



# U.S. Merchant Systems LLC

## MERCHANT BUSINESS AGREEMENT

### Business Agreement (Commercial Contract)

This Commercial Contract, herein known as "Business Agreement," has been entered into on the date stated on the Merchant Application by the Merchant by and between the Merchant referenced in the Merchant Application (herein referred to in the first person "I" or "me" or any term referring to "I, the Merchant" or "Merchant") and US Merchant Systems LLC of 48001 Fremont Blvd, Fremont, CA 94538, hereinafter ("USMS").

#### RECITALS

**WHEREAS:** US Merchant Systems LLC, is a Merchant Service Provider and is in the business of providing access to Credit Card Processing and other services to Merchants.

**WHEREAS:** Merchant, as listed on the Merchant Application, wishes to engage these services.

**THEREFORE:** Both Parties have agreed to be bound by the terms and conditions of this Agreement.

#### DUTIES OF USMS

1 **Bank Card and other Services:** I, the Merchant, understand and agree that I am contracting with USMS to provide "Merchant Services" that include, but are not limited to, bank card Services, Equipment Sales, and other services from time to time, and I understand that USMS will cause this to happen and do what is reasonable to serve the customer and provide these contracted for services specified on the Merchant Application. For purposes of this Agreement, I understand that any and all services provided to me by USMS shall be considered Merchant Services.

2 **Customer Service:** I, the Merchant, understand that USMS will have a Customer Service team that will assist me and do what is reasonable to assist with and correct any issues or answer my questions within a reasonable time frame.

#### DUTIES OF THE MERCHANT

3 **Separate Agreement(s):** I agree that while this Agreement embodies several, individual Agreements into one written document, any action taken for breach of this agreement or any good faith dispute, must be made singly and solely against the entity who is allegedly responsible. I understand and agree that I am estopped from bringing any action against any other party to this agreement, unless a direct and actual cause can be shown linking other parties to any alleged dispute. I understand and accept that USMS is an independent entity, and is not affiliated with, and is not to be held responsible for any offers, promises, or business opportunities presented to me directly or indirectly by any other entity not specifically or indirectly included in this contract. Any and all complaints not involving the specified services or equipment so listed on the Merchant Application shall be addressed directly to the vendor or entity I made the purchase from or agreement with.

4 **Other Documents:** I allow USMS to complete other applications or agreements that I have authorized from information contained on the front of the Merchant Application and this agreement or to which I may provide via phone or fax. I authorize US Merchant Systems, LLC to correct any errors on my application. Furthermore, I agree and accept that USMS may divulge or use information obtained on

the Merchant Application to a third company as deemed necessary to provide any service to me.

5 **Agreement Changes:** I understand and accept that USMS has the right to modify this agreement at any time and for any reason provided that I receive thirty (30) days notice prior to any such change. I agree to accept notice by email, mail, my merchant account monthly statement, phone or by viewing posts made available on the USMS website which I agree to check regularly. I understand and accept that the most current version of this agreement is the operable one, and that I attest that I have the most current copy, which can be found at [www.usms.com/termsconditions](http://www.usms.com/termsconditions). I also agree and affirm that in the event that there is a discrepancy between an earlier and later version of this agreement, the provisions of the later version of this agreement shall apply. In the event I, the Merchant, disagree to the changes, I shall have the opportunity to notify USMS within thirty (30) days of receipt of notice of the change with intent to terminate my account under this Agreement.

6 **Insufficient Funds:** I also authorize USMS to charge me for any returned checks, whether they are returned for insufficient funds, account closed or stop payment. I accept the fee of \$25.00 per returned check or NSF through ACH, which may also be billed to my account without notice to me. Furthermore, I understand and accept that USMS will consider a "stop payment", "closed account" or any other banking actions used to thwart or impair USMS' rights to full recourse as stated in this agreement as an intentional tort if done intentionally and for the purpose of preventing USMS from enforcing its rights hereunder, and I agree to compensate USMS for any damages that arise out of such situations, including but not limited to attorneys' fees. I understand and agree that I may be liable for treble damages to the maximum allowed by law in addition to the original amount. All other remedies are additional and still apply.

7 **Merchant Account Statements and Address Updates:** I, the Merchant, understand and agree that after receiving my Monthly Merchant Account Statement (or E-Statement), I will review it promptly and shall be deemed to have knowledge of the content of said Statement. I further agree that I will notify USMS in writing of any address changes or bank account changes within ten (10) days of the change. Furthermore, I will notify the USMS Customer Service Department if I did not receive my mailed statement or need to change my email address, and allow up to twenty (20) days for USMS to send me a second copy if I so request one.

8 **Responsibilities, Profitability, Fees and other Costs: Errors or Omissions on Application or in charges made:** I, the Merchant, agree and accept that in the event of a billing error, or in the event that the Application was unclear as to pricing, I have thirty (30) days from the date of my latest Merchant Account Statement to inquire about this perceived error and work out an adequate solution to the mistake. I understand that it is my responsibility to thoroughly review my statements each month for any errors. It is also my responsibility to be proactive in the management of my account and communicate any questions or concerns directly to USMS. I accept and agree that USMS' liability to me shall be the actual damages or \$500.00, whichever is less. Such liability shall be calculated on a "per statement" basis, meaning that for any monthly statement, should any errors or omissions be spotted, USMS' liability shall be limited to the actual damages, in the aggregate or \$500.00, whichever is less, pursuant to this section. Notwithstanding, I agree that USMS' total liability in the aggregate is the actual damages or \$500.00, whichever is less. I, the Merchant, understand and accept that I will have a working knowledge of the fees and costs associated with my Merchant Account. Furthermore, I understand and accept that I am responsible for knowing and understanding all data that is on the application and have reviewed such data with my Sales Agent/Representative. I further agree that I am responsible for all Charge Backs (along with my guarantor) and any fee(s) associated with the Charge Backs. I understand and accept that in the event my account

becomes unprofitable, USMS has the right to make periodic changes that USMS deems reasonable pertaining to my account's fees, to adjust for losses taken, in light of any risk associated with my merchant account, or to maintain the account in a profitable manner. USMS shall give me thirty days written and/or electronic notice of any changes to the pricing on my account, at which time I shall have the opportunity to accept or reject the change. If I reject the change in writing within thirty (30) days of notice to me, USMS may immediately terminate this Agreement after providing notice pursuant to the terms and conditions herein. In the event that changes in credit card processing fees occur that are not the result of any action by USMS, USMS shall immediately implement any fee changes to my account and bill accordingly.

9 **Requested Rates Are Not Final Rates:** I understand and agree that all proposals for Merchant Services shall be subject to approval by US Merchant Systems. I further understand and agree that all rates identified in any application signed by me prior to US Merchant Systems specifically approving them are considered 'Requested Rates.' 'Requested Rates' are interpreted as proposals and must be approved by US Merchant Systems in order for them to become binding. When US Merchant Systems has determined whether to accept the 'Request Rate' or process Merchant's services at another, notice will be sent to me in a manner consistent with this Agreement. I have the right to accept or deny US Merchant Systems' final rate determination. However, acceptance of US Merchant Systems' final rate is deemed effective immediately as of the date and time I accept installation of equipment under this agreement and then processes the first transaction after notice of the final rate has been sent to me.

10 **Services Subject to Approval:** By signing this Agreement and requesting a determination of whether US Merchant Systems can provide services to me, I am explicitly authorizing US Merchant Systems to share any information presented on any document signed by me in conjunction with its application to any other third party merchant services providers with which USMS has a contractual relationship for the purpose of obtaining merchant services in the event that US Merchant Systems cannot offer me any merchant services. In the event a third party merchant services provider approves my application, I agree to accept processing by a third party merchant services provider if the terms and final rate are reasonably comparable to that of US Merchant Systems. In the event that multiple third party merchant services providers accept my application, I agree that US Merchant Systems shall assign my application and processing to the third party merchant services provider that US Merchant Systems reasonably determines is most favorable in its terms to me. US Merchant Systems shall have full discretion to determine which and how many third party merchant services provider(s) it submits my application to. I acknowledge and understand that I made need to sign additional documents and provide additional information, and I agree to do so.

11 **Cooperation of Merchant:** I understand and accept that under this agreement, time is of the essence, and I will cooperate with all parties to facilitate the completion of this agreement promptly. I understand and accept that USMS does not allow, or promote, a "pre app" policy. No such policy exists. I understand and accept that if I fail to accommodate the reasonable requests of any parties in fulfilling this agreement, I will have committed a material breach of this agreement and any and all rights provided to me under this agreement may be terminated by USMS, including but not limited to, invoking the cancellation clause in §24, and/or requiring payment of the complete cost of the equipment or software license.

12 **Bankruptcy or Business Cessation:** I understand and accept that in the case that I and/or my business, so listed on the application, enters bankruptcy voluntarily or involuntarily, or ceases operation in any form, my guarantor and I assume financial responsibility for all Charge Backs coming in to our merchant account and will assist, without wages or payment of any kind, USMS to rebut Charge Backs that are deemed fraudulent or unlawful. This includes, but is not limited to, collecting and delivering all credit card data, receipts, computers or portals (with usernames and passwords) with transaction data, what was sold and when and who much was used. I also agree to keep this data organized and in a safe location and will not destroy it or allow it to be destroyed.

13 **PCI DSS & Account Data Compromise Events:** The Payment card Industry Data Security Standard (PCI DSS) is a widely accepted set of policies and procedures intended to optimize the security of credit, debit and cash card transactions and protect cardholders against misuse of their personal information. I, the merchant, understand

that in order to implement mandatory enforcement of the PCI DSS program it is necessary for USMS to provide a portal where merchants can be educated on and conduct the proper security procedures at their establishment. To cover the cost of implementation, a fee of \$7.95 will be charged to all merchants on a monthly basis. This service includes information on the PCI DDS program, the self-assessment questionnaire (SAQ) and when necessary, a quarterly scan of any main website or payment portal. Also included will be at least \$50,000 worth of breach insurance. This insurance will cover the merchant and the merchant's business up to at least \$50,000 in case of an Account Data Compromise Event, or data breach. This by no means shall be interpreted to limit my liability as a Merchant in any amount beyond that which is covered by my insurance. I understand that I, as the Merchant, am responsible in full for any damages that result from an Account data Compromise Event or data breach.

I, the merchant, will have one hundred and twenty (120) days to come into compliance before being assessed a noncompliance fee of \$19.95 per month (instead of the \$7.95 fee) until compliance is met. I, the merchant, understand and accept that USMS is not responsible or liable in any way for my PCI DSS Compliance. I the merchant accept that I alone am responsible and solely liable if I, the merchant, fail to comply by failing to complete the correct forms, falsify the compliance procedure or any compliance information, or abandon or neglect my responsibly in maintaining and training correct PCI DSS procedures to my employees. I understand and agree that USMS is providing me with information only and I will not hold them liable for any data provided whether used or not used by me.

Also, I understand that it is my sole responsibility to collect, safeguard and protect all of my consumer data. I understand that USMS does not keep consumer information on my behalf, and that I and only I am responsible for the collecting, safeguarding and protecting of any consumer data. In the event of an occurrence where any consumer data is taken or compromised with or without any express or affirmative action on my part, I agree that I and only I am liable for any damages that arise there from and hold USMS harmless for any damages that result. I agree and understand that there shall be no limit to my liability and obligations to pay damages, fees, penalties, costs, reimbursements and other associated expenditures concerning damages arising to customers, USMS, and other parties as a result of an account data compromise event or data breach. I also agree and understand that I shall indemnify USMS in full for any damages USMS pays on my behalf, including but not limited to damages, fees, penalties, costs, reimbursements, attorneys fees, charge backs, and other associated expenditures, concerning damages arising to customers, USMS, and other third parties as a result of an account data compromise event or data breach. I understand and agree that this clause shall serve to eliminate any cap on my liability pertaining to damages arising to customers, USMS, and other parties as a result of an account data compromise event or data breach.

*For more information, please go to [www.usms.com/merchant/pci](http://www.usms.com/merchant/pci).*

## GENERAL OPERATING SECTION

14 **Contracting Parties are both Merchants:** I, the Merchant, understand and accept and unconditionally agree that both parties to this agreement are Merchants and are therefore not consumers and are not bound by any Federal or State consumer law. I agree that Merchants are held to a higher standard than consumers and thus are responsible for reading what is signed by me or any of my agent(s). Furthermore, notwithstanding the statements made by Agent or representative or any presented advertising or brochure produced by the Sales Agent, Rep, Account Executive, et. al., the data contained in printed form on this application is what is binding. I also certify that I am relying solely on the contents of this document and not any other representation or documentation, except those expressly referenced or integrated with this Agreement. Added instructions written by the Agent or me, on the application or this agreement may not be enforceable, until signed and agreed to by an executive of USMS.

15 **Automatic Debit Rights:** By signing the Merchant Application, I expressly agree and allow USMS to debit by any method, my checking, savings and/or any credit card accounts so listed on this, and/or other accompanying documents, or any other account(s) that may become

known to USMS without prior notification, to satisfy any and all charges arising from this agreement, including but not limited to leasing charges. Merchant may be billed monthly for all services contracted for in this and any accompanying documents or agreements, at the discretion of USMS. I understand that the first payment or billing through my authorized bank account or credit card account for the services described herein, or in the accompanying documents, may occur prior to completion of the installation of my merchant account or final delivery process.

16 **Marketing Agreement.** I, the merchant, understand and accept that USMS may contact me through the contact information I provided in the Merchant Application for a period of ten (10) years immediately following the termination of this Agreement through all media types, including, but not limited to, Telephone, Predictive dialer, cell or mobile phone, email campaigns, bulk mail, regular mail, or mail of any kind. I agree and accept that this express consent will survive this agreement. I agree that US Merchant Systems, LLC has the right to pull or discontinue any past or currently running promotion as it sees fit. I agree that only one promotional incentive is allowed per Merchant Account.

17 **Permitted use of marks, logos and photos.** I understand and give my permission to allow USMS to use my trade or service mark, including but not limited to, my logos, business name, trademarks or other marks, photo(s), registered fonts in the trademark, or other artwork, whether online or in print, for promotional and marketing purposes for USMS services for the time this Agreement is active. USMS will use reasonable efforts to ensure the use is appropriate. As a courtesy, USMS may, but is not obligated to, send me a thirty (30) day notice of its intent to use my marks, logos, or photos for its materials, but this notice shall not be construed to be a request.

18 **Refunds and Lease Defaults.** I understand and accept that any transaction contained herein is final. There will be no refunds or acceptance of any returned equipment once funds have been tendered to USMS, and I acknowledge that upon the signing of this Agreement, the equipment will be shipped to me within a reasonable amount of time. I understand and agree that in the event of a first time payment default or non-verification of lease with leasing company as requested within 10 days, my lease may be declared in default and USMS may assume the role as the lessor and/or immediately ACH my account or charge the credit card I have on file for the full lease amount. In such an event, ALL lease payments are due and payable to USMS. Furthermore, I understand and accept that my refusal to accept delivery or my return of any promotional gift items, or any type of equipment, does not void my obligations under this agreement.

19 **Lease Substitutions/Declines:** I agree to allow USMS to substitute leasing entities in the event that I am declined by any originally assigned leasing entity, and that such substitution is for my (Merchant's) benefit to ensure fulfillment of this Agreement.

## COVENANTS

20 **Right of First Refusal.** I, the Merchant agree, that prior to the end of the initial term or prior to or at the end of any subsequent renewals, I agree to give US Merchant Systems LLC or its assignees, the Right of First Refusal at retaining the Credit Card Processing Merchant Account. I the Merchant, agree to only consider written proposals, quotes or written applications from competing Merchant Services Providers, ISOs or Banks, et al., which I agree to immediately supply the same documents to USMS. Failure to adhere to this section will result in a breach and will incur damages as stated in §24 (Cancellation).

21 **Secondary, additional or extra Merchant Account.** I the merchant understand and accept, to not engage a secondary merchant account with any other processor during the Initial Term or any subsequent Renewal Term of my agreement without specific written permission from a corporate officer of USMS. I understand and accept that violation of this section is a breach of my contract for cause and will be in breach of §20 and invoke §24. I agree that during the term of this agreement and subsequent renewals, that I, the Merchant, shall process all credit and debit card transactions, including "Pin Debit" for this location and/or Merchant Identification Number (MID), exclusively through this Agreement.

## TERM

22 **Terms:** The Agreement will become effective on the date that I, the Merchant, sign the Merchant application, which date shall be known as the "Effective Date". The Agreement will remain in effect for a maximum period of 3 years and not less than 12 months ("Initial Term"), and shall automatically renew for successive 1 year terms ("Renewal Term"), unless terminated as set forth below.

## TERMINATION

23 **Termination:** This Agreement may be terminated by any party and said termination shall be deemed effective at the end of the Initial Term or any Renewal Term. The Parties may terminate this Agreement by giving written notice of an intention not to renew within 90 days of the end of the current term. This written notice may be delivered to USMS via posted mail or electronically. Furthermore, this Agreement may be terminated at any time with or without notice and with or without cause by US Merchant Systems LLC, Non-bank Acquirer, and/or Bank.

## CANCELLATION

24 **Cancellations – Breach of Contract:** I understand and agree that USMS will put forth time, effort and expense to establish my credit card merchant account and other accounts I have applied for in this agreement. I also understand and agree that this document is a binding agreement, and should I attempt to terminate this Agreement during the application process or if it has already been approved or is approved with a reserve or holdback requirement as stated in §41, I agree to pay a fee in the amount of \$295 (In Arkansas the amount is \$50) that reflects a reasonable amount that adequately compensates USMS for any losses related thereto. This fee shall be assessed for each Merchant Application that is cancelled prior to, and through, approval. I agree that all terminations must be in writing and signed by me, the Merchant. I agree that once I have received any Point of Sale equipment, software, or Internet Processing Package, I am obligated to pay the amount in full as stated on the front of this merchant application or agreement, and/or the sum total due on any lease agreement, whether by automatic debit, cashier's check or credit card payment. I recognize US Merchant Systems, LLC is a registered ISO of one or more Banks (e.g. Deutsche Bank AG.), and that US Merchant Systems, LLC has the complete authority to act on behalf to the above named companies for the purpose of enforcing any and all terms of the "Merchant Application", "Merchant Processing Agreement", "Merchant Debit Card Service Addendum", and "Reserve Acknowledgement" between Merchant and the above named companies. This includes, but not limited to, the collection of fees, fines or other amounts owed by Merchant, setting reserve requirements, establishment of processing limits and the setting or adjusting of rates and fees.

25 **Default:** In the event of Default by Merchant, collection of all fees and monies owed arising from this contract will be initiated by USMS. Merchant will be allowed to take possession of all equipment provided by USMS to me through legal action. Following the remittance of such equipment, the wholesale value of any such equipment returned may be deducted at the discretion of USMS from any contract buy-out or payment agreement reached between USMS and Merchant.

## PRODUCTS AND SERVICES

26 **Internet Gateway Fee:** I understand and accept that the Internet Processing Package has a monthly gateway access fee in addition to any monthly payments for the license I am purchasing. This fee is separate from any other monthly payments. I understand and accept that the services granted under this license may be suspended indefinitely if the fees listed on the front of this agreement are not paid on time or said payments are rejected for insufficient funds. I also agree that all Gateway fees are to be billed and debited for the previous month.

27 **Installation Services, Installation Requirements:** I agree to provide the phone line or internet connection, and electrical outlet as needed, within reasonable proximity of any electronic terminals that are to be installed. If I have purchased a gateway/virtual terminal, I agree to provide my own Internet access. I agree to accept installation of any

equipment provided to me by USMS within 5 days of being notified by USMS that my account has been approved. In the event that I decide not to accept installation within 5 days of being notified by USMS, I agree to hold USMS harmless for any fees billed to my account by any service providers contracted with in relation to this agreement. I agree that should I fail to install or reject lease verification for a period of more than 30 days from being notified of approval by USMS, USMS may declare the contract as a cancelled and bill me or debit my account for the breach of contract fees as described in the previous sections. Any other refunds are given on a case by case basis at the discretion of USMS and are not to be construed as commonplace or standard practice, and must be evaluated by a senior executive. The USMS installer, if any, will use commercially reasonable care while installing the transaction equipment, whether a terminal or other point of sale device. I the merchant, agree to hold USMS harmless for any and all issues arising out of the installation procedures. I understand that I am responsible for the integrity of all equipment received from USMS and shall use all reasonable means to keep such equipment safe from manipulation or damage caused by any unauthorized third party.

28 **Restocking Fee:** A restocking fee of 15%, or \$50, whichever is greater, of the Retail Value of any equipment/software/processing method associated with this Agreement will be assessed when a Merchant has an established merchant account and desires to upgrade to another piece of equipment and/or processing method. If the merchant is not satisfied with the newer equipment and/or processing method, and wishes to stay with their current equipment and/or processing method, Merchant may send back the upgrade for a full refund less the restocking fee.

29 **To Replace or Return an Item:** A Merchant may have an item replaced or returned. The returned item must be accompanied with a Return Merchandise Authorization (RMA) number. To request an RMA number for a return, merchant will need to call USMS' Customer Service Department at 877-432-8871. When returning an item, the merchant shall be responsible for insuring the package with the carrier they have chosen against damage and loss, and Merchant shall bear all shipping fees associated with the return.

30 **Reprogramming of Merchant Owned or Prior Owned equipment:** I, the Merchant, understand and accept that if I provide my own terminal or if I choose to obtain one that is not purchased from USMS, I accept and understand that I shall hold USMS harmless of any damages in the event that this equipment cannot be used or reprogrammed despite USMS' best efforts. Notwithstanding any verbal statements or promises made by the agent or sales representative, I will continue to hold this agreement in full force and I will promptly either purchase a compatible terminal from USMS or from another source.

31 **Merchant's Terminals; Security Lockdown.** I the Merchant understand and agree to allow USMS to place a security lock on my equipment regardless of whether it is purchased by Merchant from USMS or provided by the Merchant, and that Merchant shall not deem this as a trespass in any way. This security lock will prevent outside tampering with the equipment's internal programming. USMS will be notified if the terminal is tampered with in any way. If this agreement is terminated for any reason under any provision provided for in this Agreement, the Security Lock will be removed from the Merchant owned equipment, provided all of the terms in §20 and §24, have been met and the account is not in breach, and any Breach of Contract fees have been satisfied in full. In the event that I request to unlock my terminal, there may be a \$50 Unlocking Fee imposed.

32 **Login ID and Password:** I understand and agree that if I have received and have signed for the gateway license and/or Point of Sale equipment, and the gateway license and/or Point of Sale equipment have been activated, my account will be considered installed. I agree that the lease obligations will commence upon activation, and that USMS will use reasonable efforts to notify me of my "log-in" ID and "password" for the Internet Gateway. I understand and agree that I am ultimately responsible for establishing my "log-in" ID and "password," and that I am precluded from holding USMS responsible for not providing the aforementioned "log-in" ID and "password," and I cannot use a lack of "log-in or password" as a defense against any or all of the remedies available to USMS under in this Agreement.

33 **Store and Forward/Offline Transactions/Daily Batching:** I agree that should I run any transactions offline or in Store and Forward Mode, or force any transaction through that has been declined, I agree

that these transactions are processed at my own risk and that I shall not hold USMS liable for any lost or declined transactions. I agree that I will "batch out" my equipment or gateway daily and I hold USMS harmless against any losses due to not batching out my machine or gateway. I also agree that the responsibility to "batch out" my equipment rest solely on me.

34 **WARRANTY:** I UNDERSTAND THAT UPON PURCHASE OF EQUIPMENT, THE WARRANTY WILL COVER MANUFACTURER'S DEFECT ONLY FOR 30 DAYS AFTER PURCHASE, SUBJECT TO THE MANUFACTURER TERMS.

35 **LIMITED/EXTENDED WARRANTY:** I UNDERSTAND THAT UNLESS I PURCHASE A LIMITED/EXTENDED WARRANTY AS PROVIDED BY USMS, I WILL PAY FOR ALL PARTS, SHIPPING AND ANY OTHER APPLICABLE FEES. I AGREE TO ALLOW USMS TO DEBIT MY ACCOUNTS AS STATED HEREIN FOR ALL COSTS RELATED TO THE LIMITED/EXTENDED WARRANTY THAT I ELECT TO PURCHASE FROM USMS. I UNDERSTAND THAT THE ADDITIONAL LIMITED/EXTENDED WARRANTY COVERAGE THAT I MAY PURCHASE WILL REMAIN IN EFFECT AS LONG AS THE MONTHLY WARRANTY PREMIUM IS PAID. IF LIMITED/EXTENDED WARRANTY COVERAGE IS TERMINATED OR NEVER PURCHASED, MERCHANT WILL ASSUME ALL LIABILITY FOR EQUIPMENT REPLACEMENT, INCLUDING ALL PARTS, SHIPPING AND TERMINAL(S). THE LIMITED/EXTENDED WARRANTY WILL COVER MANUFACTURERS DEFECT AND/OR NORMAL WEAR AND TEAR. THE LIMITED/EXTENDED WARRANTY DOES NOT COVER PRODUCT ABUSE, NEGLIGENCE, ACCIDENTAL LIQUID SPILLAGE, ACTS OF NATURE, OR DAMAGE DURING TRANSIT TO OR FROM USMS. THE TERMINAL(S) MUST NOT BE TAMPERED WITH OR DROPPED. I AGREE TO ALLOW USMS TO DEBIT MY ACCOUNTS AS STATED HEREIN FOR ALL COSTS RELATED TO ANY EXTENDED WARRANTY THAT I ELECT TO PURCHASE FROM USMS.

36 **Loaners:** In the event that I enter in to an agreement verbally or in writing with a member of USMS team, I agree to abide by the Loaner Agreement Terms that will be sent via email/mail/fax. Failure to do so or failure to send loaned equipment to USMS by a specified date may result in the collection of fees as stated in §15 for said equipment(s).

37 **Equipment and Service Substitutions:** I agree to allow USMS to substitute any or all products, technologies or services including the selection of leasing companies when necessary. Any substitutions will consist of products, technologies or services of equal quality. I understand and agree that PROCESSOR shall not be held responsible for (a) any wireless terminal repairs, and/or (b) providing a replacement wireless terminal due to equipment failure. The terminal manufacturer shall handle all wireless terminal repairs and replacements. I also understand that due to the complexity of these wireless terminals, the manufacturer may not be able to provide a replacement while completing repairs. PROCESSOR will be not responsible for any problems with the wireless services provided pursuant to this agreement.

38 **American Express:** I understand that American Express Merchant Account applications are approved separately and solely by American Express. I also understand that all related monetary rates and the extent of services are determined solely by American Express. I understand that by checking the front of this application for American Express, I may be charged a fee. I also understand and accept that I shall hold USMS harmless in the event that American Express rejects my application.

## GENERAL TERMS

### Credit and Risk

39 **Chargeback Debit (Chargeback) – Defined.** I understand and accept that for this entire agreement, and for billing and risk use, a Chargeback debit (herein known as a "chargeback") is defined as: When a cardholder initiates a complaint to the Issuer against the Merchant, the complaint is sent to the Acquirer before Chargeback Debit Settlement. I understand and agree that a "stick" count of my chargebacks will be tabulated throughout the month. Chargeback Debit totals may not equate or match up with Chargeback Debit Settlement totals in any given month. (In the case of MasterCard chargeback, this may occur twice on the same case number, if the merchant rebuts the complaint.) Chargeback creation count is used to measure my threshold performance and for

billing of the chargeback fees.

40 **Charged back items and fees.** I understand and accept that as the Merchant of record and a signatory to this Agreement, I, along with the Guarantor, if any, am personally liable for the any and all chargebacks and other branding or regulatory fines or fees that may occur. I agree to remit payment to handle these chargebacks as they occur and do so in accordance with the Merchant Operating Guide. I understand and agree that I will assist USMS, et. al. to mitigate the damages that they have incurred as a result of chargebacks and other branding or regulatory fines or fees. This shall in no way be interpreted to limit USMS' ability to pursue legal action against me or the Guarantor, if any, for any amounts due to it under this section.

41 **Risk and Additional Data:** I agree that USMS may ask for additional data, including but not limited to, personal and business financials, invoices, signed receipts, and any other documents that are deemed necessary to prevent or mitigate any substantial risk or loss to USMS. Furthermore, I agree that when necessary, USMS may ask my customers to validate charges made on my Merchant Account at any time. I also agree to a Reserve or holdback requirement, if one should arise, **and this is an explicit authorization for USMS to establish a reserve account under the terms of the Reserve Addendum.** USMS has the discretion to establish a reserve account under the terms of the Reserve Addendum at any time if in its sole discretion USMS believes it prudent to do so. This situation may arise for a number of reasons, which include but are not limited to, no credit history, insufficient credit, bad credit, high monthly volume or high average ticket price at which time the bank may require a holdback amount or my account is deemed "High Risk".

42 **Default Fees:** I understand and agree that USMS, at their sole discretion, may place my Merchant Account in a "High Risk Status" or "Risk Hold Status" and apply defaults values that supersede the processing fees so listed on the Merchant Application. A Default Fee of up to 3% may be apply to all of my tiered (Qualified, Mid-qualified, Non-qualified) or interchange plus rates, in addition to my current rates. This status may be triggered by the following items, including, but not limited to, (a) Merchant did not disclose additional Merchant Account(s); (b) Exceeds without written approval \$10,000 or 10% over the listed Approved Total Monthly Volume (TMV), whichever is less; (c) >0.75% dollar volume of Charge Backs or Retrievals; (d) Refunds or Credits back to customers on or above 5% of the TMV (e) 2 or more ACH Rejects; (f) Authorized Maximum Ticket Size exceeded; (g) Improper disclosure of business type, products or services; (h) Fraudulent or Illegal business practices; (i) Unauthorized Pre-Paid Services or Future Delivery transactions where services are not delivered within 30 days; (j) Exceeding approved total monthly processing volume by >1% (k) Changes to the products sold and/or changes to the Merchant's URL (Website) without notification and approval from USMS. I understand and agree that USMS has the right to assess the above fee from the date of the first infraction of one or more of the infractions listed above.

43 **FUTURE DELIVERY OR PRE-PAID SERVICES:** I UNDERSTAND AND AGREE THAT UNLESS I HAVE WRITTEN AUTHORIZATION FROM USMS, I WILL NOT PROCESS THROUGH ANY MEANS ANY TRANSACTIONS THAT ARE FOR PRODUCTS OR SERVICES THAT ARE DELIVERED OUTSIDE OF THIRTY (30) DAYS OF THE FROM THE DATE OF THE TRANSACTION(S). I UNDERSTAND AND AGREE THAT SHOULD I MAKE THESE TRANSACTIONS, OR ALLOW THEM TO BE MADE ON MY MERCHANT ACCOUNT, I MAY BE ASKED TO CREDIT OR REFUND MY CUSTOMER THE TRANSACTION, AND/OR MY ACCOUNT MAY BE PLACED ON "RISK HOLD," AND/OR ALL FUNDS HELD INDEFINITELY, INCUR DEFAULT FEES (§42), AND/OR MY MERCHANT ACCOUNT MAY TERMINATED AND I MAY BE PLACED ON THE TERMINATED MERCHANT FILE (TMF).

44 **Indemnification:** To the extent permitted by law, I shall indemnify USMS, the non-bank Acquirer and the Bank, Defend them and hold them harmless from any and all claims, actions, proceedings, expenses, damages, consequential damages and liabilities, including attorney's fees, arising in connection with the equipment, or software, or any Internet Processing Package, including without limitation, its manufacture, selection, purchase, delivery, installation, misrepresentations, promises made, possession, use, operation or return. I understand and accept that USMS and its affiliates are not responsible for the success or failure of my business, or the success or failure of my on-line site, if I have one. Moreover, I understand that while

USMS in its discretion may elect to repay charge backs on my behalf, I will remain fully liable for the amounts repaid by USMS, along with other charged back items and fees under this Agreement, and shall indemnify USMS accordingly consistent with this Agreement.

45 **Direct Deposit Accounts (DDA):** I, the Merchant agree to inform you of any changes to my DDA by use of the proper DDA change form. I agree to inform you if my DDA is under the control or use of a third party and will disclose the Name, address and phone number of such person or entity and their relationship to you. I certify that the DDA form is correct and I hold USMS harmless as per § 44.

46 **Drafting:** I, the Merchant, agree that no provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties, and therefore any ambiguity or uncertainty shall be interpreted accordingly.

47 **Section Headings:** I agree that the section headings contained in this Agreement are for reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

48 **Ownership:** I agree that the equipment that I purchased or leased is my responsibility. Any and all disputes with regards to the lease will be handled by me directly with the leasing company and I will hold US Merchant Systems, LLC. harmless in such an event.

49 **Absolute Guarantee:** I understand and accept that by signing the Merchant Application document, I whether an owner or shareholder, personally guarantee and warrant all sums due or the settlement of any legal action taken against the business entity so listed on this document, the payment of which may be done by automatic debit from any and/or all of my accounts.

50 **Assignability:** I understand and agree that this contract or accompanying contracts as they relate to the Merchant Operating Guide and Merchant Application, and including, but limited to, the Internet Gateway License, or Point of Sale Equipment, or leasing service, inclusive of all their terms, conditions and Merchant obligations may be assigned to another business entity, trust, individual or financial institution, only at the sole discretion of USMS. Such aforementioned potential assignment is for the benefit of merchant and may facilitate efficient processing of all billing processes. Such assignment, will inure to such third party entity or financial institution all the benefits derived from such contract.

51 **Prevailing Party Remedies:** I the Merchant understand and agree that in the event this agreement is involved in any dispute, the non-prevailing party will pay all attorneys' fees and courts cost.

52 **Force Majeure:** I agree that USMS will not be liable for any loss, expense or cost incurred by me, resulting from US Merchant Systems, LLC.'s failure to perform under this agreement due to causes beyond USMS control, including but not limited to war, fire, flooding, explosions, acts of God, power failures, Government priorities, labor stoppage, ill employees, supplier failure or delay, civil disorder, breakdown or malfunction of utilities, etc., provided that USMS shall take all reasonable, practical, and necessary steps in such an event or events to affect prompt resumption of performance herein.

53 **Severability:** Any finding by a court of competent jurisdiction of the invalidity of any part of this agreement shall not affect the validity of any of the remaining provisions of this agreement.

54 **Consumer Credit Reporting:** I the Merchant authorize USMS to confirm and verify all information provided by Merchant on this or other accompanying applications or forms, through the use of credit bureaus/reporting agencies, or any other verification procedure available to ensure the accuracy of the information stated herein, for the purposes of assessing the Merchant's credit status.

55 **Governing Law and Jurisdiction:** This agreement shall be governed by, interpreted and construed in all respects in accordance with and under the laws of the State of California. The Merchant and the Guarantor hereby irrevocably and unconditionally agree that all claims with respect to such action or proceeding may only be heard in a court located in the County of Alameda, State of California. Merchant and Guarantor hereto irrevocably and unconditionally waive any forum non-conveniens objection that either of them may have to suit arising out of or relating to this Agreement being venued in the County of Alameda, State of California.

56 **Fee Schedule:** Fees are clearly listed on the Merchant

Application and I have thoroughly read and understood them, and agree to them. Additional fees are referenced in the Business Agreement. Specifically, § 6 (Insufficient Funds), § 8 (Responsibilities, Profitability, Fees and other Costs: Errors or Omissions on Application or in charges made), § 13 (PCI DSS & Account Data Compromise Events), § 24 (Cancellations – Breach of Contract), § 26 (Internet Gateway Fee), § 28 (Restocking Fee), § 31 (Merchant Terminals; Security Lockdown), § 36 (Loaners), § 42 (Default Fees), and § 3 of the Equipment Placement Agreement, all contain important fee information. I, the Merchant, understand that it is my responsibility to review these fees and communicate and misunderstandings or questions to USMS prior to signing my Merchant Application.

## RESERVE ACKNOWLEDGEMENT

By signing the Merchant Application, I, the Merchant, understand and agree that upon underwriting the account, US Merchant Systems *may* impose a reserve based on the terms outlined below. The terms below are for informational purposes only, and in the event that a reserve must be established, I will be given a separate addendum to sign that contains the terms and conditions of the reserve account.

**Reserve Account Required to Mitigate Financial Risk.** I, the Merchant, understand and agree that after careful review of the financial risks associated with my business and method of processing by the US Merchant Systems Underwriting Department, I may be required to establish a reserve account based on a percentage of the monthly dollar amount processed in bankcard transactions. This account is established for the sole purpose of being used only when the direct demand account (DDA) is unable to satisfy any obligation arising out of this Agreement. I understand and agree that I must maintain my DDA in such a manner so that it can fulfill all obligations due hereunder. In the event my DDA is unable to satisfy any obligation due to insufficient funds, closure, freezing, default, or any other reason, my reserve account shall be debited for any obligation arising hereunder, including but not limited to any ACH Reject fees, Charge-Back Fees, Default fees, and any other fees not herein listed. I understand and acknowledge that USMS shall have a security interest in my reserve account, and that I will not hinder my DDA's ability to satisfy all obligations under this Agreement. Any failure of my DDA to satisfy its obligations under this Agreement shall be automatically considered a breach of this Agreement.

Financial risks include, but are not limited to derogatory or insufficient consumer credit reporting, high-risk business type or MCC or business model, history of excessive charge-backs and status of business financials.

**In the event that USMS authorizes a release of reserve funds to your DDA account. I understand that it is my responsibility to check and double check that the proper DDA account is being used and that I, understand and agree to hold USMS harmless per §8 of this agreement, if in fact funds are transferred to a different DDA and the funds become unrecoverable.**

I acknowledge that it is US Merchant Systems intention to work with every merchant in an effort to mitigate the inherent financial risk associated with bankcard transaction processing. The establishment of a reserve account will allow my business to process credit card transactions in a safe and prudent manner.

By signing the Merchant Application, I understand and agree to the following explanation of reserve options:

**Term of Active Reserve Account.** Reserves are typically held for as long as the merchant account is live and it is possible that a reserve may be imposed instead. Should the merchant close the account, reserves will be held in a non-interest bearing account for the term of up to 270 days. After a period of six months the merchant may request that the account be reviewed for a possible release of any funds held, the release of which will be at the sole discretion of USMS.

**Amount and Percentages to Reserves.** US Merchant Systems Underwriting Department may recommend that a certain amount is required as an up-front deposit into a reserve account in order to activate the merchant account, and that a percentage of monthly bankcard transaction volume will be deposited into the reserve account. A merchant may request a release of part or all of the reserve. After careful credit analysis of the risk exposure to USMS, USMS has the sole discretion of the decision to be made.

**I understand that I must thoroughly review the Reserve Addendum if a reserve is necessary for my account.**

## EQUIPMENT PLACEMENT AGREEMENT

1 Merchant understands and agrees that the "Equipment" is the property of USMS. Merchant agrees that in order to return the Equipment at any time, Merchant shall obtain a Return Merchandise Authorization (RMA) number from USMS by fax or email, and Merchant shall pay all costs of packaging, shipping and insuring Equipment.

2 Upon the termination of the Merchant Processing Agreement, which includes, but is not limited to, the expiration of the initial term or renewal terms without any intent to renew or continue the business relationship, Merchant may obtain an RMA and return the Equipment within 10 business days. If merchant fails to return the Equipment within 10 business days, USMS, at its sole and absolute discretion may charge Merchant the full replacement value of the unreturned Equipment, and consider the equipment as purchased by Merchant. Merchant agrees that in the event USMS does not receive the Equipment on time and USMS bills or collects payment from Merchant, USMS has no obligation thereafter to accept equipment or refund amounts paid for purchase of Equipment.

3 In the event Merchant does not fulfill or comply with the terms of the Merchant Processing Agreement, Merchant agrees to the following: A) Merchant may return Equipment and allow USMS to bill Merchant as follows: 75% of the replacement value of Equipment if Merchant's termination of the Agreement occurs within the first two years, and 50% of the replacement value of Equipment if termination occurs within the third year or any renewal terms of the Merchant Processing agreement between the parties; or B) Merchant may keep the Equipment and be billed the full replacement value; or C) If Merchant fails to return the Equipment within a 10 business day period from the effective date of Merchant's termination, USMS shall bill Merchant 100% of the replacement value of Equipment with same terms to apply to such purchase by Merchant as those stated in "B" above. Merchant agrees that the full replacement value of equipment is as follows: \$600 for each terminal, \$300 for each PIN Pad, \$500 for each Check Reader, \$149 for each Pay Saber Unit and fair market retail value of any additional items provided to Merchant under this agreement. Merchant agrees that all replacement values for Equipment are those that are stated herein and all percentages shall be computed therefrom.

4 Notwithstanding § 3, Merchant understands and agrees that USMS, at its sole discretion, shall have the right to assess the condition of all Equipment upon return. In the event the Equipment is returned in an inoperable condition, Merchant will be responsible for any damages to the "Equipment" as the result of negligence, misuse, or inoperability or failure. Merchant understands and agrees that USMS shall have the right, at USMS' sole discretion, to reasonably determine the cost of any needed repairs or replacement, whether damages are a result of negligence or abuse or failure during the course of normal wear and tear.

5 Merchant expressly agrees and understands that "Equipment" must be exclusively used in conjunction with the credit card processing and related services covered under Merchant's agreements with USMS. Merchant understands and agrees that USMS, at its sole discretion, shall have the right to determine whether the "Equipment" was used in conjunction with the services.

6 In the event Merchant's processing agreement with USMS is terminated for cause by USMS, Merchant agrees that USMS shall

have the right to charge Merchant for all Equipment as referenced in Section 3 above. Any decision to accept the "Equipment" in lieu of payment in full shall be at the absolute discretion of USMS.

7 In the event funds are due under this agreement from Merchant to USMS, Merchant grants USMS the right to collect by any means, whether cash, credit card, ACH or offset of processing dollars the full amount or any lesser amount as may be available and without prior notice. In the event USMS receives a lesser amount than the total due, Merchant agrees that the remaining amount shall be still due and payable until the full balance is paid.

8 All general provisions of Merchant Processing Agreement and Application between the parties, apply herein. The terms of this Equipment Placement Agreement are additional and separate, and where any terms conflict between this agreement and other agreements between the parties, this agreement shall supersede. This Agreement is not subject to any specific terms of any promotional offers or service guarantees. Any specific waivers or changes of terms in the Merchant Processing Agreement or Application, shall not apply to this Agreement.



# U.S. Merchant Systems LLC MERCHANT BUSINESS AGREEMENT

## CERTIFICATION AND AGREEMENT CONFIRMING RECEIPT OF THE MERCHANT BUSINESS AGREEMENT

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The signers below, as representative(s) of the Merchant to which this agreement applies, attest to receiving and reading the processing agreement and business agreement, et al., and agree to be bound by the terms and conditions contained therein. The signers certify that they have read the documents and understood their contents prior to signing this certification and agreement. All terms and conditions may additionally be found at [www.usms.com/termsconditions](http://www.usms.com/termsconditions).

For all corporations corp. Resolution -- the indicated officer(s) identified below have authorization to execute the merchant processing agreement on behalf of the corporation named in this agreement.

Merchant understands that this agreement shall take effect and becoming binding between the parties upon signing. The Merchant Application to USMS by Merchant is hereby incorporated by reference.

\_\_\_\_\_  
Date (MM/DD/YYYY)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (MM/DD/YYYY)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Signature