Accountholder's claims for failure of Contractor to provide any warranty offered or sold by or through Contractor. Additionally, Contractor grants Bank the right to annually, or more often as reasonably determined by Bank, audit and review all terms and conditions of all said warranties (including copies of all applicable documents, internal audits and review of warranty providers and/or insurance underwriters of policies regarding said warranties). Bank may require Contractor to establish an escrow account or reserve account to insure coverage of said warranties not insured by a third party insurance carrier if Bank reasonably believes that Contractor does not have sufficient financial capacity to honor the uninsured warranties. The amount of any such escrow or reserve account shall be determined by Bank in its good faith credit judgment.

9. Accountholder Information/Confidentiality and Data Security. (a) From time to time, Bank will make available to Contractor, or Contractor may capture in the course of operations under the Irrigation Program, certain fields of Accountholder Information, in connection with the Bank's operation of the Irrigation Program. Contractor agrees in each such instance to use the Accountholder Information only on behalf of the Bank for purposes of promoting sales under the Irrigation Program through which such Accountholder Information was developed, and only in accordance with applicable law and the Bank's privacy disclosures to Accountholders. Contractor also agrees not to transfer or disclose Accountholder Information to any third party without Bank's prior written consent. While Contractor may not make use of Accountholder Information provided to Bank in connection with applications for the Irrigation Program, nothing in this paragraph is intended to restrict Contractor's use of its own customer list in any way, which list may include information about Accountholders that Contractor obtains on its own in the course of providing goods or services to Accountholders. Any Accountholder Information provided to Contractor by Bank may not be used to augment Contractor's own customer files, even where Contractor transmitted this information to Bank on the Bank's behalf.

(b) Contractor and Bank will each implement and maintain appropriate administrative, technical and physical safeguards to (i) protect the security, confidentiality and integrity of Accountholder Information, in accordance with applicable law, (ii) ensure against any anticipated threats or hazards to the security or integrity of Accountholder Information; and (iii) protect against unauthorized access to or use of Accountholder Information which could result in substantial harm or inconvenience to any Accountholder or applicant.

(c) Contractor and Bank will be responsible for the acts and omissions of any third party (other than transfers to or on behalf of the other party) to whom it transfers, provides access, or discloses Accountholder Information, including, without limitation, fraudulent use of any Accountholder Information by any such third party. Additionally, Contractor and Bank will each ensure that any third party (other than the other party) who obtains access to Accountholder Information through it, directly or indirectly, signs a written contract including strict restrictions on transfer or disclosure, requirements that the Accountholder Information be used only for the specific purpose for which it was disclosed (which purpose must be in connection with Contractor's permitted uses hereunder) and data security provisions corresponding to paragraph 9(b) above. Bank may engage third parties to perform some or all of Bank's obligations under this Agreement, including, without limitation the servicing and administration of Accounts, and may share information with such third parties as needed to perform their contracted functions.

10. Contractor Information. The information furnished by Contractor to Bank in its application for participation in the Irrigation Program and thereafter is complete and accurate and fairly presents the financial condition and business of Contractor. Contractor will also provide Bank upon request a copy of Contractor's prepared financial statements and such other financial information as Bank may reasonably request. Additionally, Contractor will provide Bank with information of any change of control involving Contractor, or any change in Contractor's name, business structure or form, principal office, or state of incorporation, before or when the change occurs.

11. No Consequential Damages. Except with respect to indemnification of third party claims, and confidentiality/security obligations, set forth herein, (i) in no event shall either party be liable to the other for any consequential damages arising from the other party's actions under this Agreement, and (ii) both parties waive any claim for punitive damages arising from the other party's actions under this Agreement.

12. Indemnification. (a) Contractor agrees to indemnify, defend and hold harmless Bank and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, any costs, expenses or reasonable attorneys' fees incurred by any indemnified party), to the extent arising out of any claim, complaint, or chargeback (i) made or claimed by an Accountholder with respect to any sale made by, or Charge Transaction Data submitted by, Contractor, or (ii) made or claimed by any person or entity with respect to the products or services sold or provided by Contractor, or the advertising or promotion involving such products or services; (iii) caused by Contractor's noncompliance with the terms or covenants of this Agreement or with any provision of applicable law, including without limitation, the failure of any representation, warranty or covenant made by Contractor to be true and correct when made or deemed made, or (iv) caused by Contractor's failure to comply in any material respect with the terms of the Operating Guide; (v) resulting from any documents used in connection with the transaction (excepting those provided to Contractor by Bank), including but not limited to documents given to Accountholders pertaining to warranties, service agreements and other similar documents; or (vi) caused by any voluntary or involuntary bankruptcy or insolvency proceeding by or against Contractor.

(b) Bank agrees to indemnify, defend and hold harmless Contractor and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, any costs, expenses or reasonable attorneys' fees incurred by any indemnified party) to the extent arising out of any claim or complaint based on (i) the failure of the Bank's Accountholder terms and conditions or Privacy Policy to comply with applicable law; (ii) an applicant's claim that the Bank wrongfully declined his or her credit application; or (iii) Bank's material breach of this Agreement.

(c) The indemnity provided under this Section 12 shall survive the termination of Contractor's participation in the Irrigation Program and/or termination of this Agreement.

13. Term/Termination. (a) Bank may immediately terminate Contractor's participation in the Irrigation Program, and this Agreement, at any time, if (i) Contractor breaches this Agreement, (ii) Bank determines that Contractor's financial condition has deteriorated, (iii) Contractor is no longer a participant in Sponsor's contractor network, (iv) Contractor undergoes a change of control, or (v) at any time if Bank's agreement with Sponsor in respect of the Irrigation Program expires or terminates. In addition, upon thirty (30) days written notice to Contractor, Bank may terminate this Agreement without cause. Contractor may terminate this Agreement or Contractor's participation in the Irrigation Program, without cause, on thirty (30) days' prior written notice to Bank. This Agreement will automatically terminate if Contractor files (or has filed against it) a petition in bankruptcy.

(b) Notwithstanding termination by either party of the Irrigation Program (i) the terms of this Agreement will continue to apply to any Accounts established or transactions occurring, prior to the effective termination date of the Irrigation Program, (ii) the provisions of Sections 7, 9, 11, 12 and 14 will survive with respect to the Irrigation Program, and (iii) Bank may use Contractor's name and marks for purposes of liquidating, administering or collecting Accounts generated under the Irrigation Program.

14. Miscellaneous.

(a) **Assignability.** Contractor may not assign this Agreement, or its rights or obligations hereunder without the prior written consent of Bank. Bank may, without Contractor's consent, assign this Agreement to an Affiliate, transfer or securitize all or any portion of the Accounts or any related rights or interests therein. Bank may also use subcontractors to perform obligations of Bank hereunder, but any such subcontracting will not relieve Bank of its obligations to Contractor hereunder.

(b) **Amendment.** This Agreement may be amended (or a new agreement substituted for it) by Bank by sending a notice of amendment to Contractor, and Contractor's submission of Charge Transaction Data to Bank after the stated effective date will constitute Contractor's agreement to the amendment. Notwithstanding the foregoing, Bank may from time to time amend the Contractor Fees charged under this Agreement, or add new Contractor Fees to the pricing schedule, upon prior notice to Contractor, but without Contractor's acceptance, and such amended pricing will apply to Bank's relationship with Contractor effective as stated in the notice. Unless an amendment expressly states otherwise, the amendment shall be effective as to all Accounts whether established or incurred before or after the effective date of such amendment.

(c) **Nonwaiver; Remedies Cumulative.** No delay by any party hereto in exercising any of its rights hereunder, or in the partial or single exercise of such rights, shall operate as a waiver of that or any other right. No right under any provision of this Agreement may be waived except in writing and then only in the specific instance and for the specific purpose for which such waiver was given. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided for by law or in equity.

(d) **Governing Law.** This Agreement and all rights and obligations hereunder, including, but not limited to, matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Utah. THE PARTIES HERETO WAIVE THEIR RIGHT TO REQUEST A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING IN ANY COURT OF LAW, TRIBUNAL, OR OTHER LEGAL PROCEEDING ARISING OUT OF OR INVOLVING THIS AGREEMENT, OR ANY DOCUMENT DELIVERED IN CONNECTION HEREWITH, OR RELATING TO ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(e) **Further Assurances.** Each party hereto agrees to execute all such further documents and instruments and to do all such further things as any other party may reasonably request in order to give effect to and to consummate the transactions contemplated hereby.

(f) **Notices.** All notices, demands and other communications provided for in this Agreement shall be in writing or (unless otherwise specified) by telephonic facsimile transmission and shall be sent by certified mail or nationally-recognized overnight courier, or delivered to the other party, in the case of Contractor, at the address set forth in the Contractor Application, and in the case of Bank, to the attention of Manager, Client Support, GE Retail Sales Finance, 950 Forrer Blvd., Kettering, OH 45420, or, in either case at such other address as shall be designated by such party in a written notice given to all other parties in accordance with the terms of this Section 14(f). All such notices and communications if duly given or made, when sent by certified mail, shall be effective three business days after deposit in the mails, when sent by overnight courier shall be effective one business day after delivery to such overnight courier, and otherwise shall be effective upon receipt.

(g) **Exchange of Information.** Contractor authorizes Bank at any time to order or obtain a consumer or commercial credit report on Contractor and personal credit reports on the principals of Contractor (owners, partners, members, etc.). Subsequent reports may be ordered in connection with updating, reviewing, or continuing this Agreement. Bank may exchange information about Contractor or any of the other persons listed above in this Section 14(g) with other financial institutions, credit, or trade associations. Additionally, Contractor hereby authorizes Bank to audit and monitor its administration and promotion of the Irrigation Program through anonymous requests to open or use Accounts under the Irrigation Program and by other means.

(h) **Financial Accommodation.** Contractor acknowledges that this Agreement is a financial accommodation contract for the benefit of Contractor, which means that it is not intended to be subject to assumption by a debtor in possession in bankruptcy.

(i) **Value-Added and Insurance Programs.** Bank and Bank's Affiliates may market additional products and services (including debt cancellation programs, credit insurance programs, and real property appraisal services) to Accountholders, and may authorize third parties to do so, via direct mail, billing inserts and otherwise and may finance such products or services on Accounts. Contractor will have no rights with respect to any proceeds of such additional products and services.

(j) **Force Majeure.** Neither party shall be deemed to be in breach of this Agreement if it fails to make any payment or perform any other obligation and such failure is a result of a force majeure event. As used herein, "force majeure event" shall mean any of the following: acts of God, fire, earthquake, acts of war or terrorism, explosion, accident, nuclear disaster, riot, material changes in applicable laws or regulations, including but not limited to a change in state or federal law, or other event beyond a party's reasonable control, rendering it illegal, impossible or untenable for such party to perform as contemplated in, or to offer the Irrigation Program on the terms contemplated under, this Agreement.

(k) **Contractor Marks.** Contractor hereby grants Bank a nonexclusive license to use its name, in connection with the administration and operation of the Irrigation Program, and in connection with the liquidation of Accounts created pursuant hereto, during and after the term of this Agreement. Additionally, if and to the extent Contractor requests Bank to provide customized account documentation or other Irrigation Program materials that include any of Contractor's trademarks, logos or other marks ("Marks"), Contractor hereby grants Bank a nonexclusive license to use such Marks solely to provide such customized materials in connection with the administration and operation of the Irrigation Program, and the liquidation of Accounts created pursuant hereto, during and after the term of this Agreement.

(l) **Entire Agreement.** This Agreement (together with the schedules and appendices, if any, attached hereto) is the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements whether written or oral. This Agreement supersedes any prior agreement between the parties, including any existing agreement in respect of the Irrigation Program, and will govern all prior transactions, including all transactions previously submitted to Bank, regardless of the date of submission. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.

(m) **Credit Approval.** With respect to any credit approval mechanism or process employed by Bank in connection with the Program, Contractor acknowledges that it is a "service provider" for Bank for purposes of communicating credit decisions to Contractor's customers.

(n) **Notification of Security Breach.** In addition to any other provisions of this Agreement, Contractor shall notify Bank immediately upon discovery or notification of any actual, potential or threatened security breach (i.e., unauthorized access or use) involving any information under the possession or control of Contractor (or any third to which Contractor may have transferred or given access to such information) and which relates to Bank customers. Contractor shall also provide Bank with a detailed description of the incident, the type of customer information that was the subject of the security breach, the identity of the affected customers, and any other information Bank may request concerning the customers or the details of the breach, as soon as such information can be collected or otherwise becomes available. Contractor agrees to take action immediately, at its own expense, to investigate the incident and to identify, prevent and mitigate the effects of any such security breach, and to carry out any recovery necessary to remedy the impact. Contractor also agrees to bear any cost or loss Bank may incur as a result of the breach, including without limitation, the cost of notifying customers if Bank determines to do so.

(o) **Damages Limitation.** As between the parties, neither party shall be liable under this Agreement for any consequential, indirect or special damages, or damages arising from lost or prospective profits, or anticipated sales, whether known or unknown to either party. Each party waives any claim for punitive damages arising from the other party's action under this Agreement.