



## MERCHANT APPLICATION AND PROCESSING AGREEMENT

ELECTRONIC PAYMENT SYSTEMS, LLC 6472 SOUTH QUEBEC STREET ENGLEWOOD, CO 80111 800-863-5995



135 Crossways Park Drive North, Suite A  
Woodbury, NY 11797  
800-267-2256

### 1. MERCHANT INFORMATION

DBA Name:		Legal Name:	
Physical Business Address:		Mailing Address:	
City, State, Zip:		City, State, Zip:	
DBA Phone:	Cellular Phone:	Manager Contact:	
Fax Number:	Email:	Business Website:	Federal Tax ID #:

### 2. Owner/ Officer Information (must be greater than 50% ownership)

Primary Owner/Officer:	Title:	Owner/Officer Name:	Title:
Social Security #:	Date of Birth:	Social Security #:	Date of Birth:
Residence Address:		Residence Address:	
City, State, Zip:		City, State, Zip:	
Home Phone:	Ownership %:	Home Phone:	Ownership %:

### 3. Business Bank Account Information ( please attach a voided check for verification)

Bank Name:	Bank Phone/contact:	Bank Account Number:	Bank Routing Number (9 digits):
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### 4. Visa/MasterCard & Discover® Network Information

Do you currently Accept Visa, MasterCard and/or Discover® Network? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Terminal Type & Model:	
Current Processor:		Check Reader:	Pin Pad:
Transaction / Ticket Information:		Reprogram Only: <input type="checkbox"/> EPS Ship: <input checked="" type="checkbox"/> Shipment Type:	
Low Ticket: \$ _____	Card Swipe: _____ %	Gateway or Software:	
Average Ticket: \$ _____	Manually Keyed: _____ %	<input type="checkbox"/> Tip Line: <input type="checkbox"/> EBT*(food Stamps): <input checked="" type="checkbox"/> Auto Batch Time: _____ <input type="checkbox"/> Other: *EPS must receive a State License for merchant to accept EBT at their location	
High Ticket: \$ _____	Website: _____ %	Mobile Only: Mobile Phone Carrier: _____ Phone Model: _____	
Average Monthly: \$ _____	Call Center: _____ %		

### Merrick Bank Disclosure

135 Crossways Park Drive North Suite A, Woodbury, NY 11797 800-267-2256

#### Important Bank Responsibilities:

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

#### Important Merchant Responsibilities:

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain Fraud and Chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with Visa Operating Regulations.

**The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the VISA Member-Merrick Bank- is the ultimate authority should the merchant have any problems.**

Owner Signature: **X** Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

### Business Profile Information & Merchant Site Survey

Years In Business:	Length of Current Ownership:	Type of Business/Services Sold:	
How is the product/service delivered:		Location of Business: <input type="checkbox"/> Retail Store Front <input type="checkbox"/> Residence <input type="checkbox"/> Office Building <input type="checkbox"/> Other: _____	
<b>Type of Ownership:</b>  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Other	Major Cross Streets:		
	Area Zoned: <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Industrial		
	Business Premises is: <input type="checkbox"/> Owned by Merchant <input type="checkbox"/> Leased from: _____ Phone: _____		
	Square Footage: <input type="checkbox"/> 0-250 <input type="checkbox"/> 251-500 <input type="checkbox"/> 501-2,000 <input type="checkbox"/> Over 2,000 Photos of Business provided? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain if no: _____		
	Does the inventory and merchandise on the shelves and floor appear to match the type of business? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain if no: _____		
	Further comments by inspector (must be completed):  _____		

### Agent/ISO Acceptance and Information

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

Agent Name: \_\_\_\_\_ Agent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agent Office Contact Number: \_\_\_\_\_ Agent / ISO Office Number: \_\_\_\_\_

**Electronic Debit/Credit Authorization**

Merchant hereby authorizes Bank in accordance with this Agreement to initiate debit/credit entries to merchant's deposit account, as indicated below. This authority is to remain in full force and effect until (a) Bank has received written notification from Merchant of its termination, in such a manner as to afford Bank reasonable opportunity to act on it and (b) all obligations of

Merchant to Bank that have arisen under this agreement have been paid in full. This authorization extends, but is not limited, to such entries to this account which concern discount fees, transaction fees, chargebacks, penalties, service fees, return item fees, lease, rental and purchase charges, check services, warranty services, internet services or other services offered by EPS, involving Point Of Sale ("POS") and processing equipment.

<b>PRICING SCHEDULE A</b>			<b>Credit Card Processing</b>		<b>Pin Based Debit</b>			
Card Discount Rate	_____ %	Offline Debit	_____ %	American Express I.D. _____	Discount Rate	_____ %		
Cost Plus Pricing	_____ %	Per Item Fee	\$ _____ (+ VS/MC/DS cost of interchange)	Annual Fee	\$99.50	Per item Fee	\$. _____	
AUTH. Fee	Retail	MOTO	Monthly Administration	\$10.00	PCI-DSS Compliance	\$99.50		
VS/MC/DS	\$0.25	\$0.35	Minimum Discount Fee*	\$25.00	Warranty Program			
Other	\$0.25	\$0.35	Internet/Gateway Fee*	\$15.00	<input type="checkbox"/> 1 Terminal	\$9.95		
Wireless*	\$0.15	\$0.15	Mobile Monthly Fee*	\$12.95	<input type="checkbox"/> 2 Terminals	\$14.95		
AVS	\$0.04	\$0.04	Wireless Access Fee*	\$25.00	Warranty includes free repair and replacement			
Voice Auth. Set Up	\$4.95	Charge Back Fee	\$25.00					
Voice Auth.*	\$0.95	Retrieval Fee	\$12.00					

\*Some fees above may or may not apply due to the type of account and terminal or gateway you will use to process transactions. If you add additional terminals or programs these fees may come into effect. When accepting cards a surcharge of up to 1.75% applied to all transactions which fail to qualify for Visa MasterCard electronic data capture interchange requirements. If applying for a Cost Plus account, fees quotes are in addition to VS/MC/DS cost of interchange. Please review your merchant processing agreement for additional information on the fees listed under pricing schedule A. If using mobile, each additional phone added has an additional \$5.95 monthly fee assessed.

<b>EZ Payment Plan and Single Check Conversion Pricing</b>				<b>Additional Products and Services</b>	<b>Please Initial &gt;</b>		
A Registration and Set up fee of \$320.00 is due at time of signing.				Fees to merchants as follows:			
Monthly Admin Fee	\$10.00	Monthly Minimum	\$25.00	<input type="checkbox"/> <b>Single Check Conversion without guarantee</b> will allow you to submit your checks through the ElectCheck system and have the funds automatically debited from your customers account and deposited in to your business account. <u>Per check fee \$0.59</u>			
				% Per Check	Per Check Fee	<input type="checkbox"/> <b>Access Now</b> will develop a custom website template for your business, allowing you full access to make changes, and promote your business, with a free 30 day trial period. Choose from the following:	
				\$1.00		<input type="checkbox"/> 1 Page website \$9.95/mo	<input type="checkbox"/> 3 Page website \$19.95/mo
				\$0.25		<input type="checkbox"/> 5 Page Website \$29.95/mo	
An account set up fee of \$50.00 will be debited from the first check in the series when multiple checks are used in a single transaction. Fee payment not otherwise covered in this Agreement shall be debited from merchants account on or about the 5 <sup>th</sup> of each month for activity in the prior calendar month. An annual fee of \$99.50 is billed each year regardless of time of enrollment and cannot be waived or refunded. When applicable, in consideration for the granting of the license and use of the software, licensee agrees to pay developer a recurring monthly gateway fee of \$19.95 of the term of this agreement and any subsequent renewals.							

<b>PCI-DSS Data</b>						
Does Merchant use an independent servicer that stores, maintains, or transmits cardholder information:				<input type="checkbox"/> YES	<input type="checkbox"/> NO	If Yes please provide the following:
Name:				Phone Number / Contact:		
Does the merchant use:	Software Type:			Terminal Type:		
X	Merchant Signature	Printed Name	Date	X	Merchant Signature	Printed Name

<b>PERSONAL GUARANTEE AND ACCEPTANCE</b>						
The undersigned personally, and in his or her capacity of and for any named entity he/she represent, unconditionally guarantees the Bank and Electronic Payment Systems, LLC (EPS) the performance of this Agreement including by not limited to: payment of all sums due and owing; adherence to all terms and conditions of this agreement and any attachments hereto; and agrees to pay any attorney's fees and costs associated with enforcement of the terms, conditions, and agreements contained herein. Bank and/or EPS shall not be required to first proceed against Merchant for enforce or see any other remedy before proceeding against the undersigned. This is a continuing guaranty and shall not be discharged or affected by the death or the undersigned, shall bind the heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Bank or EPS. The terms of this guaranty shall be for the duration of the Merchant Processing Agreement and all attachments thereto and shall guarantee all obligations which may arise or accrue during the terms thereof. Enforcement may be sought subsequent to any termination.						
X	Personal Guarantor (No Title)			X	Personal Guarantor (No Title)	

The undersigned personally, and in his or her capacity of and for any named entity herein represents and warrants that all information provided by Merchant in the Merchant Application and Processing Agreement, and if elected as a service, the EPS 90 Application and Purchase Agreement, and any other documents thereto, is true and correct. Also, the undersigned authorizes the Bank and/or EPS or its representative to investigate the credit of each person and/or entity listed on the Merchant Application and represents that he/she has the authority to provide such information. <b>MERCHANT HEREBY AGREES AND ACCEPTS ALL TERMS AND CONDITIONS CONTAINED HEREIN AND OUTLINED IN THE ARTICLES 1.01 THRU 3.14(L) and articles 1-7 of the MERCHANT APPLICATION RESPECTIVELY FOR THE MERCHANT PROCESSING AGREEMENT, AND IF ELECTED AS A SERVICE, ARTICLES 1 THRU 8(b) RESPECTIVELY OF THE ARTICLES, TERMS AND CONDITIONS OF THE EZ PAYMENT PLAN APPLICATION AND PURCHASE AGREEMENT. FURTHERMORE, MERCHANT ACKNOWLEDGES RECEIPT OF A PHYSICAL COPY OF THIS AGREEMENT WHICH CONTAINS THE AFOREMENTIONED ARTICLES AND OTHER TERMS AND CONDITIONS THAT GOVERN THIS AGREEMENT, INCLUDING THE TWO (2) YEAR PROCESSING TERM FOUND IN SECTION 3.05 OF THE TERMS AND CONDITIONS.</b>						
IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.						
X	Merchants Signature	Printed name and Title	Date	X	Merchants Signature	Printed name and Title

<b>FOR OFFICE USE ONLY</b>						
Accepted by Merrick Bank * Agent Relations* South Jordan, UT 84095 * 303.221.2510				Accepted by Electronic Payment Systems, LLC * Englewood, CO 80111 * 800.863.5995		
By	Title			By	Title	

In consideration of the mutual covenants and agreements herein Merrick 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

##### 1.01 Honoring Integrated Card Solutions

- (a) Merchant shall not withhold or limit all valid cards of the type(s) made available for processing by EPS when properly presented as payment by customers in connection with bona fide, legitimate business transactions. 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 Integrated Card Solutions 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 (Discounts in payment for cash, however, are permitted).
- (c) Merchant shall not establish minimum or maximum transaction amounts.
- (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"), Discover® Network rules and regulations and is permitted by the law of the state in which the transaction takes place, for example, in mail order transactions.
- (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.

##### 1.02 Advertising

- (a) Merchant shall display adequately any advertising or promotional material provided or required by Acquirer to inform the public that Integrated Card Solutions will be honored at Merchant's place of business. Such displays, however, are not required of private clubs and other Merchants that do not deal with the general public, vehicle leasing companies at airport locations, transportation companies subject to government regulation, or other Merchants expressly exempted from this requirement by MasterCard, Visa, and/or Discover Network as applicable.
- (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 associated with Integrated Card Solution only while this Agreement is in effect or until Merchant is notified by Acquirer or any appropriate Integrated Card Solution organization to cease such usage.
- (d) Merchant shall not use the name of any other MasterCard, Visa, and Discover Network rules and regulations concerning the use of service marks and copyrights owned by MasterCard, Visa, and/or Discover Network.
- (e) Merchant shall use the proprietary names and symbols associated with Integrated Card Solution only to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that Acquirer, MasterCard, Visa, or any integrated Card Solution organization endorses Merchant's products or services.
- (f) Merchant shall not refer to MasterCard, Visa, or Discover Network in stating eligibility for its products, services or memberships.

##### 1.03 Card Examination

- (a) Merchant agrees to confirm that user is cardholder.
- (b) Merchant agrees to examine any card security features (such as hologram) included on the Card. 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 the transaction, check the validity date and expiration date of the Card and shall not honor any Card that is not valid or has expired, without prior 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 or pre-authorized transaction, Merchant shall not complete a 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 the card is blank, Merchant shall:
  - (i) review positive identification to determine that user is 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) indicate such positive identification (including any serial numbers and expiration date) on the sales draft if the transaction is a Visa transaction, and if permitted by law. (Such information shall not be recorded for MasterCard transactions); and
  - (iii) require cardholder to sign the signature panel before completing the transaction; and
  - (iv) 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. If the printed number and the embossed number do not match, Merchant shall call the voice authorization number and request a Code 10 operator.

##### 1.04 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 Card, the cardholder does not sign the sales slip, or 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 the event that an authorization is 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) Where authorization is requested for a transaction involving suspicious or unusual circumstances the Merchant shall call and request a "Code 10" authorization from Acquirer's designated authorization center.
- (g) 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.
- (h) If authorization is obtained for the estimated amount of a car rental transaction, Merchant shall disclose to cardholder such amount authorized on the rental date.
- (i) Merchant acknowledges that EPS and/or Bank 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 the Merchant should exceed the "approved" monthly volume, the Merchant acknowledges that additional documentation could be required. Merchant agrees that Bank may upon reasonable grounds suspend the deposit activity for any reasonable period of time required to investigate suspicious or unusual deposit activity. EPS and/or Bank will make good faith efforts to notify Merchant immediately. EPS and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.
- (j) 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.

##### 1.05 Retention and Retrieval of Cards

- Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card
- (a) If Merchant receives a negative response from the account number verification service and until Merchant receives further instruction from Acquirer's designated authorization center.
- (b) While making an authorization request.
- (c) If Merchant is advised to retain the Card in response to an authorization request, or
- (d) Where the embossed account number, indent printed account number, and/or encoded account number do not match or an unexpired Card does not have the appropriate legend on the Card face, or
- (e) if the cardholder has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen
- (f) The retention of the card is not authorized in a Card imposed by this section does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Acquirer harmless from any claim arising from any injury to person or property or other breach of the peace.
- (g) If a recovered card is retained by a law enforcement agency Merchant shall forward a legible copy of the front and back of the card to Acquirer, or other Integrated Card Solution organization as appropriate to support payment of any applicable reward.

##### 1.06 Completing the Transaction Record

- Except as provided below, Merchant agrees to do all or the following when honoring a Card.
- (A) To 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) To obtain the signature of the customer on the sales slip after the transaction amount is identified in the Total column.
- (C) To compare the signature on the sales slip and the signature panel of the Card and have as a photograph of the cardholder to ascertain that the customer is the cardholder and to determine if the photograph and the identification number on the account numbers are not the same or Merchant otherwise questions the validity of the Card, to contact Acquirer's authorization center for instructions.
- (D) To imprint legibly on the sales slip the embossed legends from the Card and from the merchant imprint reader. 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) To 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 terminals, at the time of the transaction.

- (F) For transactions which originate at and are data captured using point-of-transaction terminals. Merchant must include the following information on the cardholder's copy or the sales draft.
  - (i) The cardholder account number
  - (ii) Merchant's name
  - (iii) Merchant's location code or city and state
  - (iv) The amount of the transaction
  - (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 cardholder account number
  - (ii) Merchant's name
  - (iii) the magnetic stripe reading terminal location code or city and state
  - (iv) the amount of the transaction
  - (v) the transaction date

- (h) When the unencoded account number cannot be read from the magnetic stripe. Merchant shall follow normal authorization procedures and complete the approved transaction using a manual imprinter.

##### 1.07 Multiple Transaction Records, Partial Consideration

- (a) Merchant must include on one transaction 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 shall pay a portion of the transaction amount in cash, by check, with any 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,

- (D) the cardholder is using the installment payment option offered in accordance with section 1.08

- (E) Merchant agrees not to divide a single transaction between two or more transaction records to avoid obtaining an authorization

- (F) 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.

##### 1.08 Telephone Order, Mail Orders, Unauthorized Orders and Installment Orders

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

- (i) 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 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) print legibly on the signature line of the sales slip the letter "TO", "MO" or "PO" (Recurring transaction for Visa transaction), as appropriate

- (iii) print the authorization number for MO and TO transactions, authorization number must be obtained no more than seven calendar days prior to the transaction date. Merchant shall agree 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 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 cardholders 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; and
- (vi) Except as provided in Section 1.07, 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 cardholder that he 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 charge;

(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 mall/telephone order merchandise subject to the following conditions

- (i) Merchants 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 the 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) Merchant 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.

(E) in intervals of 30 days or more,

(F) on the anniversary date of the transaction (i.e. the same date each month)

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

(H) An imprint of the card is required whenever card is present.

##### 1.09 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 Card transaction.

##### 1.10 Returns and Adjustments, Credit Slips

(A) If it is worth to any transaction, any merchandise is accepted for return or any services are terminated or canceled, or any price adjustment is allowed by the Merchant, then any involuntary refund 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 adjustment.

(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) 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 inch high and in close proximity to the space provided for the cardholder's signature.

(F) "NO REFUND" For a Merchant which may not accept merchandise in return or exchange and may not issue a refund to a cardholder.

(G) "EXCHANGE ONLY" For a Merchant which may only accept merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original transaction.

(H) IN-STORE CREDIT ONLY" For a Merchant which may accept merchandise in return and deliver 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.

(I) 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 words to appear on the sales slip shall be any special terms of the transaction).

(J) 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 obtained the previous transaction with the cardholder. In no event may the credit exceed the amount of the original transaction.

##### 1.11 Cash Advances, Prepaid Sales, 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 1.08 above.

##### 1.12 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 withholdings.

##### 1.13 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 Merchants 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 their business.

##### 1.14 Disclosure and Storage or Cardholder Account Information

(a) Except as otherwise required by law, Merchant shall not, without the cardholders prior written consent, 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 destroy 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 carbon copies.

(c) Merchant and/or agent of Merchant shall not 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 or any other document that pertains to the sales for which a credit 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 1.12 above. Deposits, when identified by Acquirer, may be held in a reserve account until satisfactory completion of services and/or delivery of good can be verified.

#### ARTICLE II PRESENTMENT PAYMENT AND CHARGE BACK

##### 2.01 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 2.02, "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 MasterCard and Visa, including, but not limited to, any violation resulting in a charge back.

(b) Merchant shall retain 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 or 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) 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 three (3) bank business days after the date of the transaction.

(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 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 3.03.

(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 cardholders consent or the Merchant's action. Merchant may, at its option, pursue payment from the customer in such event though neither than a card transaction.

(g) Merchant is responsible for any transaction that is re-deposited by Acquirer.

(h) Merchant is responsible for any transaction that is re-deposited by Acquirer.

(i) Merchant is responsible for any transaction that is re-deposited by Acquirer.

(j) Merchant is responsible for any transaction that is re-deposited by Acquirer.

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(xx) Merchant is responsible for

#### 2.04 Prohibited Payment

Merchant agrees that Acquirer has the sole right to receive payments on any accepted transaction record as long as:  
(a) Acquirer has paid Merchant the amount represented by the transaction record less the discount and fees; and  
(b) Acquirer has not charged such transaction record back to Merchant unless specifically authorized in writing by Acquirer, Merchant agrees not to make or attempt to make any collections on any transaction record Merchant agrees to hold in trust for Acquirer any payment Merchant receives or all or part of the amount of any accepted transaction record, and promptly to deliver the same in kind to Acquirer as soon received, together with the cardholder's name and account number and any correspondence accompanying the payment.

#### 2.05 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 on or for which prior credit authorization was required and prior credit authorization was not obtained, or a valid authorization number is not correctly 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 Merchants ordinary course of business or is being conducted in an illegal manner, or is being conducted in a manner that is deceptive, inaccurate, or unfair for any reason;  
(x) The transaction record arises from a mail or telephone order transaction which the cardholder disputes entering into or authorizing, or which involves an account number that never existed or that never existed and has not expired; and  
(xi) Merchant fails to provide any sales slip or credit slip to Acquirer in accordance with Section 3.01 of this Agreement;  
(xii) Any other Merchant transaction charged back to Acquirer for whatever reason pursuant to Visa or MasterCard 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

##### 3.01 Records

- (a) Merchant shall for Visa, MasterCard, and Discover Network 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 three (3) years from such date legible microfilm 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 processing account for said location(s).

##### 3.02 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 the account(s) or merchant(s) account(s).  
(b) For purposes or retrieval of records Merchant must retain sales 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, and  
(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.

##### 3.03 Disputes With Cardholder: Indemnification

All disputes between Merchant and any cardholder relating to any Card transaction shall be settled between Merchant and such cardholder. Merchant shall indemnify and hold harmless from damages, liabilities, losses, and expenditures (including reasonable attorney's fees and other costs of defense) relating to or arising out of any such Card transaction and from Merchant's failure to comply with any of its obligations under this Agreement.

##### 3.04 Executive Chargeback's and/or Retrievals

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

##### 3.05 Terms, Termination and Combined 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 2.03 Insecurity or if EPS discovers any illegal activity (including but not limited to EPS's own illegal activity) on the Merchant's 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 3.05 (c) above, Merchant will be subject to an early termination fee of \$95 plus the standard fees associated with the Processing Agreement for the amount of Months remaining until the completion of the full term.  
(e) Upon the effective date of any such termination, Merchant's rights hereunder to make Card transactions, to deposit transaction records with Acquirer and to use sales slip forms, credit slip forms, promotional material, and any other items provided by Acquirer hereunder shall cease, but Merchant's obligations in connection with any transaction record accepted by Acquirer (whether before or after such termination), including without limitation Merchant's chargeback obligations, shall survive such termination.  
(f) Merchant expressly acknowledges that a Combine Terminated Merchant File (CTMF) is maintained by MasterCard containing information on Merchants terminated for one or more reasons specified in the MasterCard operating rules and regulations. Such reasons generally include, but are not limited to fraud, counterfeit card, unauthorized transactions, excessive chargebacks, violations of Merchant Agreement or highly suspect activity. Merchant acknowledges that Acquirer is required to report the Merchant business name and the names of its principals to the CTMF when Merchant is terminated due to one or more of the foregoing reasons. Merchant expressly agrees and consents to such reporting by Acquirer in the event of the termination of this Agreement due to one or more such reasons directly impacting Merchants obligations under this Agreement. Merchant may be required to make any actions required in order to comply with and perfect the security interest under this paragraph. 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 now or hereafter owed Merchant by Acquirer and/or EPS without notice or demand of any kind.

- (g) This Agreement shall become effective upon acceptance by Bank. Any party may terminate this Agreement at any time with or without cause by providing written notice to the other parties. However, if Merchant terminates this Agreement, Bank and EPS shall have thirty (30) days from date of receipt of the notice to delete Merchant's account during which time Merchant shall remain liable for all fees and charges, including any monthly minimum processing charge. Bank or EPS may terminate this Agreement immediately without prior notice if:

- (i) either party has reason to believe that fraudulent Card Transactions or other activity prohibited by this agreement is occurring at any Merchant location, in which case such action is taken to prevent loss to Bank, EPS, or Card issuers;  
(ii) there is a significant change in any Integrated Card Solutions security reporting, or (iv) Bank's Merchant Acceptance Criteria changes. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination hereof.

##### 3.06 Limitation of Liability

Acquirer's liability to Merchant with respect to any Card transaction shall not exceed the amount represented by the transaction less any applicable discount, and Acquirer shall in no event be liable for any incidental or consequential damages whatsoever. Acquirer is not liable to Merchant for errors made by account number verification service or for Merchant's failure to contact same.

##### 3.07 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 or 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 3.4(b).

- (a) An Annual fee of \$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.

##### 3.08 Compliance with Law

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

##### 3.09 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 statutory judicial decision, MasterCard, Visa, or Discover Network rule or regulation, or the regulation or ruling of any federal agency having jurisdiction over Acquirer or Merchant.

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

Merchant may engage an independent Sales Organization (ISO) or Member Service Provider (MSP) operating under applicable Visa, MasterCard, Discover Network rules and regulations who is an independent contractor and not an agent of Acquirer.

- (i) No ISO or MSP has authority to execute this Agreement on Acquirer's behalf or to alter the terms hereof without Acquirer prior written approval; and  
(ii) Representations made by Independent Sales Organizations, Member Service Providers, contractors or their employees, co-workers, 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 the 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 recourse, right, claim or claim's Whatsoever against EPS, Acquirer, Integrated Card Solution, or any of their affiliates or entities.

##### 3.11 Security Interest - Set-Off

To secure all obligations of Merchant to Acquirer and/or EPS arising from this Agreement and supporting Agreements to this application, Merchant hereby grants Acquirer and/or EPS a first lien security interest on all deposits regardless of source, to Merchant's accounts, whether known or unknown at the time of application, and all proceeds of said deposits. Acquirer and/or EPS's rights under said security interest may be exercised by Acquirer and/or EPS without notice of demand or by giving notice of withdrawal or freezing said account upon Acquirer and/or EPS's reasonable determination that a breach of any obligation of Merchant under this Agreement or another supporting Agreement, has occurred or for any other reason. The security interest in section 3.20, Exercise of Powers and EPS' rights pursuant to this security interest shall be in addition to any other rights of Acquirer and/or EPS under this Agreement. Acquirer and/or EPS shall also have the right to require Merchant to furnish such other and different security as Acquirer and/or EPS shall deem appropriate in its sole discretion in order to secure Merchants obligations under this Agreement. Merchant agrees to execute any documents or take any actions required in order to comply with and perfect the security interest under this paragraph. 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 prevent and detect money laundering activities by any activity that facilitates money laundering or the funding of terrorist and other邪惡 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 purpose 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 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 [www.VISA.COM](http://www.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 Integrated Card Solution 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 incur 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 continuance or 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 shall be governed and construed in accordance with the laws of the State of Colorado. Merchant agrees that the exclusive venue for any and all proceedings relating to this Agreement shall be a court located in Colorado.  
(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 such dispute will be decided by 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 other disputes not covered or part of 3.14 (f) above, 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 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 addresses set forth above, or, where applicable, to such address as may be specifically designated by either party.  
(k) No party may assign its rights or obligations under this Agreement except as may be specifically provided for herein.  
(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) A 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 Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

##### NOTICES: EPS

6472 SOUTH QUEBEC STREET

ENGLEWOOD, CO 80111

EZ Payment Plan ARTICLES, TERMS AND CONDITIONS

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

For the sake of this Agreement, FisPay LLC d/b/a EZ Payment Plan 6472 S. Quebec Street, Englewood, CO 80111 and Merchant listed, if approved by EPS, 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 EPS 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 ONE (1) year 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 ONE (1) years terms in perpetuity unless canceled in accordance with the provision 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.  
(b) Merchant shall assign all pending conversion authorizations to EZ Payment Plan to the extent they are required to satisfy any fees that may be due to EZ Payment Plan. Once all fees due to EZ Payment Plan are paid, Merchant shall assign any remaining conversion proceeds will be distributed to Merchant ninety (90) days after the posting of the last delayed presentation.  
(c) Termination Upon Breach

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.

##### 3. EZ Payment Plan - Credit Check Easy Payment Plan Conversion - With Guarantee

EZ Payment Plan convert and/or commercially imprinted personal checks received by Merchant from customers through the EZ Payment Plan – Online Software and purchase all approved commercially imprinted personal transactions presented for payment of goods and/or services germane to the Standard Industry Code (SIC Code) that best describes your business that is 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.  
(b) Merchant and Customer have fully completed and signed at the time of sale an "in-house financing" form.  
(c) The Merchant has not accepted subsequent payment in any form for dishonest check instrument in full or part including but not limited to cash, check, service performed, trade, barter or return goods dishonest 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 part, multi-part, signature irregular, EZ Payment Plan declined, previously bank returned, stop, stop, temporary, stolen, or cash, and check instruments known at time of sale as 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 of 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) 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 similar regulations in any country or continent of merchant services.

(l) Any or all guaranteed check instruments may be charged back in the event of 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.

(m) Merchant shall not return for any reason that recipient TEN-(10)% portion 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.

(n) Merchant guarantees the availability of funds to cover potential chargebacks.

(o) 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 similar regulations in any country or continent of merchant services.

(p) Any or all guaranteed check instruments may be charged back in the event of 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.

(q) Merchant shall not return for any reason that recipient TEN-(10)% portion 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.

(r) 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 present and shall deliver such check instrument to EZ Payment Plan immediately upon request.

(s) In the event of termination of this Agreement by either party funds due Merchant may be held or debited from Merchant's account to cover potential chargebacks.

(t) 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 similar regulations in any country or continent of merchant services.

(u) Any or all guaranteed check instruments may be charged back in the event of 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.

(v) 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.

(w) 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 of present.

(x) Deposits made will be total check instrument amount minus fees due for the conversion service and prior chargebacks if any.

(y) 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.

(z) 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.

(aa) MERCHANT MEETS AND HAS RECEIVED WHAT THEY DEEMED TO BE ADEQUATE INFORMATION AS TO THE EXTENT THEY DESIRE TO DO SO. MERCHANT ACKNOWLEDGES THAT THEY ARE ENTERING INTO A LEGAL AND BINDING AGREEMENT AND ARE FULLY AWARDED ALL RAMIFICATIONS THEREIN.

(bb) By signing 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. 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

6472 SOUTH QUEBEC STREET

ENGLEWOOD, CO 80111

VER VI 20120727-01

X \_\_\_\_\_ By Initialling Here You Are Confirming Acceptance and Receipt of This Agreement and a Copy Thereof

# **LEASE VERIFICATION AND STATEMENT OF UNDERSTANDING**

Congratulations on your decision to increase your business with the use of the programs and processing equipment provided under the attached EQUIPMENT LEASE AGREEMENT and MERCHANT AGREEMENTS. In the spirit of full disclosure we would like you as the lessee to verify that you have been informed of some of the important points of the products and the lease agreement.

\_\_\_\_\_ I am entering these Agreements of my own free will with the intent to use the products and services to increase my business sales/revenue. I have not been guaranteed any increase in business by anyone but I do understand the power of the products and services I am taking on. Everything I am relying on to make this decision is covered in the written Agreements.

\_\_\_\_\_ I understand/agree that the lease is for 48 months, is NON-CANCELABLE, and the payment is \$\_\_\_\_\_. I also understand that the aforementioned payment amount does not include the applicable tax amount for my locale and it does not include the insurance waiver if I do not have the leasing company on my business insurance policy as a loss-payee.

\_\_\_\_\_ I understand/agree that I have multiple Agreements and they are from SEPARATE COMPANIES. I know I can always contact my Agent or Electronic Payment Systems (EPS) directly for any service or support issues I have, but the leasing company is separate from the service providers.

\_\_\_\_\_ I understand/agree that my first and last payments will be debited electronically from my account within TEN (10) days from today, and my first regular payment will be withdrawn roughly 30 days from today.

## **IF YOU HAVE THE EPS90 EZ-PAYMENT PROGRAM**

\_\_\_\_\_ I understand/agree that I will be paid within 72 hours of the date designated by myself and my customer for the electronic debit to the customers' account and that I will receive no money from EZ Payment Plan in advance of the electronic debits.

\_\_\_\_\_ I understand/agree that EZ Payment Plan will cover electronic debits that do not clear as long as I follow all of the instructions, terms, and conditions of the Agreements and my percentage of bad debits does not exceed 10%.

I have not been offered any "trial period," incentive, rebate, buy-out, repurchase, bailout, alternate/offsetting compensation, or promise of return as an inducement to accept the above noted Agreements. I am relying solely on the Agreements to make my decision and I have received copies of all Agreements that are part of this transaction. Furthermore, I am comfortable with the product and its suitability/usability in my business.

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COMPANY NAME

---

GUARANTOR/LESSEE

---

DATE

**1st AMERICAN LEASING** **NON CANCELABLE EQUIPMENT LEASE AGREEMENT**

1st American Leasing  
758 Burton SE  
Grand Rapids, MI 49507  
(888) 884-6111

**LESSEE (NAME & ADDRESS)**

NAME (if corporation, list full corporation name) Account# \_\_\_\_\_  CORPORATION  PARTNERSHIP  PROPRIETORSHIP  L.L.C.  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ LESSEE PHONE# \_\_\_\_\_

EQUIPMENT as used in this lease, "Equipment" is defined as:

Quantity	Manufacturer	Model	Serial Number

LOCATION OF EQUIPMENT

ADDRESS (NO. & STREET, CITY, STATE, ZIP) IF DIFFERENT FROM ABOVE.

SCHEDULE OF PAYMENTS	PAYABLE AT SIGNING OF THE LEASE
BASIC MONTHLY LEASE PAYMENT \$ _____ FOR ____ MONTH	INITIAL MONTHLY PAYMENT(S)* \$ _____
<b>NO CANCELLATION ALLOWED DURING THE LEASE TERM PLUS APPLICABLE TAXES.</b>	OTHER \$ _____
<b>FIRST AND LAST PAYMENT REQUIRED UPON COMMENCEMENT DATE</b>	TOTAL \$ _____
*WHICH INCLUDES APPLICABLE TAXES WITH FIRST MONTHLY PAYMENT(S)	

**In this Lease Agreement**, the words, "I", "me", "mine", mean the Lessee or parties leasing the Equipment. The words "you", "yours" mean the Lessor. "Equipment" is the item I am leasing and encompasses any combination of tangible assets, rights to access or use services, software, documentation, and manuals, etc. **As part of this lease, I agree:**

- a) to pay you the total amount shown above upon signing this Lease Agreement and I agree to pay all additional Lease payments when due starting with the **Commencement Date**, as defined in this lease;
- b) to authorize you to automatically debit the bank checking account for all charges I incur under this Lease Agreement. It is understood you will debit such charges when they are due so as to avoid the incurrence of late charges. I also understand and agree that automatic debiting of lease charges is required under this Program and should you find it necessary to switch to statement billing due to a failure of automatic debiting, you are authorized to add a \$10.00 per month service charge to my monthly payment amount as reimbursement for your added services and processing expenses;
- c) that, in the event I choose to make any required payment by using a credit card, you are authorized to add a \$5.00 per payment service charge to my payment as reimbursement for you added service and processing expenses;
- d) you and your authorized affiliates are authorized to check my credit and employment history and to provide credit history information to others about your credit with me and that this authorization shall be continuing and non-revocable by me until all rents and charges allowed by the lease are paid in full;
- e) to abide by all the terms of this lease agreement;
- f) to pay the sum of \$5.95 per month, as **Supplemental Assurance**, for the repair or replacement of the leased equipment for any failure or defect of the equipment not covered by the vendor's or manufacturer's warranty, provided said failure or defect of the equipment is not caused by water or liquid damage, power surges or willful or wanton destruction of the equipment. This protection and charge commences on the Commencement Date and shall continue as long as the lease is not in default or I am not in breach of the terms of the lease. I understand that the repair or replacement shall be with comparable equipment at your discretion and that 1st American Leasing shall have no other responsibility or liability. 1st American Leasing reserves the right, at its discretion, to not offer this item;
- g) that I have been informed in writing by you of the Equipment Vendor's identity, and that I may have rights under the purchase agreement between the Vendor and Lessor and I may contact the Vendor for a description of any such rights.

The parties agree that this Agreement shall be governed and interpreted in accordance with the laws of the State of Michigan and, for the purpose of resolving any issue pertaining to the conflict of laws, this Agreement shall be deemed fully and solely executed, performed and/or observed in the State of Michigan. The parties hereto EXPRESSLY CONSENT to personal jurisdiction in the State of Michigan in any action or proceeding brought in any court therein, state or federal, arising from or alleging facts arising from the transaction completed herein. The parties expressly waive any objection to venue in the courts of the State of Michigan and waive, in so far as permitted by law, any right to a trial by jury so that the trial will be by and only to the Court. The parties acknowledged that 1st American Leasing deems this provision essential to its consideration of entering into this lease and would not enter the lease without this provision. CONSENT TO SERVICE OF PROCESS. The Parties agree that any process served for any Court Action or proceeding shall be valid if mailed by certified mail, return change of address.

I have read and agree to the terms which appear on each page of this Lease. I represent that this Equipment is being leased for business and/or professional purposes and I agree that under no circumstances shall this Lease be construed as a consumer contract. I acknowledge a receipt of a copy of this Lease Agreement, with all lease terms filled in, and acknowledge and agree that I shall be deemed to have unconditionally accepted the Equipment you have leased to me under this Lease Agreement on the terms specified. I understand that my promises under this Non Cancelable Equipment Lease Agreement become irrevocable upon the **Commencement Date**, as defined in this agreement, and that the lease commences on that date. I acknowledge that I have read all the terms of this Lease Agreement. I further acknowledge that I understand that the vendor and 1st American Leasing are separate and distinct entities or companies.

LESSEE X \_\_\_\_\_ DATE: \_\_\_\_\_  
SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_ PRINT NAME \_\_\_\_\_ TITLE \_\_\_\_\_  
1st American Leasing \_\_\_\_\_ DATE: \_\_\_\_\_  
BY \_\_\_\_\_ Authorized Signature \_\_\_\_\_

**AGENCY DISCLAIMER- NEITHER VENDOR (SUPPLIER) NOR ANY AGENT OR REPRESENTATIVE OF VENDOR IS AN AGENT OF LESSOR, NOR ARE THEY AUTHORIZED TO WAIVE, MODIFY, OR ALTER ANY TERMS OF THIS LEASE. THEIR REPRESENTATIONS SHALL IN NO WAY AFFECT LESSEE'S OR LESSOR'S RIGHTS AND OBLIGATIONS UNDER THIS LEASE.** **PERSONAL GUARANTY:** To induce you to enter into this Lease, the undersigned unconditionally guarantees to you the prompt payment when due of all of Lessee's obligations to you under the Lease. You shall not be required to proceed against Lessee or the Equipment or to enforce any other remedy before proceeding against the undersigned. The undersigned agrees and/or consents: **a**) to pay all attorney fees and other expenses incurred by you by reason of the Lessee's default; **b**) to waive notice of the acceptance hereof and of all other notices or demands of any kind of which the undersigned may otherwise be entitled; **c**) to any extensions of time or modifications in the amount of payment granted to Lessee; **d**) to the release and/or compromise of any obligations of lessee or any other obligors and guarantors without in any way releasing the undersigned from its obligations hereunder; **e**) to the credit check provisions of this lease; and **f**) to the jurisdiction and venue provisions of this lease.

**THIS IS A CONTINUING GUARANTY.**

Authorized Signature (Personal Guarantor #1 No Title Allowed) \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature (Personal Guarantor #2 No Title Allowed) \_\_\_\_\_ Date \_\_\_\_\_

Witness Signature \_\_\_\_\_ Date \_\_\_\_\_

PRINT NAME \_\_\_\_\_

PRINT NAME \_\_\_\_\_ Date \_\_\_\_\_

PRINT NAME \_\_\_\_\_ Date \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGEMENT AND ACCEPTANCE OF LEASED EQUIPMENT:** I hereby acknowledge receipt of all the Equipment described in the Lease and accept the Equipment after full inspection thereof as satisfactory for all purposes of the Lease. **I acknowledge that my non-cancelable rental obligation under the Lease commences on the Commencement Date.**

LESSEE X: \_\_\_\_\_ By X: \_\_\_\_\_ X: \_\_\_\_\_  
SIGNATURE PRINT NAME TITLE DATE OF DELIVERY ("COMMENCEMENT DATE")

**Additional Lease Terms and Conditions:**

**1. Commencement of Lease - Lease Term:** The "Commencement Date" for this lease shall mean the date the Lessee receives the equipment, or the verification call, if applicable, whichever occurs last. The signed certificate of acknowledgement shall be deemed evidence of receipt of the equipment for all purposes of this lease. The Lease Term will commence on the Commencement Date and shall expire at the end of the number of months indicated above. **End of Lease Term:** At the end of the Lease Term I have the following options: **1**) I can promptly return the Equipment in good condition, except for ordinary wear and tear, to you or to the person and place you indicate, or **2**) I can purchase the Equipment for the fair market value at that time as quoted by you plus any applicable taxes, or **3**) I can extend upon all of the terms and conditions as stated herein for a period of one year from its expiration date without the necessity of the execution of any further instrument or document. I will notify you in writing as to which option I choose at least 60 days but not more than 120 days before the expiration of the Lease. At the end of this additional year I again have available to me the above option 1, 2 and 3. Unless I notify you in writing of which option I chose 60 days prior to the expiration of the Lease Term, I shall be deemed to have chosen option 3 (one year renewal).

**2. Late Payments and Collection Costs:** If I do not make a payment within 10 days of its due date, I must pay you in addition to the payment of a late fee of 15% of the amount past due (but at least \$20.00) for each late payment. Each month the past due payment remains unpaid, an additional late fee in the amount defined will be assessed. I will also pay your actual collection costs. Such collection costs include, but are not limited to charges for collection letters and phone calls.

**3. NO WARRANTIES BY LESSOR.** I represent that to you I have selected the Equipment leased hereunder and I acknowledge that you have not made and make no representations or warranties of any kind or nature, directly or indirectly, express or implied, as to any matter whatsoever, including the suitability of the Equipment, its durability, its condition, and/or its quality; and, as between us.

**4. I LEASE THE EQUIPMENT "AS-IS".** You also disclaim any warranty of merchantability or fitness for use or purpose whether arising by operation of law or otherwise. You and your assignee will not be liable to me or others for any loss damage or expense of any kind or nature caused directly or indirectly by the Equipment however arising, or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto. No representation or warranty as to the Equipment or any other matter by the Vendor or others shall be binding on you, nor shall the breach of such relieve me of, or in any way, affect any of my obligations to you herein. If the Equipment is not satisfactory for any reason, I will make any claim on account thereof solely against the Vendor and I will nevertheless pay you all rent payable under this Lease. You agree to assign to me, solely for the purpose of making and prosecuting any such claim, any rights you may have against the Vendor for breach of warranty or representation respecting the Equipment. Regardless of cause, I will not assert any claim whatsoever against you for loss of anticipatory profits or any other indirect, special or consequential damages. You make no warranty as to the treatment of this Lease for accounting or tax purposes. **Notwithstanding any fees which may be paid by you to Vendor or any agent of Vendor, I understand and agree that neither Vendor nor any agent of Vendor is your agent or is authorized to waive or alter any terms or condition of this Lease.**

**5. NON CANCELABLE LEASE. I CANNOT CANCEL THIS DURING THE TERM HEREOF.** I acknowledge that you will not be bound by any verbal agreements or amendments modifying the terms of this lease.

**6. ASSIGNMENT:** YOU MAY ASSIGN OR TRANSFER THIS LEASE OR YOUR INTEREST IN THE EQUIPMENT, ANY RENTALS OR ANY SUM DUE OR TO BECOME DUE UNDER THIS LEASE WITHOUT NOTICE TO ME. Your assignees or transferees shall have all of your rights powers privileges and remedies but none of your obligations under this Lease and I agree that I will not assert, against any of your assignees or transferees, any defense, counterclaim or offset that I may have against you. I acknowledge that any assignment or transfer made by me shall not materially change Lessee's duties or obligations under this Lease nor materially increase the burdens or risks imposed on me. I agree that you may assign or transfer this Lease or your interest in the Equipment, rentals or other sum due or to become due even if said assignment or transfer could be deemed to materially affect my interests. You may assign this Lease and/or mortgage the Equipment in whole or in part without notice to me, and your assignee or mortgagee may reassign this Lease and/or such mortgage, without notice to me.

**7. EVENT OF DEFAULT.** I WILL BE IN DEFAULT OF THIS LEASE if: **a**) I fail to pay any amount due you within ten (10) days of the due date; **b**) the Equipment becomes involved in any civil or criminal actions or suits or is seized by law enforcement agencies due to my neglect or misconduct; **c**) I or any guarantor of this lease becomes insolvent; **d**) a receiver, trustee, conservator or liquidator is appointed as to all or a substantial portion of my assets, with or without my application or that of a guarantor; **e**) there is filed by or against me or any guarantor of this lease a petition in U.S Bankruptcy Court, **f**) I or any guarantor has made an assignment for the benefit of creditors; **g**) the Equipment is lost, stolen or destroyed; **h**) I fail to return the Equipment at the end of the lease term, if required hereunder; **i**) I fail to perform any other term, covenant or condition of this lease; **j**) or I fail to have sufficient funds in my account for any authorized debit, including personal property taxes owed, at the time said debit is attempted.

**8. REMEDIES.** Upon the occurrence of any event of default by me, and at any time thereafter, you have the right in your sole discretion to exercise one or all of the following remedies to the extent permitted by law: **a**) terminate this lease without giving me notice; **b**) require the immediate payment of all amounts then due plus the unpaid balance of the amounts due for the original or extended term of the lease; **c**) enter the premises where the Equipment is located and take possession of the Equipment, or request that I return the Equipment to you; **d**) re-lease or sell any or all of the Equipment at public or private sale on such terms and notice as you deem reasonable, in which case you will also be entitled to damages; **e**) charge me any amount necessary to put the Equipment in good condition, ordinary wear and tear excepted; **f**) continue to charge me additional monthly lease payments beyond the end of the lease term until I have cured the default; **g**) automatically debit or otherwise charge, without notice to me, any or all of my bank accounts (including but not limited to merchant accounts established pursuant to a credit card processing program), credit cards or other lines of credit which I may maintain with or access by or through you, any state or federally chartered bank or financial institution where I have an account, or any merchant card processing service provider maintains an account on my behalf, for any sum due you under this lease which is not paid when due for any court judgment obtained by you for any amounts

due under the terms of this lease and I HEREBY EXPRESSLY AUTHORIZE ANY SUCH FINANCIAL INSTITUTION to provide you on your request, with any information so requested concerning such accounts or lines of credit, and honor your draft or other debit order on any such account or line of credit; **h**) obtain and share information on my or guarantor's assets, employment, or available credit lines for purposes of collecting monies I owe you; **i**) exercise any other right or remedy which may be available to you under the Uniform Commercial Code or any other applicable law; **j**) pursue all late payments and collection costs, including attorney fees or collection agency fees, as described in this Lease Agreement in the same manner as all other delinquent payments; and **k**) pay to you a fee for breach of contract of \$100.00. I will pay all costs and expenses allowed by law incurred by you associated with the repossession, removal or de-installation of the Equipment for whatever reason, including but not limited to recovery, storage, repair, sale, re-lease or other disposition of the Equipment. I will pay attorneys fees of not less than 25% of the total lease payments, or actual fees, whichever is greater, and all costs incurred in connection with enforcing your rights due to my default, or defending your lease. I agree that I will also pay a fifty dollar (\$50.00) disposition fee if you repossess the Equipment. Each remedy set forth will be considered to be cumulative and in addition to any other remedy set forth herein or otherwise available to you at law or in equity. No express or implied waiver by you of any default shall constitute a waiver of any other or subsequent default by me or a waiver of any of your rights.

**9. Maintenance of Equipment.** I agree to maintain the Equipment in good operating and physical condition at my expense, ordinary wear and tear excepted.

**10. Repayment Terms.** I promise to pay you each Payment due under this Lease Agreement by the date it is due. I Fully Recognize Your Right To Enforce The Lease Free From Any Defenses, Offsets Or Counterclaims.

**11. Buy-Out Option During the Lease Term.** I shall have the option to buy out the Lease during the term of the Lease at the price to be quoted by you at that point in time.

**12. Warranties.** I understand that the Manufacturer may have provided a warranty on the Equipment. I will refer to the owners manual or separate Manufacturers certificate for the actual terms of the warranty. **I understand that you have not given me either express or implied warranties for the equipment I am leasing or other services, access and/or use with the equipment. You have specifically disclaimed any implied warranties at merchantability and/or fitness for any particular use. You will have no liability for indirect, consequential or special damages. I have chosen this specific equipment based on my own judgment and expressly disclaim any reliance upon any statements or representations made by you.** I hereby appoint you as agent to correct any inaccurately described identification numbers of the Equipment.

**13. Equipment Servicing.** **I understand that no servicing of any kind is provided by 1st American Leasing. I am to look to the Dealer/Supplier for any claims, servicing, or warranties, if any. I specifically and unconditionally waive any claim, present or future, against 1st American Leasing, for any failure of equipment, service or disoperation of any kind, whatever, and such failure of service or disoperation is no basis for nonfulfillment of my obligations under this lease.**

**14. Add-On Leases.** Upon my request and subject to your approval, additional leases can be added to this Lease Agreement unless I am in default. Such Add-Ons will be bound by the terms of this Agreement and will identify this Agreement by its Account and/or Lease Number.

**15. Loss or Destruction of the Equipment.** I shall bear the entire risk and be responsible for, loss, theft, damage or destruction of the Equipment from any cause, whatsoever, after my receipt of the Equipment. I will notify you immediately, if the Equipment is lost, destroyed, stolen or taken by any other person. If the Equipment has only been partially damaged, you may require that I have it repaired. If you determine it is not repairable, then it will be considered destroyed.

**16. Insurance.** I will keep the equipment fully insured against loss, destruction, theft or damage and will provide an insurance binder naming you as loss payee.

**17. Appointed Agent.** I hereby irrevocably appoint you as my attorney-in-fact to (a) make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any insurance policy; and (b) sign any UCC-Financing Statements to perfect any and all security interests granted hereunder, and to reflect in the public records that the Equipment is leased to me and owned by you.

**18. Notice.** I will send all notices to you in writing by certified mail to your address on the front page of this Lease. You will send all notices to me at the address listed on this Lease unless I tell you of a change of address.

**19. Changes on Terms of the Lease. This lease explains all the terms and conditions for the use of the Equipment I am leasing.** The terms and conditions may not be changed orally. You and I must both give written approval before any

changes are made.

**20. Assignment.** Without your prior written consent, I will not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest therein, or (b) sub-lease, or lend the Equipment or permit it to be used by anyone other than me or my employees. Subject to the foregoing, this lease inures to the benefit and is binding upon the heirs, legatees, personal representative survivors and assigned of the parties hereto.

**21. Alterations.** I shall not make alterations, additions or improvements to the Equipment without your prior written consent. All additions and improvements made to the Equipment shall belong to you.

**22. Ownership.** The Equipment is, and shall at all times remain, your property and I shall have no right, title, or interest in it except as expressly set forth in this Lease. I will not directly or indirectly create or permit to exist, and will promptly and at my own expense discharge, any lien, charge or encumbrance on the Equipment, except for any lien, charge or encumbrance resulting solely from your acts. You may sign and file any documents, including a copy of this lease, in the public records as necessary to protect your ownership and any security interest in the Equipment. You have provided me with a label stating that you are owner of the Equipment and I agree to affix it to and maintain it on the Equipment.

**23. Use.** I shall use the Equipment in a careful manner and shall comply with all laws relating to its possession, use and maintenance, I will keep the Equipment at the location shown herein above, and shall not remove the Equipment without your written consent.

**24. Indemnity.** To the extent permitted by law I shall indemnify you against, and hold you harmless from, any and all claims, actions, proceedings, expenses, damages and liabilities, including attorney's fees, arising in connection with the Equipment, including without limitation, its manufacture, selection, purchase, delivery, possession, use, operation or return. All indemnities provided under this Agreement shall survive the expiration or termination of this lease.

**25. Taxes.** I shall pay upon invoice from you all license fees, assessments and sales, use, property, excise and other taxes now or hereafter imposed by any governmental body or agency with respect to the Equipment, or delivery, installation, lease, possession and use thereof, excluding, however, all taxes attributable to or measured by your net income, and shall assume the risk of liability arising from or pertaining to the possession or use of the Equipment. I intend the rental payments hereunder to be net to you. In the event you shall pay any such taxes, I HEREBY AUTHORIZE YOU TO AUTO DEDUCT, after notice to me in writing seven (7) days in advance, from any account maintained by me in the same manner as the lease payment is authorized to be deducted. Should you choose not to auto deduct, then I shall promptly reimburse you upon demand, I hereby agree to indemnify you from and against, and agree to defend you against, any and all claims, costs, actions, expenses, (including reasonable attorney fees), damages, obligation, lien and liabilities arising from or pertaining to the possession, manufacture, purchase, lease, operation or use of the Equipment, and the loss or disallowance, in whole or in part, of any benefits of depreciation and/or investment tax credit, or the right to claim the same, pursuant to the Internal Revenue Code, as may be amended, unless such loss or disallowance is due to your failure to have sufficient liability for tax against which to apply such benefits. Change of Name, Billing Address, Vehicle Equipment Is Installed In, Bank Account Change. I will inform you, within one week, of any change in my name, address, billing address, telephone number location of the equipment, or the bank checking account used for ACH debit. You will charge me \$100 if I fail to do so. You are authorized to correct any typographic or spelling errors made on the front of the Lease Agreement regarding my address, telephone numbers or the equipment leased.

**26. Miscellaneous.** If any provision in this lease is invalid, such invalidity shall not affect the validity of the remaining provisions of this Agreement and we agree to substitute for the invalid provision a valid provision which most closely approximates the effect and intent of the invalid provision. Notwithstanding any provision contained herein the maximum amount charged and collected shall not exceed the maximum amount which may be lawfully contracted for, charged and received in the lease transaction as determined by final judgment of a court of competent jurisdiction, including appeals therefrom.

**Vendor's Bill of Sale:** For good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby sells, assigns, transfers and sets over the Equipment to 1st American Leasing per the vendor agreement.

Dated: \_\_\_\_\_

Vendor: \_\_\_\_\_

**I UNDERSTAND THAT:**

- (INITIAL) This Lease is NON CANCELABLE.  
(This lease cannot be canceled by the lessee during the term hereof as stated in the lease contract.)
- (INITIAL) The return of any equipment will not release lessee from full payment of the lease, as stated in the lease contract.
- (INITIAL) This lease is a binding agreement between the lessee and 1st American Leasing. No written or verbal alteration of this lease contract by a sales representative will be accepted as stated in the lease contract.
- (INITIAL) This lease is for \$\_\_\_\_\_ and the payments are for \_\_\_\_\_ months.  
Plus applicable taxes.
- (INITIAL) I have authorized 1st American Leasing to have the monthly payment deducted from my business checking account.
- (INITIAL) I have received a copy of the above mentioned lease agreement and terms and conditions (copy of triplicate form)

**The above must be read and acknowledged by lessee before signed and dated.**

*I have read and understand the above statements and have given my initials that the above is part of my lease with 1st American Leasing. Additionally, I certify that I am the person I represent myself to be as signed below. I also certify that I am authorized to sign these lease documents on the behalf of this company.*

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Company Name

---

Owner/ Authorized Signature

---

Printed Name of Signature

---

Date

**• INSTRUCTIONS FOR VENDOR •**



758 Burton SE Grand Rapids, MI 49507 — 888.884.6111

## APPLICATION

VENDOR NAME \_\_\_\_\_

### BUSINESS INFORMATION

LEGAL BUSINESS NAME \_\_\_\_\_

DBA \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_ FAX \_\_\_\_\_

CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ SOLE PROPRIETORSHIP \_\_\_\_\_

TYPE OF BUSINESS \_\_\_\_\_ AGE OF BUSINESS \_\_\_\_\_ FED ID # \_\_\_\_\_

BANK NAME \_\_\_\_\_ ACCOUNT # \_\_\_\_\_

PHONE # \_\_\_\_\_ CONTACT \_\_\_\_\_

EMAIL \_\_\_\_\_

EQUIPMENT \_\_\_\_\_ TERM (MONTHS) \_\_\_\_\_ PAYMENT AMOUNT \$ \_\_\_\_\_

### PERSONAL INFORMATION

OWNER/ OFFICER \_\_\_\_\_ TITLE \_\_\_\_\_

HOME ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

SOCIAL SECURITY # \_\_\_\_\_ DRIVERS LIC # \_\_\_\_\_

NEAREST RELATIVE \_\_\_\_\_ PHONE # \_\_\_\_\_

NEAREST RELATIVE ADDRESS \_\_\_\_\_

DO YOU OWN YOUR OWN HOME? YES NO IF YES, HOW LONG? \_\_\_\_\_

YEARLY BUSINESS INCOME \_\_\_\_\_ ADDITIONAL INCOME \_\_\_\_\_

EMPLOYER \_\_\_\_\_ YEARS EMPLOYED \_\_\_\_\_

EMAIL \_\_\_\_\_ ALT WORK PHONE # \_\_\_\_\_

I HEREBY CERTIFY THAT ALL OF THE INFORMATION PROVIDED IS TRUE, CORRECT & COMPLETE.  
FOR THIS PURPOSE BOND CORP MAY UTILIZE CREDIT BUREAU'S & REPORTING AGENCIES.

SIGNATURE OF APPLICANT \_\_\_\_\_

DATE \_\_\_\_\_

For any questions or service, please call the signator or any of our staff.

758 BURTON AVENUE SE GRAND RAPIDS, MI 49507 PHONE (888) 884-6111 FAX (616) 243-0530



# WE NEED A FEW MORE DOCUMENTS!



A copy of the merchant's **Business License**



A copy of the merchant's **Drivers License**



A copy of one months **Credit Card Statement**

### Part 3b. Merchant Acknowledgement

<i>Signature of Merchant Executive Officer ↑</i>	<i>Date ↑</i>
<i>Merchant Executive Officer Name ↑</i>	<i>Title ↑</i>
<i>Merchant Company Represented ↑</i>	



# **Establishment Services**

# **AMERICAN EXPRESS® CARD ACCEPTANCE APPLICATION**

**The Shaded Box Will Be Completed By The Sales Agent**

ESA Corporate Name: _____	Sales Agent ID # _____	
Please check one of the following:		
<input type="checkbox"/> American Express Discount Rate* EDC <input type="text"/> . <input type="text"/> <input type="text"/> %	Paper <input type="text"/> <input type="text"/> <input type="text"/> % Home Based <input type="checkbox"/>	<input type="checkbox"/> Monthly Gross Pay (+.03% if \$100K +) or <input type="checkbox"/> Daily Gross Pay
or		
<input type="checkbox"/> American Express Monthly Flat Fee - \$5.00*	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Estimated \$ <input type="text"/> Annual American Express Charge Volume	Estimated \$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Average Ticket	Pay <input type="checkbox"/> 3 Day <input type="checkbox"/> 15 Day <input type="checkbox"/> 30 Day Frequency
Franchise Name: _____		Franchise CAP #: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
* Applies to online statements. Paper statements may be subject to additional fees.		

**What Is Your Name & Address? Please Complete The Following. If You Have Any Questions  
Call 1-800-528-5200**

<b>FULL LEGAL NAME</b> of Corporation, Partnership or Proprietorship <input type="text"/> <input type="text"/>		
<b>Doing Business As (DBA, Trade Name)</b> <input type="text"/> <input type="text"/>		
<b>Address</b> <input type="text"/> <input type="text"/>		
<b>City</b> <input type="text"/> <input type="text"/>	<b>State</b> <input type="text"/> <input type="text"/>	<b>Zip Code</b> <input type="text"/> <input type="text"/> <input type="text"/>
<b>Federal Tax ID (TIN/EIN)</b> <input type="text"/> <b>ACH ABA#</b> <input type="text"/>		
<b>DDA#</b> <input type="text"/>		
<b>URL</b>	<input type="text"/>	
<b>E-mail</b>	<input type="text"/>	
<b>Signer Information</b>		
Name: _____	Title: _____	
Social Security Number: _____		
Home Address: _____		
City: _____	State: _____	Zip: _____
Have You Previously Had An American Express Merchant Account #: <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, Merchant #: _____		
<p>By signing below, I represent that the information I have provided on the Application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this Application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.</p>		
<b>Please Sign Here X</b> _____ Date: _____		