

**Merchant
Services**

**Merchant
Application
and Agreement
Booklet**

This Merchant Application and Agreement (also referred to as the "Agreement"), is entered into between the business indicated on the Merchant Application and Agreement ("Merchant" or "you"), Cynergy Data and Priority Payment Systems collectively referred to herein as ("Processor"), and BMO Harris Bank, N.A. ("Bank"). The Processor and Bank may be collectively identified as "we" or "us" within the body of this Agreement.

Recitals

Merchant desires to accept Debit Cards and/or Credit Cards, ("Card" or collectively "Cards") as indicated on the Merchant Application. Bank and Processor desire to provide the Services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

1 Acceptance of Card Transactions

1.1 Acceptance of Card Transactions. The following requirements apply to all Card Transactions: Merchant will accept without discrimination, all valid Cards properly presented by Cardholders for payment for goods or services. Merchant will prominently display the promotional materials provided by Processor and Bank in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Processor and Bank. When accepting a Card, Merchant will follow the steps provided by Processor and Bank for accepting Cards and will:

- (a) Determine in good faith and to the best of its ability that the Card is valid on its face;
- (b) Obtain Authorization (as set forth in Section 2, below) before completing any Transaction. Where Authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the Cardholder;
- (c) Obtain an Imprint of the Card unless the Sales Draft is electronically generated from a swiped Transaction or is the result of an Internet, mail, phone or preauthorized order. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an imprint and the Cardholders signature;
- (d) Obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before processing the Sales Draft if Merchant's terminal is unable to read the magnetic stripe on the Card;
- (e) Enter a description of the goods or services sold and the price thereof (including any applicable taxes);
- (f) Obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card;
- (g) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale;
- (h) Legibly reproduce without alteration of the original Transaction receipt, the Cardholder's name, account number, expiration date and the Merchant's name and place of business if that information is not legibly imprinted on the Sales Draft. For MasterCard Transactions, Merchant will legibly reproduce the name of the Card Issuer as it appears on the face of the Card;
- (i) Merchant is responsible for the actions of each of its employees, including their compliance with the terms and conditions hereof;
- (j) Any tax required to be collected must be included in the total Transaction amount and not collected in cash;
- (k) Accept a Visa Card or Visa Electron Card for the purchase of Scrip;
- (l) Accept a Visa TravelMoney Card for a Manual Cash Disbursement; and
- (m) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant.

1.2 Prohibited Transactions.

- (a) You cannot establish minimum or maximum amounts as a condition for accepting U.S. issued Debit Cards; however a minimum payment, not to exceed \$10 may be established, for all other Card brands;
- (b) Federal agencies and higher education institutions only may establish a maximum payment for all card brands except for U.S. issued Debit Cards;
- (c) You cannot impose a surcharge or fee for accepting a Card; however, you may discount or offer incentives for other forms of payment such as Debit Cards, cash, or check;
- (d) You cannot establish procedures that discourage, favor or discriminate against the use of any particular Card; however, you may choose not to accept either U.S. issued Debit Cards or U.S. issued credit Cards under the terms described in Section 1.3;
- (e) You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by us, except for a mail order/telephone order or delivery required transaction, and ZIP code for a Card-present key-entered Transaction in order to obtain an Address Verification (AVS);
- (f) You cannot submit any Transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible;
- (g) You cannot submit a Transaction or sale that has been previously charged back;
- (h) You are prohibited from depositing Transactions originating from Cards of owners, partners or officers of your business establishment except for Transactions that are routine in type, size and frequency for your business and that represent actual sales of goods or services. Submission of sales Transactions on Cards in order to obtain a cash advance is strictly prohibited and may result in immediate cancellation of your account;
- (i) Cash payments by and cash disbursements to Cardholders are also prohibited;
- (j) You must not accept any direct payments from Cardholders for charges of merchandise or services which have been included on a Sales Draft; it is the right of the Card Issuing Bank to receive such payments;

- (k) You may not make any cash disbursements to a Cardholder as part of a Card Transaction except to the extent expressly authorized by the Merchant Application and Agreement or the Association Rules;
- (l) You cannot submit a Transaction or sale to cover a dishonored check;
- (m) You cannot deposit a credit Transaction without a preceding debit Transaction;
- (n) You cannot require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature or any other card data in plain view when mailed;
- (o) You cannot request or use a cardholder's account number for any purpose other than as payment for your goods or services, except to support the Health Care Eligibility Service or the Visa Prepaid Load Network;
- (p) You may not process for payment any Transaction(s) representing the refinancing of an existing obligation of Cardholder including, but not limited to, obligations previously, owed to Merchant, or arising from the dishonor of a cardholder's personal check, and/or representing the collection of any other pre-existing indebtedness;
- (q) You shall not require any Cardholder to pay any part of any Discount Rate or charge imposed upon Merchant by this Agreement;
- (r) Merchant will not deposit duplicate Transactions;
- (s) A Card must not be accepted for the purchase of scrip, and
- (t) A prepaid Card must not be redeemed for cash. Failure to comply with any of the Association Rules may result in fines, penalties and/or termination of this Agreement.

1.3 If you have indicated either in your Merchant Application and Agreement or by registering with us at least thirty (30) days in advance that you will limit your acceptance to either only accept Signature Debit Transactions or only accept Credit Card Transactions, then the following terms in this Section 1.3 will apply:

- (a) You will be authorized to refuse to accept for payment either Signature Debit or Credit Cards that are issued within the United States. You will, however, continue to be obligated to accept all foreign issued Credit or Debit Cards issued by Discover, MasterCard, Visa or American Express, so long as you accept any type of Discover, MasterCard, Visa, or American Express branded Card.
- (b) While many Debit Cards include markings indicating debit, such as, Visa Checkcard, Visa Buxx, Gift Card, DEBIT or Mastermoney), many Debit Cards do not include any such markings. It will be your responsibility to determine at the point of sale whether a Card is of a type that you have indicated that you will accept. You agree to institute appropriate systems and controls to limit your acceptance to the Card types indicated. You may purchase a table of BIN and ICA numbers currently associated with Debit Card Transactions upon execution of confidentiality/non-disclosure agreements required by the Associations. You will be responsible for updating your systems to utilize such tables and to obtain updated tables.
- (c) To the extent that you inadvertently or intentionally accept a Transaction that you are not registered to accept, such Transaction will downgrade to a mid or non-qualified Credit Transaction and the Discount Rate that will be applied to the Transaction will be your mid or non-qualified rate as described on page 2 of this application in the fees section.
- (d) Based upon Merchant's choice to accept only the Card types indicated in your Merchant Application and Agreement, you must remove from your premises any existing signage indicating that you accept all Discover, Visa, MasterCard or American Express Cards and use approved specific signage reflecting your policy of accepting only Debit Cards or Credit Cards.
- (e) Notwithstanding any election not to accept Credit or Signature Debit Transactions, you may still accept PIN Debit Transactions if you have signed up for PIN Debit services.

1.4 Along with this Merchant Application and Agreement, you are being provided with Operating Procedures, which contain the operating procedures, instructional and other directives related to Card Transactions. You agree that if you process Card Transactions, you will comply with and be bound by the Operating Procedures for all Transactions you process. You may also request a copy of the Operating Procedures from your sales representative and or Processor at any time.

1.5 Merchant will promptly examine all statements relating to the Account and immediately notify us in writing of any errors. Merchant's written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by us within 60 days after Merchant received the periodic statement containing the error.

2 Authorization

2.1 You must obtain an Authorization for all sales that you submit to us.

2.2 An Authorization only indicates the availability of credit on an account at the time the Authorization is requested. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback. If you fail to obtain an Authorization or if you submit a Card Transaction after receiving a decline (even if a subsequent Authorization attempt provides an approval), your Transaction may be assessed fines or fees by the Card Associations for which you will be responsible. These fines or fees currently range from \$50 per Transaction to \$150. To avoid these costs, always obtain an Authorization directly from your terminal before submitting a Transaction for settlement.

2.3 Do not attempt to obtain an Authorization provided by someone other than us, except as described in Section 2.6. If a Cardholder or another service provider provides you with either an Authorization number or with a telephone number for obtaining Authorizations, the Authorization you receive may not be valid. Even if the Transaction is initially processed and funded, it may be subject to a Chargeback at a later date. Also, if you receive an Authorization from someone other than us, we will not have a record of it and will be unable to verify that you received the Authorization if it is later questioned in a

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- Chargeback. Where Authorization is obtained you will be deemed to warrant the true identity of the Cardholder.
- 2.4 You may not attempt to obtain multiple Authorizations for a single Transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other Authorization sources. Instead, request another form of payment. If you accept and process a Transaction that was declined, or attempt to submit multiple Transactions and/or multiple Authorizations, you are subject to a Chargeback, Association Fines and/or cancellation of this Merchant Application and Agreement.
- 2.5 If you utilize AVS, you must review the response from the Authorization separately from the response from the AVS. A Transaction can receive an Authorization from the Issuing Bank even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the Issuer. If the authorized Cardholder disputes such a Transaction, you will be responsible for the resulting Chargeback.
- 2.6 **Third Party Authorization System.** If you have contracted with another Authorization network to obtain Credit Card Authorization, i.e., your terminal can split dial, liability resulting from discrepancies with that network must be resolved between you and that network. We will not research Chargebacks resulting from Authorization approval codes obtained from another authorization service organization. Such Chargebacks will be passed through to you for resolution. If an Authorization provided by a third party authorization system is challenged in a Chargeback, you must obtain proof (e.g., third party authorization logs) from the authorization source and submit it to us within the time frame specified on the Chargeback documentation.
- IF YOU CONTRACTED TO USE ONE OF OUR AUTHORIZATION SERVICES, DO NOT USE ANOTHER THIRD PARTY SYSTEM WITHOUT NOTIFYING CUSTOMER SERVICE. OTHERWISE, WE WILL BE UNABLE TO SUCCESSFULLY RESEARCH AND DEFEND ANY AUTHORIZATION RELATED CHARGEBACKS ON YOUR BEHALF. THIS DELAY WILL SIGNIFICANTLY DECREASE YOUR TIME TO RESEARCH AND PROVIDE PROOF OF AUTHORIZATION, THUS REDUCING YOUR OPPORTUNITY TO REVERSE A CHARGEBACK.
- If you utilize another authorization network, you will be responsible for the downgrade of any Transactions to a higher cost interchange that result from a mismatch of information to our systems and those of third party authorization networks.
- If you use a third party authorization network, you must also comply with Section 4.10 of the Operating Procedures.
- 3 **Sales Drafts**
- 3.1 Each Transaction that you submit must be supported by a single Sales Draft containing all of the following:
- (a) A clear imprint of the Card, showing account number and expiration date, truncated if applicable;
- (b) The signature of the Cardholder;
- (c) A short description of the goods or services sold;
- (d) The total amount charged;
- (e) Your business name and Merchant number; and
- (f) You will retain the Merchant copy of the Sales Draft or credit memorandum for at least three years following the date of completion of the Card Transaction (or such longer period as the Rules require).
- 3.2 Instead of an imprint of the Card on the Sales Draft, you may rely on the terminal printout of the Card account number on the Sales Draft only in cases where the terminal is able to successfully read the magnetic stripe from the Card (i.e., the Card number is not keyed in) and the Transaction is authorized by the terminal without any Referral or voice authorization.
- 3.3 You may not combine different papers to create a single Sales Draft. All the requirements of the Sales Draft must be met by a single page document.
- 3.4 You must timely provide us with copies of any Sales Drafts that we request. Failure to provide us with a valid Sales Draft may result in a Chargeback.
- 3.5 If you accept a Transaction where you do not obtain a Sales Draft meeting all of the requirements of Section 3.1, you do so at your own risk.
- 4 **Mail Order, Telephone Order, Internet Transactions.** You may only engage in mail/telephone/Internet orders provided they do not exceed the percentage of your total bankcard volume reflected on your Merchant Application and Agreement. Failure to adhere to this requirement may result in cancellation of this Merchant Application and Agreement, or we may hold your funds and/or interrupt or terminate your Services. Mail/Telephone/Internet Transactions have a substantially higher risk of Chargeback. Since you will not have an imprinted or magnetically swiped Transaction and you will not have the Cardholder's signature on the Sales Draft as you would in a face-to-face Transaction, you will assume all risk associated with accepting a mail/telephone/Internet order Transaction.
- 5 **Settlement of Card Transactions**
- 5.1 Subject to your compliance with Association Rules and this Merchant Application and Agreement, Bank will settle the Card Transactions for Cards specified in your Merchant Application and Agreement and will initiate a transfer of applicable funds to you. Such funds shall be subject to our withholding, set-off, security and reserve rights. All settlements for Discover, MasterCard, Visa and American Express Card Transactions will be net of credits/refunds, adjustments, applicable Discount Rates when due, Chargebacks and any other amounts then due from you. All payments to you are provisional and are subject to, among other things, Chargebacks, fees and fines imposed by the Associations. We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including, but not limited to, any Association or your financial institution.
- 5.2 In addition to any other remedies available to us under this Merchant Application and Agreement, we may, without prior notice, suspend payment of any funds should any Event of Default occur or if we have reason to believe there is any fraudulent activity related to the Transactions that you submit to us.
- 5.3 The "Combined Estimated Monthly Volume" and "Estimated Highest Ticket/Sales Amount" appearing on your Merchant Application and Agreement is the maximum monthly Transaction volume and maximum Sales Draft amount that you are permitted to submit to us. If you exceed these amounts, we may hold your funds and/or interrupt or terminate Services. Any request for an increase to these amounts is contingent upon our prior written approval.
- 5.4 **Account Monitoring.** Merchant acknowledges that Processor will monitor Merchant's daily Credit Card Transaction activity. Merchant agrees that Processor may upon reasonable grounds, divert the disbursement of Merchant's funds and/or temporarily suspend processing under this Agreement and/or terminate this Agreement, and Processor shall provide Merchant with notice of such action. Reasonable grounds shall include, but not be limited to, the following: suspicious or unusual Transaction activity; material variance in the nature of Merchant's business, type of product and/or service sold, average ticket size, monthly volume or swiped/keyed percentages, from such disclosures made by Merchant in this Agreement; Merchant does not authorize Transactions; receives excessive retrieval requests against Merchant's prior activity; excessive ACH rejects or Excessive Chargebacks are debited against Merchant's prior activity. If the Merchant's funds are diverted by Processor or Processor has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by Processor to fully investigate Merchant's account activity and resolve, to Processor's sole satisfaction, the subject questionable, suspect or fraudulent Transactions or activity of Merchant. Any funds diverted shall be maintained by Bank in a non-interest bearing account at Bank. Bank and Processor shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any diversion of funds, suspension of processing or termination of this Agreement by Processor pursuant to this paragraph. Processor will assess all fees and expenses incurred in relation to its investigation of suspicious or unusual Transaction activity, which includes activity that deviates from this Agreement. In addition, Processor's monthly investigation fee for conducting its internal investigation of suspicious activity shall be a monthly amount equal to up to ten percent (10%) of the initial dollar amount being investigated.
- 6 **Exclusivity.** During the term of this Merchant Application and Agreement, you shall use Processor as your exclusive provider of all Services unless we have otherwise specifically agreed in writing.
- 7 **Fees; Adjustments; Collection of Amounts Due**
- 7.1 You shall be charged fees for the Services, which shall be calculated and payable pursuant to this Merchant Application and Agreement and any additional pricing supplements. You agree to pay any fines imposed on either Processor or Bank by an Association or Debit Card network resulting from Chargebacks and any other fees or fines imposed by an Association with respect to your acts or omissions. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Through ACH, Bank or Processor will debit your Settlement Account, daily or monthly as applicable, for the following fees: (See Sections 1.3, 2.2, 8.5, 10.3, 13, 16 and this Section 7 for additional fees that may apply. Please also see ACH approvals at the end of the Agreement.)
- a) Merchant may be assessed a monthly investigation fee of up to ten percent (10%) of the dollar amount investigated for any suspicious or unusual Transaction activity or any Transaction activity which deviates from this Agreement. (see 5.4)
- b) \$10.00 audit fee for each diversion of Merchant's funds by Processor pursuant to its monitoring of Merchant's Settlement Account. (See Section 5.4)
- c) \$25.00 administrative fee for each judgment, writ, warrant of attachment, execution or levy received and processed by Processor.
- d) \$25 monthly statement fee for any diverted Reserve Account established by Processor in Merchant's name. (See Section 19)
- e) A fee for each returned ACH debit. See Page 2 and Section 8 for more information on the ACH settlement process and the initiation of credits and debits to your account.
- f) Merchant will be assessed a one-time fee of \$35.00 if Merchant's keyed Transactions exceed 15% of the total dollar amount of all VISA/MasterCard Transactions made in a thirty (30) day period. Thereafter, a fee of 1.5% of the total dollar amount of these Transactions will be assessed any month in which the dollar amount of keyed Transactions exceeds 15% of the total dollar amount of all Transactions. Such fee shall be in addition to any additional discount applied for keyed Transactions.
- g) A monthly fee not to exceed \$25 per merchant account (MID) for governmental compliance in support of programs developed by Processor to ensure compliance with all federal regulations as mandated, inclusive of, but not limited to, annual income reporting, Tax Id Number "TIN", and Legal name matching. Notwithstanding the foregoing, additional fees, not to exceed \$50 per month may be assessed for a non-matching TIN and Legal Name.
- 7.2 Discount Rates are charged on all sales and refunds where applicable. All Discount Rates may be deducted daily.
- 7.3 You acknowledge that for Discover, Visa and MasterCard Transactions, we will process your Card Transactions at the Rate 1 Discount Rate only when your Transactions meet

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certain criteria set by the applicable Association and us. When your Card Transactions fail to meet the qualification criteria, we will process your Transactions at the higher Rate 3 Discount Rate (or, in certain circumstances, at an intermediate Rate 2 Discount Rate) indicated in this Merchant Application and Agreement. Notwithstanding the previous sentence Rate 1, Rate 2 and 3 Discount Rate pricing tiers do not apply to pricing scenario's where Discount Rate pricing is based on "interchange pass-through pricing plans plus basis points".

7.4 The fees for Services set forth in your Merchant Application and Agreement may be adjusted to reflect changes by the Associations in interchange, assessment and other Association fees or to pass through increases charged by third parties. All such adjustments shall become effective upon the date determined by the applicable Association or third party, or upon such other date as identified by us. The Association fees are subject to change and additional categories of fees may be added. For further information on Association fees and pass through increases, please see the Association's website.

7.5 Subject to Section 15.1, we may also increase the rates and/or fees for Services for any other reason (excluding Association increases which are discussed in Section 7.4) by notifying you at least twenty (20) days prior to the effective date of any such change.

7.6 You will be automatically enrolled in Processor's My Merchant Benefits Club (the "Program") for a monthly fee as described herein. You understand that supply quantities required to properly process Card transactions (i.e. sales slips, printer rolls, etc.) provided by Processor will be based on your monthly transaction count. Provided Merchant is current on the Program fees as stated in this Merchant Application and Agreement and not otherwise in breach of this Merchant Application and Agreement, after at least one statement cycle, should the Merchant's printer, pin pad, peripheral or terminal become defective as a result of normal business usage and through no fault of Merchant or any third party, Processor shall facilitate the exchange of said processing equipment, whether or not the device at issue is under a manufacturer's warranty, for a refurbished device (same in model, form, features, and function as the defective device) at no charge within 24 to 48 hours. If a defective terminal becomes obsolete, not compatible with industry required software applications, no longer in compliance with Payment Card Industry Data Security Standards ("PCI DSS"), or otherwise unavailable, a similar terminal (similar in form, features, and function as the defective terminal) will be exchanged. YOU ARE REQUIRED TO RETURN THE DEFECTIVE DEVICE AS DIRECTED BY PROCESSOR. YOU SHALL BE CHARGED FOR ANY EQUIPMENT SENT TO YOU IF THE DEFECTIVE DEVICE IS NOT RETURNED AS DIRECTED BY PROCESSOR. Equipment is under warranty for the life of manufacturer's warranty, for a refurbished device. Terminal/Peripheral replacement will only apply to those terminals/ peripherals that have submitted or settled batch/transactions and is limited to a maximum of two (2) terminals/peripherals replacements annually. You may cancel Program membership separately by logging into the merchant portal from the corporate site and selecting the Opt Out option or by notifying us in writing. If you cancel the Program membership, you will be responsible for purchasing all supplies required to properly process Card transactions (i.e. sales slips, printer rolls, etc.) and will no longer have access to the Program Benefits as defined hereafter. Additionally, if you cancel your Program membership less than twelve (12) months after receiving a replacement terminal/peripheral you will be charged the full cost of the equipment. Termination of this Merchant Application and Agreement terminates the Program membership. Processor may choose to cancel the Program at any time without notice. The Program does not cover (i) terminals/peripherals that have been subject to water damage; (ii) products that have been damaged due to alteration or modification (iii) wireless terminals (iv) non-PCI DSS compliant terminals/peripherals; (v) equipment that is damaged due to a power surge, including, but not limited to, lightning strikes; (vi) equipment that is stolen; or (vii) equipment that becomes inoperable, damaged, or malfunctions due to any reason other than normal business usage. In these instances, the Merchant will be charged the full purchase price of the refurbished replacement equipment. The Program also allows access to savings, discounts, and/or other benefits (collectively, "Benefits") from outside companies and vendors (collectively, "Vendors") that are promoted, displayed, advertised, or otherwise posted on the Program site and shall be subject to the terms and conditions of purchase or service established by each such Vendor and under no circumstance will we, or any of our affiliates, employees, representatives, officers, directors, subsidiaries, parents, or related companies (collectively, the "Parties"), be liable in any manner whatsoever for any transaction, offer, deal, purchase, or any communication whatsoever offered, made, promoted, displayed, advertised, or otherwise posted on the site by a Vendor. Without limiting the foregoing, the Parties shall not be liable to you in connection with or arising out of (i) the failure of any Vendor to honor any promotion, advertisement, offer, deal, or agreement with you, or (ii) any of the Benefits provided, or promised to be provided, by a Vendor to you.

Terms and services regarding the Program can be found in its entirety by going to our corporate site at www.cynergydata.com and logging into your merchant portal or by contacting us at 888-830-0555. This program is non-transferable without written consent.

7.7 **Other Amounts Owed.** You will immediately pay Processor and Bank any amount incurred by Processor and Bank attributable to this Merchant Application and Agreement including but not limited to Chargebacks, fines imposed by Visa, Discover, MasterCard, or American Express, non-sufficient fund fees, and ACH debits that overdraw the Settlement Account, Reserve Account or are otherwise dishonored. You authorize Processor and/or Bank to debit via ACH the Settlement Account, Merchant account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank

demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

8 Electronic Funding

8.1 To the extent the Automated Clearing House (ACH) settlement process is used to debit or credit your Settlement Account and Reserve Account (if one is established for you in accordance with Section 19), you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association (NACHA). You hereby authorize us (Bank and Processor) to initiate credit and debit entries and adjustments to your account through the ACH settlement process and/or through direct instructions to (or such other arrangements as Bank and/or Processor deem appropriate) the financial institution where your Settlement Account and Reserve Account are maintained for amounts due under this Merchant Application and Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account and Reserve Account are maintained to make all such debits and credits to your account. This authority will remain in full force and effect until all monies due under this Merchant Application and Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.

8.2 After you submit sales and credit drafts, you will receive settlement funds through ACH credit. We will initiate a transfer of such applicable settlement funds through ACH to your Settlement Account. Settlement by ACH credit generally will take place the second banking day after we process the applicable Card Transactions. Settlement funds will be net of discount and all other amounts then due from you.

8.3 If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been affected.

8.4 If after your account has terminated, you fail to instruct Processor and/or Bank as to where to transmit funds that are being held and that are due to you, Processor and/or Bank may deduct from those funds Processor and/or Bank's fees and reasonable costs associated with the maintenance of such funds on a monthly basis.

8.5 The following is a partial list of reasons for other debits to your Settlement Account. Processor and/or Bank may add to this list as required:

- (a) Association fees, charges and fines assessed as a result of your Transactions;
- (b) Currency conversion errors;
- (c) Fees and Chargebacks not previously charged;
- (d) ACH reject fees; and
- (e) Deposits posted in error.

For additional reasons, refer to your Operating Procedures.

9 Other Entitlements

9.1 The provisions set forth in this Section 9 relate to American Express Card acceptance and Transactions. Merchants may access the American Express Merchant Operating Guide at <http://www.americanexpress.com/merchantopguide>. The provisions of this Agreement regarding American Express Transactions constitute an agreement solely between you and Processor. You acknowledge that Bank is not a party to this Agreement insofar as it relates American Express Transactions, and Bank is not responsible for, and shall have no liability to you in any way with respect to, American Express Transactions.

9.2 American Express Transaction Data. The transaction data you collect to facilitate the charge must be or have been provided directly to you by the Cardholder. You must not accept or have accepted transaction data from, nor shall you provide or have provided transaction data to, any third parties other than your covered parties (as defined in the American Express Data Security Requirements (DSR)). If you fail to comply with this requirement, in

addition to other rights and remedies regarding "monitoring," you may be charged a fee as indicated on the Merchant Processing Application, we may suspend Card acceptance privileges at your establishments, or terminate the Agreement. Where Cardholders pay you using payment or "e-wallet" accounts (which Cardholders may have created by providing Cardmember information when the account was established), the transaction data collected to facilitate the card not present charge has already been provided directly by the Cardholder.

You are not required to have the Cardholder re-enter the transaction data. All information required by American Express evidencing one or more transactions, including information obtained at the point of sale, information obtained or generated during Authorization and Submission, and any Chargeback.

9.3 Disclosure and Use of Data Collected Under Agreement. Processor may disclose to American Express data and information that you provide on your Application and that Processor collects as part of performing American Express payment processing services or transaction related services including information about you. American Express may use the information that you provide in the Application at the time of setup to screen and/or monitor you in connection with Card marketing and administrative purposes. American Express also may use such information to perform its responsibilities in connection with American Express Card acceptance, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes. American Express may otherwise use and share your information for business purposes and as permitted by applicable law. American Express uses reasonable administrative, technical and physical security measures to protect your information consistent with the sensitivity of the information.

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9.4 Consent for American Express to Contact You by Phone, eMail, Text or Facsimile. American Express may use the information you provide in the Application (as such information may be updated) to call you or send you communications or materials via email, SMS, text or facsimile regarding American Express products, services and resources available to you. You consent and agree to receive autodialed, automated and/or prerecorded calls and communications (which may include SMS or text messages) at the telephone number(s) you have provided. If you provide a fax number, you consent and agree to receiving fax communications from American Express. In connection with the foregoing, you understand that the calls made or communications sent to you by American Express may be subject to charges or fees by your telecommunications or other applicable service provider that are your responsibility to pay. You understand that your consent under this Section 9.4 is not a condition of purchasing or receiving any product or service or entering into this Agreement. Opt-Out: You may opt-out of receiving marketing related communications and materials from American Express by calling your Processor at their customer service number 888-830-0555. If you have opted-out, you may still receive messages or communications from American Express related to important information about your account.

9.5 Conversion to a Direct Relationship with American Express. You acknowledge and agree that upon written notice from Processor, you will be converted to a direct American Express Card acceptance relationship with American Express if and when the annual American Express Card charges that you submit under this Agreement are greater than \$1,000,000. You agree that, upon conversion, (i) you will be bound by American Express' then-current Card Acceptance Agreement with respect to American Express Transactions; (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance; and (iii) you will no longer be able to submit American Express Card transactions under this Agreement, but this Agreement will continue in full force and effect with respect to other payments and services you elected to receive on your Application.

9.6 No Assignment of Payments. You acknowledge and agree that you shall not assign to any third party any payments due to you under this Agreement as the result of American Express Card transactions, and all indebtedness arising from American Express Card charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that you may sell and assign future transaction receivables to us, our affiliates and/or any other funding source that partners with us or our affiliates.

9.7 Third Party Beneficiary Rights. American Express is a direct and intended third party beneficiary of this Agreement, and may enforce any terms of this Agreement that apply to American Express, including American Express Card acceptance and transaction processing, directly against you.

9.8 Your Right to Opt Out of American Express Card Acceptance. You may opt out of accepting American Express Cards at any time without directly or indirectly affecting your rights to accept any other payment products.

9.9 Collections from American Express Cardholder. You may not bill or collect from any American Express Cardholder for any purchase or payment on the American Express Card unless a Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.

9.10 American Express-Excessive Disputes. You may be subject to various fees and assessments as set forth on the Application, including fees for excessive disputes. Some fees and assessments are for special products or services, while others may be applied based upon non-compliance of American Express policies and procedures. Many non-compliance fees and assessments can be avoided by correcting the actions that are causing such non-compliance.

9.11 American Express Right to Modify or Terminate Agreement. American Express has the right to modify the Agreement with respect to American Express Card transactions or to terminate your acceptance of American Express Card transactions and to require Processor to investigate your activities with respect to American Express Card transactions.

10 Chargebacks

10.1 You are responsible for reimbursing Processor and/or Bank for any Transaction that is charged back by the Card Issuing Bank and/or the Cardholder and for related fees.

10.2 Among the reasons that a Transaction may be charged back are:

- A Cardholder disputes the validity of a Transaction;
- A Cardholder disputes the quality or receipt of goods or services;
- A copy of the Sales Draft was not provided when requested, or the copy provided was improperly completed or illegible in whole or in part;
- A credit was not provided to the Cardholder;
- The Transaction was not authorized by the Issuing Bank at the time of sale, or efforts were made to avoid a decline of the Authorization (such as, but not limited to, attempts to obtain an Authorization after receiving either a decline or a Referral to a call center or splitting a sale across multiple Transactions of the same Card);
- The Sales Draft was not imprinted using an imprinting machine (an electronic swipe of the magnetic stripe on the Card may only substitute for a manual imprint if the Transaction is electronically authorized by the terminal after the swipe. In situations where the account number is keyed into the terminal or where the terminal provides a Referral response, a physical imprint of the Card on the Sales Draft is mandatory); and

g) All mail order/telephone order and Internet sales are at your risk and are subject to Chargeback.

h) Any other circumstance where a Transaction is charged back.

10.3 You will incur a Chargeback Fee each time a Transaction is charged back or reversed to you. Your Chargeback Fee may be doubled in the event of Excessive Chargebacks as defined in Section 28 of this Agreement. If we reverse a Chargeback on your behalf and the Issuing Bank disputes the reversal (which may occur through a subsequent Chargeback, a pre-arbitration demand or an arbitration demand), the Transaction may be charged back again, and you will incur an additional Chargeback Fee. You may also be charged an arbitration fee of up to \$500 and/or incur "good faith" connection fees in connection with a disputed Chargeback.

10.4 Merchant hereby grants a security interest in any Settlement Account and/or any substitute account now and in the future and all proceeds thereof, to Bank and/or Processor to secure all fees, costs and charges due in accordance with this Merchant Application and Agreement. Bank and/or Processor are authorized to file financing statements relating to the Settlement Account without Merchant's signature. Merchant appoints Bank and/or Processor as its attorney-in-fact to execute such documents as may be necessary or desirable to accomplish perfection of any security interest. This appointment is coupled with an interest and shall be irrevocable for the later of (i) as long as Merchant owes any amount to Bank and/or Processor; or (ii) ten months following termination of this Agreement.

You must maintain sufficient funds in your designated Settlement Account to cover all Chargebacks and other amounts owed under this Agreement. Simultaneously, with each Transaction processed by you, we have a contingent and un-matured claim against you for any amount we must pay as a result of your processing of Transactions, including, but not limited to, any Chargebacks, fees, discounts, customer credits and adjustments, charges, fines, assessments and penalties. All settlements or credits given or payment made by us to you in connection with your Transactions are provisional, and subject to revocation, Chargeback or refund, subject to the terms and conditions of this Merchant Application and Agreement, and Association Rules. Your right to receive any amounts due from us is expressly subject and subordinate to our Chargeback, set-off, lien and security interest rights without regard to whether such Chargeback, set-off, lien and security interest rights are applied to claims that are liquidated, un-liquidated, fixed, contingent, matured or un-matured. **WE MAY, WITHOUT FURTHER NOTICE, ELECTRONICALLY DEBIT YOUR SETTLEMENT ACCOUNT TO COVER ALL SUMS OWING TO US PURSUANT TO THIS MERCHANT APPLICATION AND AGREEMENT, INCLUDING, BUT NOT LIMITED TO, AMOUNTS OWING FOR CHARGEBACKS, RELATED FEES AND FINES IMPOSED BY CARD ASSOCIATIONS.**

11 Representations; Warranties

11.1 For each Card Transaction submitted to us, you warrant the following:

- It is a lawful sale/rental not previously submitted and is only for the items sold or rented (including taxes, but without any surcharge);
- It represents an obligation of the Cardholder for the Transaction amount;
- It is not an amount charged subject to any dispute, set-off or counterclaim;
- It is for merchandise or service actually delivered or performed at the same time you accepted and submitted the Card for processing (except for any delayed delivery or advance deposit Transactions expressly authorized by this Merchant Application and Agreement);
- It is not the refinancing of an existing obligation of the Cardholder or arising from the dishonor of a personal check;
- That you have no knowledge or notice that the Transaction is improper, fraudulent or unauthorized;
- That the Transaction is between you and the Cardholder;
- Is not the deposit of a credit Transaction without a preceding debit; and
- The Transaction is made in accordance with this Merchant Application and Agreement, the Operating Procedures and Association Rules.

11.2 THIS IS A SERVICE AGREEMENT. WE DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS MERCHANT APPLICATION AND AGREEMENT.

12 Limitations on Liability; Exclusion of Consequential Damages

12.1 IN NO EVENT SHALL PROCESSOR OR BANK, OUR AFFILIATES OR ANY OF OUR/THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 NOTWITHSTANDING ANYTHING IN THIS MERCHANT APPLICATION AND AGREEMENT TO THE CONTRARY (INCLUDING, BUT NOT LIMITED TO, SECTIONS 12.3 or 21, OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MERCHANT APPLICATION AND AGREEMENT) AND REGARDLESS OF THE

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FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED (I) \$50,000 OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE MERCHANT APPLICATION AND AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS, WHICHEVER IS LESS.

12.3 NEITHER PROCESSOR NOR BANK SHALL BE RESPONSIBLE OR LIABLE FOR ANY ACTION TAKEN BY PROCESSOR OR BANK (OR THE RESULTS THEREOF) WHICH IS AUTHORIZED BY THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN CONNECTION WITH THIS AGREEMENT AND, WITHOUT LIMITING THE FOREGOING, WE DISCLAIM ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY INFORMATION PROVIDED BY OTHERS OR FOR THE USE OF ANY SYSTEM OR EQUIPMENT OF PROCESSOR, BANK OR OTHERS OR FOR ANY CIRCUMSTANCES BEYOND OUR CONTROL.

12.4 NOTWITHSTANDING ANYTHING IN THIS MERCHANT APPLICATION AND AGREEMENT TO THE CONTRARY (INCLUDING, BUT NOT LIMITED TO, SECTION 21, OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS, AS ESTABLISHED BY THE FEDERAL RESERVE BOARD FROM TIME TO TIME, LESS ONE PERCENT (1%). Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

13 Confidentiality.

(a) Cardholder Information. Except as required or permitted pursuant to this Merchant Application and Agreement or otherwise required by law, you will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, CID or CVV2 data after authorization. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature of a Cardholder, you may not reproduce such signature except upon our specific request. You acknowledge that you will not obtain ownership rights in any information derived from Card Transactions.

(b) Neither Processor nor Bank shall be responsible for any cardholder data that was delivered to Merchant in a secure or encrypted matter (as required by the PCI Data Security Standards) and then decrypted by the Merchant in order to process or re-key transaction authorizations or credits.

(c) Merchant authorizes Processor and Bank to obtain and share all financial, credit, sales, experience and other information about Merchant with their affiliates and with others as otherwise allowed by applicable law. Merchant authorizes us to contact or communicate with Merchant's customers with respect to Transactions.

(d) Merchant confirms that it is, and shall be, in full compliance during the term of this Merchant Application and Agreement with all laws, statutes and federal and/or state regulations, as well as the Association Rules applicable to Merchant, its business and any Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations, non-disclosure of Cardholder information to third parties and transaction documents, and other security procedures adopted by the Debit Networks, Visa, MasterCard, Discover, American Express and/or any other applicable Card Association. Merchant shall comply with all rules and regulations of all Payment Networks such as Visa, MasterCard, American Express and Discover and all bylaws, rules and regulations of any Card Issuer. Copies of the MasterCard Rules are available to Merchant at www.mastercard.com, selected excerpts of the Visa Rules are available to Merchant at www.visa.com and Discover's rules and operating regulations are located at www.discovernetwork.com. The American Express Merchant Operating Guide can be obtained at www.americanexpress.com/merchanttopguide. Merchant shall promptly pay penalties assessed by any Card Issuer or Payment Network for Merchant's failure to comply with the Association Rules or other requirements. Merchant hereby certifies that it (and any outside agent that it may utilize to, submit Transactions to Bank and/or Processor) complies with the PCI Data Security Standards as may be amended, (instituted by Visa, MasterCard Discover and American Express. Merchant hereby agrees to pay an annual PCI compliance fee not to exceed \$300 per Merchant account as well as any fees, fines, and penalties that may be assessed by Bank, Processor, Visa, MasterCard, American Express and/or Discover as a result of Merchant's noncompliance with the requirements of PCI, or by its failure to accurately validate its compliance, including a monthly PCI non-compliance fee not to exceed \$50 per Merchant account until compliance is validated. The Merchant should review and/or monitor the requirements at <http://www.pcisecuritystandards.org> in order to determine its due date of compliance under PCI. The foregoing is an ongoing obligation during the term of this Merchant Application and Agreement and as it may be renewed. Merchant acknowledges and understands that Merchant may be prohibited from participating in Payment Network programs if it is determined that Merchant is non-compliant. The following lists certain specifications of the current PCI requirements, all of which Merchant shall comply with, if applicable: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) do not use vendor-supplied

defaults for system passwords and other security parameters; (iii) encrypt stored Cardholder data; (iv) encrypt transmission of Cardholder data sent across open, public networks; (v) use and regularly update anti-virus software; (vi) Develop and maintain secure systems and applications; (vii) restrict access to Cardholder data to business "need to know;" (viii) assign a unique ID to each person with computer access to data; (ix) restrict physical access to Cardholder information; (x) track and monitor all access to network resources and Cardholder data by unique ID; (xi) regularly test security systems and processes; and (xii) maintain a policy that addresses information security for employees and contractors. Merchant acknowledges that it may be subject to, and Processor and/or Bank retain the right, to conduct an audit performed by them and or any of their designated third party(s) to verify Merchant's compliance with the foregoing security procedures. Merchant is required to contact Processor and/or Bank within twenty-four (24) hours after becoming aware of (i) any suspected or actual data security breach and (ii) any noncompliance by Merchant with the security requirements set forth herein. Merchant shall be responsible, at its own expense, to (i) perform or cause to be performed an independent investigation of any data security breach of Card or Transaction data; (ii) perform or cause to be performed any remedial actions recommended by such investigation; and (iii) cooperate with Processor and/or Bank in the investigation and resolution of any security breach.

14 Assignments

14.1 Any transfer or assignment of this Merchant Application and Agreement by you, including any rights and obligations stated herein, is voidable by us and may result in the immediate termination of this Merchant Application and Agreement. We may transfer, assign and/or delegate this Merchant Application and Agreement to any third party without notice. Upon notice to you, another Bank or Processor may be substituted for the Processor or Bank under whose sponsorship this Merchant Application and Agreement is performed.

14.2 Except as set forth in this Section 14, this Merchant Application and Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns.

15 Term of Agreement

15.1 Term and Termination. This Merchant Application and Agreement shall become effective when accepted by Processor and Bank. The term of this Merchant Application and Agreement shall be for thirty-six months (3 years) and will renew for successive 1 year terms ("Renewal Term") unless terminated as follows. If you elect to terminate this Merchant Application and Agreement, you shall provide us with written notice of termination at least ninety (90) days prior to the expiration of your current term. In the event Processor changes the rates, fees or terms of this Merchant Application and Agreement pursuant to Sections 7.5 or 17, you may terminate the Merchant Application and Agreement upon written notice received by Processor from you prior to the effective date of such change, and, if applicable, no Cancellation Fee will be charged.

15.2 The provisions of this Merchant Application and Agreement intended to remain in effect after termination, including, but not limited to, Sections 3.4, 5.1, 8.1, 8.2, 8.3, 10.1, 10.2, 10.3, 12.1, 12.2, 12.3, 18.2, 18.4, 19.1, 19.2, 19.3 and 25, shall survive termination. After termination of this Merchant Application and Agreement for any reason, you shall continue to be solely responsible for all amounts owing for Chargebacks and fees resulting from your Card Transactions and all other amounts then due or which thereafter may become due under this Merchant Application and Agreement.

15.3 Notwithstanding any other provision of this Merchant Application and Agreement, we may terminate this Merchant Application and Agreement with or without cause at any time by providing 30 days' advance notice to you.

15.4 Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

16 Cancellation Fee

16.1 If (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the then current thirty-six (36) month term, or (b) this Merchant Application and Agreement is terminated by us prior to the expiration of the then current term due to an Event of Default, we will suffer a substantial injury for which it is impracticable or extremely difficult to fix actual damages. In an effort to liquidate in advance the sum that should represent such damages, you agree to pay us as a "Cancellation Fee" up to but no greater than four hundred ninety five dollars (\$495.00). This sum represents a reasonable pre-estimate of the losses that we will incur as a result of the cancellation of this Merchant Application and Agreement prior to the expiration of the then current term of the Merchant Application and Agreement.

17 Amendments. Subject to Section 15.1, we may amend this Merchant Application and Agreement at any time by providing written notice to you of any amendment at least twenty (20) days prior to the effective date of the amendment.

18 Events of Default

18.1 If any of the following events shall occur (each an "Event of Default"), we may immediately terminate this Merchant Application and Agreement without notice:

- (a) A material adverse change in your business or financial condition, business procedures, products or services;
- (b) Any assignment or transfer of voting control of you or your parent;
- (c) A sale of all or a substantial portion of your assets;
- (d) Irregular Card sales, Excessive Chargebacks or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us;

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- (e) Your breach of any of your representations or warranties in this Merchant Application and Agreement;
- (f) You breach and/or default in the performance or observance of any term, covenant, condition or agreement contained in this Merchant Application and Agreement (or any agreement with any of our affiliates);
- (g) Any action or omission on your part that creates harm or loss of goodwill to Processor, Bank or any payment network or Association; or
- (h) Any fraudulent activity on your behalf.
- 18.2** After termination of this Merchant Application and Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Credits, fines and adjustments resulting from Card Transactions processed pursuant to this Merchant Application and Agreement and all other amounts then due or which thereafter may become due under this Merchant Application and Agreement.
- 18.3** You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time, and, in the event Merchant becomes a debtor in any bankruptcy or similar proceeding, then (i) such event shall be deemed a default for purposes of this agreement and (ii) it is the intent of the parties that, unless otherwise agreed by us, this Agreement should not be assumed or enforced by another person and we should be excused from performance hereunder. In the event you file for protection under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our services, it is your responsibility to open new accounts to distinguish pre- and post-filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim. In the event of your failure, including bankruptcy, insolvency, or other suspension of business operations, sell, transfer or disclose any materials that contain Cardholder account numbers, personal information or transaction information to third parties. You must either return this information to Bank or provide acceptable proof of destruction of this information to Bank.
- 18.4** If this Merchant Application and Agreement is terminated for cause, or if you voluntarily terminate this Agreement and grounds for termination for cause exists, you acknowledge that we may be required to report your business name and the names and other information regarding your principals to the Terminated Merchant file/match file maintained by Card Associations. You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa or MasterCard or if such reasons exist at the time of your voluntary termination. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.
- 19 Reserve Account; Security Interest**
- 19.1** *You expressly authorize us to establish a Reserve Account in an amount to be set by us in our sole discretion, based upon, among other things, your processing history and the potential risk of loss to us as we may determine from time to time. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.*
- 19.2** *The Reserve Account may be funded without notice. The Reserve Account may be funded as follows: (i) ACH or other debits to your Settlement Account or any other accounts held by Bank or any of its affiliates; (ii) deductions or offsets to any payments otherwise due to you; (iii) such other lawful manner acceptable to us. In the event of termination of this Merchant Application and Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of 270 days after termination of this Merchant Application and Agreement or for such longer period of time as is consistent with our liability for Card Transactions in accordance with Association Rules. Your funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds of our Merchants. You shall not receive any accrued interest on any funds held by us as a result of your processing of Transactions, including, but not limited to, funds held by us in a Reserve Account. Notwithstanding the foregoing, we shall be entitled to accrued interest on any such held funds. After the expiration of such 270 day period or greater you must provide Processor with written notification indicating your desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, and that Bank (and not Merchant) shall have sole control of the Reserve Account.*
- 19.3** *To secure your obligations to us and our affiliates under this Merchant Application and Agreement and any other agreement for the provision of related equipment or related services (Obligations), you hereby grant us a lien and security interest in and to any of your funds pertaining to the Card Transactions contemplated by this Merchant Application and Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you. In addition to any rights granted under applicable law, we are hereby authorized (any related notice and demand are hereby expressly waived) to set-off, recoup and to appropriate and to apply any and all such funds against and on account of your Obligations, whether such Obligations are liquidated, un-liquidated, fixed, contingent, matured or un-matured. You agree to duly execute and deliver to us such instruments and documents as may be reasonably requested to perfect and confirm the lien, security interest, right of set-off, recoupment and subordination set forth in this Merchant Application and Agreement.*
- 20 Financial and Other Information**
- 20.1** You will provide to us financial statements and other information concerning your business and your compliance with the terms and provisions of this Merchant Application and Agreement as we may reasonably request. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any of your assets not later than three (3) days after you become aware of same. You will be assessed an additional \$25.00 administrative fee for each judgment, writ, warrant of attachment, execution or levy received and processed by Processor. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Merchant Application and Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate.
- 20.2** From time to time, we may determine that an inspection of your business location is necessary. In such event, you shall pay the costs incurred by us for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations. Prior to the imposition of such costs, we shall notify you in writing of our intention to impose such costs and provide you with an estimate as to the amount of such costs. Your written consent to pay such costs shall not be unreasonably withheld.
- 21 Indemnification**
- 21.1** Processor agrees to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Merchant Application and Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Merchant Application and Agreement; provided, however, that attorney's fees are not recoverable as a loss, liability or expense.
- 21.2** You agree to indemnify and hold Processor and Bank, our vendors and affiliates, as well as Discover, MasterCard, Visa, American Express and any other Card Association or Card Issuing bank, harmless from and against all losses, liabilities, damages, judgments, settlements, actions, suits, claims, demands, costs (including but not limited to, court costs and out-of-pocket costs and expenses) and expenses of any and every type (including but not limited to, attorneys' fees) in connection with, by virtue of or arising or resulting from, either directly or indirectly:
- (a) Submissions that do not conform to the requirements of this Merchant Application and Agreement, the Operating Procedures or applicable law;
- (b) Any Transaction or any act or omission of Merchant in connection with a Cardholder;
- (c) Your breach or default or an alleged breach or default of or under any term, warranty, covenant condition, representation, obligation, undertaking, promise or agreement contained in this Merchant Application and Agreement (including the Operating Procedures) or in any agreement with any Cardholder, Card Association, Processor or Bank; or
- (d) The rescission cancellation or avoidance of any Transaction, by operation of law, adjudication or otherwise;
- (e) Any claim, counterclaim, complaint, dispute, or defense, including, without limitation, claims brought by Merchant, whether or not well founded, with respect to this Agreement or a Transaction;
- (f) Damages, including without limitation, those for death or injury caused by the good or service purchased with the Card; or
- (g) All web based, Internet or electronic commerce transactions involving Merchant's insecure transmission of Card transaction data and/or storage of Cardholder information.
- For purposes of this Merchant Application and Agreement, including the foregoing indemnities, Merchant is responsible and liable for the acts of omission of its employees, agents and representatives (whether or not acting in the scope of their duties).
- 22 Special Provisions for PIN Debit Transactions, EBT and Wireless Services.** Your acceptance of PIN Debit Transactions and EBT transactions, and your use of any Wireless Services, are governed by specific provisions of the Operating Procedures. In accepting these transactions or using these services, you agree to abide by these provisions, and failure to do so may result in additional fees.
- 23 Processing Related Equipment**
- 23.1** YOU WARRANT THAT ANY PROCESSING EQUIPMENT AND/OR SOFTWARE YOU OBTAIN IS FOR A COMMERCIAL PURPOSE AND IS NOT FOR HOME OR PERSONAL USE. Unless otherwise provided for in a separate sales agreement, the sale of all processing equipment is between you and third parties, including, but not limited to, our independent sales agents and representatives. WE ARE NOT IN THE BUSINESS OF LEASING EQUIPMENT. ALL LEASES ARE BETWEEN YOU AND AN INDEPENDENT LEASING COMPANY.
- 23.2** YOU ACKNOWLEDGE THAT ANY EQUIPMENT AND/OR SOFTWARE YOU OBTAIN MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS. WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH EQUIPMENT AND/OR SOFTWARE COMPATIBLE WITH ANY OTHER PROCESSING SYSTEMS. IN THE EVENT THAT YOU ELECT TO USE ANOTHER PROCESSING SERVICE PROVIDER UPON THE TERMINATION OF THIS MERCHANT APPLICATION AND AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE THAT YOU HAVE OBTAINED.

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- 23.3 We may upgrade or otherwise modify our computer system at any time without prior notice. You agree to provide us access to your processing equipment in the event that we deem it necessary as part of our upgrade or system modification.
- 23.4 In the event of unauthorized access to any computer system or hardware containing cardholder account numbers, Merchant will notify Bank and Processor within 24 hours of such breach.
- 24 Special Provisions Regarding Merchant Web Sites and Gateway Services**
- 24.1 A gateway service provides you with an Interface between you and your customers so you can accept sales from your customers over the Internet. Your choice of a third-party gateway service provider is subject to our approval. Notwithstanding any gateway service provider offered, suggested, or referenced by us or our sales agent, you acknowledge that all issues concerning your gateway service, including, but not limited to, its service and functionality, are solely between you and your gateway service provider. The fees and terms for your gateway service and any services or products offered by your gateway service are set forth in the Merchant Application and Agreement or, if applicable, stated in a separate agreement between you and your chosen gateway service provider.
- 24.2 Programming of your Web site, technical support, and its functionality with the gateway service provider you have chosen, are your sole responsibility. We shall not be liable in any manner whatsoever for any errors, disruptions or security breaches related to your Internet business or Web site. You shall be liable to us for all fees and liabilities incurred under this Merchant Application and Agreement notwithstanding any errors, disruptions or security issues related to your Internet business or Web site.
- 25 **Waiver of Trial by Jury.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS MERCHANT APPLICATION AND AGREEMENT OR THE SERVICES PROVIDED BY US.
- 26 Other Provisions**
- 26.1 No party shall be liable for any default or delay in the performance of its obligations under this Merchant Application and Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including, without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a third party shall not excuse the performance of your obligations to us under this Merchant Application and Agreement.
- 26.2 The headings contained in this Merchant Application and Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Merchant Application and Agreement.
- 26.3 If there are any inconsistencies between the Merchant Application and Agreement and the Operating Procedures, the Merchant Application and Agreement will govern. If any part of the Merchant Application and Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.
- 26.4 This Merchant Application and Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, supersedes any previous agreements and understandings and, except as expressly provided in this Merchant Application and Agreement, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Merchant Application and Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- 26.5 The parties acknowledge that the Discover, MasterCard, Visa and American Express Association Rules give Discover, MasterCard, Visa and American Express certain rights to require termination or modification of this Merchant Application and Agreement with respect to Transactions involving, respectively, Discover, MasterCard Visa and American Express Cards and the Discover, MasterCard Visa, and American Express Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Association Rules with respect to this Merchant Application and Agreement's applicability to Transactions involving such other Cards.
- 26.6 The Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96) provides that electronic signatures on documents hold equivalent legal status as traditional handwritten signatures. By completing the online Merchant Application and Agreement via the internet, Merchant acknowledges, agrees and consents that it has read and understand the Terms and Conditions herein and does sign each section of these Terms and Conditions with its digital signature.
- 26.7 Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card Transactions) shall be in writing and, if sent by Processor and/or Bank to you, by mail, courier, facsimile, or electronically at your address appearing on your Merchant Application and Agreement, or any other address you provide notice to Processor and/or Bank in a manner consistent with this paragraph; and if sent by you to Processor, by mail, courier to Priority Payment Systems, PO Box 246, Alpharetta, GA 30009-0246 with a copy to Bank by mail, courier to BMO Harris Bank, N.A. 150 N. Martingale Road, Suite 900, Schaumburg, Illinois 60173.
- 27 Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York as applied to contracts made and performed within the State of New York. The parties hereby waive their right to assert in any proceeding involving this Merchant Application and Agreement that the law of any jurisdiction other than the State of New York shall apply to such dispute; and the parties hereby covenant that they shall assert no such claim in any dispute arising under this Merchant Application and Agreement. Any proceeding which arises out of or relates in any way to the subject matter of this Merchant Application and Agreement shall be brought in the Superior Court of New York, County of New York or the United States District Court for the Central District of New York, New York Division. The parties hereby consent to the jurisdiction of the State of New York and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the person or forum non conveniens.
- 28 **GLOSSARY.** As used in this Merchant Application and Agreement, the terms below will have the following meanings:
- ACH Fee.** A fee charged each time a Merchant's bank account is either debited or credited funds through the ACH Settlement process
- Address Verification Service (AVS).** A service provided through which the Merchant verifies the Cardholder's address. Primarily used by mail order/telephone order Merchants. Not a guarantee that a Transaction is valid.
- Association.** Any entity formed to administer and promote Cards, including, without limitation, MasterCard International, Inc.; VISA U.S.A., Inc.; and VISA International, Inc, Discover and American Express Travel Related Services Company, Inc.
- Association Rules.** The rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Association.
- Authorization.** Approval by, or on behalf of, the Card Issuing Bank to validate a Transaction for a Merchant or another affiliate bank. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.
- Authorization Fee (Auth Fee).** A Merchant is charged an Authorization Fee each time communication is made via the POS terminal, software or gateway.
- Bank.** Member of MasterCard and Visa that clears Transactions for these Associations as set forth in the opening paragraph of this Merchant agreement. The Bank is BMO Harris Bank, N.A. 150 North Martingale Road, Suite 900, Schaumburg, IL 60173, or such other member of MasterCard and Visa that may subsequently be assigned.
- Cancellation Fee.** A fee up to but no greater than four hundred ninety five dollars (\$495.00), charged in the event that (a) you elect to cancel this Merchant Application and Agreement prior to the expiration of the then current thirty-six (36) month term of the Merchant Application and Agreement, or (b) this Merchant Application and Agreement is terminated prior to the expiration of the then current thirty-six (36) month term due to an Event of Default, except as provided in Section 15.1.
- Card.** A valid Credit Card or Debit Card bearing the service mark of Visa, MasterCard, Discover or American Express and, to the extent that you have signed up for such services, the marks of any other Association.
- Cardholder.** The individual whose name is embossed on a Card (or Debit Card, as applicable) and any authorized user of such Card.
- Chargeback.** The procedure by which a Sales Draft or other indicator of a Card Transaction (or disputed portion thereof) is returned to Bank or the Issuing Bank, the liability for which is the Merchant's responsibility.
- Chargeback Fee.** A fee incurred each time a Transaction is charged back to you.
- Credit.** A refund or price adjustment given for a previous purchase Transaction.
- Debit Card.** A Card used at a Merchant location bearing a MasterCard or Visa logo and/or the marks of ATM networks (such as MAC, NYCE, Star) where the Issuing Bank is not extending credit to the Cardholder, but where the Card is connected to either a deposit account, a prepaid account or a prepaid benefit account.
- Debit Network Processing Fees.** Fees charged by PIN Debit networks for processing PIN Debit Transactions. In addition to any Debit Network Processing Fees, Merchant will also pay the Debit Card/ATM transaction fee as indicated in the Merchant Application and Agreement. Debit Network Processing Fees are subject to change without notice.
- Decline Fee.** A fee charged each time the Merchant processes a Transaction which does not receive an Authorization or is otherwise declined.
- Dial-Up Terminal.** An Authorization device which, like a telephone, dials an Authorization center for validation of Transactions.

Merchant Initials: X ___ Processor Initials: X ___

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Discount Rate. An amount charged for processing credit Card Transactions or Signature Debit Transactions. Discount Rates are charged on all sales and refunds where applicable. The discount rates for Rate 2 and Rate 3 Transactions are higher or at interchange pass-through plus basis point Discount Rate as described in Section 7.3 and the "Schedule of Charges (Fees)" section of the Merchant Application and Agreement.

Downgrade Fee. An additional fee applied per settled item for Transactions that are charged a Rate 2 Discount Rate or Rate 3 Discount Rate.

Electronic Benefit Transfer (EBT). An electronic system that allows a government benefit recipient to authorize the transfer of his/her benefits from a Federal, State or local government account to a Merchant account to pay for products and services received.

Excessive Chargebacks. (a) Chargebacks or Retrieval Requests in excess of Association Rules as they may exist from time to time, (b) Chargebacks relating to a Merchant's Transactions processed by Bank in excess of one percent (1%) of the average monthly dollar amount of such Transactions, (c) Chargebacks relating to a Merchant's Transactions processed by Bank in excess of one and a half percent (1.5%) of the total number of Transactions processed by the Merchant for a particular month or, (d) Retrieval Requests in excess of three percent (3%) of the total number of Transactions processed.

Imprinter. A manual or electric machine used to physically imprint the Merchant's name and ID number as well as the Cardholder's name and Card number on a Sales Draft.

Issuing Bank. The bank that has issued a Card.

Magnetic Stripe. A stripe of magnetic information affixed to the back of a plastic Credit Card or Debit Card. The magnetic stripe contains essential Cardholder and account information.

Merchant. The party identified as "Merchant" on the Merchant Application and Agreement. The words "you" and "your" refer to Merchant.

Merchant Application and Agreement. The agreement among Merchant, Processor and Bank contained in the Merchant Application and Agreement, any attachments, addenda, schedules thereto, each as amended from time to time, all of which collectively constitute the agreement among the parties.

My Merchant Benefits Club ("Program"). A Processor managed program Merchant is automatically enrolled in for a monthly fee that provides supplies required to properly process Card transactions (i.e. sales slips, printer rolls, etc.) as well as providing Merchants access to savings, discounts, and/or other benefits from various outside companies and vendors.

Monthly Minimum Discount Fee. A fee, as indicated in the Merchant Application and Agreement, less the net Discount Rates, if any, for your MasterCard/Visa Transactions during the month.

Monthly Fee. A recurring monthly fee, as indicated in your Merchant Application and Agreement, for maintaining an account with Processor and Bank.

Next Day Funding. A feature, for which an additional fee is assessed, enabling next business day settlement of Card Transactions, as specified in your Merchant Application and Agreement. See Section 5 Settlement for all conditions that apply.

Online Merchant Portal Fee. A recurring monthly fee, as indicated in your Merchant Application and Agreement for the provision of online real time access to enable the Merchant to review statement details on a real time basis including: daily batch activity, Transaction details and ACH funding.

Operating Procedures. The then-current manual prepared by Processor, containing operating procedures, instructions and other directives relating to Card Transactions. If you process Card Transactions, you must comply with the Operating Procedures

Pre-Authorization Fee. A fee charged when a Merchant completes pre-authorization on a Transaction.

Processor. Priority Payment Systems or any successor, transferee, assignee or delegate thereof.

Referral. The message received from an Issuing Bank when an attempt for Authorization requires a call to the Voice Authorization Center Voice Response Unit (VRU).

Reserve Account. A fund established and managed by us to protect against actual or contingent liability arising from Chargebacks, adjustments, fees and other charges.

Retrieval Request/Transaction Documentation Request: A request for documentation related to a Card Transaction such as a copy of a Sales Draft or other Transaction source documents.

Sales Draft. Evidence of a purchase of goods or services by Cardholder from Merchant using a Card, regardless of whether the form of such evidence is in paper, electronic or otherwise, all of which must conform to Association Rules.

Services. The activities undertaken by Processor and Bank to authorize, process and settle all United States Dollar-denominated MasterCard, Discover, Visa and American

Express Card Transactions undertaken by Cardholders Merchant's location(s) in the United States, and all other activities necessary for Processor and Bank to perform the functions required by this Merchant Application and Agreement for all other Cards covered by this Merchant Application and Agreement.

Settlement Account. An account at a financial institution designated by Merchant as the account to be debited and credited by Processor Bank for Card Transactions, fees, Chargebacks and other amounts due under the Merchant Application and Agreement or in connection with the Merchant Application and Agreement.

Signature Debit Transaction. A Transaction in which a Debit Card is used at a Merchant location bearing a MasterCard or Visa logo, but where the Cardholder does not enter a PIN.

Submission. The process of sending batch deposits to us for processing. This may be done electronically or by mail.

Transaction means acceptance of a Card for payment for goods sold and/or leased or services provided to Cardholder by Merchant and receipt of payment from Bank in accordance with the terms of this Agreement.

Us. Bank and Processor collectively.

Vital Fee. A fee charged for each Transaction processed through the Vital Front-End processor.

Voice Authorization Fee. This is a fee charged when the Merchant contacts an authorization representative to process their Transaction.

Voice Response Unit Fee: This fee is charged when the Merchant calls into the 800 number to authorize a Transaction

We. Bank and Processor collectively.

You, your. See Merchant

Merchant Initials: X___ Processor Initials: X___

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