

**MERCHANT APPLICATION**

BUSINESS NAMES

Legal Name:	DBA Name:
Legal Address:	DBA Address (No PO Box):
Legal City, State, Zip:	DBA City, State, Zip:
Legal Phone #: Contact:	DBA Phone #: Mobile #:
Cust. Svc. # (if different):	Website Address: www.
Fax #:	Email Address (required to receive E-statement availability notification):

MERCHANT PROFILE

Type of Ownership:  Sole Proprietor  Partnership  Not For Profit  Corporation  Limited Liability Company

Type of Goods or Services Sold: \_\_\_\_\_ SIC Code: \_\_\_\_\_

Do you currently process Credit Cards?  Yes  No  
 If yes, submit three current months' processing statements

Name of current processor: \_\_\_\_\_

Has Merchant or any associated principal disclosed below filed bankruptcy or been subject to any involuntary bankruptcy?  No  Yes  
 If yes, date filed: \_\_\_\_\_

Processing Profile:	Card Swiped	%
<input type="radio"/> Retail	Manual Key Entry with Imprint, Card Present with Signature	%
<input type="radio"/> Restaurant	Mail/Telephone Order	%
<input type="radio"/> Lodging	eCommerce	%
<input type="radio"/> Service	<b>TOTAL MUST EQUAL 100%</b>	
<input type="radio"/> Mail/Telephone Order		
<input type="radio"/> eCommerce		

Federal Tax # (9 digits, no dashes): [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] # of Locations: \_\_\_\_\_ Years in Business: \_\_\_\_\_ Years Owned Business: \_\_\_\_\_

Bank Name: \_\_\_\_\_ Routing #: [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Checking Account #: \_\_\_\_\_ Bank Phone # (10 digits, no dashes): [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

**MEMBER BANK INFORMATION**

Deutsche Bank AG, c/o Deutsche Card Services GmbH, Kallenbornweg 1-3, 50679 Cologne, Germany  
 +49 221 99577 777 support.deucs@db.com

**IMPORTANT MEMBER BANK RESPONSIBILITIES**

1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant.
2. A Visa Member must be a principal (signer) to the Merchant Agreement.
3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
4. The Visa Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa Member is responsible for all funds held in reserve that are derived from the settlement.

**IMPORTANT MERCHANT RESPONSIBILITIES**

1. Merchant must ensure compliance with cardholder data security and storage requirements.
  2. Merchant must maintain fraud and chargebacks below thresholds.
  3. Merchant must review and understand the terms of the Merchant Agreement.
  4. Merchant must comply with Visa Operating Regulations.
- The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the merchant understands these specific responsibilities.

\*\*\*\*\* Payment Card Industry Data Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PA DSS") compliant or you (merchant) must validate PCI DSS compliance (see #1(b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.\*\*\*\*\*

1. Have you ever experienced an Account Data Compromise ("ADC")?  Yes  No If yes, provide date of compromise: \_\_\_\_\_  
 a) Have you validated PCI DSS compliance?  Yes  No If yes, go to #1(b); If no, go to #2  
 b) Date of compliance, Report on Compliance ("ROC") or Self Assessment Questionnaire ("SAQ"): \_\_\_\_\_  
 c) What is the name of your Qualified Security Assessor ("QSA")? \_\_\_\_\_ or SAQ (circle one): A, B, C, or D  
 d) Date of last scan: \_\_\_\_\_ Approved Scanning Vendor's name: \_\_\_\_\_
2. Are you using a "dial-up" terminal or Touch Tone Capture ("TTC")?  Yes  No
3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number ("FCN"), electronically?  Yes  No  
 a) If yes, where is card data stored?  Merchant's location only  Primary Service Provider  Other Service Provider: \_\_\_\_\_  
 Merchant's Headquarters/Corp office only  Both Merchant and Service Provider(s)  All Apply
4. What Primary Service Provider/Software Developer did you purchase your POS application from (i.e., software, gateway)? \_\_\_\_\_  
 a) What is the name of the Service Provider/Software Developer's application? \_\_\_\_\_ Software Version #: \_\_\_\_\_  
 b) Do your transactions process through any other Service Provider (i.e., web hosting companies, gateways, corporate office)?  Yes  No  
 c) If yes, name the other Service Provider: \_\_\_\_\_

**(Individual Ownership Must be Equal to or Greater than 50%)**

1 Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:
2 Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:

**(To Be Completed by Sales Representative)**

Merchant Location:  Retail Location with Store Front  Office Building  Residence  Other: \_\_\_\_\_

Area Zoned:  Commercial  Industrial  Residential Is inventory/merchandise amount consistent with type of business?  Yes  No

If No, explain: \_\_\_\_\_

The Merchant:  Owns  Leases the Business Premises Landlord Name & Phone #: \_\_\_\_\_

Does the Merchant use a Fulfillment House?  Yes  No If yes, was the Fulfillment House inspected?  Yes  No

Further comments by Inspector (required): \_\_\_\_\_

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief. Date: \_\_\_\_\_

Verified and Inspected by: Representative Print Name \_\_\_\_\_ Representative Signature \_\_\_\_\_ Merchant Signature \_\_\_\_\_

CARDHOLDER STORAGE COMPLIANCE & SERVICE PROVIDER

OWNER(S) OR OFFICER(S)

MERCHANT SITE SURVEY REPORT

RATE SCHEDULE

<input type="radio"/> <b>Interchange Plus</b>	<input type="radio"/> <b>Discount Rate</b>				
Visa / MasterCard / Discover Credit Card Discount Rate:	_____ %	American Express Discount Rate*:	_____ %		
Visa / MasterCard / Discover Offline Debit Discount Rate:	_____ %	EBT Transaction Fee:	_____ Per Item		
Bankcard Transaction Fee:	_____ Per Item	Terminal Program:	_____ Per Item		
Non-Bankcard Transaction Fee:	_____ Per Item	Equipment Maintenance Fee:	_____ Per Item		
Offline Debit Transaction Fee:	_____ Per Item	Voice Authorization Fee:	\$ 1.50 Per Call		
PIN Debit Discount Rate:	_____ %	AVS Surcharge:	\$ 0.05 Per Item		
Debit Transaction Fee (Plus Debit Network Fees):	_____ Per Item	Annual Fee (billed in advance for the following year):	\$99.00 Per Year		
Visa Authorization/Settlement Network Access/NABU Fee:	\$ 0.05 Per Item	ACH Reject Fee:	\$25.00 Per Item		
MasterCard Authorization/Settlement Network Access/NABU Fee:	_____ Per Item	Retrieval Fee:	\$10.00 Per Item		
Discover Authorization/Settlement Network Access/NABU Fee:	\$ _____ Per Item	Chargeback Fee:	\$25.00 Per Item		
Bank Service Fee:	_____ Monthly	Online Access Fee:	\$10.00 Monthly		
Batch Fee:	_____ Per Batch	Statement Fee:	_____ Monthly		
Split Batch Fee (additional):	\$ 0.20 Per Batch	Gateway Activation Fee (if applicable):	_____ One Time		
Monthly Minimum:	\$25.00 Monthly	Gateway Access Fee (if applicable):	_____ Monthly		
Wireless Activation Fee (if applicable):	\$35.00 One Time	eCommerce/Gateway Item Fee (if applicable):	_____ Per Item		
Wireless Access Fee (if applicable):	\$23.00 Monthly	MICROS Transaction Fee (if applicable):	\$ 0.09 Per Item		
Wireless Item Fee (if applicable):	\$ 0.12 Per Item	Set Up Fee:	_____ Per Item		

I/We understand and agree to the following: 1) That my/our discount rate as stated above will be charged on all electronically authorized payment card transactions that are in batches closed daily (qualified rate). 2) That all payment card transactions that do not meet the requirement stated in the preceding number 1, and transactions such as but not limited to (a) car holder and card not present at merchants point of sale device, key entered, AVS without full match of billing zip code, settled after two days of authorization; settled amount does not equal authorized amount, card not present, single authorization only, without order number required; (b) Discover, Visa rewards & Visa Signature, MasterCard enhanced value & MasterCard World Card transactions, Bus, Copr, Int'l, Purch. & Comm cards; T&E.; or (c) Mail/Telephone, e-commerce, lodging, car rental, small ticket, convenience and express service transactions; may be charged up to 2.19% + \$0.20 above the qualified rate. Merchants may also be assessed a Monthly and/or Annual Compliance fee. 3) Merchants may be charged a Cross Border transaction assessment of up to 1.00%, in addition to the applicable rate, on transactions when the country code of the Card Issuer differs from the Country Code of the Merchant. 4) On international transactions Merchants may be charged a rate of up to 0.55% for Visa's International Acquirer Fee, Maestro U.S. and MasterCard's Acquirer Program Support Fee and Discover's International Service Fee and International Processing Fee. 5) Merchants may also be assessed a monthly and/or annual Regulatory Compliance Fee of up to \$19.95 or \$99.95 respectively. 6) If Interchange/Cost Plus: All transactions will be assessed the current, published interchange rates, dues, and assessments in addition to the basis points as stated above. The published rates for Visa and MasterCard can be viewed at: www.visa.com and www.mastercard.com. 7) An early closure fee of \$495.00 will be paid to Benchmark if the Merchant Processing Agreement is not terminated in accordance with the Terms and Conditions. 8) Merchant will also be assessed the following fees on Visa transactions: the Visa Misuse of Authorization System fee, which will be assessed on authorizations that are approved but not settled in a timely manner; the Visa Zero Floor Limit Fee, which will be assessed on settled transactions that do not correspond to a valid authorization with the prior 30 days; and the Visa Zero Dollar Verification Fee, which will be assessed on transactions where Merchant requests an address verification response without an authorization. These fees of up to \$0.10 per transaction may include fees assessed by both the applicable card association and Bank or PROCESSOR. 9) Merchant will also be assessed each month the following Card Association fees: Fixed Network Fee and Licensing Fee. These fees, which may vary each month, are based on Merchant Category Codes, the number of merchant locations by Merchant's taxpayer identification number, and/or Merchant's processing volume by Merchant's taxpayer identification number. For additional information about these fees go to swipebms.com/FNF. \*American Express Fees: Retail: \$0.10 transaction fee\*\*; Services, Wholesale and All other: \$0.15 transaction fee.\*\*A .30% CNP fee will be charged for any transaction where the card is not presented at the time of the transaction.

**AMERICAN EXPRESS:** By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") and American Express's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct American Express and American Express's agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon American Express's approval of the application, the entity will be provided with the Agreement and materials welcoming it to American Express's Card acceptance program.

DEBIT/CREDIT AUTHORIZATION

Merchant authorizes any party to the Agreement to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which any such parties are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives written notice of revocation as required by this Agreement.

**INVESTIGATIVE CONSUMER REPORT:** An investigative or consumer report may be made in connection with application. MERCHANT authorizes ANY PARTY TO THE AGREEMENT or any of their agents to investigate the references provided or any other statements or data obtained from MERCHANT, and from any of the undersigned personal guarantor(s), or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

AVERAGE TICKET SIZE: \_\_\_\_\_ \*HIGHEST TICKET SIZE: \_\_\_\_\_ MONTHLY VOLUME: \_\_\_\_\_

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4.C, 9 and 13.B of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT. \*Highest ticket for informational purposes only.

**IMPORTANT NOTICE:** All information contained in this application was completed or supplied by all contracting parties. Any change in printed terms shall be of absolutely no force or effect unless specifically agreed to in writing by all contracting parties. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing.

**FOR ALL CORPORATIONS CORP. RESOLUTION**  
The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the herewithin named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

PERSONAL GUARANTY (NO TITLES)

By signing below, the undersigned Guarantor(s) jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations under the attached Merchant Processing Agreement, as such Agreement now exists or as may be amended from time to time, with or without notice. Guarantor(s) understands further that any party to the Merchant Processing Agreement may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity or any security being held pursuant to the Merchant Processing Agreement. Guarantor(s) waive trial by jury with respect to any litigation arising out of or relating to this personal guaranty. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of a successor of any party to the Merchant Processing Agreement. Guarantor(s) understand that the inducement to the parties to enter into the Merchant Processing Agreement is consideration for this guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

AGREED AND ACCEPTED

X \_\_\_\_\_  
#1 From Application—Signature Date

X \_\_\_\_\_  
#2 From Application—Signature Date

If Merchant submits a transaction hereunder, Merchant will be deemed to have accepted the Terms and Conditions of the Merchant Processing Agreement.

X \_\_\_\_\_  
#1 From Application—Signature Date

X \_\_\_\_\_  
#2 From Application—Signature Date

X \_\_\_\_\_  
Accepted by

X \_\_\_\_\_  
Accepted by Deutsche Bank AG, New York

X \_\_\_\_\_  
Accepted by Deutsche Bank AG, New York

EQUIPMENT/ADDITIONAL SERVICES

**Equipment:**  Purchase from BMS  Reprogram Merchant's existing equipment

**If purchase, choose equipment:**  Terminal  Printer  PINPad  Software  Other: \_\_\_\_\_

**Ship equipment to:**  Merchant  ISO  Other: \_\_\_\_\_ **Ship to:**  Commercial  Residential

**Choose shipment method:**  Overnight  2nd Day  Ground

**Must choose one:**  Starter Kit  Starter Package (includes manual imprinter)

**If lease, indicate:**  LSI  Other: \_\_\_\_\_

**TERMINAL TYPE:**

<input type="radio"/> NURIT 3020 (*NOS 7 required)	<input type="radio"/> VERIFONE VX570	<input type="radio"/> HYPERCOM T7 Plus
<input type="radio"/> NURIT 2085 (*NOS 7 required)	<input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> HYPERCOM T7P
<input type="radio"/> NURIT 8320	<input type="radio"/> OMNI VX510 LE	<input type="radio"/> FRICTION <input type="radio"/> THERMAL
<input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> OMNI VX510	<input type="radio"/> BMS Charge
<input type="radio"/> NURIT 8320 Lite	<input type="radio"/> OMNI 3740	<input type="radio"/> PC Charge
<input type="radio"/> NURIT 8400	<input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> PC Software: _____
<input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> OMNI 3750	<input type="radio"/> Other: _____
<input type="radio"/> NURIT 8400 Lite	<input type="radio"/> DIAL <input type="radio"/> IP	
<input type="radio"/> POWERSWIPE 1800	<input type="radio"/> HYPERCOM T4210	
<input type="radio"/> DEJAVOO X5	<input type="radio"/> HYPERCOM 4205	
<input type="radio"/> DEJAVOO X8 IP	<input type="radio"/> HYPERCOM T4220	

**WIRELESS TERMINAL TYPE: (NOTE: NEW BMS SIM CARD REQUIRED FOR ALL GPRS REPROGRAMS)**

Way MTT 15XX Wireless Combo (repro only) KIT/MTT/SIM# \_\_\_\_\_

Way 5000 Wireless Combo KIT/MTT/SIM # \_\_\_\_\_

NURIT 8000 Wireless (GPRS) (repro only) S/N \_\_\_\_\_

NURIT 8000 Wireless (RAM) (repro only) S/N \_\_\_\_\_ MAN/ESN# \_\_\_\_\_

NURIT 8010 Wireless (GPRS) (repro only) S/N \_\_\_\_\_

NURIT 8020 Wireless (GPRS) S/N \_\_\_\_\_

DEJAVOO M3 S/N \_\_\_\_\_

Other: \_\_\_\_\_

By signing this application it is agreed that BMS shall not be held responsible for (a) any wireless terminal repairs or (b) providing a replacement wireless terminal due to equipment failure. The terminal manufacturer shall handle all wireless terminal repairs and replacements. I also understand that due to the complexity of these wireless terminals, the manufacturer may not be able to provide a replacement while completing repairs. In addition, I further agree that a wireless terminal is NOT covered by participation in the BMS Supply/Replacement Program. BMS will not be responsible for any problems with the wireless services provided pursuant to this agreement. **See Rate Schedule for Wireless Fees.** Fees are subject to change.

**GATEWAY:**  Authorize.Net  Global Transport  Other: \_\_\_\_\_ Gateway Administrator email address (required): \_\_\_\_\_

PayPal  USA EPAY \_\_\_\_\_

**TERMINAL APPLICATION:**  WITH TIPS  WITHOUT TIPS  LODGING  MOTO  QPS **Merchant Refund Policy:**  No Refund  Exchange Only  In-Store Credit Only

**PINPad Type:**  HYPERCOM PINPad S9 PCI  HYPERCOM PINPad P1300  HYPERCOM PINPad 1320 (BMS Charge)  VERIFONE PINPad 1000SE

**Check Equipment:**  MAGTEK Reader  MAGTEK Imager  RDM Imager

**Accessories:** MAGTEK Mini Swipe Card Reader USB (choose one):  Authorize.Net  BMS Charge  PC Charge  USA EPAY

Equipment selection may be subject to availability/processing requirements.

**ADDITIONAL SERVICES:**

Check Advantage\* List Existing Merchant #: \_\_\_\_\_

Other Check Service: \_\_\_\_\_ List Existing Merchant #: \_\_\_\_\_

MasterCard PayPass™/Visa payWave  Merchants Advance Program

Other Card Types:	NEW	EXISTING	LIST EXISTING MERCHANT NUMBERS
<input type="radio"/> AMERICAN EXPRESS	<input type="radio"/>	<input type="radio"/>	_____
<input type="radio"/> EBT*	N/A	N/A	Existing FCS #: _____
<input type="radio"/> DEBIT	N/A	N/A	Supplied by BMS _____
<input type="radio"/> GIFT*	N/A	N/A	Supplied by BMS _____
<input type="radio"/> LOYALTY*	N/A	N/A	Supplied by BMS _____
<input type="radio"/> VOYAGER*	<input type="radio"/>	N/A	Supplied by BMS _____
<input type="radio"/> WRIGHT EXPRESS*	<input type="radio"/>	N/A	Supplied by BMS _____

Upon Approval of Visa/MasterCard/Discover processing, allow 48-72 hours for new non-bankcard(s) to be added.

\*Addendum/Application Required

**SPECIAL INSTRUCTIONS (requests are subject to management approval, please print clearly):** Other: \_\_\_\_\_

Request change of ownership. Existing MID number to close: \_\_\_\_\_

Request to pick up equipment/starter kit at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Merchant elects to receive monthly merchant account statements via U.S. Mail to:  
 Legal Address or  DBA Address



**MERCHANT PROCESSING AGREEMENT**

This document "Merchant Processing Agreement" (the "Agreement") accompanies the document "Merchant Application" ("Merchant Application") and includes the Terms and Conditions set forth below (the "Terms and Conditions") together with the terms and conditions of the Merchant Application. The bank ("Bank") identified in this Agreement is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), and is Deutsche Bank AG, New York branch, EVO Merchant Service, LLC d/b/a EVO Merchant Services, Inc. ("EVO Merchant Services") and is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is entered into by Processor, Bank, and the merchant (or "Merchant") identified in the Merchant Application ("Merchant"). Merchant and Processor agree that the rights and obligations contained in this Agreement do not apply to Bank with respect to Discover transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover; in such case, Merchant will also be enabled to accept JCB and Diner's Club cards under the Discover network and such transactions will be processed at the same rate as Merchant's Discover transactions are processed. All references to the Debit Sponsor shall refer to the debit sponsors identified below.

**RECITALS**

Merchant desires to accept credit cards ("Cards") validly issued by members of Visa, MasterCard, and Discover. Bank and Processor desire to provide credit card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

**TERMS AND CONDITIONS**

**1. Honoring Cards.**

- A. **Without Discrimination.** You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card.
- B. **Cardholder Identification.** You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as home or business telephone number, home or business address, or a driver's license number, as a condition for honoring a Card unless permitted under the Laws or Rules (defined in Section 14, below).
- C. **Card Number.** You will use your best efforts to relate any Card: (i) on Visa Cards to the printed four digits below the embossed account number; (ii) on the first two digits of the embossed account number; (iii) if you are advised by Processor or Bank (or a designated) issuer of the Card or the designated value authorization center to retain it; (iv) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, not authorized by the Cardholder; or (v) if, for MasterCard Cards, the embossed account number, printed account number and encoded account number do not match or the Card does not have a MasterCard hologram on the lower right corner of the Card face.
- D. **Surcharges.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.
- E. **Return Policy.** You will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any return policy you have on accepting returned merchandise.
- F. **To Claim Against Cardholder.** You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuse to accept the Sales Draft (as defined in Section 3) or revoke a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services listed in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.
- G. **Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor nor Bank bear any responsibility for such transactions.

**2. Authorization.**

- A. **Required on all Transactions.** You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.
- B. **Effect.** Authorization or other valid indication of a fraudulent transaction or a transaction involving the use of an expired Card.
- C. **Unreadable Magnetic Stripes.** When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

**3. Presentment of Sales Drafts.**

- A. **Forms.** You will use Sales Drafts ("Sales Drafts") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale, including any applicable taxes, or credit transaction; and (vii) adjacent to the signature, a notation that all sales are final, if applicable.
- B. **Signatures.** Each Sales Draft must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.
- C. **Repudiation of Information.** If the following information is not legibly imprinted on the Sales Draft, you will legibly inscribe on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (iii) expiration date of the Card and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly inscribe the name of the Bank issuing the Card as it appears on the back of the Card.
- D. **Delivery and Retention of Sales Drafts.** You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "true" duplicate copy of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).
- E. **Electronic Transmission.** In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction on a computer terminal or magnetic strip, reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions and, at Processor's sole discretion, the deposit of the funds received for such sales or credit transaction into the Reserve Account. If you provide your electronic terminal or similar device, such terminal must meet Processor and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic strip, reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specify or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

**4. Deposit of Sales Drafts and Funds Due Merchant.**

- A. **Deposit of Funds.** Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bank Depository Code, 12 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and you will provide your provisional credit for such funds (less recourse of any credit(s), adjustments, fines, charges, or fees). You shall not be entitled to credit for any indebtedness that rises out of a transaction not processed in accordance with the terms of this Agreement or the rules and regulations of a card association or other organization. You acknowledge that your obligation to Processor and Bank for all amounts due under this Agreement arises out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account, i.e. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Processor and Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks, repayment, adjustments, fines and fees: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any situation constituting, in Processor and Bank's view, a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect, but are not required, to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion. iii. **Processing Limits.** Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor or Bank. This limit may be changed by Processor or Bank upon written notice to you.
- B. **Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay Processor the amount of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully comply with all provisions of the Rules regarding chargebacks.
- C. **Excessive Activity.** Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this agreement. "Excessive Activity" means, during any monthly period, (i) the dollar amount of chargebacks exceeds retrieval requests and exceeds 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 10% of the dollar volume indicated on the application; or (iii) the dollar amount of returned equipment exceeds 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension of processing privileges and establishment or increase in the amount allocated to the Reserve Account and a reduction in the amount of provisional credit remitted to you in accordance with this Agreement.
- D. **Credit.** i. **Credit Memoranda.** You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Processor or Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Processor and Bank. You will not submit a credit memorandum relating to any Sales Draft not originally submitted to Processor and Bank, and you will not submit a credit memorandum that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Credit. Processor or Bank may revoke a credit memorandum or forgiveness of debt for services which were the subject of a Sales Draft, and you may refuse to accept any Sales Draft, and Processor and Bank may revoke a prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes its liability to Processor and Bank for any reason, including but not limited to, the contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered, or those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.
- E. **Reprocessing.** Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

5. **Miscellaneous.** You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

**5. Other Types of Transactions.**

- A. **Debit Card Processing Services.** You may elect to accept debit cards, and said election should be made by you to the accompanying Merchant Application. If you elect to accept debit cards, the following terms and conditions apply to you. Debit Sponsor shall act as sponsor for you in each Network, and you shall obtain prior written consent from the Debit Sponsor for each of your principal adverse events in each of the following debit card networks ("Networks"): Acela, AFFN, Alaska Optic, Antioch, Maestro, NYCE, Pulse, Shazam, Star, CU24, and Tyne, which Networks may be changed from time-to-time by Debit Sponsor or Processor without notice. You may also have access to other debit networks that do not require a sponsor. Processor will provide you with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks, and Processor will provide connectivity to the Networks, terminal applications, settlement, and reporting activities (collectively, the "Services"). You will comply with all federal, state and local laws, rules, regulations, and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the networks ("Network Rules"). You will execute and deliver any application, participation, or membership agreement or other document necessary to enable Debit Sponsor to act as sponsor for you in each Network, and you shall obtain prior written consent of the networks, or orders of any governmental agency or body required for the execution, delivery, and performance of this Agreement. You agree to utilize the debit card services in accordance with this Agreement, its exhibits or attachments, and Processor's instructions and specifications, and to provide Processor with the necessary data in the proper format to enable Processor to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to you upon request. You will provide prompt written notice to Processor in the event that you are subject to any of the following: i. Conviction for a felony offense in any other crime involving moral turpitude; ii. Restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on your part; iii. Bankruptcy filing or petition; iv. Federal or state tax lien; v. Any material adverse change in your assets, operations, or condition, financial or otherwise; vi. The threat or filing of any litigation against you, the occurrence of which reasonably could have a material adverse effect on your continuing operations; vii. Any administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency, or any disciplinary action taken by any Network against you or your principal adverse event in respect of your continuing operations; or viii. Any disciplinary action taken by any Network against you or any of your principals. Processor may immediately suspend its notice to the occurrence of any of the conditions set forth in items (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) in the immediately preceding paragraph or if Debit Sponsor's sponsorship of you in any Network is terminated or modified by the provision of Services to you. 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**3. Cash Advances.** You will not deposit any transaction for purposes of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.  
**4. Prohibited Transactions.** You will not accept or deposit any fraudulent or illegal transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, deposit telemarketing transactions unless you obtain Bank, Processor prior written consent. Such consent will be subject to Bank's final approval. If you present any such transactions, you may be immediately terminated and Processor's Bank may hold funds and/or increase the amount allocated to the Reserve Account and/or deduct from the amount of provisional credit that would otherwise be allocated to you. Further, you may be subject to Visa, MasterCard or Discover reporting requirements.

**6. Designated Account.**

**A. Establishment and Authority.** Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank and Processor ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations, including, but not limited to, those contemplated by this Agreement. Merchant irrevocably authorizes Bank and Processor to debit the Designated Account for chargebacks, recoupments, adjustments, fines, fees and other penalties or amounts owed to Bank and Processor under this Agreement and to the amount directly attributable to the settlement of transactions. You also authorize Processor and Bank to debit the Merchant Account for any fees due to such vendor or agent under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor or Bank may immediately terminate the Agreement and may take other actions necessary, as determined by them, within their sole discretion.

**B. Deposits.** Bank deposits all Sales Drafts to the Designated Account subject to the other provisions of this Agreement. The funds representing Sales Drafts will be deposited 3 business days following Processor's receipt of the Sales Draft, except for mail or overnight order and electronic transactions which will be deposited 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and to initiate or process such entries as may be necessary to grant Merchant provisional credit for any entry. You authorize and appoint Bank and Processor to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, Bank and Processor in their sole discretion, may grant provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

**C. Assorted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your 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 you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you receive the periodic statement relating to the asserted error. Your failure to notify Processor and Bank of any error within 30 days constitutes a waiver of any claim for that error. You may not make any claim against Processor or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following our receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

**D. Indemnity.** You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.  
**E. ACH Authorization.** You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement and the ACH Authorization of the attached Exhibit B, Merchant Authorization. The ACH Authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account you will execute a new ACH Authorization.

**7. Security Interests, Reserve Account, Recoupment and Set-Off.**

**A. Security Interests.** Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligation under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor upon request of Processor or Bank, with or without an immediate withdrawal of the secured assets. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to assist in perfecting your security interest and warrant that no other security interest or lien has a security interest in the Secured Assets. Further, with respect to such security interests and liens, you warrant and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank a prior consent prior to granting a security interest in any of the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from the automatic stay in any bankruptcy proceeding in order for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

**B. Reserve Account.** Establishment. A non-interest bearing deposit account ("Reserve Account") has been established and is maintained at Bank or at its affiliates with funds sufficient to satisfy your current and future merchant obligations as determined by Processor and Bank. You authorize Processor and Bank to debit the Designated Account or any other account you maintain at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank or Processor may deposit into the Reserve Account funds if you would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonable, necessary to protect its interests. ii. Authorizations. Processor and Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amount due to Processor or Bank, including, without limitation, rights of set-off and recoupment. In the event you submit a merchant application to Processor through the use of auto-App and Processor does not receive a completed written merchant application within 2 business days, you authorize Processor or Bank to hold all of your funds in the Reserve Account until the completed written merchant application and other required documentation is received by Processor. iii. Funds. Funds in the Reserve Account will remain in the Reserve Account for 270 calendar days following the later of termination of this Agreement or the last activity in your account, provided, however, that you will remain liable to Processor and Bank for all liabilities occurring beyond such 270 day period. After the expiration of the 270 day period Processor will provide you with written notification via national recognized delivery service advising you that the 270 day period has expired, requesting that you provide Processor with an address where the funds you have remaining in the Reserve Account should be delivered, and that you that in the event you fail to respond to this notification within 30 days, Processor will begin deducting a flat fee of \$95 each month from the funds you have remaining in the Reserve Account. In the event you fail to respond to the notification, the \$95 fee will then be deducted each month from the funds you have remaining in the Reserve Account. This fee will offset the administrative, clerical, legal, and risk management costs incurred by Processor to monitor the funds you have remaining in the Reserve Account beyond the 270 day period, and includes all monthly minimum payments and any other contractual fees that would ordinarily be assessed against your account pursuant to the terms of this Agreement. You agree that prior to the expiration of the 270 days, you will make any funds you owe to Processor and/or Bank under this Agreement, including but not limited to paying chargeback fees, fines, and other amounts you owe to Processor and/or Bank under this Agreement. Processor and Bank (and any merchant) shall have control of the Reserve Account. iv. Assurances. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must maintain funds in the Reserve Account in an amount satisfactory to Processor and Bank.

**C. Recoupment and Set-Off.** Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding or uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other account of Processor; (iii) any amounts you owe under this Agreement or any other agreement; and (iii) any funds in the Designated Account or the Reserve Account. You acknowledge that in the event of a bankruptcy proceeding in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

**D. Remedies Cumulative.** The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and in addition to every other right.

**8. Fees and Other Amounts Owed Processor and Bank.**

**A. Fees and Taxes.** You will pay Processor fees for services, forms and equipment in accordance with the rates set forth on the Application. In addition, you will pay Processor a fee for research it performs at your request in an amount equal to \$200 per hour, or \$5 per statement. Such fees will be calculated and debited from the Designated Account once each business day or month for the prior business day or month. Processor and Bank reserve the right to adjust the fees set forth on the Application and this Section, in accordance with Section 16.H below. If you do not have an active account at the time of the request, payment by certified check or money order must be received prior to the release of the requested document copies or research results. You are also obligated to pay taxes and other charges imposed by any governmental authority on the services provided under this Agreement. With respect to the MasterCard and Discover products, you may elect to accept debit cards or debit/prepaid cards or both. You shall so elect on the Merchant Application before complete, contemporaneously provided. You agree to pay and your account(s) will be charged pursuant to Section 16 of this Agreement for any transactions incurred as a result of your subsequent acceptance of transactions with any Visa, MasterCard or Discover product that you have elected not to accept.

**B. Other Amounts Owed Processor and Bank.** You will immediately pay Processor and Bank any amount incurred by Processor and Bank pursuant to this Agreement, including but not limited to chargebacks, fines and penalties imposed by Visa, MasterCard or Discover (including but not limited to fines and penalties related to PCI DSS), fine-sufficient fund fees, and ACH debits that overdraw the Designated Account or Reserve Account, or are otherwise dishonored, non-sufficient, Processor and Bank to debit via ACH the Designated Account or any other account you have at Bank or 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 and 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 in amount.

**C. Merchant Supply/Replacement Program.** Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If Merchant elects to participate in Processor's Supply/Replacement Program,

Merchant understands that it is entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. It is Merchant's responsibility to contact Processor each month to order supplies. Processor will only provide Merchant with supplies for the current month, and Merchant's failure to place an order with Processor will constitute a waiver of its right to receive supplies for that month under the Supply/Replacement Program. Quantity of supplies provided is at the discretion of Processor. Enrollment in Processor's Supply/Replacement Program also entitles Merchant to free refurbished replacement equipment. Processor has collected 3 monthly payments from Merchant (merchant is responsible for all shipping costs). A separate program is provided for each terminal Merchant may have. If Merchant's terminal type is unavailable, at Processor's discretion, a substitute may be provided. Processor's Supply/Replacement Program does not include late, parts, or expedited service necessary to replace or repair equipment damaged by fire, flood, accident, improper packaging, misuse of equipment, service performed by persons other than Processor representatives, and/or failure to continually maintain a suitable operating environment for the equipment. Processor may choose to cancel Merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminal.

**9. Application, Indemnification, Limitation of Liability.**

**A. Application.** You are presenting a warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business; the identity of principals and/or owners; the form of business organization (e.g., sole proprietorship, partnership, etc.); type of goods and services sold and how sales are completed (i.e., by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor and Bank (as applicable) for all losses and expenses incurred by Processor and/or Bank arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

**B. Indemnification.** You will hold Processor and Processor's Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of this Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

**C. Limitation of Liability.** Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of such liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor and Bank's liability shall not exceed the lowest amount determined in accordance with the foregoing calculation for any one month involved. Neither Processor, Bank nor their agents, officers, directors, or employees shall be jointly liable to you under this Agreement or liable for indirect, special, or consequential damages. Neither Processor nor Bank will be responsible or liable for any damages you incur that arise from a terminal that has been discontinued by a third party in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the other for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party.

**E. Representations By Salespersons.** All salespersons are independent contractors, and are not agents, employees, joint venturers, or partners of Processor or Bank. Any and all representations and/or statements made by a salesperson are made by them in their capacity as an independent contractor, and cannot be imputed to Processor or Bank. Processor and Bank have absolutely no liability or responsibility for any representations and/or statements made to you by any sales representative.

**10. Representations and Warranties. You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:**

**A. Information.** All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

**B. Entity Power.** Merchant and Processor signing this Agreement have the power to execute and perform this Agreement. This Agreement and your performance hereunder will not violate any law, or conflict with any other agreement to which you are subject.

**C. No Litigation or Termination.** There is no action, suit or proceeding pending or to your knowledge threatened which, if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have not entered into an agreement with a third party to perform credit or debit card processing which has been terminated by the third party.

**D. Transactions.** All transactions involving the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank. Processor may choose to obtain Merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminal.

**E. Full Compliance.** You will comply with the laws of the United States, without violating the generality of the foregoing, including but not limited to the handling, retention, and storage of information related thereto, will comply with the rules and regulations of the Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including but not limited to Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and Payment Application Best Practices.

**11. Audit and financial information**

**A. Audit.** You authorize Processor or Bank to audit your records to conform compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.  
**B. Financial Information.** i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank. ii. Documents. You will provide Processor or Bank with all financial and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

**12. Third Parties.**

**A. Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

**B. Use of Terminals Provided by Others.** You will notify Processor and Bank immediately if you decide to use electronic authorization data capture terminals or software provided by any entity other than Processor and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals or payment software provided by others you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules and this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as result of any error by a third party agent, or a malfunction of your credit card terminal, including but not limited to Third Party Terminals.

**13. Term of this Agreement.**

**A. Term.** This Agreement shall become effective ("Effective Date") only upon acceptance by Processor and Bank, or upon the submission of a transaction by you to Processor, whichever event shall occur first. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

**B. Termination.** The Agreement may be terminated by Merchant at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 30 calendar days before the end of the Initial Term or any Renewal Term. Further, this Agreement may be terminated by Processor or Bank at any time with or without notice, with or without cause.

**C. Action upon Termination.** Upon termination of this Agreement, you acknowledge that Bank is terminated due to the reasons listed in the Rules. i. Merchant's principals to Visa, MasterCard and Discover who Merchant is terminated due to the reasons listed in the Rules. ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Processor and Bank to charge the Reserve Account, or any other account maintained under this Agreement, for such amounts you owe if the amount in the Designated Account or Reserve Account is not adequate, until you pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and Bank immediately pay Processor, any amount you owe them for equipment costs. iv. Early Termination. If you terminate this Agreement before the end of the Initial Term, or before the end of any successive Renewal Term, you agree to comply with the procedure set forth in Section 13.B above, or if Processor or Bank terminates this Agreement based upon your failure to comply with the terms and conditions contained herein, you will immediately pay Processor, as liquidated damages, the closure fee of \$495. You agree that this fee is not a penalty, but rather is reasonable in light of the financial harm caused by the termination of this Agreement.

**14. Compliance With Laws And Rules.**

You agree to comply with all rules and operating regulations issued from time to time by MasterCard, Visa and Discover ("Rules") and any policies and procedures provided by Processor or Bank. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules, now and hereafter applicable to this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary. Without limiting the generality of the foregoing, you agree to comply with and be bound by the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including but not limited to Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program, and MasterCard's Site Data Protection Program. You agree to cooperate in connection with cardholder and transaction information security. You may also be assessed a monthly or annual PCI fee, which will appear as a separate item and monthly statement. This fee is assessed by Processor in connection with Processor's efforts to comply with the PCI DSS and does not ensure your compliance with PCI DSS or any law, rule or regulation related to cardholder data security. The payment of such fee shall not relieve you of your responsibility to comply with all rules and regulations related to cardholder data security, including but not limited to the PCI DSS. Without limiting the generality of the foregoing, you agree to use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. You will indemnify and hold Processor and Bank harmless from any fines and penalties issued by Visa, MasterCard, Discover or any card association or network organization.



and any other fees and costs arising out of or relating to the processing of transactions by Processor and Bank at your location(s) and will reimburse Processor and Bank for any losses incurred by Processor with respect to any such fines, penalties, fees and costs. You also agree that you will comply with all applicable laws, rules and regulations related to the truncation or masking of cardholder numbers and expiration dates on transaction receipts from transactions processed at your location(s), including without limitation the Fair and Accurate Credit Transactions Act and applicable state laws ("Truncation Laws"). As between you, on the one hand, and Processor and Bank, on the other hand, you shall be solely responsible for complying with all Truncation Laws and will indemnify and hold Processor and Bank harmless from any claim, loss or damage resulting from a violation of Truncation Laws as a result of transactions processed at your location(s).

#### 15. Use of Trademarks and Confidentiality.

**A. Use of Trademarks.** Your use of Visa, MasterCard and Discover trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover, or other cards' promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover, or others endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover or others in stating eligibility for your products or services.

**B. Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks").** You are prohibited from using the Discover Program Marks other than as expressly authorized in writing. You shall not use the Discover Program Marks other than to display decals, signage, advertising or other forms depicting the Discover Program Marks that are provided to you pursuant to this Agreement or otherwise approved in advance in writing. You may use the Discover Program Marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance in writing. You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

**C. Confidentiality.** i. **Cardholder Information.** 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, or as required by law. You must destroy all material containing Cardholders' account numbers, Card imprints, Sales Drafts, credit vouchers and (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. ii. **Prohibitions.** You will not use for your own purposes, will not disclose to any third party, and will not retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement) and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. iii. **Disclosure.** You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

**D. Return to Processor.** All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

#### 16. General Provisions.

**A. Entire Agreement.** This Agreement, as amended from time to time, including the Rules and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement among the four parties hereto (other than any prior agreements to which Merchant is not a party), and all prior or other agreements to which Merchant is a party or representations, written or oral, made to Merchant are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

**B. Exclusivity.** During the initial and any renewal term of this Agreement, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

**C. Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

**D. Assignability.** This Agreement may be assigned by Processor or Bank but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor and Bank. Any such assignment in breach of this provision shall be null and void, ab initio. If Merchant nevertheless assigns this Agreement without the consent of Processor and Bank, the Agreement shall be binding upon the assignee. Bank will be immediately informed in writing of any such assignment.

**E. Notices.** Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

#### MEMBER BANK INFORMATION

Deutsche Bank AG, c/o Deutsche Card Services GmbH  
Kaltenbornweg 1-3  
50679 Cologne, Germany

+49 221 99577 777 Support.deucs@db.com

Debit sponsorship provided by either Wells Fargo Bank N.A. or JP Morgan Chase N.A., as applicable.

**F. Bankruptcy.** You will immediately notify Processor and Bank (i) of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals and (ii) if it could reasonably be expected that any such action or proceeding will be initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Law.

**G. Choice of Law/Attorney's Fees/Venue/Jury Trial Waiver.** Should it be necessary for Processor or Bank to defend or enforce any of its rights under this Agreement in any collection or legal action, you agree to reimburse Processor and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses including reasonable attorney's fees as a result of such collection or legal action. Without limiting the generality of the foregoing, you agree to reimburse Processor and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by Processor, Bank or any agent acting on any action arising out of or relating to or in connection with this Agreement, without regard to whether there has been an adjudication on the merits in any such action. You waive trial by jury with respect to any litigation arising out of, relating to, or in connection with this Agreement. Processor, Bank, you, and Guarantor agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of, relating to, or in connection with (i) this Agreement, (ii) the relationships which result from this Agreement, or (iii) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of New York notwithstanding any conflicts of laws rules (other than NY General Obligations Law Section 5-1401), and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. Processor, Bank, you, and Guarantor agree that all actions arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall only be brought in either the courts of the State of New York sitting in Suffolk County or in the United States District Court for the Eastern District of New York, and hereby irrevocably and unconditionally submit to the personal jurisdiction of those courts in those actions.

**H. Amendments.** Processor will notify you on your monthly statement of any new or increased fees. Except for any fee increases imposed by Visa, MasterCard, Discover, or the debit network, you may cancel the Agreement without charge if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

**I. Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

**J. Independent Contractors.** Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other, except as provided in 6.C and 7.A(ii).

**K. Employee Actions.** You are responsible for your employees' actions while in your employment.

**L. Survival.** Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, and 16.G will survive termination of this Agreement.

#### 17. E-statements.

**A. Merchant Account Statement.** Upon opening a merchant processing account you will automatically have access to your monthly merchant account statement electronically (an "E-statement") by viewing it on line. This Agreement governs the electronic availability of your E-statement. You agree to abide by the terms and conditions stated herein, and to access E-statements, as well as all notices and initial and future disclosures regarding your E-statement, online. You acknowledge that by the third business day of each month, your E-statement will be available online. You will be notified in writing of the website where you can access your E-statement. Your E-statement will be accessible only through a secure Log In screen which requires the use of a unique User ID and Password. You understand that you will not receive a monthly merchant account statement by U.S. postal mail, and that making your E-statement available online constitutes Processor's compliance with delivery of your monthly merchant account statement. You can print the E-statement or save the file to your computer's hard drive or other disk in order to retain a copy of the E-statement. Your E-statement can be accessed through the E-statement link for three consecutive months from the date the E-statement is first made available. You further agree to receive all initial and periodic account disclosure information in an electronic format. All such disclosures shall be provided in a clear, conspicuous manner that you can print and/or save using the hardware and software specified below. You are also entitled to obtain a paper copy of all disclosures or E-statements upon written request, however such a request does not constitute a withdrawal of consent to receive monthly E-statements. A fee may apply for providing such documentation. You understand that you may withdraw your consent to receive E-statements, or change your email address, upon 30 days written notice to Processor. Please note that a withdrawal of consent does not apply to an E-statement that was furnished before the date on which the withdrawal of consent becomes effective. PC Requirements: Viewing your E-statement on line requires a personal computer with Adobe Acrobat and internet access through a standard web browser. The product version levels must be supported by the respective vendors (i.e. Adobe, Apple, Mozilla, and Microsoft). Processor is not obligated to ensure that your E-statements are accessible through outdated vendor products. In the event you are unable to access any of the information that has been made available by Processor in electronic format, it is your obligation to notify Processor in writing immediately.

**B. Reporting Of Errors.** You must promptly view all E-statements, and immediately notify Processor in writing of any errors. Your 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 you believe an error exists and the cause of it, if known. That written notice must be

received by Processor within 30 calendar days after the E-statement containing the asserted error is first made available. Your failure to notify Processor of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against Processor for any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor will be entitled to investigate the asserted error and we will notify you of the results of our investigation.

**C. Miscellaneous.** Processor shall not be responsible for: (i) consequential or incidental damages caused by services performed by Processor, its agents, or your Internet Service Provider ("ISP"); (ii) damages arising from unauthorized access to E-statement services; or (iii) any costs associated with updating, modifying or terminating your software or hardware. Processor may change, suspend, or terminate all or any aspect of this service upon written notice to you.

#### 18. Electronic Signatures.

Under the Electronic Signatures in Global and National Commerce Act ("E-Sign"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when: (a) your electronic signature is associated with the Agreement and related documents, (b) you consent and intend to be bound by the Agreement and related documents, and (c) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree: (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize Processor or Bank to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.