

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 Mail Statements to: <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)

| | | | |
|----------------------|------------------|--------------------|----------------|
| Owner 1 Name: | Title: | Social Security #: | |
| Current Address: | City, State, Zip | Phone: | |
| Previous Address: | City, State, Zip | Date of Birth: | % of Ownership |
| | | | |
| Owner 2 Name: | 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 <input type="checkbox"/> Owns <input type="checkbox"/> Leases the premises Provide name and phone # of landlord if merchant location is leased _____ Merchant Location Type <input type="checkbox"/> Retail Store Front <input type="checkbox"/> Residence <input type="checkbox"/> Office Building <input type="checkbox"/> Warehouse <input type="checkbox"/> Other _____ Merchant appears to be conducting business as represented in application? <input type="checkbox"/> Yes <input type="checkbox"/> No Merchant is adequately staffed and stocked to do business? <input type="checkbox"/> Yes <input type="checkbox"/> No Have you taken pictures of the inside and outside of the premises? <input type="checkbox"/> Yes <input type="checkbox"/> No Have you confirmed the identity of the person who signed the application? <input type="checkbox"/> Yes <input type="checkbox"/> No | I hereby certify that I have physically inspected the business premises of the merchant at this address, or I am attaching the following documents: <input type="checkbox"/> Business License <input type="checkbox"/> Copy of Drivers License <input type="checkbox"/> Phone Bill <input type="checkbox"/> Sales Invoices, Ads, etc. PRINT NAME: _____ SIGNATURE: _____ DATE: _____ |
|---|--|

EQUIPMENT SET UP INFORMATION

| | | | | |
|---|--|---|---|---|
| Hardware Terminals 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> | Software Terminals <input type="checkbox"/> OnCall CAPTURE <input type="checkbox"/> SPOT PC Software (include version) _____ Peripherals Printer Type: _____ Contactless: <input type="checkbox"/> OTI Saturn <input type="checkbox"/> ViVoPay 3000/4000 Other: _____ PIN Pads: _____ | Type Part # Connection Type <input type="checkbox"/> Dial/Access # <input type="checkbox"/> MOTO (HCS) <input type="checkbox"/> NETePay <input type="checkbox"/> High Speed (IP) <input type="checkbox"/> Mobile - CDMA <input type="checkbox"/> Mobile - GPRS Industry Type 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) | Batch Closure Request • 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 _____ Standard Features • 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"/> | Restaurant Features • 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 Retail Tip Features • 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: _____ |
|---|--|---|---|---|

MASTERCARD, VISA AND DISCOVER CARD PRICING SCHEDULE

| Pass Through | BP | Per Item |
|---|----------|----------|
| Tiered | Discount | Per Item |
| 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) | |
| <input type="checkbox"/> Cash Back <input type="checkbox"/> Sales Only <input type="checkbox"/> 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 # | |
| <input type="checkbox"/> 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/MSF 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 imprint, 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 "Identify 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 shall 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 (its floor 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 card 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 fee 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 systems 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 Identify 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 applicable 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 therefore together with a fee to cover Processor's costs and expenses incurred in processing any chargebacks or retrieval requests, without notice and to reassess 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 a 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 Identify 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 however, 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), car rental agreements and carbons.
- Merchant, and Merchant's Internet Service Provider, shall not under any circumstances retain 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) continual 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.

13. ADDITIONAL OBLIGATIONS OF MERCHANT

- (a) If at any time the charges against Merchant's account hereunder exceed the balance therein, or if at any time the charges against Merchant hereunder exceed the amount of any payment due to Merchant from Processor, Merchant will pay the amount of such excess to Processor promptly after oral or written notice thereof.
- (b) Merchant will comply with Processor's operating procedures including but not limited to the procedures necessary for compliance with MASTERCARD, VISA or DISCOVER Card rules and regulations.
- (c) As they relate to Card Sales pursuant to this Agreement, Merchant will comply fully with the provisions of the Fair Credit Billing Act and the regulations implementing that act, as they may be amended from time to time, and will indemnify Processor against and hold Processor harmless from all liabilities, losses, claims and demands resulting from Merchant's noncompliance with such act and regulations, except to the extent such liabilities, losses, claims and demands result from actions of Processor or rules, regulations or requirements established by Processor or MASTERCARD, VISA or DISCOVER Card.
- (d) If a petition is filed by Merchant and/or Guarantor under any provision of the Bankruptcy Act or amendments thereto, or if a receiver or trustee is appointed for it or any of its property and it is not dismissed within thirty (30) days, or if it becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, appoints a committee of creditors or liquidating agent, makes an offer of composition or bulk sale, or if it is dissolved or ceases to do business, then and in any of such events Processor will have the option to require Merchant and/or Guarantor forthwith to repurchase all outstanding Card Sales purchased by Processor hereunder and will pay therefore a repurchase price equal to the aggregate amount unpaid and owing thereon. In addition, Processor at its option, reserves the right to require Merchant and/or Guarantor to designate funds as a reserve to cover, including but not limited to, merchant discount fees and chargebacks in the event Merchant and/or Guarantor files bankruptcy, or Processor reasonably believes that there has been a material deterioration in Merchant's and/or Guarantor's financial condition which is not likely to be remedied within a reasonable amount of time. This Agreement is a statement of financial accommodation. Merchant and Guarantor hereby grant Processor a lien on all of Merchant's and Guarantor's funds and reserves. Merchant will immediately notify Processor of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Processor 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, and failure to do so will be cause for immediate termination or any other action available to Processor under applicable rules or law. Merchant acknowledges that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of Merchant, and, as such, cannot be assumed or assigned in the event of Merchant's bankruptcy.
- (e) Payment of any applicable taxes on services or equipment provided by and under this Agreement will be the responsibility of Merchant and Merchant assumes all liability for the proper and timely payment of same.
- (f) Merchant will establish and maintain a deposit account with sufficient balances to permit Processor to recover any chargebacks, processing fees or other charges due Processor under this Agreement. Merchant will notify Processor of Merchant's intent to change deposit accounts and grants Processor the same rights in any new deposit accounts.
- (g) Merchant will provide Processor at least thirty (30) days prior written notice of (i) its intent to change in any way the products or services it provides or of the basic nature of the Merchant's business as disclosed in the Merchant Application, (ii) its intent to move its trade or business to a new location, or (iii) its intent to commence operating an unrelated trade or business on the same premises where Merchant operates the trade or business stated on the Merchant Application. Merchant understands that Processor has the right to immediately terminate this contract if such change is not approved by Processor.
- (h) Any controversy or claim arising out of or relating to this Agreement and all Addendums, the relationship resulting in or from this Agreement or the breach of duties hereunder, shall be settled by arbitration in accordance with the procedures established by the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Processor reserves the right to file suit for fraudulent activity of Merchant or actions by Merchant and/or Guarantor that increase Processor's risk.
- (i) Merchant has ninety (90) days from the date the merchant statement is issued to notify Processor of errors. Processor assumes no liability after ninety (90) days.

14. SEASONAL MERCHANTS

A seasonal merchant is based on business type and number of months in operation and must be approved and designated as a seasonal merchant by Processor upon receipt of the Merchant Application. Merchant must notify Processor 72 hours in advance of going out of season or coming into season. When Merchant is placed into an inactive seasonal status, Merchant may be entitled to a reduction or elimination of monthly service fees which must be approved by Processor. An inactive seasonal status only applies to MASTERCARD, VISA and DISCOVER Card processing. If Merchant is utilizing a wireless terminal and wishes to be designated as a seasonal merchant, Merchant is responsible for ongoing wireless fees or activation/deactivation fees incurred for wireless terminals.

15. WIRELESS MERCHANTS

If Merchant utilizes a wireless POS terminal the following conditions apply when changing the status of the Card processing account: (i) If Merchant terminates this Agreement, Merchant's wireless account will automatically be deactivated and fees incurred from the wireless service provider will be passed through to Merchant; (ii) If Merchant requests this Agreement be re-instated, and such request is approved by Processor, a wireless account will be re-activated and fees incurred from the wireless service provider will be passed through to Merchant. Some wireless terminals offer "Store and Forward" capabilities. Transactions added to the "Store and "Forward" batch have not been approved and may be declined. Use of this feature is at the Merchant's risk. For extra security, obtain a voice authorization.

16. ADDITIONAL PRODUCTS

If Merchant requests additional products or card types, and is approved for processing of MASTERCARD, VISA and DISCOVER Cards, then Processor will assist and facilitate the set-up of the additional products or card types. However, if Merchant is declined for processing of MASTERCARD, VISA and DISCOVER Cards then Processor shall not facilitate the set-up of the additional products or card types. Additional products or card types are subject to the approval of third party vendors.

17. GENERAL

- (a) No failure to enforce or delay in enforcing any right contained in this Agreement or which may otherwise exist or arise in favor of Processor or Merchant will constitute a waiver of that or any other right or constitute estoppel in respect of that or any other right.
- (b) Except as provided in Section 8 with respect to notice of a dispute, claim or defense, Processor will not be required to notify Merchant of the default or nonpayment by any Cardholder. Processor will give written notice to the Merchant of any claim by Processor against, or default by, Merchant in connection with any sales receipt, Card Sale, Identity Responsibility Sale, credit receipt or this Agreement.
- (c) Merchant (i) consents to all extensions given any Cardholder, and (ii) agrees that such extensions will not affect any liability of Merchant hereunder.
- (d) Merchant agrees to exclusively process all Card Sales with Processor.
- (e) Merchant will pay discount, authorization, set-up, minimum discount, annual fee, equipment and any miscellaneous fees disclosed in this Agreement or noted on the Merchant Application.
- (f) Processor may amend this Agreement upon written notice to Merchant.
- (g) Notwithstanding the provisions of Section 12, Processor may terminate this Agreement at any time upon notice to Merchant because of fraudulent Merchant activity. Merchant will be responsible for all acts (whether or not authorized) of its employees.
- (h) Merchant may not assign this Agreement.
- (i) Merchant will not sell, purchase, provide or exchange account number information in the form of sales receipts, carbon copies of imprinted sales receipts, mailing lists, tapes or other media obtained by reason of a Card transaction to any third party.
- (j) Merchant will not (i) make a cash disbursement to any Cardholder or (ii) receive monies from a Cardholder and subsequently prepare a credit to the Cardholder's account.
- (k) Merchant authorizes Processor to investigate the background, personal credit history, and the like of any and all the principals and/or Guarantors associated with Merchant prior to the acceptance of this Agreement and at any time during this Agreement.
- (l) Any and all losses resulting from or arising out of a failure on the part of Merchant to comply fully with all provisions of this Agreement will be borne by Merchant. Merchant will indemnify and hold Processor harmless from all claims, actions, losses, damages, liabilities and expenses (including but not limited to all attorneys' fees) arising out of or relating to any failure on the part of Merchant to comply fully with all provisions of this Agreement. With respect to Merchant's indemnity obligations set forth in this Agreement, Merchant acknowledges that Processor may elect, in its discretion, to charge the indemnification amount against Merchant's account after oral or written notice to Merchant.
- (m) Processor will not be liable for a loss or damage incurred by Merchant that arises, directly or indirectly, from this Agreement unless such loss is due to the gross negligence of Processor and unless there is no contributory negligence on the part of Merchant or of any other person, firm or corporation, whether or not acting as agent or employee of Merchant.
- (n) Merchant agrees to accept communications from Processor on program updates, new product announcements, product updates, and general correspondence via facsimile, direct mail, telephone and e-mail.
- (o) Merchant acknowledges and agrees that ALL account maintenance charge requests received from Merchant, only requires notification / authorization from one of the Merchant account signers for the change to be effected by Processor.

18. LIMITATION OF DAMAGES

Neither Processor nor its affiliates, officers, directors, or employees shall be liable for special, consequential, exemplary, or punitive damages. In no event shall Processor's cumulative liability to Merchant exceed the amount of processing fees paid by Merchant to Processor for the transactions in question. Merchant agrees to indemnify Processor against, and hold Processor harmless from, all claims, damages, expenses (including reasonable attorney fees), costs, liabilities, losses, actions, causes of action or suits arising out of any negligent or wrongful act or failure to act on the part of Merchant or any of its employees, or out of any other disputes between any Card member and Merchant, its officers, directors and guarantors hereby waive rights to class action. Processor makes no warranty, expressed or implied, including any warranty of merchantability or fitness for a particular purpose. In no event will processor be responsible or liable for special, indirect, incidental or consequential damages which merchant or any customer thereof may incur or experience on account of or in reliance with this agreement. Neither processor nor its affiliates, officers, directors, agents, or employees shall be liable to merchant or guarantors for the acts of third parties used or recommended by processor to provide any good or service.

19. STERLING ADVANTAGE

Merchant acknowledges that membership in Sterling Advantage is available to merchants with a Merchant Processing Agreement with Sterling Payment Technologies, LLC. Equipment replacement does not include fire damage, acts of nature and theft. An additional charge per month may be imposed if the merchant owns more than one terminal at their location. Sterling reserves the right to limit the number of times a merchant's equipment may be replaced. Abuse of equipment is not covered under Sterling Advantage program. Features or services may be added or deleted from time to time without notice. Merchant may cancel membership in Sterling Advantage at any time with thirty (30) days written notice to Sterling Payment Technologies, LLC Attn: Sterling Advantage, PO. Box 20427, Tampa, FL 33622. Sterling Payment Technologies, LLC, its affiliates, officers, directors, or agents are not affiliated with the plan sponsors or the association that provides group health insurance.

20. VARIANCES

Merchant acknowledges and agrees that Processor may hold funds, temporarily suspend processing under this Agreement, or terminate this Agreement if there exists material variances in the nature of Merchant's business, Merchant's financial condition, type of composition of bank card processing, actual average ticket amount, daily deposit amount, or monthly volume amount from such amounts represented or disclosed by Merchant on the Merchant Application. If such variances exist, Merchant does not swipe credit cards through approved electronic terminals, Merchant does not receive authorization for transactions, Processor receives excessive retrieval requests against Merchant's prior activity, or excessive or suspicious chargebacks are debited against Merchant's prior activity, Processor may delay or without settlement of funds for a period not less than 180 days or until Processor is reasonably certain fraud or other activity detrimental to Processor has not occurred. All determinations shall be made by and at the discretion of Processor. Merchant should immediately contact Processor if material variances from the average ticket amount or daily or monthly volumes occur. For purposes herein, Processor's determination of what is material shall be binding upon Merchant.

21. MERCHANT RESERVE ACCOUNT

Processor may require Merchant and/or Guarantor to immediately establish a Reserve Account against current and future indebtedness when Processor suspects fraudulent, improper, suspicious, or other out of the ordinary activity and/or in the event Processor deems merchant to be financially insecure, in Processor's sole discretion. Failure of Merchant and/or Guarantor to fund the reserve can result in immediate cancellation of this Agreement, suit for specific enforcement, and/or damages. Merchant and/or Guarantor agree that Processor may deduct at any time any amount owed Processor pursuant to this Agreement from the Reserve Account, the designated deposit account and other applicable accounts or funds. At the time of such deduction or establishment of a reserve, any amounts shall be deemed the property of Processor. Any reserve will be held by Processor for a period of time as is consistent with Processor's liability for indebtedness purchased from Merchant and/or Guarantor under applicable MASTERCARD, VISA and DISCOVER Card regulations. Processor shall be entitled to charge Merchant and/or Guarantor a per transaction fee for any chargeback, suspected fraudulent transaction or other transactions subject to a reserve account.

Processor shall also be entitled to collect and be reimbursed for any out of pocket expenses including the costs of personnel associated with the collection of any chargeback and administration of any transaction subject to fraudulent, improper, suspicious, or out of the ordinary characteristics. In the event Processor suspects fraud or improper, suspicious, or out of the ordinary activity, and/or in the event Processor deems merchant to be financially insecure, in Processor's sole discretion, Processor may immediately estimate the amount of the potential losses, fees, and costs and require Merchant and/or Guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. In the event Merchant and/or Guarantor fails to establish the reserve account and/or funds available to Processor are inadequate to meet the estimate of Processor, after thirty (30) days Processor may charge interest at the highest lawful rate on any amount requested which results in a chargeback and for which the reserve was inadequate to cover such chargeback. In no event shall Processor charge interest in excess of the applicable maximum lawful rate. In the event that any amount of interest charged shall be deemed to exceed the maximum rate, such amount shall first be applied to amounts owed Processor, obligations of Merchant and/or Guarantor hereunder and the remaining amount placed in a reserve account to cover applicable anticipated costs or reserve obligations of Merchant and/or Guarantor, or refunded to Merchant. Merchant and/or Guarantor acknowledge that in the event of a bankruptcy proceeding, in order for Merchant and/or Guarantor to provide adequate protection under Bankruptcy Code 362 to Processor, Merchant and/or Guarantor must create and maintain the Reserve Account as required by Processor, and Processor will have the right to offset against the Reserve Account for any and all obligations which Merchant and/or Guarantor may owe Processor, without regard to whether the obligations relate to transactions initiated or created before or after the filing of the bankruptcy petition. Merchant and/or Guarantor grant to Processor a security interest in and lien upon: (a) all funds at any time in the Merchant and/or Guarantor's accounts, regardless of the source of such funds, (b) all funds at any time in the Reserve Account, regardless of the source of such funds, and (c) amount which may be due to Merchant under the Agreement, including without limitation, all rights to receive any payments or credits under the Agreement (collectively, the "Secured Assets"). Merchant and/or Guarantor agree to provide other security to Processor upon request to secure its obligations under the Agreement. These security interests and liens will secure all of Merchant and/or Guarantor's obligations under this Agreement and any other agreements now existing or later entered into between Merchant and Processor including, but not limited to, the obligation to pay any amounts due and owing to Processor. This security interest may be exercised by Processor without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Processor has control over and may direct the disposition of the Secured Assets without further consent of the Merchant and/or Guarantor. Merchant and/or Guarantor represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Processor will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant and/or Guarantor will obtain from Processor written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant and/or Guarantor agree this is a contract of recoupment and Processor is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant and/or Guarantor agree not to contest or object to any motion for relief from automatic stay filed by Processor. Merchant and/or Guarantor authorize Processor and appoint Processor its attorney in fact to sign its name.

22. NON DISCLOSURE OF CARDHOLDER INFORMATION

Merchant acknowledges they are bound to abide by the Payment Card Industry Data Security Standards ("PCI") guidelines governed by the PCI Security Standards Council. Merchant further agrees to exercise reasonable care to prevent disclosure of any Card or Cardholder information (including, without limitation, any Cardholder's name, address, account number or CVW information collectively, "Cardholder Information") other than to Merchant's agents and contractors for the purpose of assisting Merchant in completing a Card transaction, or to the applicable Association, or in connection with a loyalty program, or as specifically required by law. Merchant agrees to comply with all security standards and guidelines which may be published or modified from time to time by the PCI Security Standards Council, VISA, MASTERCARD, DISCOVER Card or any other Association. Should conflict be found between requirements as defined by the PCI Security Standards Council and those defined by an Association, Merchant shall abide by requirements deemed to be the most restrictive as determined by Processor at its sole discretion. Merchant further understands failure to comply with PCI requirements and other Security Guidelines may result in fines and/or penalties by the Associations, and Merchant further agrees to indemnify and reimburse Processor immediately for any fine or penalty imposed due to Merchant's breach of this Section. Merchant hereby indemnifies Processor and its assigns and successors for any liability, claims, obligations, damages, costs, fees (including, without limitation, attorneys' fees) or expenses incurred as a result of or in connection with Merchant's failure to follow the guidelines. Merchant's failure (whether negligent or otherwise) to maintain the security or confidentiality of Cardholder Information, or Merchant's misuse of any such information. If at any time either party determines Cardholder Information has been compromised, such party will notify the other party immediately and assist in providing notification to the proper parties as Processor deems necessary. Merchant information may be shared by Processor with affiliates subject to the provisions of this Agreement and Association Rules. Merchant may obtain the most recent version of PCI Requirements from the PCI Security Standards Council's website, located at www.pcisecurstandards.org.

23. FORCE MAJEURE

The parties to the Agreement shall be released from liability hereunder for failure to perform any of the obligations herein where such failure to perform occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, computer or communications failure, sabotage, war, military operation, national emergency, mechanical or electrical breakdown, civil commotion, or the order, requisition, request, or recommendation of any governmental agency or acting governmental authority, or either party's compliance therewith or government pro-ration, regulation, or priority, or any other cause beyond either party's reasonable control whether similar or dissimilar to such causes; provided however that this paragraph shall not affect or excuse Merchant's obligation to establish reserve accounts or liability for chargebacks and applicable fees under this Agreement.

24. NOTICE

Any notice required or permitted to be given under this Agreement or any Addendum shall be in writing and shall be served upon the other party personally, or by certified mail, return receipt requested. Any notice to Processor shall be sent to: Sterling Payment Technologies LLC, P.O. Box 20427, Tampa, FL 33622. Any notice to Merchant may be mailed or delivered to the address of its corporate office.

25. CONSTRUCTION AND INTERPRETATION

This Agreement is to be construed according to and governed by the laws of the State of Florida. Jurisdiction is hereby declared in the City of Tampa, County of Hillsborough, State of Florida. Captions contained in this Agreement are for convenience only and do not constitute a limitation of the terms thereof. Each party has had a full opportunity to review this Agreement with counsel; accordingly, the parties agree that any rule of construction shall be construed to have no application in the interpretation of this Agreement.

26. FEES

All fees disclosed on the Merchant Application are applicable and binding and incorporated herein by this reference. Processor may adjust fees to Merchant should processing costs or interchange fees assessed by MASTERCARD, VISA or DISCOVER Card increase. Processor may also pass along any additional fees incurred by Processor on behalf of Merchant. Merchant agrees to process all transactions by swiping valid Cards through electronic POS equipment; or Merchant agrees to pay additional fees for transactions that are keyed into electronic POS equipment or software due to the less efficient processing method and the greater risk incurred. "Qualified" transactions include those in which the credit card was magnetically read, an authorization was obtained, the credit card was issued by a bank within the United States, and the transaction was settled on the day of the sale. Lodging and Car Rental Merchants are required to have a Lodging or Car Rental Program or transactions will downgrade. "Mid-Qualified" transactions include transactions that are manually entered, or transactions deposited one (1) day following the transaction date. "Non-qualified" transactions include transactions failing to qualify at any other level. Merchant acknowledges that fees and rates charged hereunder may vary as a consequence of variable charges incurred under MASTERCARD, VISA and DISCOVER Card programs and each may change from time to time. Furthermore, transaction qualifications for "Qualified", "Mid-Qualified" and "Non-Qualified" are contingent upon method of processing, Merchant's category code, type of card accepted and timeframe of submission into the Interchange System. All rates and fees are contingent upon volume processed and average initially calculated. Any Annual Fees will be collected by the end of the first full month following the month in which the Merchant account was approved; and during the anniversary month thereafter. Any Monthly Minimums will be calculated by subtracting discount fees due from the established monthly minimum and the balance will be collected at month end. Bundled rates are contingent upon volume processed and average ticket size. Processor reserves the right to adjust bundled rates if monthly volume or ticket sizes deviate from the amounts upon which a bundled rate was calculated.

Sterling reserves the right to pass through fees, charges or increased costs resulting from additional requirements assessed or imposed by the Associations.

27. STORED VALUE CARDS

(a) Services. The Merchant's customers are given a magnetic stripe card by the Merchant in exchange for money received, merchandise returned or other considerations. The Card represents a dollar value that the Merchant's customer can either use or give to another individual. There is no security associated with the card itself. The actual record of the balance on the card is maintained on Paymentech, LLC's Stored Value Card database. The card, the design and use of which is proprietary to the Merchant, is designed to be swiped through a POS terminal during each transaction at Merchant's location. When the customer gives the magnetic stripe card to the cashier, the cashier will press the appropriate keys dependent upon the transaction type, swipe the card into the terminal, and key in the amount to be applied against the card's balance. This information will be immediately transmitted to Paymentech, LLC and the appropriate approval response will be routed to the Merchant. Associated with the program is a standard monthly reporting package detailing the Merchant's transactions and the outstanding balances on the individual Cards. The Merchant will have access to help desk support through Paymentech, LLC for its stored value card transactions. Cardholders will have access to an interactive voice response system ("IVR"), via a toll free number, through which they may receive some basic account information. Merchant's card program will be configured in the manner specified by Merchant to Paymentech, LLC during enrollment, which will represent binding program rules relating to Merchant's card program. Changes to such program requested by Merchant subsequent to setup will be made at Paymentech, LLC's sole discretion and in the time and manner which Paymentech, LLC shall determine. We will supply a detailed statement reflecting your Program activity. We will not be responsible for any error that you do not bring to our attention within ninety days from date of such statement.

(b) Cards & Packaging. You may be obligated to purchase Cards from us if you participate in this program. Please check the pricing schedule of your Merchant Agreement to see if the mandatory card purchase requirements apply to you. If you are obligated to purchase Cards from us or if you elect to do so anyway, we will arrange for the Card production and may, at our option, invoice you therefore, in lieu of electronically debiting your account. Any such invoice will be payable upon receipt. Cards, Packaging and Point-of-purchase marketing materials are available and priced on a per bundle basis, based on current rates. All production and delivery timetables and costs provided by us are estimates only and we do not guarantee any specific date of delivery or price for Cards produced by third parties. You are responsible for all production costs and delivery charges for Cards. The form and content of all Cards will be subject to our approval.

(c) Compliance and Warranties. Merchant is solely responsible for complying with all applicable laws relating to your Cards and you agree to indemnify and hold us harmless from any loss, damage or claim resulting to or arising out of any failure to comply with applicable laws in connection with your Card program. The stores value and loyalty services described herein are provided without warranties of any kind, either expressed or implied, including but not limited to warranties or merchantability and fitness for a particular purpose. Neither this agreement nor any documentation furnished under it is intended to express or imply any warranty by Processor the services will function without interruption or errors. Any security mechanisms incorporated in the services have inherent limitation, and you must independently determine the mechanisms adequately meet its security and reliability requirements. By using the services, Merchant represent they have so determined.

(d) Indemnity. In the event of any loss, theft, disappearance of or damage to data that is transmitted electronically in connection with the Program, you agree to indemnify and hold harmless Paymentech with respect to such. You are solely responsible for monitoring the legal developments applicable to the operation of your Card program and ensuring that your Card program complies fully with such requirements as in effect from time to time. Merchant acknowledges that Paymentech, LLC cannot reasonably be expected to monitor and interpret the laws applicable to its diverse customer base, and has no responsibility to monitor or interpret laws applicable to Merchant's business.

Merchant hereby agrees (i) they are responsible for ensuring that all Cards require activation at the point of sale; (ii) to provide notification in writing to Paymentech, LLC of any fraud losses by type (i) after days following the end of each calendar quarter; (iii) Merchant will be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from their Card program; (iv) to discourage transportation of groups of sequentially numbered Cards; and (v) to deactivate or otherwise remove all value from Cards which have been compromised. Merchant shall be responsible for any fraudulent transactions involving your Cards, including, without limitation, the unauthorized activation of Cards, reloading of existing Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized reuse of Cards or Card data for fraudulent transactions. Paymentech, LLC provides a number of tools and options to help Merchant reduce Merchant's risk of exposure for fraudulent transactions. Paymentech, LLC urges Merchant to make use of any and all of such tools as we may offer in order to help reduce the risk of such transactions. In particular, Paymentech, LLC recommends Merchant utilize only those vendors which have been certified by Paymentech, LLC as having appropriate security measures in place to reduce the risk of counterfeit Cards and the loss of sensitive Card Information which might result in unauthorized transactions and, Merchant promptly and frequently reconcile the transaction reports Paymentech, LLC provides to Merchant against their own internal transaction records, and to report any unauthorized transactions to Merchant's account representative. Because manual Card transactions (i.e. those involving the activation or reloading of cards over the telephone in cases where Merchant terminals may be unavailable) pose a higher risk of potential fraud, Paymentech, LLC urges merchant to pay special attention to these transactions and reconcile them on an even more frequent basis. In the event Merchant does not reconcile their transaction reports and promptly report any suspicious activity to Paymentech, LLC, Paymentech, LLC may not be able to assist Merchant in canceling fraudulently activated or related cards, or in otherwise identifying the source of any fraud.