

In consideration of the mutual covenants and agreements herein Esquire Bank ("Acquirer"), Electronic Payment Systems ("EPS"), acting on behalf of and for Acquirer, and the undersigned merchant ("Merchant") have agreed as follows as of the date of acceptance by Acquirer and issuance of a valid merchant number:

## **ARTICLE 1-CARD TRANSACTIONS**

### **1.1 Honoring Cards**

- (a) Merchant shall honor without discrimination all valid cards of the type(s) made available for processing by EPS and Acquirer (collectively, "Cards") when properly presented as payment by customers in connection with a bona fide, legitimate business Transaction. If Merchant does not deal with the public at large (such as in the case of a private club), Merchant shall be deemed to have complied with this non-discrimination rule if it honors all valid payment cards of cardholders who have purchasing privileges or memberships with Merchant.
- (b) Merchant shall not require, through an increase in price or otherwise, any cardholder to pay any surcharge at the time of sale or to pay any part of any charge imposed on Merchant by Acquirer except as expressly permitted by, and under terms and conditions that comply in full with, applicable law and Card Association (as that term is defined below) rules and regulations.
- (c) Merchant shall not establish minimum or maximum amounts for transactions completed with Cards ("Transactions").
- (d) Merchant shall not require a cardholder to provide identification information such as telephone number, address or driver's license number as a condition of completing a Transaction, unless such identification is required by MasterCard International, Inc. ("MasterCard"), Visa U.S.A. Inc. ("Visa") or Discover® rules and regulations and is permitted by the law of the state in which the Transaction takes place (for example, in mail order Transactions). MasterCard, Visa and Discover are referred to herein as the "Card Associations."
- (e) Merchant may not make a photocopy of a Card under any circumstances and may not request that the cardholder provide a photocopy of the Card as a condition for honoring the Card.

### **1.2 Advertising**

- (a) Merchant shall display adequately any advertising or promotional material provided or required by Acquirer to inform the public that Cards will be honored at Merchant's place of business. Such displays, however, are not required if Merchant is a private club or does not deal with the general public, is vehicle leasing company at airport locations, is a transportation company subject to government regulation, or is otherwise expressly exempted from this requirement by the Card Associations.
- (b) Merchant shall not display or use advertising or promotional materials containing Acquirer's name or symbol which might cause a customer to assume that Merchant honors only Cards issued by Acquirer.
- (c) Merchant shall have the right to use or display the proprietary names and symbols of the Card Associations only while this Agreement is in effect or until Merchant is notified by Acquirer or any appropriate Card Association to cease such usage.
- (d) Merchant shall comply with all applicable rules and regulations concerning the use of service marks and copyrights owned by any Card Association.
- (e) Merchant shall use the proprietary Card Association names and symbols only to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that Acquirer or any Card Association endorses Merchant's products or services.
- (f) Merchant shall not refer to any Card Association in stating eligibility for its products, services or memberships.

### **1.3 Card Examination**

- (a) Merchant agrees to confirm that the customer presenting the Card in each Transaction is the appropriate cardholder.
- (b) Merchant agrees to examine any security features (such as a hologram) included on each Card presented to Merchant. Merchant shall compare the embossed account number on the face of the Card with the account number indent on the signature panel.
- (c) Merchant shall, prior to completing any Transaction, check the validity date and expiration date of the Card and shall not honor any Card that is not valid or that has expired, without proper authorization.
- (d) Where the magnetic stripe on the Card is read in connection with a Transaction, Merchant shall compare the embossed account number on the Card to the number displayed or printed by the terminal to ascertain that they are the same.
- (e) Except in connection with a mail order, telephone order, eCommerce or pre-authorized Transaction, Merchant shall not complete the Transaction without presentation of the Card by the cardholder and a proper examination by the Merchant of the Card.
- (f) If the signature panel on any Card presented to Merchant is blank, Merchant shall:
  - (i) review positive identification to determine that the customer presenting the Card is the appropriate cardholder. Such identification must consist of a current official government identification document (such as a passport or driver's license) that bears the cardholder's signature; and
  - (ii) request authorization.
- (g) In the case of a Visa Card, Merchant shall compare the printed issuing bank identification number, which is directly above the first four digits of the embossed account number, with the embossed account number. If the printed number and the embossed number do not match, Merchant shall not accept or process the Transaction.

### **1.4 Authorization**

- (a) Before honoring any Card, Merchant shall request authorization from Acquirer's designated authorization center.
- (b) Authorization numbers or positive account number verification response codes, as appropriate, shall be printed legibly in the designated area on the sales slip.
- (c) If authorization is denied, Merchant shall not complete the Transaction and shall use its best efforts by reasonable and peaceful means to follow any instructions from the authorization center.
- (d) Merchant shall be liable to Acquirer, regardless of any authorization, if Merchant completes a Transaction when the cardholder is present but does not have his or her Card, the cardholder does not sign the sales slip, the signature on the sales slip does not match the signature appearing on the Card, or the signature panel on the Card is blank.
- (e) In no event shall an authorization be deemed to be Acquirer's representation that the particular Transaction is in fact a valid, authorized or undisputed Transaction entered into by the cardholder or an authorized user of the Card.
- (f) An authorization for a restaurant Transaction in which a gratuity is added to the sales slip by the cardholder is valid if the total Transaction amount is within 20% of the authorization amount.
- (g) If authorization is obtained for the estimated amount of a car rental Transaction, Merchant shall disclose to the cardholder the amount authorized on the rental date.
- (h) Merchant acknowledges that EPS and/or Acquirer will monitor Merchant's daily deposit activity. The deposit activity should remain consistent to the "approved" monthly volume and average ticket amount approved on the Merchant Agreement and Application. If Merchant should exceed the "approved" monthly volume, Merchant acknowledges that additional documentation could be required. Merchant agrees that Acquirer may upon reasonable grounds suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. EPS and/or Acquirer will make good faith efforts to notify Merchant immediately of any such suspension. EPS and/or Acquirer shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of the disbursement of funds.
- (i) In all cases the final delivery and/or performance of all goods and/or services shall not exceed ninety (90) days from the date of the original Transaction.

### **1.5 Completing the Transaction Record**

When honoring a Card in connection with a Transaction, Merchant agrees to:

- (a) Enter on the sales slip the Transaction date, a description of the goods or services sold, and the price thereof (including any applicable taxes) in detail sufficient to identify the Transaction.
- (b) Obtain the signature of the customer on the sales slip after the Transaction amount is identified in the "Total" column.
- (c) Compare the signature on the sales slip and the signature panel of the Card and, if the Card has a photograph of the cardholder, to ascertain that the customer resembles the person depicted in the photograph, and if either identification is uncertain, or the account numbers are not the same or Merchant otherwise questions the validity of the Card, to not accept or process the Transaction.
- (d) Imprint legibly on the sales slip the embossed legends from the Card and from Merchant's imprinter plate. If the imprinter does not legibly imprint the embossed legends from the Card and Merchant plate, Merchant shall detail legibly the cardholder's name and account number and Merchant's name and place of business, as well as the name or trade style of the issuer as it appears on the face of the Card, the ICA number, the Card initials, if any, and both the effective date and expiration date. Merchant shall also record on the sales slip any other embossed data (such as security symbols).

(e) Deliver a true and completed copy of the sales slip to the customer at the time of delivery of the goods or performance of the services or for point of transaction terminal Transactions, at the time of the Transaction.

(f) Include, for Transactions which originate at and are data captured using point-of-transaction terminals, the following information on the cardholder's copy of the sales draft:

- (i) the Card's account number;
- (ii) Merchant's name;
- (iii) Merchant's location code or city and state;
- (iv) the amount of the Transaction; and
- (v) the Transaction date.

(g) Transaction records must be produced for all Transactions which originate at and are data captured using automated dispensing machines or limited amount terminals, except for Transactions which originate at magnetic stripe reading telephones. Such Transaction records must include at least the following information:

- (i) the Card's account number;
- (ii) Merchant's name;
- (iii) the magnetic stripe reading terminal location code or city and state;
- (iv) the amount of the Transaction; and
- (v) the Transaction date.

(h) Whenever the uncoded account number cannot be read from the magnetic stripe, Merchant shall follow normal authorization procedures and complete the approved Transaction using a manual imprinter.

#### **1.6 Multiple Transaction Records, Partial Consideration**

(a) Merchant must include on one Transaction record the entire amount due for the Transaction except in the following instances:

- (i) the Transaction involves purchases made in separate departments of a multidepartment store;
- (ii) the Transaction involves delayed or amended charges for a vehicle rental Transaction in which:
  - (A) the cardholder consented to be liable for such charges;
  - (B) such charges consist of ancillary or corrected charges, such as taxes or fuel fees, and not charges for loss, theft, damage, or traffic violations; and
  - (C) Merchant sends the cardholder a copy of the amended or add-on-sales drafts (sales drafts for such delayed or amended charges may be deposited without the cardholder signature provided that Merchant has cardholder's signature on file, and the words "Signature on File" are entered onto the signature panel of the sales draft);

(iii) the customer pays a portion of the Transaction amount in cash, by check, with any other card, or any combination of such payments at the time of the Transaction, and further provided that Merchant obtains authorization for that part of the Transaction affected with a Card;

(iv) all or a portion of the goods or services are to be delivered or performed at a later date and the customer signs two separate sales slips, one of which represents a deposit and the second of which represents payment of the balance, and the balance sales slip is completed only upon delivery of the goods or performance of the services, in which case Merchant agrees:

(A) to note on the sales slips the word "deposit" or "balance" as appropriate and the words "Delayed Delivery;"

(B) if the total amount of the two slips exceeds the applicable floor limit, to obtain prior authorization and note the authorization date and approval code on the sales slips; and

(C) not to present the "balance" sales slip until all goods are delivered or all the services are performed; or

(v) the cardholder is using the installment payment option offered in accordance with Section 1.7.

(b) Merchant agrees not to divide a single Transaction between two or more Transaction records to avoid obtaining an authorization.

(c) For sales processed at electronic P.O.S. terminals, multiple items individually billed to the same account will not be considered a violation of this Agreement if separate authorizations are obtained for each item.

#### **1.7 Telephone Order, Mail Orders, eCommerce, Preauthorized Orders and Installment Orders**

(a) If a Transaction is made by telephone order (TO), mail order (MO), eCommerce or preauthorized order (PO), the sales slip may be completed without a customer's signature or a Card imprint, but Merchant shall:

(i) except in the event of an eCommerce Transaction, print legibly on the sales slip sufficient information to identify the Card issuer, Merchant and the cardholder, including Merchant's name and address, the Card issuer's name or trade style, ICA number and bank initials (if any), the account number, the expiration date and any effective date on the Card, the cardholder's name, and any company name; and

(ii) except in the event of an eCommerce Transaction, print legibly on the signature line of the sales slip the letter "TO", "MO" or "PO" ("Recurring Transaction" for Visa Transactions), as appropriate;

(iii) obtain authorization for every sale for MO, TO and eCommerce Transactions (which authorization must be obtained no more than seven calendar days prior to the Transaction date), and attempt to obtain the expiration date of the Card as part of the authorization inquiry.

(b) In any non-imprint Transaction (and whenever an expired Card is presented, regardless of whether it is imprinted), Merchant shall be deemed to warrant the customer's true identity as an authorized user of the Card, whether or not authorization is obtained, unless Merchant obtains and notes legibly on the sales slip evidence of the customer's true identity.

(c) In connection with a recurring Transaction (or preauthorized order) pursuant to which goods or services are delivered to or performed for a cardholder periodically, Merchant agrees to the following conditions:

(i) Merchant must obtain a written request from the cardholder that the recurring Transaction be charged to the cardholder's account.

(ii) The written request must specify the amount of the recurring Transaction (or allow space for cardholder to specify a minimum and maximum amount if the recurring Transactions are to be for varying amounts), the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect.

(iii) Before renewing a preauthorized order, Merchant must obtain a subsequent written request from the cardholder containing the information listed above.

(iv) Merchant must retain the cardholder's written authorization for as long as the preauthorized order is in effect and must provide a copy to Acquirer upon request.

(v) Merchant must not deliver goods or perform services covered by a preauthorization order after being advised that the preauthorization has been canceled or that the Card is not to be honored.

(vi) Except as provided in Section 1.6, a recurring Transaction may not include partial payments to Merchant for goods or services purchased in a single Transaction, or for periodic payments of goods or services on which Merchant assesses additional finance charges.

(vii) Merchant must inform the cardholder that he or she has the right to receive, at least 10 days prior to each scheduled Transaction date, written notice of the amount and date of the next charge. Cardholder may elect to receive the notice:

(A) for every change;

(B) only when the Transaction amount does not fall within the specified range shown on the order form; or

(C) only when the Transaction amount will differ from the most recent charge by more than an agreed-upon amount.

(d) Merchant may offer cardholders an installment payment option for its mail/telephone order merchandise subject to the following conditions:

(i) Merchant's promotional material must clearly disclose the installment terms, including but not limited to:

(A) whether the plan is available only for selected items or for the total amount of any order; and

(B) how shipping and handling charges and applicable taxes will be billed. The material also must advise cardholders who are not billed in the Transaction currency of Merchant that the installment billing amounts may vary due to fluctuations in the currency conversion rates.

(ii) No finance charges may be added by Merchant. The sum of the installment Transactions may not exceed the total sales price of the merchandise on a single Transaction basis.

(iii) Authorization is required for each installment Transaction. Merchant's floor limit is zero.

(iv) Merchant may not deposit the first installment Transaction with Acquirer until the merchandise is shipped. Subsequent installment Transactions must be deposited:

(A) at intervals of 30 days or more; or

(B) on the anniversary date of the Transaction (i.e. the same date each month).

(v) In addition to Merchant's name, an appropriate installment Transaction descriptor (e.g. "one of five," "two of five," etc.) must be included in the Merchant name field of the clearing record.

(e) except in the event of an eCommerce Transaction, an imprint of the Card is required whenever the Card is present.

### **1.8 Vehicle Rental Transactions**

Regardless of the terms and conditions of any written preauthorization form, the sales slip amount for any vehicle rental Transaction shall include only that portion of the Transaction, including any applicable taxes, evidencing a bona fide renting of personal property by Merchant to a customer and shall not include any consequential charges. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Transaction.

### **1.9 Returns and Adjustments, Credit Slips**

(a) If, with respect to any Transaction, any merchandise is accepted for return or any services are terminated or canceled, or any price adjustment is allowed by Merchant (other than involuntary refunds by airlines or other carriers when required by applicable tariffs and except where otherwise required by law or governmental regulations), Merchant shall not make any cash refund to the cardholder but shall deliver promptly to Acquirer a credit slip evidencing such refund or adjustments.

(b) Each credit slip shall be signed and dated by Merchant and include the Transaction date, a description of the goods returned, services canceled or adjustment made and the amount of the credit in sufficient detail to identify the Transaction and the embossed data from the Card and Merchant's imprinter plate.

(c) The refund or adjustment shall be indicated on a credit slip and may not exceed the original Transaction amount.

(d) The Merchant may limit its return, adjustment, refund or exchange policies provided that proper disclosure is made and purchased goods or services are delivered to the cardholder at the time of the Transaction.

(e) Proper disclosure by the Merchant must be given at the time of the Transaction by printing the following words or similar wording on all copies of the sales slip or invoice being presented to the cardholder for signature in letters approximately 1.4 inches high and in close proximity to the space provided for the cardholder's signature:

(i) "NO REFUND," for a Merchant that does not accept merchandise in return or exchange and will not issue a refund to a cardholder;

(ii) "EXCHANGE ONLY," for a Merchant that only accepts merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original Transaction;

(iii) "IN-STORE CREDIT ONLY," for a Merchant that accepts merchandise, and delivers to the cardholder an in-store credit for the full value of the merchandise returned which may be used only in the Merchant's place(s) of business.

(f) A Merchant may, if permitted by applicable law, stipulate special circumstances agreed to by the cardholder (e.g. late delivery, delivery charges or insurance charges) as terms of the Transaction, but under no circumstance shall a surcharge be assessed for the use of a Card. The wording to appear on the sales slip shall be any special terms of the Transaction(s).

(g) Merchant must deliver to the cardholder a true and complete copy of the credit slip at the time of the credit transaction. Merchant shall not process a credit slip without having completed the purchase Transaction with the cardholder. In no event may the credit exceed the amount of the original Transaction.

### **1.10 Cash Payments, Factoring, Split Sales**

(a) Merchant shall not receive any payments from a customer for charges included on any Transaction record resulting from the use of any Card, nor receive any payments from a cardholder to prepare and present a credit slip for the purpose or effecting a deposit to the cardholder's account.

(b) Factoring is the act of processing a Transaction that is not the result of goods or services provided or sold by the Merchant and for the benefit of others. This includes any Transaction that may generate a fee to Merchant for this service. These and any like Transactions are PROHIBITED under this Agreement.

(c) Split Sales are Transactions that utilize the same Card, at the same time in incremental amounts to achieve a desired authorization amount. If one Card is used, it must be for the full amount of the sale. This does not apply to Installment Orders as described in Section 1.7 above.

### **1.11 Cash Advances**

Merchant agrees not to make any cash advance to a cardholder or take any cash advances for themselves, their employees, family members or their company, either directly or by deposit to the cardholder's account. Money orders sent by wire, contribution to charitable and political organizations, tax payments, insurance premium payments for (1) one quarter year or less, alimony and child support payments, and court costs and fines shall not be considered cash advances or withdrawals.

### **1.12 Transactions Acceptable Under This Agreement**

Notwithstanding any other Sections, conditions, covenants or requirements contained herein, Merchant is approved to accept Transactions, as outlined in this Agreement in the normal course of Merchants business that are germane to Merchant's business and within the "approved" average ticket and volumes for Merchant. Transactions should be within the reasonable context of the information provided by Merchant at the time of application and conform to the standards established by S. I. C. (Standard Industry Code) that identifies Merchant's business.

### **1.13 Prohibited Transactions**

Merchant shall not do any of the following:

(a) Obtain an authorization for the purpose of setting aside the cardholder's credit line for use in future sales;

(b) Extend credit for or defer the time of payment of the total cash price in any Transaction;

(c) Honor a Card except in a Transaction where a total cash price is due and payable;

(d) Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;

(e) Transmit or accept payment for any Transaction that was not originated directly between Merchant and a cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;

(f) Honor or accept a Card as payment for any legal services or expenses arising out of or related to:

(i) the defense of any crime other than a traffic violation;

(ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or

(iii) any bankruptcy, insolvency, compromise, composition or other process affecting cardholder's creditors;

(g) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;

(h) Re-process any Transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of cardholder approval;

(i) Initiate a Transaction credit without a preceding debit equal to the credit;

(j) Initiate a Transaction credit without a balance in the Operating Account at least equal to the credit;

(k) Use any equipment related to Transactions or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;

(l) Use any equipment related to Transactions or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;

(m) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;

(n) Disclose any information obtained through any equipment related to Transactions to any person except for necessary disclosures to affected cardholders, Acquirer and/or the financial institution that issued the relevant Card;

(o) Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant;

(p) Disburse funds in the form of cash;

(q) Accept a Card to collect or refinance an existing debt (whether originally owed to Merchant or otherwise);

(r) Issue a Transaction credit in respect of goods or services acquired in a cash transaction which are returned;

(s) Make any cash refund to a cardholder who has made a purchase with a Card (all Transaction credits shall be issued to the same Card account number used in the sale);

(t) Require a cardholder to complete a postcard or similar device that includes the cardholder's account number, Card expiration date, signature or any other Card account data in plain view when mailed;

(u) Process a Transaction that represents collection of a dishonored check;

(v) Accept a Card for the purchase of Scrip (as defined by applicable VISA regulations);

- (w) Accept any payment directly from a cardholder for previous Card charges incurred and processed by Merchant; or
- (x) Request or use any Card number for any purpose other than as payment for goods or services offered or sold by Merchant.

#### **1.14 Disclosure and Storage of Cardholder Account Information**

- (a) Except as otherwise required by law, Merchant shall not sell, purchase, provide, or otherwise disclose the cardholder's account information or other cardholder information to any third party other than Acquirer.
- (b) Merchant and/or any agent of Merchant shall store in an area limited to selected personnel and, prior to discarding, shall mutilate in a manner rendering data unreadable, all material containing cardholder account numbers including but not limited to Card imprints, such as sales slips and credit slips, car rental agreements and carbons.
- (c) Neither Merchant nor any agent of Merchant shall retain or store magnetic stripe data subsequent to the authorization of a Transaction.
- (d) Merchant will be responsible for maintaining all records of all Transactions, including but not limited to original sales slips, signed sales drafts, signed credit drafts, work orders, and all other documents that pertain to the sales for which a Card was used as a form of or partial payment of the subject Transaction for a minimum of thirty-six (36) months from the date of the original Transaction.

#### **1.15 Deposits**

Notwithstanding any other Sections, conditions, covenants or requirements herein, Merchant may accept deposits for goods and/or services to be performed in a timely manner. A deposit shall not be used as a payment to Merchant and is not to be used as interim financing or a "Cash Advance" as outlined in Section 1.11 above. Deposits, when identified by Acquirer, may be held in a reserve account until satisfactory completion of services and/or delivery of goods can be verified.

#### **1.16 Merchant Financial Representations and Commitments**

Merchant has made financial representations in this "Merchant Application and Processing Agreement" that Merchant is asking Acquirer to rely upon to evaluate, underwrite, and approve this Agreement. Acquirer evaluation and underwriting process includes but is not limited to a Risk and Reward analysis based on the financial representations of Merchant. If Merchant fails to honor and meet the representations made it may subject Acquirer to undue financial exposure and possibly harm. A material variance in the Merchant's volume representations on this "Merchant Application and Processing Agreement" may result in a re-evaluation of the Agreement including but not limited acceptance of Merchant for Processing.

- (a) Acquirer entered into this Agreement to provide services based in part on the fee income the account would generate. Failure of Merchant to meet the financial representations made in this "Merchant Application and Processing Agreement" would deprive Acquirer of the fee income they negotiated for and Merchant agreed to pay. Acquirer would suffer damages for the loss of fee income. To calculate the damages Acquirer will compute the fee income that would have been generated on a monthly basis based on the Merchant's volume representations on this "Merchant Application and Processing Agreement" including all fees that would be due and payable based on the "Pricing Schedule A" and Acquirer will be entitled to collect the fee income otherwise deprived. Merchant acknowledges that the damages noted herein are not a punitive act but represent a reasonable calculation of the financial harm caused by Merchant for failures to meet the financial representations made by Merchant.

### **ARTICLE II-PRESENTMENT, PAYMENT AND CHARGE BACK**

#### **2.1 Presentment of Transaction Records to Acquirer**

(a) Merchant may designate a third party (that does not have a direct agreement with Acquirer) as its agent for the purpose of delivering Transactions data-captured at the point of sale by such agent if Merchant elects to use such third party as its agent for the direct delivery of data-captured Transactions. Merchant agrees to the following conditions (for the purposes of this Section 2.1, "Merchant" includes any agent designated by Merchant as permitted under this Section):

- (i) Merchant must provide satisfactory notice to Acquirer that Merchant chooses to exercise the option specified above;
- (ii) The obligation of Acquirer to reimburse Merchant for Transactions is limited to the amount (less the appropriate discount fee) delivered by Merchant's designated agent; and
- (iii) Merchant is responsible for any failure by its agent to comply with all applicable rules and regulation of the Card Associations, including, but not limited to, any violation resulting in a charge back.

(b) Merchant shall present all sales data relevant to a Transaction to Acquirer within the lesser of three (3) bank business days or five (5) calendar days after the date of the Transaction, except that:

(i) Merchant shall present no sales data until goods have been shipped or the services have been performed and Merchant has otherwise performed all of its principal obligations to the customer in connection with the Transaction unless the cardholder agreed to a delayed delivery or goods and proper disclosures were made at the time of the Transaction;

(ii) When Merchant requests and receives authorization for delayed presentment and legibly prints on the sales slip the authorization number and the words "Delayed Presentment," Merchant must present the sales data within the period permitted for delayed presentment (not to exceed thirty (30) calendar days);

(iii) If Merchant is obligated by law to retain a sales slip or return it to a buyer upon timely cancellation, Merchant must present the sales data within ten (10) bank business days after the date of the Transaction; and

(iv) When Merchant has multiple locations or offices and accumulates Transaction records at a central facility, Merchant must present the Transaction records to Acquirer within (20) calendar days after the date of the Transaction. If Merchant has multiple locations, Merchant must deliver the Transaction records in such a manner that Acquirer is able to identify the Transactions originating at each location.

(c) Merchant shall deliver all credit data to Acquirer within three (3) bank business days after the credit Transaction date, except that if Merchant has multiple locations as described in subsection (b)(iv) above, Merchant must deliver the credit data to Acquirer within seven (7) business days after the Transaction date.

(d) Merchant shall not present to Acquirer, directly or indirectly, any Transaction record that Merchant knows or should have known to be fraudulent or not authorized by the cardholder, that results from a Transaction outside Merchant's normal course of business, that results from a Transaction not involving Merchant, that contains the account number of a Card account issued to Merchant, or that was not the result of a Transaction between Merchant and a cardholder.

(e) If the transmission of sales data or credit data from Merchant to Acquirer is in the form of magnetic tape or electronic data, Merchant shall preserve a copy of the sales and credit slips as per Section 3.3.

(f) Merchant is prohibited from re-depositing any Transaction which has previously been charged back and subsequently returned to Merchant. This prohibition applies with or without the cardholder's consent or the Merchant's action. Merchant may, at its option, pursue payment from the customer in such event through means other than a Transaction.

#### **2.2 Operating Account and Reconciliation**

(a) Prior to accepting any Cards, Merchant will establish a demand deposit account at Acquirer, or at a financial institution approved by Acquirer (the "Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Acquirer to debit all amounts Merchant owes Acquirer or EPS hereunder from the Operating Account, whether maintained at Acquirer or another financial institution, at times deemed appropriate by Acquirer or EPS, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any and all claims for loss or damage arising out of any such charges or debits to the Operating Account.

(b) Acquirer will control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Acquirer receives payment from or through the Card Associations will be settled on a daily basis, and Acquirer will deliver payment to Merchant in connection with such Transactions as soon after receiving such payment as practicable by effecting a credit to the Operating Account equal to the reconciled and paid summary Transaction total of all of Merchant's total paid summary Transactions since the previous credit. Notwithstanding the foregoing, Acquirer may, in its sole discretion, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Acquirer receives payment in connection therewith from or through the Card Associations. In either case, Acquirer may, if necessary or appropriate, reduce any credit made to the Operating Account by, and/or Acquirer may require that Merchant pay to Acquirer an amount equal to:

- (i) the sum of all cardholder charges denied, refused or charged back;
  - (ii) all refunds processed on account of cardholders during said time period;
  - (iii) the rates, fees and charges, including chargebacks, Merchant owes Acquirer or EPS hereunder;
  - (iv) all taxes, penalties, charges, fees and other items incurred by Acquirer that are reimbursable pursuant to this Agreement; and
  - (v) any amount Acquirer previously credited to the Operating Account that Acquirer determines, in good faith, was incorrectly so credited.
- (c) Merchant will reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Acquirer for payment, and will notify Acquirer and EPS immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Acquirer nor EPS will have any

responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Acquirer for settlement.

(d) Any credits to the Operating Account are provisional only and subject to revocation by Acquirer until such time that the Transaction is final and no longer subject to chargeback by the relevant issuing bank, cardholder or Card Associations. Acquirer may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant issuing bank, or Acquirer and/or EPS receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate chargeback risk.

### **2.3 Insecurity**

(a) Notwithstanding Section 2.2, Acquirer may withhold payment to Merchant or prohibit Merchant's withdrawal of funds then on deposit in the Operating Account for any of the following reasons:

- (i) Acquirer is suspicious of any Transaction records;
- (ii) Merchant's volume of sales exceeds a stipulated amount or amounts that are typically generated during a particular period;
- (iii) Merchant's average ticket amount exceeds a stipulated amount;
- (iv) Merchant does not swipe Cards through electronic terminals;
- (v) Merchant fails to authorize any relevant Transaction;
- (vi) Acquirer receives excessive retrieval requests against Merchant's account as prior activity;
- (vii) Excessive chargebacks are debited against Merchant's account as prior activity; or
- (viii) If for any other reason Acquirer reasonably determines that withholding funds or preventing the withdrawal of funds previously deposited into the Operating Account is necessary to cover anticipated charges from Card activities;

(ix) A debit by Acquirer to Merchant's Operating Account is returned unpaid for any reason.

(b) Upon, or at any time after, execution of this Agreement, Acquirer may establish a reserve account at Acquirer ("Reserve Account"), for all future indebtedness of Merchant to Acquirer or EPS that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, chargebacks and fees, in such amount as Acquirer from time to time may determine in its sole discretion. Acquirer may fund the Reserve Account by deducting amounts from payments due to Merchant, by effecting a charge against Merchant's Operating Account or against any of Merchant's accounts at Acquirer, or by demanding payment from Merchant (which payment Merchant shall make within ten (10) days after receipt of any such demand). The Reserve Account will be maintained for a minimum of six months after the date on which this Agreement terminates or until such time as Acquirer determines that the release of the funds to Merchant is prudent, in the best interest of Acquirer, and commercially reasonable, and that Merchant's account with Acquirer is fully resolved. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant.

### **2.4 Chargeback**

(a) Under any one or more of the following circumstances, Acquirer may charge back to Merchant any Transaction record that Acquirer has accepted, and Merchant shall repay Acquirer the amount represented by the Transaction record plus any associated fees:

(i) the Transaction record or any material information on a sales slip (such as the account number, expiration date of the Card, Merchant description, Transaction amount, or date) is illegible, incomplete, or otherwise indiscernible, is not endorsed, or is not delivered to Acquirer within the required time limits;

(ii) the Transaction was one which received a negative account verification service response (or would have received a negative account verification service response if Merchant had contacted the service on the Transaction date) and Merchant did not reject the Transaction or receive prior authorization for the Transaction, as applicable;

(iii) the sales slip does not contain the required imprint of a Card that was valid, effective, and unexpired on the Transaction date;

(iv) the Transaction was one for which prior credit authorization was required and prior credit authorization was not obtained, or a valid authorization number is not correctly and legibly included on the Transaction record;

(v) the Transaction record is a duplicate of an item previously paid, or is one of two or more Transaction records generated in a single Transaction in violation of this Agreement;

(vi) the cardholder disputes the execution of the Transaction record, the sale, delivery, quality, or performance of the goods or services purchased, or alleges that a credit adjustment was requested and reissued or that a credit adjustment was issued by Merchant but not posted to the cardholder's account;

(vii) the price of the goods or services shown on the Transaction record differs from the amount shown on the copy of the sales slip or the receipt delivered to the customer at the time of the Transaction;

(viii) Acquirer reasonably determines that Merchant has violated any term, condition, covenant, warranty, or other provisions of this Agreement in connection with the Transaction record or the Transaction to which it relates;

(ix) Acquirer reasonably determines that the Transaction record is fraudulent or that the related Transaction is not a bona fide Transaction in Merchant's ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation negligence, fraud, or dishonesty on the part of Merchant or Merchant's agents or employees;

(x) the Transaction record arises from a mail or telephone order Transaction or eCommerce Transaction which the cardholder disputes entering into or authorizing, or which involves an account number that never existed or that has expired and has not been renewed;

(xi) Merchant fails to provide any sales slip or credit slip to Acquirer in accordance with Section 3.1 of this Agreement; or

(xii) the Transaction is charged back to Acquirer for any other reason pursuant to Card Association rules and regulations.

(b) In the event Merchant believes a chargeback to be improper, Merchant must notify Acquirer of this in writing within the (10) calendar days of the date of the chargeback or forfeit its right to contest the chargeback.

(c) Except in the case of chargebacks that are based solely on the Merchant's failure to obtain an authorization, Acquirer may chargeback a Transaction in accordance with this Section even if an authorization was obtained in connection with the Transaction.

## **ARTICLE III MISCELLANEOUS**

### **3.1 Records**

(a) Merchant shall, for Card Association purposes, preserve a copy of the actual paper sales slips and credit slips for at least six (6) months after the date Merchant presents the Transaction data to Acquirer, and Merchant shall make and retain for at least seven (7) years from such date legible microfilm or electronic copies of both sides of such actual paper Transaction records.

(b) Merchant agrees to immediately notify Acquirer of any merchant location(s) added after the date of this Agreement, and agrees to the establishment of a separate Operating Account for said location(s).

### **3.2 Requests for Copies**

(a) Within one (1) business day of receipt of any request by Acquirer, Merchant shall fax or mail to Acquirer either the actual paper Transaction record, if requested by Acquirer, or a legible copy thereof (in size comparable to the actual paper Transaction records), and any other documentary evidence available to Merchant and reasonably requested by Acquirer to meet its obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning cardholder accounts.

(b) For purposes of retrieval of records, Merchant must retain sale slips and credit slips by reference number within date sequence.

(c) If Merchant does not provide a requested copy of sales slip(s) to Acquirer within the time frame specified, in addition to other rights and remedies available to Acquirer under this Agreement:

(i) Acquirer may charge Merchant a penalty fee;

(ii) Acquirer may charge Merchant the Transaction amount of the requested sales slip;

(iii) Acquirer may, at its option, charge Merchant the Transaction amount of the requested sales slip at the time of the request. Such amount will be reimbursed to the Merchant upon delivery of a valid and correct sales slip.

### **3.3 Disputes With Cardholder; Indemnification**

(a) Merchant shall respond promptly to inquiries from cardholders and shall attempt to resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Acquirer, Acquirer may terminate this Agreement. Acquirer reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive cardholder inquiries, refunds or chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a cardholder for which Merchant has received notice:

- (i) the cardholder's name;
- (ii) the Card account number;
- (iii) the date and time the cardholder asserted the claim or defense;
- (iv) the nature of the claim or defense; and
- (v) the action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

(b) Merchant agrees to indemnify and hold Acquirer and EPS harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Acquirer or Acquirer's affiliates, EPS or affiliates of EPS) arising out of any of the following:

- (i) Merchant's failure to comply with this Agreement;
- (ii) any act or omission of Merchant;
- (iii) Merchant's failure to comply with any equipment's user's guide;
- (iv) Merchant's failure to comply with any applicable law, rule or regulation;
- (v) any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
- (vi) the fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
- (vii) Merchant's selection of an Internet service provider or other telecommunication services provider; or
- (viii) the theft of or damage or destruction to any equipment.

### 3.4 Excessive Chargebacks and/or Retrievals

Merchant agrees that in the event Acquirer is presented, during any monthly period, with chargebacks and/or retrieval requests relating to the Transactions of the Merchant processed by Acquirer in excess of one percent (1%) of the interchange volume of such Transactions, such chargeback and/or retrieval requests will conclusively be deemed to be excessive under applicable Card Association regulations which shall allow Acquirer to take such action as may be authorized herein or by applicable Card Association regulations.

### 3.5 Terms, Termination and Terminated Merchant File

(a) The initial term of the Agreement shall be two (2) years commencing on the date of approval of this Agreement. Thereafter, until cancelled in accordance with this Agreement, the Agreement will automatically renew for consecutive two (2) year terms.

(b) EPS may terminate this Agreement at any time immediately and without notice based on any of the reasons noted in Section 2.3 or if EPS discovers any inconsistencies or misrepresentations (as determined by EPS in its sole and absolute discretion) on the Merchant Application.

(c) Merchant may terminate this Agreement with a ninety (90) day written notice to EPS prior to the completion of the initial term or any renewal thereafter.

(d) If Merchant terminates in a manner other than what is described in Section 3.5(c), Merchant will be subject to an early termination fee of \$295 plus the standard fees associated with the Processing Agreement for the number of months remaining until the completion of the full term.

(e) Acquirer may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank may terminate this Agreement immediately upon written notice to Merchant upon the occurrence of any of the following (each, an "Event of Default"):

- (i) Any information concerning Merchant obtained by Acquirer is unsatisfactory to Acquirer, in Acquirer's sole discretion.
- (ii) Any act of fraud or dishonesty is committed by Merchant, its employees or agents, or Acquirer believes in good faith that Merchant, its employees or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation.
- (iii) Chargebacks are excessive, in the opinion of Acquirer.
- (iv) There is a breach of any representation or warranty made by Merchant to Acquirer, or Merchant defaults in the performance of any of its obligations under this Agreement.

(v) Merchant files a petition under any bankruptcy or insolvency law.

(vi) Acquirer determines that the continuation of this Agreement may create harm or the loss of goodwill to Acquirer or any Card Association.

(vii) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Acquirer hereunder.

(viii) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Acquirer.

(ix) Any insurance policy obtained by Acquirer, EPS or Merchant relating to Transactions and/or chargebacks is cancelled or terminated for any reason.

(j) Merchant fails to provide financial statements suitable to Acquirer on request.

(k) EPS does not or cannot perform its duties under this Agreement and Acquirer determines that it is not feasible to provide the services contemplated by this Agreement to Merchant. Acquirer is not obligated to provide replacement Services if EPS does not or cannot perform.

(f) Acquirer may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement.

(g) In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the date of such Transaction.

(h) In the event Acquirer terminates this Agreement following any Event of Default, Merchant: (i) agrees that Acquirer may place Merchant on each Card Association's "Terminated Merchant File" (or any other list or file serving a similar purpose); and (ii) agrees to indemnify and hold Acquirer and EPS harmless from and against any and all costs, expenses and liabilities incurred by Acquirer and/or EPS in connection with or arising out of such Event of Default.

(i) Merchant agrees that, if the Merchant Agreement is terminated before completion of the initial term or any subsequent renewal term(s) of the Merchant Agreement for any reason other than a material uncured breach by Acquirer, Merchant will pay Acquirer damages for the loss of fee income. Acquirer entered into this Agreement to provide services based in part on the fee income the account would generate. Termination for any reason other than as noted here in 3.5 (i) would deprive Acquirer of the fee income they negotiated for and Merchant agreed to pay. To calculate the damages Acquirer will calculate (a) the fee income that would have been generated on a monthly basis based on the Merchant's volume representations on this "Merchant Application and Processing Agreement" including all fees that would be due and payable based on the "Pricing Schedule A" and, (b) the actual monthly average of fee income generated by the account over the last three-(3) months plus all fees that would be due and payable based on the "Pricing Schedule A" but not charged in the period, then multiply the calculated amount (whichever is greater between the two-(2) methods described above) by the number of months remaining in the then-current term of the Merchant Agreement. Merchant acknowledges that the damages noted herein are not a punitive act but represent a reasonable calculation of the financial harm caused by Merchant for termination of the Merchant Agreement before completion of the initial term or any subsequent renewal term(s).

### 3.6 Limitation of Liability

In addition to all other limitations on the liability of Acquirer and EPS contained in this Agreement, neither Acquirer nor EPS shall be liable to Merchant or Merchant's customers or any other person for any of the following:

- (a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
- (b) Any loss caused by a Transaction downgrade resulting from defective or faulty equipment, even if such equipment is owned by Acquirer or EPS;
- (c) The unavailability of any services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Acquirer, EPS or any other person for any reason; or
- (d) Interruption or termination of any services caused by any reason.

NEITHER ACQUIRER NOR EPS SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY ACQUIRER OR EPS PURSUANT TO THIS AGREEMENT. MERCHANT ACKNOWLEDGES THAT ACQUIRER HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT ACQUIRER HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. ACQUIRER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. IF THERE ARE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM ACQUIRER'S OR EPS'S PERFORMANCE OR ANY FAILURE TO PERFORM, ACQUIRER'S AND EPS'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE.

In no case will Merchant be entitled to recover damages from EPS or Acquirer that exceed the fees retained by Acquirer and EPS pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.

### 3.7 Supplementary Documents; Fees

All reference herein to this "Agreement" shall collectively include current Schedules, Amendments, Merchant Application, Change Notices, Addendum, Appendices and Attachments and associated reference materials, all of which are incorporated herein by reference and made a part of this Agreement as if fully set forth herein. Merchant agrees to pay the fees and charges identified in this Merchant Application or in any other schedule of fees and charges provided to Merchant which may be amended from time to time as provided in Section 3.14(i).

An Annual Fee and PCI-DSS Fee of \$99.50 will be charged to all Merchant accounts based on the number of Active Terminals per Merchant in each Calendar Year regardless of enrollment time. This fee is not refundable for any reason and cannot be pro-rated or abated in any way.

### **3.8 Compliance with Law**

Merchant shall comply with all laws applicable to Merchant, Merchant's business and any Transaction, including, but not limited to and without limitation, all state and federal consumer credit and consumer protection statutes and regulations and Card Association regulations.

### **3.9 Modification**

This Agreement is subject to such modifications, changes, and additions as may be required, or deemed by Acquirer to be required, by reason of any state or federal statute, judicial decision, Card Association rule or regulation, or the regulation or ruling of any federal agency having jurisdiction over Acquirer or Merchant. Acquirer may amend this Agreement pursuant to this Section 3.9 simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Acquirer in such written notice.

### **3.10 Independent Sales Organization/Member Service Provider**

Merchant acknowledges that:

(i) Acquirer may use an independent Sales Organization (ISO) or Member Service Provider (MSP) operating under applicable Card Association rules and regulations who is an independent contractor and not an agent of Acquirer.

(ii) No ISO or MSP has authority to execute this Agreement on Acquirer's behalf or to alter the terms hereof without Acquirer's prior written approval; and

(iii) Representations made by Independent Sales Organizations, Member Service Providers, contractors or their employees, coworkers, assigns, contractors or any other persons associated with them that are not expressly contained in this Agreement **ARE NOT VALID** and do not apply. Acquirer makes no representations outside of this Agreement. If you rely on representations that are not contained in this Agreement then you are doing so of your own free will and WILL NOT in any way have any recourse, right or claim whatsoever against EPS, Acquirer, any Card Association or any of their affiliates or entities.

### **3.11 Security Interest, Set-Off**

As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Acquirer a security interest in: (i) the funds held in the Operating Account and in the Reserve Account; and (ii) any inventory with respect to which a Transaction has occurred but has not yet been fulfilled. Merchant will execute and deliver to Acquirer such documents, in form satisfactory to Acquirer, as Acquirer may reasonably request in order to perfect Acquirer's security interest in the Operating Account, Reserve Account and such inventory, and will pay all costs and expenses associated with filing the same or this Agreement in all public filing offices, where filing is deemed by Acquirer to be necessary or desirable. Acquirer is authorized to file financing statements relating to the Operating Account, the Reserve Account and such inventory without prior approval by Merchant where authorized by law. Merchant appoints Acquirer as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or EPS. Acquirer and/or EPS may, at any time there is an obligation owing from Merchant to Acquirer and/or EPS, set off any such amounts against any deposit balances or other money or hereafter owed Merchant by Acquirer and/or EPS without notice or demand of any kind.

### **3.12 Anti Money-Laundering Policy**

In compliance with the "Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" Act (USA PATRIOT Act) ("Act"), Pub. Law 107-56(2001), Electronic Payment Systems ("EPS") has adopted an Anti-Money Laundering (AML) compliance policy ("Policy").

It is the policy of EPS to prohibit and actively pursue the prevention of money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities. EPS is committed to AML compliance in accordance with applicable law and requires its officers, employees and appointed contractors, agents, and vendors to adhere to these standards in preventing the use of its products and services for money laundering purposes.

For the purposes of the Policy, money laundering is generally defined as engaging in acts designed to conceal or disguise the true origins of criminally derived proceeds so that the unlawful proceeds appear to have been derived from legitimate origins or constitute legitimate assets.

Terrorist financing may not involve the proceeds of criminal conduct, but rather an attempt to conceal the origin or intended use of the funds, which will later be used for criminal purposes.

By accepting this Agreement Merchant hereby pledges and promises not to participate in any activity that may be construed as a violation of the above noted Act and this Anti Money-Laundering Policy and shall furthermore cooperate, comply, and assist in any efforts to assure compliance by Acquirer, EPS, Integrated Card Solution, or Government Agency.

### **3.13 Payment Card Industry Data Storage Standard (PCI DSS)**

As a Merchant if you store Card or cardholder data in any way, shape, or form you are required to maintain that information in a secure manner. The guidelines for Data Storage can be found in detail at VISA.COM [type in PCI DSS in the search bar and follow the links to the information that applies to you], or contact the EPS Risk Department at 800-863-5995. EPS will be happy to explain the process and responsibilities related to this important Card Association requirement.

### **3.14 General**

(a) The paragraph headings and captions contained in this Agreement are for convenience only, and should not be deemed to define, limit or describe the scope or intent of this Agreement to the extent that they conflict with the substance of this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns; provided, however, this Agreement may not be assigned by Merchant without the written consent of Acquirer. Any such assignment by Merchant without Acquirer's prior written consent shall be null and void.

(c) Should any provision of this Agreement contravene any law, or valid regulation or rule of any regulatory agency or self-regulatory body having jurisdiction over either party hereto, or should any provision of this Agreement otherwise be held invalid, or unenforceable by a court or other body of competent jurisdiction, then each such provision shall be automatically terminated and performance hereof by both parties waived, and all other provisions of this Agreement then in effect shall nevertheless remain in full force and effect.

(d) No failure by Acquirer to insist upon strict performance during the continuance of any default hereunder shall constitute a waiver of any such term, obligation, right or remedy, or a waiver of any such default by Acquirer.

(e) THIS AGREEMENT AND ALL QUESTIONS ARISING IN CONNECTION HERewith SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, AND ALL SUITS HEREUNDER OR IN RESPECT HERETO BY EITHER PARTY SHALL BE INSTITUTED IN THE COLORADO COURTS. FURTHERMORE, Merchant HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COUNTY COURT OF ARAPAHOE COUNTY, COLORADO, THE DISTRICT COURT OF ARAPAHOE COUNTY, COLORADO, OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, AND HEREBY CONSENTS TO SERVICE OF PROCESS AT MERCHANT'S ADDRESS SET FORTH ABOVE.

(f) EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING IN ANY MANNER TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THE PARTIES AGREE THAT ANY DISPUTE SHALL BE TRIED TO A JUDGE WITHOUT A JURY. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COUNSEL TO THE EXTENT IT DESIRES TO DO SO.

(g) Merchant will be liable for and indemnify Acquirer for any and all attorney's fees and other related costs and expenses paid or incurred by the Acquirer in the enforcement hereof, or in collecting any amounts due from Merchant to Acquirer hereunder or resulting from any breach by Merchant of any of the terms or conditions of this Agreement.

(h) In the event of the occurrence of a dispute not described in Section 3.14 (g), the prevailing party will be entitled to receive reimbursement of all legal fees associated with the dispute.

(i) Acquirer may amend this Agreement at any time without prior notice to Merchant. Such amendment shall take effect at the time of notification to Merchant and be incorporated herein as if part of the original Agreement.

(j) All notices or other communications required to be given by either party shall be in writing and shall be hand delivered, delivered by electronic mail (email), delivered by national carrier (e.g FedEx, UPS, etc.), or sent by United States certified mail, postage prepaid, and shall be deemed to be given when hand delivered or upon deposit in the mail as indicated. Notices shall be addressed to the parties at the address identified below, or such other address as may be specified by either party by notice to the other party.

(k) Acquirer may appoint an agent(s) to do or take any actions that may be done or taken by Acquirer under this Agreement.

(l) This Agreement is intended by the parties as a final expression of and a complete and exclusive statement of the terms of this Agreement, there being no conditions to the enforceability of this Agreement. This Agreement may not be supplemented or modified except in writing as provided for in this Agreement.

(m) Merchant may not accept a Card for an unlawful Internet gambling Transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Acquirer which are attributable, at the Acquirer's discretion, to Merchant's Transaction processing or business.

(n) To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Acquirer for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Acquirer's rights or claims under this Agreement.

(o) The parties will be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

(p) Acquirer may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant will provide all information requested by Acquirer to complete Acquirer's audit. Merchant authorizes parties contacted by Acquirer to release the credit information requested by Acquirer, and Merchant agrees to provide a separate authorization for release of credit information, if requested by Acquirer. Merchant will deliver to Acquirer such information as Acquirer may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information will be true, complete and accurate. Without limiting the generality of the foregoing, Merchant will provide to Acquirer and EPS its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.

NOTICES: EPS

6472 SOUTH QUEBEC STREET

ENGLEWOOD, CO 80111

ESQUIRE BANK

320 OLD COUNTRY ROAD

GARDEN CITY, NY 11530

End of Credit Card Processing Merchant Agreement

### **EZ Payment Plan ARTICLES, TERMS AND CONDITIONS**

For the sake of this Agreement, FlexPay LLC d/b/a EZ Payment Plan 6472 S. Quebec Street, Englewood, CO 80111 and Merchant listed, if approved by EZ Payment Plan, agree to enter into this Agreement and to be bound by the contractual provisions contained herein in order to receive the substantial benefits set forth herein and which EZ Payment Plan would not otherwise confer upon Merchant.

NOW, THEREFORE, in consideration of the premises and mutual promises contained in this Agreement, the parties agree as follows:

#### **1. Term**

If approved, this Agreement shall be effective from the date hereof and shall remain in full force and effect for a period of TWO (2) years as an initial term, unless sooner terminated as set forth herein. Upon the completion of the initial term, unless Merchant furnishes written notice of non-renewal at least THIRTY (30) days prior to completion of the then existing term, this Agreement shall renew automatically for additional TWO (2) year terms unless canceled in accordance with the provisions contained in the Agreement. In any event of early termination:

(a) all fees for the full term of the Agreement are immediately payable and Merchant hereby authorizes EZ Payment Plan or its' agent to collect said fees from any account owned by Merchant and/or guarantor(s) via Automated Clearing House (ACH) Transactions, and/or any other legally viable method,

(b) all prior guarantees shall be made null and void, and c) Merchant assigns all proceeds of pending conversion authorizations to EZ Payment Plan to the extent they are required to satisfy any fees that may be due EZ Payment Plan. Once all fees due EZ Payment Plan are satisfied any remaining conversion proceeds will be distributed to Merchant ninety-(90) days after the posting of the last delayed presentment.

#### **2. Termination**

This Agreement may be terminated immediately by EZ Payment Plan in the event of a breach of any representation, warranty, condition, provision, section or covenant in this Agreement. Merchant shall have the right to cure any breach that is susceptible of cure during the initial FIVE (5) days from the date of discovery and if the breach is cured to the reasonable satisfaction of EZ Payment Plan, this Agreement shall not be terminated and shall continue in full force and effect. In any event of early termination all fees for the full term of the Agreement are immediately payable and Merchant hereby authorizes EZ Payment Plan or its' agent to collect said fees from any account owned by Merchant and/or guarantor(s) via Automated Clearing House (ACH) Transaction and/or any other legally viable method.

(a) Merchant agrees that, if the Merchant Agreement is terminated before completion of the initial term or any subsequent renewal term(s) of the Merchant Agreement for any reason other than a material uncured breach by Acquirer, Merchant will pay Acquirer damages for the loss of fee income. Acquirer entered into this Agreement to provide services based in part on the fee income the account would generate. Termination for any reason other than a material uncured breach by Acquirer would deprive Acquirer of the fee income they negotiated for and Merchant agreed to pay. To calculate the damages Acquirer will calculate (a) the fee income that would have been generated on a monthly basis based on the Merchant's volume representations on this "Merchant Application and Processing Agreement" including all fees that would be due and payable based on the "EZ Payment Plan and Single Check Conversion Pricing" and, (b) the actual monthly average of fee income generated by the account over the last three-(3) months plus all fees that would be due and payable based on the "EZ Payment Plan and Single Check Conversion Pricing" but not charged in the period, then multiply the calculated amount (whichever is greater between the two-(2) methods described above) by the number of months remaining in the then-current term of the Merchant Agreement. Merchant acknowledges that the damages noted herein are not a punitive act but represent a reasonable calculation of the financial harm caused by Merchant for termination of the Merchant Agreement before completion of the initial term or any subsequent renewal term(s).

#### **3. EZ Payment Plan - No Credit Check Easy Payment Plan Conversion - With Guarantee**

EZ Payment Plan will convert commercially imprinted personal check instruments received by Merchant from customers through the EZ Payment Plan to an ACH Transaction and purchase all approved Transactions presented for payment of goods and/or services germane to the Standard Industry Code (SIC Code) that best describes your business that are converted which fail to clear subject to the following terms and conditions provided "% per check" is not waived:

(a) The check instruments are made payable to Merchant/EZ Payment Plan.

(b) Merchant and Customer have fully completed and signed at the time of sale a "Payment-Authorization" form.

(c) The Merchant has not accepted subsequent payment in any form for dishonored check instrument in full or part including but not limited to cash, check, service performed, trade, barter or return if goods dishonored check instrument was written for. In the event of received payment as described herein Merchant shall notify EZ Payment Plan immediately.

(d) Merchant shall not accept two party, multi-party, signature irregular, EZ Payment Plan declined, previously bank returned, stop, stop pay, temporary, stolen, for cash, and check instruments known at time of sale to be non-negotiable. Such acts may be considered non-conforming and subject to forfeiture of guarantee status.

(e) The full daytime telephone number and drivers license or state issued ID number with expiration date (must be unexpired) being used as reference for the writer must be clearly written on the FRONT of the check instrument.

(f) Merchant must warrant and attest that they have confirmed the identity of the check writer and the writer is the account holder, the writer is the named individual on the face of the check instrument, all check instruments submitted and authorizations for the Transaction were signed by the writer in person at the time of sale, and the amounts of the check instruments constitute full payment for the goods and/or services purchased.



- (g) Unless otherwise noted Merchant account deposits are forwarded to the Federal Reserve for clearing to Merchants deposit account within 24 to 72 hours from date to present.
- (h) Deposits made will be total check instrument amount minus fees due for the conversion service and prior chargebacks if any.
- (i) If a customer's check instrument is charged back to EZ Payment Plan for any reason Merchant will respond to retrieval request from EZ Payment Plan for same in a timely manner. In addition, payment of funds for check instruments may be held back or reversed to cover chargebacks until guarantee status can be determined.
- (j) Merchant guarantees the availability of funds to cover chargebacks.
- (k) In the event of a disputed Transaction by any party, funds for same may be withheld until dispute is settled.
- (l) Limits may be set for single check and daily deposit amounts. These limits may include additional time to deposit.
- (m) Merchant is required to cooperate with EZ Payment Plan and follow instructions given by EZ Payment Plan related to any verification or collection efforts. Failure to do so will result in forfeiture of any unsecured funds. This cooperation may entail the production of the original instrument.
- (n) Merchant must warrant and attest that proper customer notification will be given prior to converting check instruments to debits.
- (o) Merchant shall keep and maintain all original copies of all check instruments submitted to program for a period of not less than ninety-(90) days from the date of presentment and shall deliver such check instrument to EZ Payment Plan immediately upon request.
- (p) In the event of termination of this Agreement by either party funds due Merchant may be held and or debited from Merchant's account to cover potential chargebacks.
- (q) Merchant agrees to abide by and be bound to the rules and regulations of the "National Automated Clearing House Association" (NACHA), and any other entity having authority to regulate or in any way control the use of conversion services.
- (r) Any or all guaranteed check instruments may be charged back in the event any fraud or deception from or by Merchant or Merchants' employees is discovered. If a previously guaranteed check instrument is later found not eligible for the guarantee program it may be charged back.
- (s) Merchant shall not have returns for any reason that represent TEN-(10)% percent of total dollar volume for any period. In the event that Merchant exceeds the TEN-(10)% limit, no check instruments will be available for guarantee until Merchant's aggregate return rate returns to below the stated and acknowledged limit.

#### **4. EZ Payment Plan - Single Check Conversion - With Guarantee**

EZ Payment Plan will convert commercially imprinted personal check instruments received by Merchant from customers to an ACH Transaction and purchase all approved Transactions presented for payment of goods and/or services germane to the Standard Industry Code (SIC Code) that best describes your business that are converted which fail to clear subject to the following terms and conditions provided "% per check" is not waived:

- (a) All terms and conditions of 3 above and all subsections thereof apply to all Transactions contemplated herein except Section 3. b., which does not apply.
- (b) Post dated check instruments do not qualify for the "Single Check Conversion."

#### **5. Payment To Merchant**

Payment to Merchant for single check conversion program items covered under this agreement are subject to ALL conditions contained herein and furthermore those specifically addressed in Section 4 and all subsections thereof above. Payment for No Credit Check EZ Payment Plan converted check instrument conversion program items covered under this agreement are subject to ALL conditions contained herein and furthermore those specifically addressed in Section 3 and all subsections thereof above. In the event a check instrument fails and becomes subject to the Guarantee Program, payment of the Guaranteed funds shall be made on or about the 10th or 25th (Guarantee Payment Dates) of each month for the activity prior to the last Guarantee Payment Date.

#### **6. Miscellaneous**

- (a) This is the entire agreement between Merchant and EZ Payment Plan, with respect to the subject matter hereof, and supersedes any prior agreement, discussions or correspondence, oral or written, between Merchant and EZ Payment Plan. The program guidelines attached hereto are incorporated herein by reference as if set out in full herein.
- (b) THIS AGREEMENT AND ALL QUESTIONS ARISING IN CONNECTION HERewith SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, AND ALL SUITS HEREUNDER OR IN RESPECT HERETO BY EITHER PARTY SHALL BE INSTITUTED IN THE COLORADO COURTS. FURTHERMORE, Merchant HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COUNTY COURT OF ARAPAHOE COUNTY, COLORADO, THE DISTRICT COURT OF ARAPAHOE COUNTY, COLORADO, OR IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, AND HEREBY CONSENTS TO SERVICE OF PROCESS AT MERCHANT'S ADDRESS SET FORTH ABOVE.
- (c) EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING IN ANY MANNER TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THE PARTIES AGREE THAT ANY DISPUTE SHALL BE TRIED TO A JUDGE WITHOUT A JURY. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COUNSEL TO THE EXTENT IT DESIRES TO DO SO.
- (d) Representations made by the Independent Contractor or their employees, representative or any other persons associated with them that are not expressly contained in this Agreement **ARE NOT VALID** and do not apply. EZ Payment Plan makes no representations outside of this Agreement. If you rely on representations made by Contractor not contained in this Agreement you are doing so of your own free will and at your own risk and shall not place any claim of any sort on EZ Payment Plan for such reliance.
- (e) The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.
- (f) Nothing contained in this Agreement shall be construed to constitute a joint venture or partnership between or among any persons or entities referred to herein.
- (g) If any provision of this Agreement is at any time adjudged invalid or unenforceable to any extent by any court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to render it valid and enforceable and such invalidity or unenforceability shall not affect any other provision of this Agreement.
- (h) MERCHANT ACKNOWLEDGES THAT THIS IS A LEGAL DOCUMENT AFFECTING MERCHANT'S RIGHTS AND OBLIGATIONS. MERCHANT FURTHER ACKNOWLEDGES THAT THEY HAVE BEEN ENCOURAGED TO HAVE THIS AGREEMENT REVIEWED BY COUNSEL OF MERCHANT'S CHOOSING PRIOR TO ENTERING INTO THIS AGREEMENT AND THAT MERCHANT HAS CONSULTED WITH SUCH COUNSEL TO THE EXTENT THEY DESIRES TO DO SO. MERCHANT ACKNOWLEDGES THAT THEY ARE ENTERING INTO A LEGAL AND BINDING AGREEMENT AND ARE FULLY AWARE OF ALL RAMIFICATIONS THEREIN.
- (i) By affixing their signature(s) hereto on behalf of the Merchant, the undersigned individual(s) represent and affirm that they are binding themselves personally and further that Merchant has the power and authority to enter into this Agreement and the execution and delivery of this Agreement and the performance of Merchant's obligations hereunder have been duly authorized by all necessary corporate or company action.

#### **7. Credit Report Authorization**

Merchant authorizes EZ Payment Plan to obtain an investigative and/or consumer credit report, personal and/or commercial in nature, in connection with this Agreement.

#### **8. Electronic Debit/Credit Authorization**

Merchant hereby authorizes EZ Payment Plan, in accordance with this Agreement, to initiate debit/credit entries to Merchant's accounts. This authority is to remain in full force and effect until

- (a) all obligations of Merchant to EZ Payment Plan that have arisen under this Agreement have been paid in full and
- (b) EZ Payment Plan has received written notification from Merchant of its termination, in such a manner as to afford EZ Payment Plan reasonable opportunity to act on it. This authorization extends, but is not limited to, entries to Merchant's account for fees, applied percentages, monthly minimums, chargebacks, retrievals, check and check instrument rejects, and any other incidents for which funds may become due under this Agreement.

NOTICES: EZ Payment Plan  
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ENGLEWOOD, CO 80111  
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