

## MERCHANT APPLICATION

BUSINESS NAMES

MERCHANT PROFILE

Legal Name:		DBA Name:	
Legal Address:		DBA Address (No PO Box):	
Legal City, State, Zip:		DBA City, State, Zip:	
Legal Phone #:	Contact:	DBA Phone # (non-mobile is preferred):	
Cust. Svc. # (if different:)		Website Address:	
Fax #:		Email Address:	
Mail Statement to (must choose one): <input type="radio"/> Legal Address <input type="radio"/> DBA Address			
Type of Ownership <input type="radio"/> Sole Proprietor <input type="radio"/> Partnership <input type="radio"/> Not For Profit <input type="radio"/> Corporation <input type="radio"/> Limited Liability Company			
Type of Goods or Services Sold:		SIC Code:	
Do you currently process credit cards? <input type="radio"/> Yes <input type="radio"/> No If yes, submit three current months' processing statements		Processing Profile:	
Name of current processor:		<input type="radio"/> Retail <input type="radio"/> Restaurant <input type="radio"/> Lodging <input type="radio"/> Service <input type="radio"/> Mail/Telephone Order <input type="radio"/> eCommerce	
Has Merchant or any associated principal disclosed below filed bankruptcy or been subject to any involuntary bankruptcy? <input type="radio"/> No <input type="radio"/> Yes		Card Swiped _____ % Manual Key Entry with Imprint, Card Present with Signature _____ % Mail/Telephone Order _____ % eCommerce _____ % <b>TOTAL MUST EQUAL 100%</b>	
If yes, date filed: _____			
Federal Tax #(9 digits, no dashes):		# of Locations: _____ Years in Business: _____ Years Owned Business: _____	
Bank Name: _____ Routing #: _____		Checking Account #: _____ Bank Phone # (10 digits, no dashes): _____	

## MEMBER BANK INFORMATION

Deutsche Bank AG, c/o Deutsche Card Services GmbH, Kaltenbornweg 1-3, 50679 Cologne, Germany  
+49 221 99577 777 support.deucs@db.com

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## IMPORTANT MEMBER BANK RESPONSIBILITIES

- A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant.
- A Visa Member must be a principal (signer) to the Merchant Agreement.
- The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
- The Visa Member is responsible for and must provide settlement funds to the Merchant.
- The Visa Member is responsible for all funds held in reserve that are derived from the settlement.

- Merchant must ensure compliance with cardholder data security and storage requirements.
- Merchant must maintain fraud and chargebacks below thresholds.
- Merchant must review and understand the terms of the Merchant Agreement.
- Merchant must 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 these specific responsibilities.

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\*\*\*\*\* Payment Card Industry Data Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PADSS") compliant or your merchant must validate PCI DSS compliance (see #1 (b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.

- Have you ever experienced an Account Data Compromise ("ADC")? ☐ Yes ☐ No If yes, provide date of compromise: \_\_\_\_\_
- Have you ever experienced a Cardholder Data Breach ("CDB")? ☐ Yes ☐ No If yes, provide date of compromise: \_\_\_\_\_
- If yes, go to #1(b); If no, go to #2
- Date of compliance, Report on Compliance ("ROC") of Self Assessment Questionnaire ("SAQ"): \_\_\_\_\_
- What is the name of your Qualified Security Assessor ("QSA")? \_\_\_\_\_ or SAQ (circle one): A, B, C, or D
- Date of last scan: \_\_\_\_\_ Approved Scanning Vendor's name: \_\_\_\_\_
- Are you using a "dial-up" terminal or Touch Tone Captuer ("TTC")? ☐ Yes ☐ No
- Do you or your Service Provider(s) received, pass, transmit or store the Full Cardholder Number ("FCN"), electronically? ☐ Yes ☐ No
  - If yes, where is the card data stored? ☐ Merchant's location only ☐ Primary Service Provider ☐ Other Service Provider
  - ☐ Merchant's Headquarters/Corp office only ☐ Both Merchant and Service Provider(s) ☐ All Apply
- What Primary Service Provider/Software Developer did you purchase your POS application from (i.e., software, gateway)? \_\_\_\_\_
  - What is the name of the Service Provider/Software Developer's application? \_\_\_\_\_ Software Version #: \_\_\_\_\_
  - Do your transactions process through any other Service Provider (i.e., web hosting companies, gateways, corporate office)? ☐ Yes ☐ No
  - If yes, name the other Service Provider: \_\_\_\_\_

(Individual Ownership Must be Equal to or Greater than 50%)

1	Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
	Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:
2	Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
	Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:

(To Be Completed by Sales Representative)

Merchant Location: <input type="radio"/> Retail Location with Store Front <input type="radio"/> Office Building <input type="radio"/> Residence <input type="radio"/> Other: _____
Area Zoned <input type="radio"/> Commercial <input type="radio"/> Industrial <input type="radio"/> Residential Is inventory/merchandise amount consistent with type of business? <input type="radio"/> Yes <input type="radio"/> No
If No, explain: _____
The Merchant: <input type="radio"/> Owns <input type="radio"/> Leases the Business Premises Landlord Name & Phone #: _____
Does the Merchant use a Fulfillment House: <input type="radio"/> Yes <input type="radio"/> No If yes, was the Fulfillment House inspected? <input type="radio"/> Yes <input type="radio"/> No
Further comments by Inspector (required): _____

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

Merchant Initials (required) \_\_\_\_\_

Representative Print Name \_\_\_\_\_ Representative Signature \_\_\_\_\_ Date: \_\_\_\_\_

CARDHOLDER STORAGE COMPLIANCE & SERVICE PROVIDER

OWNER(S) OR OFFICER(S)

MERCHANT SITE SURVEY REPORT

RATE SCHEDULE

☐ **INTERCHANGE PLUS**      ☐ **Discount Rate**

Visa / MasterCard / Discover Credit Card Discount Rate:	_____	%	Visa / MasterCard / Discover Offline Debit Discount Rate:	_____	%
American Express Discount Rate:	_____	%	Monthly Minimum	_____	Monthly
Bankcard Transaction Fee:	_____	Per Item	EBT Transaction Fee:	_____	Per Item
Offline Debit Transaction Fee:	_____	Per Item	Gift Card / Loyalty Card Transaction Fee:	_____	Per Item
Debit Transaction Fee (Plus Debit Network Fees):	_____	Per Item	Voice Interaction Fee:	_____	Per Item
Visa Authorization/Settlement Network Access/Usage Fee:	\$ 0.03	Per Item	Annual Fee (billed in advance for the following year):	_____	Per Year
MasterCard Authorization/Settlement Network Access/Usage Fee:	\$ 0.02	Per Item	ACH Reject Fee:	_____	Per Item
Discover Authorization/Settlement Network Access/Usage Fee:	\$ 0.02	Per Item	Retrieval Fee:	_____	Per Item
Bank Service Fee:	_____	Monthly	Chargeback Fee:	_____	Per Item
AVS Surcharge:	_____	Per Item	<input type="radio"/> Supply/Replacement Program (optional):	_____	Monthly
Batch Fee:	_____	Per Batch	<input type="radio"/> Each Additional Terminal      Quantity: _____	_____	Monthly
Split Batch Fee (additional):	_____	Per Batch	Gateway Activation Fee:	_____	One Time
Wireless Activation Fee:	_____	One Time	Gateway Access Fee:	_____	Monthly
Wireless Access Fee:	_____	Monthly	eCommerce/Gateway Item Fee:	_____	Per Item
Wireless Item Fee:	_____	Per Item	Cancellation Fee:	_____	One Time
Application Fee:	_____	One Time	MICROS Transaction Fee (if applicable):	_____	Per Item

I/we understand and agree to the following: 1) Discount rate as stated above will be charged on "Qualified Rate" transactions. Qualified Rate transactions are defined as electronically authorized and swiped transactions that are batched and closed daily. In addition, sales volume may be charged for Association dues and assessments at a rate of up to 0.11%. 2) All lodging, car rental, small ticket, convenience and Express Services transactions may have a surcharge of up to 0.49% added to the Qualified Rate. 3) Discover transactions may have a surcharge of up to 0.50% added to the Qualified Rate. 4) A "Mid-Qualified" surcharge of up to 1.48% + \$0.20 will be added to the Qualified Rate under the following circumstances: a) Cardholder and card present at merchant's point of sale device, key entered, signature obtained, Address Verification Service ("AVS") with full match of billing zip code, settled within three days of authorization; settle amount must equal authorized amount; b) Card not present, single authorization only, order number required, AVS with full match of billing zip code, settled within two days of authorization, settle amount must equal authorized amount; c) Certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card transactions. 5) A "Non-Qualified" surcharge of up to 1.98% + \$0.20 may be added to the Qualified Rate for transactions that do not meet the requirements stated above, and may also apply to transactions on Bus, Corp, Int'l, Purch, & Comm Cards; T&E, Mail/Telephone, e-Commerce, certain Discover, Visa Rewards & Visa Signature, MasterCard Enhanced Value & MasterCard World Card. 6) If Interchange/Cost Plus: All transactions will be assessed the current, published interchange rates, dues, and assessments in addition to the basis points stated above. The published rates for Visa and MasterCard can be viewed at: www.visa.com and www.mastercard.com. 7) Merchants may be charged a Cross Border transaction assessment of up to 1.00% in addition to the applicable rate, on transactions when the country code of the Card Issuer differs from the country code of the Merchant. 8) On international transactions Merchants may be charged a rate of up to 0.55% for Visa's International Acquirer Fee, Maestro U.S. and MasterCard's Acquirer Program Support Fee and Discover's International Service Fee and International Processing Fee. 9) POS high-speed processing and/or gateway activation may be subject to a one time set up fee of up to \$100.00, depending on provider. 10) An early closure of fee of \$250.00 will be paid to EVO if the Merchant Processing Agreement is not terminated in accordance with the Terms and Conditions. 11) Merchant will also be assessed the following fees on Visa transactions: the Visa Misuse of Authorization System Fee, which will be assessed on all transactions where the address verification response without an authorization. These fees are up to \$0.10 per transaction will be displayed as separate items on Merchant's monthly statement and may include fees assessed by both the applicable card association and Bank or EVO. 12) Merchant will also be assessed each month the following Card Association fees: Fixed Network Fee and Acceptance and Licensing Fee. These fees, which may vary each month, are based on Merchant Category Codes, the number of merchant locations by Merchant's taxpayer identification number, and/or Merchant's processing volume by Merchant's taxpayer identification number. For additional information about these fees go to www.goveo.com/FNF. \*American Express Fees: Retail: \$0.10 transaction fee; Services, Wholesale and All Other: \$0.15 transaction fee. \*\*A 0.30% CNP fee will be assessed for all transactions where the Cardholder is presented at the time of the transaction.

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DEBIT/CREDIT AUTHORIZATION

<b>STABLE CHECK VOID</b>	Merchant authorizes any party to the Agreement to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which any such parties are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives written notice of revocation as required by this Agreement.
<b>INVESTIGATIVE CONSUMER REPORT:</b>	An investigative or consumer report may be made in connection with application. MERCHANT authorizes ANY PARTY TO THE AGREEMENT or any of their agents to investigate the references provided or any other statements or data obtained from MERCHANT, and from any of the undersigned personal guarantor(s), or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

AVERAGE TICKET SIZE: _____	HIGHEST TICKET SIZE: _____	MONTHLY VOLUME: _____
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Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4.C, 9 and 13.B of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.

**IMPORTANT NOTICE :** All information contained in this application was completed or supplied by all contracting parties. EVO and BANK shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of EVO and BANK. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing.

**FOR ALL CORPORATIONS; CORP. RESOLUTION**  
The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the herewithin named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

PERSONAL GUARANTY (NO TITLES)

As a primary inducement to EVO and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to EVO and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and EVO and Bank Global, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that EVO and Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by EVO and Bank or Merchant. Guarantor(s) waive trial by jury with respect to any litigation arising out of or relating to this personal guaranty. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of EVO and Bank. Guarantor(s) understand that the inducement to EVO and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

**AGREED AND ACCEPTED**

X _____ #1 From Application—Signature	Date _____
X _____ #2 From Application—Signature	Date _____

If Merchant submits a transaction hereunder, Merchant will be deemed to have accepted the Terms and Conditions of the Merchant Processing Agreement.

X _____ #1 From Application—Signature	Date _____
X _____ #2 From Application—Signature	Date _____

X \_\_\_\_\_  
Accepted by EVO Merchant Services, LLC

X \_\_\_\_\_  
Accepted by Deutsche Bank AG, New York

X \_\_\_\_\_  
Accepted by Deutsche Bank AG, New York

## EQUIPMENT/ADDITIONAL SERVICES

Equipment: ☐ Purchase from EVO ☐ Reprogram Merchant's existing equipment  
 If purchase, choose equipment: ☐ Terminal ☐ Printer ☐ PINPad ☐ Software ☐ Other: \_\_\_\_\_  
 Ship equipment to: ☐ Merchant ☐ ISO ☐ Other: \_\_\_\_\_ Ship to: ☐ Commercial ☐ Residential  
 Choose shipment method: ☐ Overnight ☐ 2nd Day ☐ Ground  
 Must choose one: ☐ Starter Kit ☐ Starter Package (includes manual imprinter)  
 If lease, indicate: ☐ LSI ☐ Other: \_\_\_\_\_

## TERMINAL TYPE:

- |   |   |  |
|---|---|--|
| <input type="radio"/> NURIT 3020 (repro only, *NOS 7 required)            | <input type="radio"/> OMNI VX510 LE                                       | <input type="radio"/> HYPERCOM T7Plus  |
| <input type="radio"/> NURIT 2085 (repro only, *NOS 7 required)            | <input type="radio"/> OMNI VX510 IP                                       | <input type="radio"/> HYPERCOM T4210 (repro only)                                  |
| <input type="radio"/> NURIT 2085+ (repro only, *NOS 7 required)           | <input type="radio"/> OMNI VX510 (repro only)                             | <input type="radio"/> HYPERCOM T4220 (repro only)                                  |
| <input type="radio"/> NURIT 8320 (repro only)                             | <input type="radio"/> OMNI 3740 (repro only)                              | <input type="radio"/> HYPERCOM T7P (repro only)                                    |
| <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> <input type="radio"/> FRICTION <input type="radio"/> THERMAL |
| <input type="radio"/> NURIT 8320Lite                                      | <input type="radio"/> OMNI 3750 (repro only)                              | <input type="radio"/> HYPERCOM T77 (repro only)                                    |
| <input type="radio"/> NURIT 8400  | <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> <input type="radio"/> FRICTION <input type="radio"/> THERMAL |
| <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> INGENICO 5100 (repro only)                          | <input type="radio"/> EVO Charge   |
| <input type="radio"/> NURIT 8400Lite                                      | <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> PC Charge  |
| <input type="radio"/> VERIFONE VX570                                      | <input type="radio"/> INGENICO Aqua                                       | <input type="radio"/> Payware  |
| <input type="radio"/> <input type="radio"/> DIAL <input type="radio"/> IP | <input type="radio"/> DEJAVOO X5 (repro only)                             | <input type="radio"/> PC Software (repro only): _____                              |
|   | <input type="radio"/> DEJAVOO X8 IP                                       | <input type="radio"/> Other: _____   |

## WIRELESS TERMINAL TYPE: (NOTE: NEW EVO SIM CARD REQUIRED FOR ALL GPRS REPROGRAMS)

- ☐ Way MTT 15XX Wireless Combo (repro only) KIT/MTT/SIM# \_\_\_\_\_
- ☐ Way 5000 Wireless Combo KIT/MTT/SIM # \_\_\_\_\_
- ☐ Nurit 8000 Wireless (GPRS) (repro only) S/N \_\_\_\_\_
- ☐ Nurit 8000 Wireless (RAM) (repro only) S/N \_\_\_\_\_
- MAN/ESN# \_\_\_\_\_
- ☐ Nurit 8010 Wireless (GPS) S/N \_\_\_\_\_
- ☐ Nurit 8020 Wireless (GPS) S/N \_\_\_\_\_
- ☐ DEJAVOO M3 S/N \_\_\_\_\_
- ☐ Other: \_\_\_\_\_

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## GATEWAY:

- ☐ DPS Authorized.Net ☐ DPS PayPal (choose one): ☐ PayFlow Pro ☐ PayFlow Link
- ☐ Benefits for registered users: ☐ Other: \_\_\_\_\_

Gateway Administrator email address (required): \_\_\_\_\_

By signing this application it is agreed that EVO shall not be held responsible for (a) any wireless terminal repairs or (b) providing a replacement wireless terminal due to equipment failure. The terminal manufacturer shall handle all wireless terminal repairs and replacements. I also understand that due to the complexity of these wireless terminals, the manufacturer may not be able to provide a replacement while completing repairs. In addition, EVO shall not be held responsible for any problems with the wireless services provided pursuant to this agreement. See Rate Schedule for Wireless Fees. Fees are subject to change.

## TERMINAL APPLICATION:

- ☐ WITH TIPS ☐ WITHOUT TIPS ☐ LODGING ☐ MOTO ☐ QPS

Merchant Refund Policy: ☐ No Refund ☐ Exchange Only ☐ In-Store Credit Only

## PINPAD TYPE:

- ☐ HYPERCOM PINPad S9 PCI (repro Only) ☐ HYPERCOM PINPad P1300 ☐ HYPERCOM PINPad 1320 (EVO Charge)
- ☐ INGENICO PINDPad 3010 (repro only) ☐ VERIFONE PINDPad 1000SE

CHECK EQUIPMENT: ☐ MAGTEK Reader ☐ MAGTEK Imager ☐ RDM Imager ☐ Other: \_\_\_\_\_

ACCESSORIES: ☐ MAGTEK Mini Swipe Card Reader USB (choose one): ☐ EVO Charge ☐ PC Charge ☐ Payware

Equipment selection may be subject to availability/processing requirements.

## ADDITIONAL SERVICES:

- ☐ EVO Check Advantage\* List Existing Merchant #: \_\_\_\_\_
- ☐ Other Check Service: \_\_\_\_\_ List Existing Merchant #: \_\_\_\_\_
- ☐ MasterCard PayPass™/Visa payWave ☐ Merchant's Capital Access\*
- Other Card Types: NEW EXISTING LIST EXISTING MERCHANT NUMBERS
- |  |                       |                       |                      |
|--|-----------------------|-----------------------|----------------------|
| <input type="radio"/> AMERICAN EXPRESS | <input type="radio"/> | <input type="radio"/> | _____                |
| <input type="radio"/> EBT*             | <input type="radio"/> | N/A                   | Existing FCS#: _____ |
| <input type="radio"/> DEBIT            | N/A                   | N/A                   | Supplied by EVO      |
| <input type="radio"/> GIFT*            | N/A                   | N/A                   | Supplied by EVO      |
| <input type="radio"/> LOYALTY*         | <input type="radio"/> | N/A                   | Supplied by EVO      |
| <input type="radio"/> VOYAGER*         | <input type="radio"/> | N/A                   | Supplied by EVO      |
| <input type="radio"/> WRIGHT EXPRESS*  | <input type="radio"/> | N/A                   | Supplied by EVO      |

Upon Approval of Visa/MasterCard processing, allow 48-72 hours for new non-bankcard(s) to be added.

\*Addendum/Application Required

## SPECIAL INSTRUCTIONS (requests are subject to management approval, please print clearly):

- ☐ Change of ownership. Existing MID to close: \_\_\_\_\_
- ☐ Request to pick up equipment/starter kit at EVO Melville. \_\_\_\_\_

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

- ☐ Merchant elects to receive monthly merchant account statements via U.S. Mail to:
- ☐ Legal Address or ☐ DBA Address



This document, "Merchant Pressing Agreement" (the "Agreement"), accompanies the document "Merchant Application" ("Merchant Application") and includes the Terms and Conditions set forth below (the "Terms and Conditions") together with the terms and conditions of the Merchant Application. The bank ("Bank") identified in this Agreement is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), and is Deutsche Bank AG, New York branch. EVO Merchant Services, LLC d/b/a EVO ("EVO") is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is between EVO, Bank, and the merchant (or "you") identified in the Merchant Application ("Merchant"). Merchant and EVO agree that the rights and obligations contained in this Agreement do not apply to Bank with respect to Discover transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover. In such case, Merchant will also be enabled to accept JCB and Diner's Club cards under the Discover network and such transactions will be processed at the same rate as Merchant's Discover transactions are processed. Any references to the Debit Sponsor shall refer to the debit sponsors identified below.

Merchant desires to accept credit cards ("Cards") validly issued by members of Visa, MasterCard, and Discover. Bank and EVO desire to provide credit card processing services to Merchant. Therefore, Merchant, EVO and Bank and Global agree as follows:

### 1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card.

**B. Cardholder Identification.** You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired, (ii) the signature on the sales draft does not correspond with the signature on the Card, or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below).

**C. Card Recovery.** You will use your best efforts to retain any Card: (i) on Visa Cards if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by EVO or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) if, for MasterCard Cards, the embossed account number, indent printed account number and encoded account number do not match or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. **Surcharges.** You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.

**E. Return Policy.** You will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder: You will not have any claim against or right to receive payment from a Cardholder unless EVO and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to EVO and Bank.

**G. Disputes With Cardholders.** All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither EVO nor Bank bear any responsibility for such transactions.

**Required on all Transactions:** You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the full and proper completion of the transaction.

**B. Effect.** Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the

## Benefits for registered users.

# 1 No watermark on the output documents

Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction; (iv) the amount and description of the goods or services sold; (v) the transaction card account number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

**3. No page quantity limitations for converted PDF**

C. Reproduction of Information: If the following information is not legibly imprinted on the Sales Draft, you will legibly inscribe on the Sales Draft before submitting it to EVO and Bank: (i) the Cardholder's name; (ii) account number (iii) expiration date of the Card and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly inscribe the name of the bank issuing the Card as it appears on the face of the card.

**D. Delivery and Retention of Sales Drafts.** You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

**E. Electronic Transmission.** In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions and, at EVO's sole discretion, the deposit of the funds received for such sales or credit transaction into the Reserve Account. If you provide your own electronic terminal or similar device, such terminal must meet EVO and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to EVO and Bank or their agent in the form EVO and Bank from time to time specify or as required under the Rules. If EVO or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

4. Deposit of Funds. i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code. If U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You shall not be entitled to credit for any indebtedness that arises out of a transaction not processed in accordance with the terms of this Agreement or the rules and regulations of a card association or network organization. You acknowledge that your obligation to EVO and Bank for all amounts owed under this Agreement arises out of the same transaction as EVO and Bank's obligation to deposit funds to the Designated Account. ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will EVO or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by EVO and Bank. All Sales Drafts and deposits are subject to audit and final checking by EVO and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks, recoupment, adjustments, fines and fees: (i) in accordance with the Rules; (ii) for any of your obligations to EVO and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. EVO and Bank may elect, but are not required, to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within EVO and Bank's sole discretion. iii. Processing Limits. EVO and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by EVO or Bank. This limit may be changed by EVO or Bank upon written notice to you.

**B. Chargebacks.** You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the amount of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. **Excessive Activity**. Your presentation to EVO and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 10% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of

the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, EVO and Bank to take any action they deem necessary including but not limited to, suspension of processing privileges and establishment or increase in the amount allocated to the Reserve Account and a reduction in the amount of provisional credit remitted to you in accordance with this Agreement.

D. Credit. i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. EVO or Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to EVO and Bank. You will not submit a credit memorandum relating to any Sales Draft originally submitted to EVO and Bank, nor will you submit a credit memorandum that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction. ii. Revocation of Credit. EVO or Bank may refuse to accept any Sales Draft, and EVO and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to EVO and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered, or those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay EVO and Bank any amount previously credited to you for a Sales Draft not accepted by EVO and Bank or where accepted, is revoked by EVO and Bank.

E. Reprocessing. Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

**A. Debit Card Processing Services.** You may elect to accept debit cards, and said election should be made by you on the accompanying Merchant Application. If you elect to accept debit cards, the following terms and conditions apply to you. Debit Sponsor shall act as your sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by you (the "Covered Terminals") in each of the following debit card networks ("Networks"): Accel, AFFN, Alaska Option, Interlink, Maestro, NYCE, Pulse, Shazam, Star, CU24, and Tyme, which Networks may be changed from time-to-time by Debit Sponsor, EVO without notice. You may also have access to other debit networks that do not require a sponsor. EVO will provide you with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks, and EVO will provide connection to such Networks, terminal applications, settlement, and reporting activities (collectively, the "Services"). You will comply with all federal, state, and local laws, rules, regulations and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). You will execute and deliver any application, participation, or membership agreement or other documents

necessary to enable Debit Sponsor to act as sponsor for you in each Network, and you shall obtain all consents, approvals, authorizations, or orders of any governmental agency or body required for the execution, delivery, and performance of this Agreement. You agree to utilize the debit card services in accordance with this Agreement, its exhibits or attachments, and EVO's instructions and specifications, and to provide EVO with the necessary data in the proper format to enable EVO to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to you upon request. You will provide prompt written notice to EVO in the event that you are subject to any of the following: i. Conviction for a felony offense or any other crime involving moral turpitude; ii. Restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practice on your part; iii. Bankruptcy filing or petition; iv. Federal or state tax lien; v. Any material adverse change in your assets, operations, or condition, financial or otherwise; vi. The threat or filing of any litigation against you, the outcome of which reasonably could have a material adverse effect on your continuing operations; vii. administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency or entity operating an EBT Network, that reasonably could have a material adverse effect on your continuing operations; or viii. Any disciplinary action taken by any Network against you or any of your principals. EVO may terminate or suspend its discretion

**Debit Sponsor's sponsorship of any such Network or modify the provision of Services to you. Immediately upon notice to you of termination of your sponsorship of any such Network, you shall, within the time specified in the immediately preceding paragraph or if Debit Sponsor's authority to participate in such Network or act as your sponsor in such Network is terminated by such Network, ii. This Section (30) days after written notice by EVO to you of the occurrence of any of the conditions set forth in items (iv), (vi), or (vii) in the immediately preceding paragraph or if Debit Sponsor terminated its membership or participation in such Network; iii. Immediately upon notice to you in the event any financial statement, representation, warranty, statement or certificate furnished is materially false or misleading; or iv. Immediately upon notice to you of the occurrence of any other circumstance with respect to this Section that may reasonably be expected to have an adverse effect on EVO. The parties hereto acknowledge and agree that EVO shall pay Debit Sponsor any and all fees related to Debit Sponsor's sponsorship of you in the Networks; provided, however, that in the event EVO fails to pay such amounts, Debit Sponsor shall be entitled to recover all such amounts directly from you and you agree to pay all such amounts. You shall not in any way indicate that Debit Sponsor endorses its activities, products, or services. Debit**

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Sponsor and you shall remain independent contractors of one another. Neither of you nor its respective individual employees, shall be an agent, partner, joint venturer, or employee of the other. Nothing contained in this section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and you. You shall indemnify and hold harmless EVO and its affiliates (including parents and subsidiaries), their respective officers, directors, employees, successors and assigns, from and against any and all direct or contingent losses, costs, claims, demands, and causes of action (including, without limitation, the cost of investigating the claim, the cost of litigation, and reasonable attorney's fees including those of in house counsel, whether or not legal proceedings are instituted) paid or incurred by or on behalf of EVO as a result of your violation of any of the terms of this Section, Network Rules, or Applicable Laws, or otherwise arising from or related to Debit Sponsor's sponsorship of you in any Network. In the event that Debit Sponsor's sponsorship of you in any Network is terminated prior to the termination of this Agreement, EVO may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this section necessary to enforce the rights and obligations of the parties contained in this section shall survive the termination of Debit Sponsor's debt sponsorship of you under this Agreement.

B. Mail/Telephone Order. EVO and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify EVO and Bank if your retail/mail order/telephone order mix changes from the percentages represented to EVO and Bank in the Merchant Application. EVO and Bank may cease accepting, mail/telephone order transactions, or limit their acceptance of such transactions, or increase their fees if this mix changes. Bank will release funds to Merchant five (5) business days after transaction date for mail/telephone orders. Merchant agrees to use and retain proof of a traceable delivery system as means of shipment of product to the customer. Merchant agrees that transactions will not be processed until products are shipped to the Cardholder. Merchant agrees to a charge of \$0.05 per AVS transaction, if applicable. The Agreement may be immediately terminated by Bank if Merchant fails to comply with any of the terms of the agreement.

C. Recurring Transactions: For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from EVO or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

D. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

**E. Partial Completion.** i. Prior to present, you will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of EVO or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules. ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

F. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing "whether by electronic means" which relates to the sale of goods or services for future delivery without EVO or Bank's, prior written authorization. Such consent will be subject to Bank's final approval. If EVO or Bank have given such consent, you represent and warrant to EVO and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

**G. Electronic Commerce Transactions.** You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained EVO's consent. If you submit EC transactions without our consent, we may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have reviewed the Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and to the extent that they apply to you, you agree to comply with, and ensure such transactions comply with, the terms of each. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions are your responsibility. You understand that EVO will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency. i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: i) complete description of the goods or services offered; ii) returned merchandise and refund policy; iii) customer service contact, including electronic mail address and/or telephone number; iv) transaction currency (such as U.S. or Canadian dollars); v) export or legal restrictions, if known; and vi) delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in the database, you must follow PCI DSS, CISP and SDP guidelines on securing such data. ii. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to Cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the PCI DSS, CISP and SDP Rules in contracts with other service providers. You understand that failure to comply with this Section may result in fines and you agree to indemnify and reimburse EVO and Bank immediately for any fine imposed due to your breach of this Section.

**H. American Express.** JCB and Diners Club Transactions. Upon your request, EVO and Bank will provide authorization and/or data capture service, for JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express, and JCB. Merchant understands that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club Card for goods and/or services, Merchant agrees to be bound by the terms and conditions of the Agreement. EVO and Bank are not responsible for funding such transactions. Initial setup fees may apply.

**I. Cash Advances.** You will not deposit any transaction for purposes of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

**J. Prohibited Transactions.** You will not accept or deposit any fraudulent or illegal transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, deposit telemarketing transactions unless you obtain Bank or EVO's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and EVO or Bank may hold funds and/or increase the amount allocated to the Reserve Account and/or deduct from the amount of provisional credit that would otherwise be allocated to you. Further, you may be subject to Visa, MasterCard or Discover reporting requirements.

#### 6. Designated Account.

**A. Establishment and Authority.** Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank and EVO ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank and EVO to debit the Designated Account for chargebacks, recommendations, adjustments, fees, fees and any other penalties or amounts owed under this Agreement, and irrevocably authorizes Bank and EVO to debit the Designated Account for any and all amounts owed by you to EVO and Bank under this Agreement other than the amounts directly attributable to the settlement of transactions. You also authorize EVO and Bank to debit the Merchant Account for any fees due such vendor or agent under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified EVO and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or EVO to change the Designated Account. If Merchant does not notify Bank or EVO of a change to the Designated Account, Bank or EVO may change the Designated Account and may take other action necessary, as determined by them within their sole discretion.

**B. Deposit.** Bank will deposit all Sales Drafts to the Designated Account subject to the other provisions of this Agreement. The funds represented by the Sales Drafts will be deposited to the Designated Account within 5 business days, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays as observed by the Federal Reserve Bank of New York. Merchant authorizes Bank to debit the Designated Account for any and all amounts owed by you to EVO and Bank as may be necessary to grant Merchant provisional credit for any entry. You authorize and appoint Bank and EVO to act as your agent to collect Card transactions from Cardholders and to deposit the proceeds of such transactions into the Designated Account. Bank may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

**C. Asserted Errors.** You must promptly examine all statements relating to the Designated Account, and immediately notify EVO and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by EVO and Bank within 30 calendar days after you received the periodic statement containing the asserted error. Your failure to notify EVO and Bank of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against EVO or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following our receipt of your written notice. During that 60 day period, EVO and Bank will be entitled to investigate the asserted error.

**D. Indemnity.** You will indemnify and hold EVO and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

**E. ACH Authorization.** You authorize EVO and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement and the ACH Authorization on the attached Exhibit B, Merchant Authorizations. The ACH Authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, you will execute a new ACH authorization.

**7. Security Interests, Reserve Account, Recoupment and Set-Off.**

**A. Security Interests.** i. A security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to EVO and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to EVO and Bank to secure your obligations under this Agreement upon EVO or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and EVO or Bank. This security interest may be exercised by EVO or Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets. ii. Perfection. Upon request of EVO or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, EVO and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from EVO and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and EVO and Bank are not required to file a motion for relief from the automatic stay in any bankruptcy proceeding order for EVO or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by EVO or Bank. You authorize EVO or Bank and appoint EVO or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest in lien granted hereunder.

**B. Reserve Account.** i. Establishment. A non-interest bearing deposit account ("Reserve Account") has been established and is maintained at Bank or one of its affiliates with sums sufficient to satisfy your current and future merchant obligations as determined by EVO and Bank. You authorize EVO and Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank or EVO may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. ii. Authorizations. EVO and Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and EVO or Bank. Also, EVO and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to EVO or Bank including, without limitation, rights of set-off and recoupment. In the event you submit a merchant application to EVO through the use of

Insta-App, and EVO does not receive a completed written merchant application within 2 business days, you authorize EVO or Bank to hold all of your funds in the Reserve Account until the completed written merchant application and other required documentation is received by EVO. iii. Funds. Funds in the Reserve Account will remain in the Reserve Account for 270 calendar days following the later of termination of this Agreement or the last activity in your account, provided, however, that you will remain liable to EVO and Bank for all liabilities occurring beyond such 270 day period. After the expiration of the 270 day period EVO will provide you with written notification via nationally recognized delivery service advising you that the 270 day period has expired, requesting that you provide EVO with an address where the funds you have remaining in the Reserve Account should be delivered, and stating that in the event you fail to respond to this notification within 30 days, EVO will begin deducting a flat fee of \$95 each month from the funds you have remaining in the Reserve Account. In the event you fail to respond to the notification, the \$95 fee will then be deducted each month from the funds you have remaining in the Reserve Account. This fee will offset the administrative, clerical, legal, and risk management costs incurred by EVO to monitor the funds that you have remaining in the Reserve Account beyond the 270 day period, and includes all monthly minimums and any other contractual fees that would ordinarily be assessed against your account pursuant to the terms of this Agreement. You agree that prior to the expiration of the 270 days, you will not use any funds you have in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines, or other amounts you owe to EVO and/or Bank under this Agreement. EVO and Bank (and not Merchant) shall have control of the Reserve Account. iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must maintain funds in the Reserve Account in an amount satisfactory to EVO and Bank.

**C. Recoupment and Set Off.** EVO and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or EVO may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or the Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to EVO and Bank, you must create or maintain the Reserve Account as required by EVO and Bank, and EVO and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to EVO and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

**D. Remedies Cumulative.** The rights and remedies conferred upon EVO and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of EVO and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

#### 8. Fees and Other Amounts Owed EVO and Bank.

**A. Fees and Taxes.** You will pay EVO fees for services, forms and equipment in accordance with the rates set forth on the Application. In addition, you will pay EVO a fee for research it performs at your request in an amount equal to \$200 per hour, or \$5 per statement. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business days or month's activity or will be netted out from the funds due you attributable to Sales Drafts presented to EVO and Bank. EVO and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.H, below. If you do not have an active account at the time of the request, payment by certified check or money order must be received prior to the release of the requested document copies or research results. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. With respect to Visa, MasterCard and Discover products, you may elect to accept credit cards or debit/prepaid cards or both. You shall so elect on the Merchant Application being completed contemporaneously herewith. You agree to pay and your account(s) will be charged pursuant to Section 6.A of this Agreement for any additional fees incurred as a result of your subsequent acceptance of transactions with any Visa, MasterCard or Discover product that you have elected not to accept.

**B. Other Amounts Owed EVO and Bank.** You will immediately pay EVO and Bank any amount incurred by EVO and Bank attributable to this Agreement including but not limited to chargebacks, fines and penalties imposed by Visa, MasterCard or Discover (including but not limited to fines and penalties related to PCI DSS), non-sufficient fund fees, and ACH debits that overdraw the Designated Account or Reserve Account, or are otherwise dishonored. You authorize EVO and Bank to debit via ACH the Designated Account or any other account you have at Bank or at any other financial institution for any amount you owe EVO or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and EVO or Bank, whether your obligation is direct, due to a primary obligor, fixed, contingent, joint, or co-obligation. In the event you fail to make payments in accordance with this Agreement, EVO and Bank for the amount owed, you will immediately pay EVO and Bank such amount.

**C. Merchant Supply/Replacement Program.** Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If Merchant elects to participate in EVO's Supply/Replacement Program, Merchant understands that it is entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. It is Merchant's responsibility to contact EVO each month to order supplies. EVO will only provide Merchant with supplies for the current month, and Merchant's failure to place an order with EVO will constitute a waiver of its right to receive supplies for that month under the Supply/Replacement Program. Quantity of supplies provided is at the discretion of EVO. Enrollment in EVO's Supply/Replacement Program also entitles Merchant to free refurbished replacement equipment after EVO has collected 3 monthly payments from Merchant (merchant is responsible for all shipping costs). A separate program is required for each terminal Merchant may have. If Merchant's terminal is unavailable at EVO's location, substitute machine provided by EVO's Supply/Replacement Program does not include, but is not limited to, the following: equipment damage, theft, fire, flood, accident, improper voltages, misuse of equipment, service performed by persons other than EVO representatives, and/or failure to continually maintain a suitable operating environment for the equipment. EVO may choose to cancel Merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminals.

#### 9. Application, Indemnification, Limitation of Liability.

**A. Application.** You represent and warrant to EVO and Bank that all information in the Application is correct and complete. You must notify EVO in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (e.g., sole proprietorship, partnership, etc.), type of goods and services provided and how sales are completed (i.e., by telephone, mail, or in person at your place of business). The notice must be received by EVO within 10 business days of the change. You will provide updated information to EVO within a reasonable time upon request. You are liable to EVO and Bank (as applicable) for all losses and expenses incurred by EVO and/or Bank arising out of your failure to report changes to it. Bank and EVO may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

**B. Indemnification.** You will hold harmless and indemnify EVO and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by EVO or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

**C. Limitation of Liability.** Any liability of EVO or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to EVO and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of EVO and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither EVO, Bank nor their agents, officers, directors, or employees shall be jointly liable to you under this Agreement or liable for indirect, special, or consequential damages. Neither EVO nor Bank will be responsible or liable for any damages you incur that arise from a terminal that has been downloaded by a third party.

**D. Performance.** EVO and Bank will perform all services in accordance with this Agreement. EVO and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. EVO and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the, fault or negligence of such party. Neither EVO nor Bank shall be liable for the acts or omissions of any third party.

**E. Representations By Salespersons.** All salespersons are independent contractors, and are not agents, employees, joint ventures, or partners of EVO or Bank. Any and all representations and/or statements made by a salesperson are made by them in their capacity as an independent contractor, and cannot be imputed to EVO or Bank. EVO and Bank have absolutely no liability or responsibility for any representations and/or statements made to you by any sales representative.

#### 10. Representations and Warranties. You represent and warrant to EVO and Bank at the time of execution and during the term of this Agreement the following:

**A. Information.** You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to EVO or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of EVO and Bank.

**B. Entity Power.** Merchant and the person signing this Agreement have the power to execute and perform this Agreement. This Agreement and your performance hereunder will not violate any law, or conflict with any other agreement to which you are subject.

**C. No Litigation or Termination.** There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.



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