

**MERCHANT BANKCARD APPLICATION/PROCESSING AGREEMENT (Federal Regulations require we collect information to verify customer identity and we retain this information in our records)**

Corporate Name:		DBA Name:	
Corporate Street Address:		Location Street Address (No P.O. Box)	
Corporate Location City, State, Zip:		Location City, State, Zip:	
Corporate Phone:		Location Phone:	
Corporate Fax:	Cell:	E-mail Address for Correspondence:	
Website Address: http://		Fed Tax ID:	<input type="checkbox"/> E-mail Monthly Statements <input type="checkbox"/> E-mail Daily Statements <input type="checkbox"/> Paper Statements <b>Mail Statements to:</b> <input type="checkbox"/> Corporate <input type="checkbox"/> DBA
Contact Name and Title:		Mail to Other Address:	<input type="checkbox"/> Sole Prop <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> LP <input type="checkbox"/> Other: _____
Type of Goods/Services Sold:		Seasonal: <input type="checkbox"/> Yes <input type="checkbox"/> No	Current Address Since:
Has Merchant ever accepted MasterCard/Visa? <input type="checkbox"/> Yes <input type="checkbox"/> No		Business Opened Date:	Owned Since:
Has Merchant ever been terminated by another processor? <input type="checkbox"/> Yes <input type="checkbox"/> No			

**OWNERS/OFFICERS INFORMATION (PARTNERSHIP MUST REFLECT 51% OR MORE OWNERSHIP)**

<b>Owner 1 Name:</b>	Title:	Social Security #:	
Current Address:	City, State, Zip	Phone:	
Previous Address:	City, State, Zip	Date of Birth:	% of Ownership
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<b>Owner 2 Name:</b>	Title:	Social Security #:	
Current Address:	City, State, Zip	Phone:	
Previous Address:	City, State, Zip:	Date of Birth:	% of Ownership

**BANK ACCOUNT INFORMATION**

Bank Name:		Bank Contact:	
Bank Phone#	Routing #	Account #	Date Account Opened

**ADDITIONAL CREDIT CARD OPTIONS (Please refer to the Sterling Payment Technologies' Terms and Conditions booklet for terms and conditions governing each product)**

American Express	Existing #	Order New Amex #	Order Reverse PIP
I understand that the terms and conditions for American Express card acceptance will be sent to the business entity indicated above with the welcome letter upon approval of such entity to accept the American Express card by American Express Travel Related Services Company, Inc. By accepting the American Express card for the purchase of goods and/or services, such business entity agrees to be bound by the Terms and Conditions.			
Discover	Existing #	Order New Discover #	

**MERCHANT SITE SURVEY**

**Merchant**  Owns  Leases the premises Provide name and phone # of landlord if merchant location is leased \_\_\_\_\_

I hereby certify that I have physically inspected the business premises of the merchant at this address, or I am attaching the following documents:  Business License  Copy of Drivers License  Phone Bill  Sales Invoices, Ads, etc.

**Merchant Location Type**  
 Retail Store Front  Residence  
 Office Building  Warehouse  
 Other \_\_\_\_\_

Merchant appears to be conducting business as represented in application?  Yes  No  
 Merchant is adequately staffed and stocked to do business?  Yes  No  
 Have you taken pictures of the inside and outside of the premises?  Yes  No  
 Have you confirmed the identity of the person who signed the application?  Yes  No

PRINT NAME: \_\_\_\_\_  
 SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

**EQUIPMENT SET UP INFORMATION**

<b>Hardware Terminals</b> VeriFone: _____ Hypercom: <input type="checkbox"/> Friction <input type="checkbox"/> Thermal Nurit: <input type="checkbox"/> NOS 6 <input type="checkbox"/> NOS 7 Ingenico: _____ Other: _____ Wireless* <small>*Attach Wireless Addendum Form</small>	<b>Software Terminals</b> <input type="checkbox"/> OnCall CAPTURE <input type="checkbox"/> SPOT PC Software (include version) _____	<b>Peripherals</b> Printer Type: _____ Contactless: <input type="checkbox"/> OTI Saturn <input type="checkbox"/> ViVOpay 3000/4000 Other: _____ PIN Pads: _____	<b>Connection Type</b> <input type="checkbox"/> Dial/Access # <input type="checkbox"/> NETePay <input type="checkbox"/> High Speed (IP) <input type="checkbox"/> Mobile - CDMA <input type="checkbox"/> Mobile - GPRS <b>Industry Type</b> Retail: <input type="checkbox"/> (HCS) <input type="checkbox"/> (TCS) <input type="checkbox"/> MOTO (HCS) <input type="checkbox"/> Restaurant (TCS) <input type="checkbox"/> Lodging (TCS) <input type="checkbox"/> Auto Rental (TCS) Retail Tip: <input type="checkbox"/> (HCS) <input type="checkbox"/> (TCS) <input type="checkbox"/> Fleet Fuel (HCS) <input type="checkbox"/> Fleet Service (HCS)	<b>Batch Closure Request</b> • Host Capture Auto Close (HCS defaults to 5am ET) <input type="checkbox"/> Off • Terminal Capture (Default is manual close) <input type="checkbox"/> On <input type="checkbox"/> Off Upload Time (ET) Military Time _____ <b>Standard Features</b> • Address Verification (Default is On) <input type="checkbox"/> Off • CVV2 (Default is On) <input type="checkbox"/> Off • Fraud Protection (Default is On)* <input type="checkbox"/> Off • Invoice Number (Default is Auto Generate) <input type="checkbox"/> Off • Cashier/Clerk Numbers (Default is Off) <input type="checkbox"/> On • Debit (Default is Off) <input type="checkbox"/> On • Dial Back Up (Default is On) <input type="checkbox"/> Off • Store and Forward (Default is Off) <input type="checkbox"/> On • Truncate Both Copies <input type="checkbox"/> • Truncate Customer Copy Only <input type="checkbox"/>	<b>Restaurant Features</b> • Server Numbers (Default is On) <input type="checkbox"/> Off • Tab Options (Default is On) <input type="checkbox"/> Off • Tip Adjust (Default is On) <input type="checkbox"/> Off • Tip Calculator (Default is On) <input type="checkbox"/> Off • Tip Processing (Default is On) <input type="checkbox"/> Off <b>Retail Tip Features</b> • Sale + Tip (Omni or Nurit Only) <input type="checkbox"/> On <input type="checkbox"/> Off • Dummy Receipt (Omni or Nurit Only) <input type="checkbox"/> On <input type="checkbox"/> Off * WAIVER OF FRAUD PROTECTION If Fraud Protection is turned OFF, the merchant must agree to the following: Please remove the Fraud Protection feature, which requires entry of the last four digits of payment cards when swiping a payment card. We understand that by removing this, fraudulent cards could be accepted through our payment terminal. We will not hold Sterling Payment Technologies or any of its partners liable for such transactions. _____ MERCHANT SIGNATURE:
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# MASTERCARD, VISA AND DISCOVER CARD PRICING SCHEDULE

Pass Through	BP	Per Item
<b>Tiered</b>	<b>Discount</b>	<b>Per Item</b>
MasterCard Check Qualified		
Visa Check Qualified		
Discover Network Card Check Qualified		
MasterCard Credit Card Qualified		
Visa Credit Card Qualified		
Discover Network Card Credit Card Qualified		
MasterCard Mid-Qualified		
Visa Mid-Qualified		
Discover Network Card Mid-Qualified		
MasterCard Non-Qualified		
Visa Non-Qualified		
Discover Network Card Non-Qualified		

**Acceptance Options:**  Credit Only  Check Card Only  Both

**Billing Options:**  Net Daily  Gross Monthly

MasterCard, Visa and Discover each provide for multiple interchange fees based on the type of merchant processing method utilized by the merchant, the time within which card sales are interchanged to card issuing institutions, and the types of cards processed. For more information refer to Merchant Processing Agreement.

**Gift Card Schedule of Charges:**

- Initial Card Order (if Quick Card\*) \$ \_\_\_\_\_
- Stored Value Auth Fee\*\* \$ \_\_\_\_\_
- Block Activation Fee \$ \_\_\_\_\_
- Stored Value Setup Fee \$ \_\_\_\_\_
- Paper Report Delivery Fee \$ \_\_\_\_\_
- Stored Value ONLY Fee \$ \_\_\_\_\_
- Monthly Service Fee \$ \_\_\_\_\_
- ACH Services Fee (Inter-Score or Central Acct.) \$ \_\_\_\_\_
- Plastic Fee (if Custom) \$ \_\_\_\_\_
- Fold Over Fee/Envelope Fee (if Custom) \$ \_\_\_\_\_

\* Requires signed Quick Card order form  
 \*\* A Stored Value Authorization Fee will be charged on each transaction generated at the point of sale.

**Sterling Funding**

Has merchant accepted credit cards for at least 3 months?  Yes  No

Is merchant interested in receiving an advance on future credit card sales?  Yes  No

If Yes to both questions, please complete and return the Sterling Funding Checklist and Sterling Funding Merchant Advance Agreement.

**PIN Debit/EBT Services**

**Debit Schedule of Charges:**

Authorization Fee \$ \_\_\_\_\_

Monthly Fee \$ \_\_\_\_\_

Cardholder Surcharge (optional)

Cash Back  Sales Only  Both \$ \_\_\_\_\_

In addition to the authorization fee, all network fees will be passed through to the merchant depending on the network the authorization was routed through.

**EBT Schedule of Charges:**

FSC # \_\_\_\_\_

Cash Benefits Only

Authorization Fee \$ \_\_\_\_\_

**Sterling Advantage**

Discount Medical Plan, Disability Insurance, Life Insurance, Emergency Medical, Discount Pharmacy, Fixed Rate Vision Plan, Fixed Rate Dental Plan, Check Recovery Services\*, Equipment Repair/Replacement\*\*, Processing Supplies and Web Site Reporting

Monthly Fee \$ \_\_\_\_\_

\* Requires CybrCollect Agreement and Bank Auth Form  
 \*\* Excludes Wireless POS Devices

**ADDITIONAL FEES**

- T&E Card Auth \$ \_\_\_\_\_
- Batch Fee \$ \_\_\_\_\_
- Monthly Fee (Statement Fee) \$ \_\_\_\_\_
- Monthly Minimum Fee \$ \_\_\_\_\_
- Annual Fee \$ \_\_\_\_\_
- Third Party Monthly Access \$ \_\_\_\_\_
- Third Party Authorization Surcharge \$ \_\_\_\_\_
- Mobile Monthly Fee \$ \_\_\_\_\_
- Mobile Authorization Surcharge \$ \_\_\_\_\_

**Additional Fees that may apply are:**

- Check Card Authorization \$0.05/each
- Return ACH Fee (NSF Fee) \$30.00/each
- Deposit Account Change Fee \$25.00/each
- Chargeback Fee \$30.00/each
- Retrieval Fee \$15.00/each
- Arbitration/Compliance Fee \$400.00/each
- Good Faith Collection \$50.00/each
- Voice Authorization \$.75/each
- Documentation/Research Fee \$45.00/hour
- Early Termination Fee \$395.00

**PROCESSING PARAMETERS**

**Requested Processing Volumes**

- Average Ticket \$ \_\_\_\_\_
- High Ticket \$ \_\_\_\_\_
- Average Monthly Volume \$ \_\_\_\_\_
- High Monthly Volume \$ \_\_\_\_\_
- Total Monthly Sales \$ \_\_\_\_\_

(Include Bankcard, T&E, Checks and Cash processing volumes. Subject to approval by Sterling and may be adjusted.)

Processing Profile (must equal 100%)

- Card Swiped \_\_\_\_\_ %
- Keyed w/Imprint \_\_\_\_\_ %
- Keyed w/o Imprint \_\_\_\_\_ %
- Internet Transactions \_\_\_\_\_ %

**MOTO/Internet**

*Only applicable if merchant has more than 50% keyed transactions*

Does merchant house inventory?  Yes  No

How does merchant advertise?  Newspaper  Catalog  Internet  Flyers

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

When is the cardholder billed? \_\_\_\_\_

Is a deposit required?  Yes  No

If yes, how far in advance? \_\_\_\_\_

When is deposit paid? \_\_\_\_\_

What is the refund/return policy? \_\_\_\_\_

What percentage of transactions will be from foreign cards? \_\_\_\_\_

What measures are in place to protect against chargebacks/fraud? \_\_\_\_\_

Additional Comments: \_\_\_\_\_

**Merchant Acceptance**

Each person signing below agrees to the terms and conditions stated in the front and back of this Agreement and certifies that all information provided in the application is true, correct, and complete. Each signer authorizes Sterling Payment Technologies, LLC and/or the Member Bank or any agent of the Member Bank, to make whatever inquiries Sterling Payment Technologies and/or the Member Bank deem appropriate to investigate, verify, or research references, statements or data, including personal credit reports for the purpose of this application. Merchant understands this Agreement shall not take effect until Merchant has been approved by Sterling Payment Technologies, LLC and/or the Member Bank and a merchant number is issued.

**SIGN HERE**

\_\_\_\_\_

#1 from Application (Signature) Date #2 from Application (Signature) Date

**For All Corporations - Corporate Resolution**

The indicated officer(s) identified in numbers 1 and/or 2 have the authorization to execute the Merchant Processing Agreement on behalf of the here within named corporation.

**SIGN HERE**

\_\_\_\_\_

Corporate Officer (Signature) Title Date

**Personal Guaranty**

By signing below, signer(s) unconditionally guarantee(s) to Sterling and its successors and assigns the full and prompt payment when due of all its obligations of every kind and nature of Merchant arising directly or indirectly out of the Agreement or any document or Agreement executed and delivered to Merchant in accordance with the terms of the Agreement. The undersigned further agrees to pay Sterling all expenses including attorney fees and court cost(s) paid or incurred by Sterling in collecting such obligations and in enforcing this Guaranty.

**SIGN HERE**

\_\_\_\_\_

#1 from Application (Signature) Date #2 from Application (Signature) Date

**Sterling Approval**

\_\_\_\_\_

Approved By: Title Date

**Bank Approval**

\_\_\_\_\_

Approved By: Title Date

# STERLING PAYMENT TECHNOLOGIES TERMS AND CONDITIONS

## MERCHANT PROCESSING AGREEMENT (Henceforth Referred To As "Agreement")

Version: MBA 1\_08

This Agreement and Processing Application (the "Agreement") is made by and among Paymentech, LLC, located at 1601 Elm Street, Suite 700, Dallas, TX 76201; Merrick Bank located at 101 Crossway Park West, Woodbury, NY 11797; or Sterling Payment Technologies, LLC located at P.O. Box 20427, Tampa, FL 33622; and the undersigned "Merchant" and shall become effective upon execution by Processor.

### 1. RECITALS

Whereas Paymentech, LLC or Merrick Bank is a member in good standing of MasterCard International, Inc. ("MASTERCARD"), Visa U.S.A., Inc. ("VISA") and Dfs Services, LLC ("DISCOVER CARD") which enables holders of MASTERCARD, VISA and DISCOVER cards ("Cards") to purchase goods and services from selected merchants by use of their Cards; and Whereas Sterling Payment Technologies, LLC is a registered ISO/MSP for Paymentech, LLC or Merrick Bank and is responsible for servicing merchant accounts and authorized to perform Card Processing Services on behalf of Paymentech, LLC or Merrick Bank, and Whereas Paymentech, LLC or Merrick Bank and Sterling Payment Technologies, LLC shall be collectively known as "Processor" for the purposes of this Agreement; and Whereas Merchant sells goods and services to consumers or businesses and wishes to participate in the MASTERCARD System, VISA System and DISCOVER Card System by entering into contracts with such cardholders (collectively "Cardholders" or individually "Cardholder") for the sale of goods and services through the use of Cards and assigning, without recourse except as otherwise specifically provided in this Agreement, to Processor all sales receipts arising from such sales ("Card Sales"). And, Merchant further warrants it is engaged in a lawful business and is duly licensed in the laws of the state, county and city disclosed by Merchant on the Merchant Application, to conduct such business; and Merchant warrants neither it nor any of its officers, directors, or owners has been terminated for any reason by any bank or processor in connection with any agreement regarding depositing or processing bank card sales.

Now Therefore, in consideration of the representations and mutual covenants made herein, the parties agree as follows:

### 2. HONORING CARDS

- Merchant will adequately display the MASTERCARD, VISA and/or DISCOVER Card service marks as applicable, on promotional materials to inform the public which Cards are to be honored at Merchant's place of business.
- Merchant will honor all valid, properly tendered Cards of MASTERCARD, VISA and DISCOVER Card it has agreed to accept.
- Merchant will not establish minimum or maximum transaction amounts as a condition for honoring Cards.
- Merchant will not impose any surcharge on transactions.
- Merchant will not impose a requirement on Cardholders to provide any personal information such as home or business telephone number, a home or business address or driver's license number as a condition for honoring Cards unless such information is specifically requested by Processor or the Card is not present.
- Before completing a Card Sale, Merchant will examine the Card and sales receipt and make the following determinations: (i) that, to the extent evident on the face of the Card, the Card has become effective and has not expired and bears a MASTERCARD, VISA or DISCOVER Card logo; (ii) that on a VISA Card, the first four digits of the embossed account number are exactly the same as the four digits preprinted directly above it; (iii) the Card has been signed and the signature on the sales receipt appears to be the same as the signature on the Card; and (iv) the Card Sale has been authorized subject to the terms, conditions and procedures described in Section 3.
- Subject to the provisions of paragraph (h) and (i) below, Merchant in making a Card Sale will: (i) electronically read the Cardholder account data from the magnetic strip on the Card or key enter the Cardholder account number, expiration date and Address Verification Service (AVS) information into the electronic Point of Sale terminal and print the account number and expiration date of the Card on the sales receipt; (ii) when an electronic printer is not utilized or the Cardholder account data is key entered, Merchant will legibly imprint the embossed legend from the Card on the sales receipt with a suitable printer, and legibly complete the sales receipt showing the date of the sale, the total sales price and a brief description of the goods or services involved ("merchandise or miscellaneous" are not sufficient identification) and such other information as is required by law and called for by the sales receipt; (iii) require the Cardholder to sign the sales receipt in Merchant's presence; (iv) comply with all applicable laws and MASTERCARD, VISA and/or DISCOVER Card regulations regarding personal identification information; and (v) deliver a complete, legible copy of the sales receipt to the Cardholder at the completion of the sale or delivery of the goods or services.
- Merchant, when making a sale to a Cardholder without the use of the Cardholder's Card, may request the Cardholder's address and telephone number, and will obtain the Cardholder's name, account number and expiration date of the Card from the Cardholder.
- Merchant, when making a sale to a Cardholder by mail ("MO"), telephone ("TO") or preauthorization ("PO"), will follow the procedures provided in paragraph (h) above, except Merchant will legibly mark the sales receipt, transaction record, or facsimile with the words "Mail Order," "Telephone Order," or "Preauthorized Order," or the corresponding letters "MO," "TO" or "PO" as the case may be. Card Sales without the use of the Cardholder's Card and sales by mail, telephone or preauthorization are "Identity Responsibility Sales." Such sales may be made by Merchant at its option and sole risk. In making such sales, Merchant will be deemed to warrant and represent the purchaser is the person whose name appears as the Cardholder on the sales receipt and the name and account number appearing on the sales receipt are the same as those embossed on such Cardholder's Card. In the case of "Mail Order" or "Telephone Order" where merchandise is to be shipped or delivered to the cardholder, the shipping date shall not be more than five calendar days after the Authorization is obtained and any shipping costs not included in the Authorization amount must not exceed 15% of the amount authorized. Under no circumstances may Merchant require a Cardholder to complete a document or postcard type communication which displays the Cardholder's account data in plain view when mailed. Calculation, collection and remittance of any sales tax are the sole responsibility of the Merchant.
- Merchant, when making a sale to a Cardholder when the Card is not present, will utilize the Address Verification Service (AVS). Failure to do so will result in additional charges to merchant for the transaction.
- Merchant will establish and post a fair policy for the exchange or return of goods sold and for the adjustment of services rendered. Merchant will give a full credit or refund for all such returns or adjustments by issuing credit receipts therefor. Upon receipt of any such credit receipt, Processor will currently credit the amount thereof. If no credit will be issued, Merchant must electronically print or write "Final sale" or "No return" on the sales receipt by the customer signature line. Any store credit policy must be electronically printed, hand written or stamped by the customer signature line.

### 3. CARD SALES AUTHORIZATIONS

- An authorization is required on all Card Sales. Merchant understands and acknowledges that the dollar amount established for each transaction over which authorization from the bank card issuer must be obtained (if your limit) is ZERO. Merchant shall request authorization for the exact amount of the transaction on the date the transaction takes place by swiping the Card through the terminal or keying the account number, expiration date, amount and AVS information into the terminal. Merchant shall electronically print or write legibly on the sales receipt the authorization approval code evidencing any authorization so obtained. If Merchant receives a negative verification response, Merchant must not complete the transaction, and if instructed by Processor to pick up the Card, Merchant should do so by reasonable and peaceful means, notify Processor when the Card has been recovered, and ask for further instructions.
- When requesting an authorization in any of the following circumstances: (i) the transaction is a mail order, telephone order or preauthorized order; (ii) the Cardholder is present and does not have the Card; (iii) the name or signature on the signature panel of a Card differs from or is dissimilar to the name on the sales receipt; (iv) an expired Card is present; (v) any suspicious or unusual circumstances; Merchant must advise the authorization center of the specific circumstance accompanying the authorization request.
- If the electronic credit terminal is not functioning, Merchant may obtain an authorization by telephone, calling the voice authorization center phone number. Merchant must provide the voice authorization center the card account number, expiration date and the amount of the sale. In order to process any approved voice authorization, when the electronic credit card terminal is functioning, the transaction must be key entered utilizing the "force," "offline" or "post authorization" function.

### 4. EQUIPMENT

- All credit card transactions must be processed electronically utilizing an electronic terminal or personal computer software designed for credit card processing and certified by Processor. Merchant may purchase, rent or lease terminals and/or printers, or license software from an approved third party. Merchant understands if it chooses to obtain equipment or software from a third party, Processor is not responsible nor liable for the servicing, repair, performance, maintenance or replacement of these products.
- Merchant is responsible for all telephone charges including installation of all required lines, equipment and telephone connections in conjunction with the use of electronic equipment or software.
- Merchant agrees to keep all electronic equipment or software in good working order.
- Merchant shall not move, modify, or make any attachments to electronic terminals or software without the written consent of Processor.
- Merchant agrees to keep a manual imprinter on site at all times to obtain imprints of Cards if systems or equipment is not functioning properly.

### 5. SETTLEMENT

- Merchant will settle all transactions no later than the close of business on the first business day following completion of any Card Sale transaction via an electronic transmission prepared at Merchant's expense. Any Card Sale transaction which has been rejected or corrected will be reconciled and re-entered by Merchant into the electronic authorization terminal before electronically batching. A transaction will not be deemed to be complete until Merchant has performed all of its obligations to the purchaser in connection with such transaction. The delivery by Merchant of an electronic transmission, in accordance with this Agreement will constitute the assignment to Processor without recourse, except as otherwise specifically provided in this Agreement, of all of Merchant's rights, title and interest therein. Merchant hereby authorizes Processor to execute a specific assignment thereof without recourse, except as otherwise specifically provided for in this Agreement, on behalf of Merchant to Processor.
- Subject to the provisions of this Agreement, Processor will purchase the Card Sales upon receipt of the electronic transmission containing the Card Sales information, for the aggregate face amount thereof and will credit such amount, less any fees which may be due, to a deposit account designated by Merchant. Processor may refuse to purchase any Card Sales or claim the amount of which, in whole or in part, it could charge back to Merchant pursuant to Section 8 below, if it had purchased the Card Sales or claim. Payment to Merchant will be provisional for each electronic transmission received by Processor until Merchant has fulfilled all of its obligations relating to said Card Sale.
- Merchant will pay a merchant discount rate as identified on the Merchant Application depending on the processing option. This fee will be calculated as a percentage of all MASTERCARD Card Sales, VISA Card Sales and DISCOVER Card Sales and a transaction fee based upon the number of Card Sales for which an authorization was attempted. If at any time during the term of this Agreement the MASTERCARD, VISA or DISCOVER Card interchange fees change, or if the MASTERCARD, VISA and DISCOVER Card transactions submitted by electronic transmission fail to qualify for a reduced electronic issuer reimbursement fee, then Merchant may incur an additional increase in MASTERCARD, VISA and/or DISCOVER Card interchange fees and operating expenses based on any increase in the interchange rates or fees related to processing downgraded items. Merchant acknowledges MASTERCARD, VISA and DISCOVER Card each provide for multiple interchange rates based primarily on the data processing technique used by Merchant for the authorization of Card Sales and the time within which Card Sales are interchanged to Card Issuing institutions. If the Card Sales submitted by Merchant fail to qualify for the lowest interchange fee calculation due to the failure of Merchant to perform one or more of its obligations under this contract, Merchant will be charged for the incremental increase in interchange fees and operating expenses. Additionally, any fees or costs charged to Processor by third parties in connection with the processing of Card Sales provided to Merchant by Processor may be charged to Merchant.
- Fees and other charges due Processor hereunder may be deducted from amounts otherwise due Merchant, may be debited against Merchant's designated demand deposit account, any other demand deposit account for which Merchant is a designator signor, or other account, such as Guarantor's personal account, at Processor's sole discretion. The discount and other fees (such as transaction fees, statement fees, monthly minimums, annual fees, etc.) may be collected by Processor on a daily, monthly, or other basis, as determined by Processor. All reserve amounts may be deducted from amounts otherwise due Merchant, debited against Merchant's designated account, or Guarantor's personal account, or paid directly by Merchant through the ACH system or otherwise at Processor's sole discretion. Merchant authorizes Processor to initiate debit entries to Merchant's account, or Guarantor's personal account, and to any other account maintained by Merchant at any financial institution. This authorization will remain in effect after termination of this Agreement, and for as long as Merchant owes any amount to Processor. Merchant will indemnify and hold any financial institution and Processor harmless for any action taken against Merchant's account in accordance with instructions from Processor regarding Merchant's account. This section will survive termination of this Agreement.
- Upon receipt of the electronic transmission indicating a credit receipt which conforms to the requirements of this Agreement, Processor will charge against Merchant's depository account the total shown thereon.
- All sales receipts, credit receipts and deposit slips are subject to review, verification and acceptance by Processor. In the event of a computational or similar error of an accounting or record keeping nature with respect to such receipts, Processor may credit to or charge against (as the case may be) Merchant's account the proper corrective amount per Processor's normal operating procedures.

(g) If Processor, as a result of Merchant's failure to comply with settlement procedures provided herein, is unable to deliver payments otherwise due Merchant, such payments shall be earned compensation of Processor.

### 6. REPRESENTATIONS AND WARRANTIES

As to the Card Sales delivered to Processor and the transactions they evidence, Merchant represents and warrants:

- the Card Sales represent a bona fide sale of only merchandise or services as specified in the Merchant's Application in the ordinary course of business for the total sales price;
- the Card Sales involve no advance of cash and no transaction other than described or referred to therein; (c) the Card Sales completely and accurately reflect the terms of the transactions covered thereby;
- the sale is in all respects in compliance with the terms of this Agreement and all laws, rules and regulations, including but not limited to the MASTERCARD, VISA and DISCOVER Card rules and regulations, governing the same for which Merchant is responsible;
- Merchant has no knowledge or notice of any fact or circumstances which would impair the enforceability or collection of the claim against the named Cardholder;
- the Card Sales do not represent goods or services provided or performed by any person other than Merchant ("Factoring");
- Merchant will indemnify and hold Processor harmless from all judgments, losses, costs and expenses, including reasonable attorneys' fees, incurred by Processor and arising out of any claim relating to a Card Sale purchased by Processor which claim is interposed as a defense, dispute, offset or counterclaim to Processor's action to collect on the Card Sale;
- subject to the other provisions of this Agreement, the Card Sales and the claims are enforceable against the Cardholder according to their terms and the Cardholder has no defense to the payment thereof.
- Merchant has full authority to enter into this Agreement and Merchant's entry into this Agreement will not violate any other agreement to which Merchant is a party;
- Merchant confirms the representations set forth in the application completed by Merchant and delivered to Processor and such application is incorporated herein by reference. If Processor believes Merchant is Factoring, Processor may immediately terminate this Agreement. With respect to Identity Responsibility Sales, the Merchant also makes representations and warranties provided in Section 2, above.

### 7. FRAUDULENT SALES / FACTORING

Merchant shall not present to Processor any sales slip or transaction record (i) which Merchant knows or upon exercising reasonable care should have known to be fraudulent, improper, illegal or not authorized by the Cardholder, (ii) which results from a transaction outside Merchant's normal course of business as described on the Merchant Application, (iii) which results from processing or credit of any transaction not originated as a result of an act directly between Cardholder and Merchant, or (iv) which contains the account number of a bank card account issued to Merchant. Should Merchant do so, this Agreement may be immediately terminated by Processor without notice, all funds otherwise due Merchant may be placed on hold for such period as Processor may determine, but in any event, not less than 180 days. Merchant may be required to establish a reserve account in an amount determined by Processor. Merchant hereby releases, indemnifies and holds Processor harmless to the fullest extent permitted by applicable law for any loss or damage it may incur as a consequence of Merchant being placed by Processor on the Combined Terminated Merchant File or other public list where such events are reported. Processor may withhold any payment to Merchant from all transactions following the determination of improper, fraudulent, suspect or other questionable transaction, including but not limited to, transactions varying materially in character or volume from original ticket size, daily volume or monthly volume disclosed on the Merchant Application, until such questions regarding such transactions have been resolved to the satisfaction of Processor.

### 8. CHARGEBACK AND RETRIEVAL REQUESTS

Merchant agrees to pay the face amount of any Card Sales purchased by Processor hereunder, whether photocopy or original, and Processor shall have the right to charge Merchant's Account together with a fee to cover Processor's costs and expenses incurred in processing any chargebacks or retrieval requests, without notice and to reassign such Card Sales to Merchant under any circumstances where chargebacks are authorized by rules and regulations of MASTERCARD, VISA or DISCOVER Card or any state or federal consumer protection statute. Some examples of reasons for chargebacks are listed as follows:

- Goods are returned, whether or not a credit receipt is delivered to Processor;
- Any sales transaction that has not been specifically authorized by Processor;
- A Card Sale is alleged to have been entered into improperly or without authority;
- A sales receipt is illegible;
- A Cardholder disputes the sale, quality or delivery of goods or the performance or quality of services covered by the Card Sale;
- The purchase of any Card Sales evidencing goods sold or services performed was in violation of law, rules or regulations of any government agency, federal, state, local or otherwise;
- A sales receipt lacks a Card imprint and/or Cardholder's signature;
- A Cardholder claims the dollar amount was altered after the sales receipt was completed;
- Two or more sales receipts were prepared by Merchant to circumvent the Floor Limit;
- A Card had expired before the transaction date;
- The name or signature on the signature panel of the Card differs from the name on the sales receipt;
- A Card was included on an invalid Card notice or warning notice;
- A Card Sale was received by Processor more than ten business days after the transaction date showing thereon;
- A Card Sale is a duplicate of one previously delivered to Processor or includes a charge previously paid by Cardholder;
- A copy of sales receipt is requested of Merchant and Merchant does not comply within the required timeframe;
- The Card Issuer or Processor has information Merchant fraud occurred at the time of the transaction, whether or not such transaction was properly authorized by the Card Issuer, and the Cardholder neither participated in nor authorized the transaction, or the Card Issuer certifies there was no Card outstanding with the account number used;
- A recipient of the goods or services from Merchant is not the person whose name appears as the Cardholder in an Identity Responsibility Sale (as defined in Section 2);
- Any other situation where a sales receipt was executed or credit receipt was given in circumstances constituting a breach of any duty, term, condition, representation or warranty by Merchant hereunder, or where any action or lack of action by Merchant in violation of MASTERCARD, VISA or DISCOVER Card rules and regulations has resulted in a Card Sale being charged back to Processor by an issuing member of MASTERCARD, VISA or DISCOVER Card pursuant to MASTERCARD, VISA or DISCOVER Card rules and regulations, as amended from time to time.

The Merchant may not present for processing or entry into interchange any Card Sale representing a Transaction, which has been previously charged back to Merchant. This prohibition is applicable to Transactions processed with or without the Cardholder's permission. Merchant may, at its option, pursue payment from the customer outside the MASTERCARD, VISA or DISCOVER Card system, provided that, in the event Merchant pursues payment from the customer, Merchant shall indemnify and hold Processor harmless from all judgments, losses, costs and expenses, including reasonable attorneys' fees, incurred by Merchant and arising out of any claim by such customer. In accordance with rules established by MASTERCARD, VISA and DISCOVER Card, Card Issuing banks may pass along approved fees in processing chargebacks. Any fees incurred by Processor on behalf of Merchant for processing chargebacks as a result of Merchant's activity, will automatically be assessed to Merchant.

### 9. PROCESSING OF TRAVEL AND ENTERTAINMENT / PRIVATE LABEL CARDS

Processor will facilitate the processing of certain travel and entertainment cards (such as American Express, Diners and JCB) and private label cards in accordance with the terms, conditions and fees stated on the Merchant Application. The transactions resulting from certain travel and entertainment cards and private label cards will be processed electronically by Merchant utilizing the same electronic terminal which is used to process all other Card Sales. Processor will electronically route the travel and entertainment card transactions to the respective card company for authorization and/or settlement. Payment for these travel and entertainment card transactions will be made by the respective card company directly to Merchant. The private label transactions will be authorized and settled by Processor based upon procedures agreed upon by Merchant and Processor. The acceptance of all other cards is subject to the rules and regulations of the issuing associations.

### 10. RETENTION OF RECORDS

- Processor may examine and verify at reasonable times all records of Merchant pertaining to Card Sales sold to Processor hereunder. Merchant will be responsible for the retrieval of all sales receipts and credit receipts requested by Processor within the time limits established by the MASTERCARD, VISA and DISCOVER Card rules and regulations. Merchant will retain originals or copies of sales receipts and credit receipts for at least three (3) years from the processing date of the transaction.
- Merchant agrees to deliver the paper copy or facsimile of any such sales receipts or credit receipts in its files to Processor, or to such person as Processor may designate, within such period after request therefore as is required by law or by the rules and regulations of MASTERCARD, VISA and DISCOVER Card. Such requested copies must be legible. Merchant will be responsible for all liabilities arising from any failure to provide an acceptable copy of any sales receipts as required by law or the rules and regulations of MASTERCARD, VISA or DISCOVER Card.
- Merchant, prior to discarding, will destroy in a manner rendering data unreadable, all material containing Cardholder account numbers, Card imprints, (such as sales receipts and credit receipts), rental agreements and carbons.
- Merchant, and Merchant's Internet Service Provider, shall not under any circumstances rent Cardholder information including Cardholder name, account number, CVC/CVV values, expiration dates, billing addresses, etc. in a database that can be accessed via a web-based application. Merchant shall indemnify and hold Processor harmless from all judgments, losses, costs and expenses, including reasonable attorneys' fees, incurred by Merchant and arising out of any claim by Card issuing institutions or by Cardholders' whose security has been breached due to violation of Merchant to this section. With respect to Charges or other transactions incurred via the Internet or other electronic transmission, Merchant agrees that Valid Card information may only be accepted by Merchant if it is protected through a means, such as encryption, that prevents the information being transmitted from interception or disclosure during transmission. Merchant may only conduct transactions on the Internet using a browser software that supports industry standard encryption protocols. Merchant must establish and use a separate Establishment account number for Merchant's Internet Charge transactions.

### 11. COLLECTIONS / PAYMENTS

- This Agreement provides for the purchase by and assignment to Processor of Card Sales, the indebtedness thereunder and all Merchant's rights connected therewith, including the right to collect the same and retain the proceeds. Merchant agrees to pay any third party costs incurred by Processor in collecting Card Sales. Merchant shall not receive any payment from Cardholder for merchandise or services included on a Card Sale.
- Processor shall have the sole right to receive payment on all Card Sales purchased by Processor hereunder.
- Merchant agrees not to sue or make any collection thereon, except as may be specifically authorized by Processor. In the event of such authorization, Merchant agrees to hold all collections in trust for Processor and deliver the same in full immediately upon receipt.

### 12. TERM / TERMINATION AND INACTIVITY

This Agreement shall become effective upon execution by Merchant and acceptance by Processor and shall remain in effect for an initial term of 36 months. Thereafter this Agreement shall automatically renew for successive 12 month terms. Merchant must provide Processor written notice of its intent not to renew this Agreement which notice shall be delivered not less than ninety (90) days prior to expiration of the then current term. Alternatively, Processor may terminate this Agreement at any time upon delivery of written notice of termination to Merchant. In the event this Agreement is terminated by Merchant prior to the expiration of the then current term, Merchant shall pay to Processor a de-conversion fee of \$395 (Three Hundred Ninety-Five dollars), (\$50 in Arkansas). Merchant shall also reimburse Processor for any damage, loss or expense incurred by Processor as a result of a breach by Merchant. All such amounts shall be due and payable by Merchant on the effective date of such termination. In the event that any Addendum to this Agreement is in effect at the time of termination, the termination date of this Agreement shall be the later of (i) the termination date of the Addendum, or (ii) the termination date of this Agreement. Notwithstanding the foregoing, Merchant's Account shall remain open for nine (9) months following the effective date of termination to facilitate the processing of chargebacks as set forth in Section 8. All existing obligations, warranties and agreements with respect to Card Sales entered into before such termination will remain in full force and effect following such termination. In the event that Merchant has leased terminals and/or printers from any third party and Merchant terminates this Agreement prior to the equipment termination, all existing obligations as set forth in this Agreement will remain in full force and effect despite such termination. Merchant agrees they will allow Processor to review competitive offers for processing services and will give Processor first right of refusal to match competitive offers prior to canceling this Agreement. All competitive offers must be submitted to Processor in writing.

If a merchant does not process card sales for a period of 60 (sixty) consecutive days and merchant was not previously approved as a "seasonal merchant" (per section 14 below), Merchant will be deemed "Inactive" and a Non Processing Termination fee in the amount of \$395 (Three Hundred Ninety-Five dollars) will automatically be charged. If a merchant processes in excess of \$20,000 (twenty-thousand dollars) per month and ceases to process cards, said merchant will automatically be deemed inactive and a Non Processing Termination fee in the amount of \$395 (Three Hundred Ninety-Five dollars) will be assessed. Although inactive, merchant's account shall remain open for nine (9) months following the effective date of inactivity to facilitate the processing of chargebacks as set forth in Section 8.

