



INNOVATIVE GIFT & REWARDS
APPLICATION/AGREEMENT

Customer Information

Corporation ☐ LLC ☐ Partnership ☐ Non-Profit Organization ☐ Sole Proprietorship ☐

Business Legal Name

Business DBA Name

Address

City () -- State () -- Zip code --

Business Phone Business Fax

Account Data

Office Code

Sales Rep Name

Principal Title Phone/Extension Social Security #

Principal Address

Principal City Principal State Principal Zip code

Schedule of Charges

Transaction Fee \$ _____ cents Gold Package \$ 19.95 ☐ Platinum Package \$ 29.95 ☐
Monthly Access Fee Monthly Statement Fee Monthly Access Fee Monthly Statement Fee
Statement Fee Online Database

Card Order Information

Card Quantity Ordered: _____ Maximum Card Value \$ _____ Back of Card Verbiage (circle one) 1 2 3 4

Email Address _____ Custom Design \$ _____ per card
(Card design and Mock-up Approval or enter sales office e-mail address)

Gift ☐ Loyalty ☐ Gift and Loyalty ☐ Total \$ _____

Note: Cards will be shipped to sales office. Appointment to train on card functions will be set by marketing representative.

Card Graphic Design Information

Describe any specific details you would like included on your card; including background colors, images, artwork, business address or phone numbers and fonts. Fonts (please specify by name): _____

Notes: _____

Authorization

See Reverse Side for terms and conditions. By signing below the applicant agrees to the terms and conditions set forth on the back of this Application/Agreement. Merchant authorizes Innovative Merchant Solutions to investigate and confirm the information contained herein and hereby certifies that all information provided, including Merchant's legal status, is true, correct and complete. Merchant hereby authorizes Innovative Merchant Solutions to utilize credit bureau/reporting agencies and/or its own agents for the purpose of verifying the accuracy of any information provided by Merchant and for purposes of assessing and monitoring Merchant's credit status. Merchant authorizes that all credit bureau/reporting agencies can release any information that they may have pertaining to Merchant to Innovative Merchant Solutions. This agreement may only be modified as approved in writing by authorized corporate officer of Innovative Merchant Solutions. No other representative is authorized to make a verbal or written modification to this agreement. All companies must have their obligations guaranteed by a principal or other creditworthy individual. As a primary inducement to IMS to enter into this Agreement with Principal and/or the signed Guarantor(s), by signing the merchant Application/Agreement form, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to IMS pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice, whether before or after termination or expiration and whether or not the Guarantor(s) received notice of any amendment. If Merchant breached this Agreement, Innovative Merchant Solutions may proceed directly against the Guarantor(s) or any other person or entity responsible for the performance of this Agreement without first exhausting its remedies against any other person or entity responsible.

_____/_____/_____
Signature, Principal or Corporate Officer Date (Please sign in both areas) Signature, an Individual Date

RECITALS

WHEREAS, INNOVATIVE MERCHANT SOLUTIONS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (IMS), IS ENGAGED IN THE BUSINESS OF PROVIDING PREPAID TRANSACTION SERVICES FOR PAYMENT OF GIFT/LOYALTY TRANSACTIONS SUBMITTED BY PARTICIPATING MERCHANTS UNDER THE PROGRAM HEREIN DESCRIBED; WHEREAS THE MERCHANT (MERCHANT) DESIRES TO HAVE IMS PERFORM CARD PROCESSING SERVICES FOR GIFT/LOYALTY SERVICES; NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND OF THE MUTUAL PROMISES HEREINAFTER SET FORTH, IMS AND THE MERCHANT HEREBY AGREE AS FOLLOWS.

SERVICES

Services to be provided by IMS – Subject to the terms and conditions set forth in this Agreement, IMS hereby agrees to perform the following services for the benefit of the Merchant: IMS shall provide for the electronic processing of Card transactions (Gift/Loyalty) and purchases made by customers of the Merchant who holds approved cards (“Approved Cards”). IMS shall electronically confirm that the card presented by the cardholder (“Cardholder”) is an active account on the IMS electronic Gift/Loyalty processing system (“Card System”) in which there are sufficient funds that can be reserved or removed to pay for Cardholder’s purchase. Merchant must use individual care and discretion to verify the identity of Cardholder; IMS shall process electronic point of sale transactions for the Merchant, consisting of Card System services, IMS shall provide for the electronic debiting of the Cardholder’s account when said Cardholder has made a purchase and the electronic crediting of the Cardholder’s account when value is added to the Cardholder’s account; IMS shall maintain an accessible electronic record of transactions as described above for a period of 60 days. The services to be rendered by IMS in accordance with this section shall be referred to herein as the (“Services”); and IMS will supply to and accept from the Merchant all information and data reasonably required from time to time in connection with the Services. Merchant’s Duties – Subject to the terms and conditions set forth in this Agreement, the Merchant agrees; The Merchant will accept for processing by IMS any transaction initiated by a customer utilizing Approved Cards without discrimination with regard to the customer who initiated the transaction or the point-of-sale terminal at which a transaction was initiated (“The POS Terminal”); The Merchant will supply to IMS all information and data reasonably required from time to time by IMS to perform the Services, including the location of POS terminals and Cardholder data and content as may be agreed upon by the parties from time to time and within such time or times as may be reasonably necessary to perform the Services promptly and in a proficient manner; The Merchant will maintain all transaction records and other records required by law or regulation to maintain in connection with the operation of the electronic point of sale processors (Card Terminals); The merchant will obtain, operate, and maintain at its own expense the Card, Terminal; The Merchant will be responsible for the accuracy and adequacy of all data transmitted by it or on it’s behalf for processing by or storage of information on IMS’ Card System; The Merchant will maintain sufficient “back-up” information and data to reconstruct any information or data loss due to any system malfunction; The Merchant will comply with all Federal and State laws and regulations relating to financial transactions, if applicable; The Merchant will make both personal and IMS records available to IMS, all within such time or times and in such form or manner as may be reasonably necessary to enable IMS to perform the Services promptly and in a proficient manner; Notwithstanding anything contained in this Agreement to the contrary; the Merchant’s relationship with IMS shall be exclusive, and Merchant shall be obligated to have IMS perform Card processing services on its behalf. Use of Name and Logo – Merchant authorizes the use of Merchant’s name, logo, trademark, service marks or copyrights of Merchant or its affiliates in any advertising, promotional or instructional materials provided by or for IMS.

FEES

Fee Schedule – In consideration for the performance of the Services provided by IMS, the Merchant agrees to pay to IMS the fees and other charges set forth in the application attached hereto and made a part hereof. The fees and charges will be collected through a direct debit of the Merchant’s bank account via the Automated Clearing House (ACH) on a monthly basis. Rejects – The merchant will maintain an account at an ACH receiving depository institution (“Account”) approved by IMS. Merchant must maintain sufficient funds in the Account to satisfy all obligations, including the fees set forth in this Agreement. Should an ACH reject occur, the Merchant will agree to pay IMS a \$25.00 per item reject fee for processing. Additional Accounts – In the event the Account is closed or otherwise unavailable to IMS, Merchant and/or Guarantors consent to IMS locating additional deposit Accounts or assets by using any means available. In this event the Merchant and/or Guarantors waive all rights to their privacy in favor of IMS until such time as all outstanding liabilities and fees owed to IMS have been paid in full. Responsibility for Taxes and Expenses – The Merchant understands and agrees to be responsible for the payment of all Federal, State, and local taxes (and any amounts legally levied instead of taxes), exclusive of taxes based upon IMS’ net income, arising out of or incidental to its participation in this Agreement as well as all other expenses, fees, and charges. No Surcharge – The Merchant acknowledges and agrees increased fees, surcharges, or any other premium payments will not be charged to any of Merchant’s customers for Card transactions, the use of the POS Terminals or the operation of the system unless such surcharges are permitted by the applicable law or regulation. Security Interests – All personal bank Accounts standing in Merchant’s and/or Guarantor’s name shall be subject to this Application/Agreement and ACH debit, and all ACH debits, whether made against Merchant’s Account or a Guarantor’s Account shall bear a commercial account code designation (CCD) for purposes of electronic collection via the ACH system and Merchant and/or Guarantor irrevocably consent to IMS using any means available to locate such deposit Accounts until such time as all amounts due have been paid. IMS may enforce this security interest as applicable by: making an immediate debit/charge via the ACH system (code CCD) to any deposit Account standing in the name or names of the Merchant and/or Guarantor(s), without notice or demand of any kind; and/or interrupting the electronic transmission of funds to any Account through the ACH system; Freezing the entire Account, without notice or demand of any kind, upon IMS determination that Merchant has breached any term of this Agreement; By placing a receiver within Merchant’s place of business without notice or bond to intercept and collect all income derived from Merchant’s operations until such time as indebtedness owed to IMS arising under this Agreement has been satisfied in full; Obtaining a writ of attachment or a writ of possession without bond pertaining to Merchant and/or its Guarantor’s personal property upon a showing of a presumption that Merchant has committed an act of fraud or is about to misappropriate funds to which it is not entitled. Merchant shall provide any statement or notice that IMS determines to be necessary to preserve and protect this security interest. Merchant’s and/or Gaurantor’s granting of this security interest in no way limits Merchant’s liabilities to IMS under this Agreement.

TERM

The Agreement will commence on the date set forth in the Merchant Application/Agreement and shall have an initial term of 1 year. The Agreement shall automatically renew for an additional term of 1 year unless either party has notified the other in writing, at least thirty (30) days prior to the expiration of the initial term or any such renewal term, that it does not wish to renew the Agreement.

CREDIT AND FINANCIAL INQUIRIES

Reserve – IMS may impose a cap on the dollar amount of outstanding liabilities. This limit may be changed from time to time with or without notice. Should Merchant exceed the limit established by IMS, IMS may suspend processing, establish a Reserve Account, or take other actions as deemed necessary by IMS to guarantee the repayment of Outstanding Liabilities. This decision may be based in whole or in part on creditworthiness as determined from credit reports received from credit reporting agencies as well as any other information that will assist us in our decision.

TERMINATION

Termination by IMS – The Merchant understands and agrees that this Agreement and Merchant’s participation in the Card System may be terminated for “good cause” by IMS. For purposes of this section “good cause” shall mean: A material breach of this Agreement by the Merchant; Failure to pay any fees, charges, or other amounts owed by the Merchant to IMS in accordance with this Agreement; A determination by IMS that all Merchant transactions have ceased and therefore the relationship between Merchant and IMS has ceased. The violation of any law or regulation applicable to the Merchant that has an adverse effect upon the operation of the Card System. A determination by IMS that Merchants continued participation in the Card System may be considered financially detrimental to either Merchant or IMS. This decision may be based in whole or in part on creditworthiness as determined from credit reports received from credit reporting agencies as well as any other information that will assist us in our decision. Termination by Merchant – IMS understands that the Agreement may be terminated by the Merchant in the event: Of a material breach of this Agreement by IMS; e.g. gross negligence or failure to honor the terms and conditions of this Agreement; That the participation in the Card System by the Merchant, or IMS’ operation and administration of the Card System, is held illegal by any judicial or regulatory authority having jurisdiction over them. Responsibilities upon Termination – The Merchant and IMS understand and agree that in the event this Agreement is terminated, neither party shall have any further rights with respect to each other except for those that arose prior to the effective date of the termination including the mutual confidentiality provisions. The Merchant shall not be entitled to a refund of any fees, charges, or other amounts paid to IMS. Merchant shall remain liable for, and shall continue to be responsible for, meeting all financial and other obligations arising from its participation (including the payment of any and all applicable fees, charges, and other amounts) that may have accrued prior to the effective date of such termination. Each party shall cease the use of all materials and properties provided by the other, however the owning party must request in writing within ten days of the termination date that the materials be returned. Merchant shall notify its customers of any balance owed to the customer by the Merchant. **Any chargebacks arising from the unused portion of Gift/Loyalty cards after termination are the sole responsibility of Merchant.**

SYSTEM DOWN TIME

The Merchant hereby agrees that in the event that the Card System is down and not able to verify transactions, IMS will not continue to process transactions. The Merchant accepts sole responsibility in the event that any transactions are authorized by the customer without IMS’ knowledge. Such will be the sole responsibility of the Merchant, and the Merchant will indemnify and hold harmless IMS from and against any and all damages, loss, liability, consequential damage, expense, claim or obligation arising in connection therewith.

AMENDMENTS

This Agreement is subject to amendment to conform with regulations of the Card System as it pertains to the processing of Gift/Loyalty transactions. From time to time, with or without notice, IMS may amend any portion of this Agreement, including, without limitation, those relating to fees and charges payable by Merchant.

BANKCARD SERVICES

Additional rules, policies, procedures, restrictions and laws will apply to those Gift/Loyalty cards activated through the use of, or purchased by, a bankcard. Each of these provisions have been outlined in a separate bankcard Agreement with your bankcard service provider (“Acquirer”), but should be considered as relevant and applicable in relation to Gift/Loyalty transactions processed through the Card System.

INDEMNIFICATION AND LIMITATION OF LIABILITY

Indemnification by Merchant The Merchant hereby agrees to indemnify and hold IMS harmless, affiliates and subsidiaries, agents and employees from any claim relating to a dispute between Merchant and Cardholder, a Gift/Loyalty transaction paid for by IMS as may be made by anyone by way of defense, dispute, off-set, counterclaim or affirmative action, or for any damages of, or losses that IMS, affiliates and subsidiaries, agents and employees may incur as a result of Merchant’s breach of this Agreement. Further, Merchant shall reimburse IMS for all expenses including attorney’s fees with regard thereto.

Limitation of Liability Notwithstanding anything in this Agreement to the contrary, in no event shall IMS, its affiliates or its directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by Agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages. Notwithstanding anything in this Agreement to the contrary, IMS’ cumulative liability for all losses, claims suits, controversies, breaches or damages for any cause whatsoever (including, but no limited to, those arising out of or related to this Agreement) and regardless of this form of action or legal theory shall not exceed the average of three months’ revenue derived from transaction fees, less all costs incurred by IMS, which were received by IMS from this Merchant or such lesser time if this Agreement has been in effect for less than three months.

COMPLIANCE WITH LAW

This Agreement is subject to, and the parties agree to comply with all laws of duly authorized governments and authorities relating to the use of communication lines leased from domestic, international and foreign carriers to transmit information. It is understood and agreed by the parties that the performance of the Services hereunder may be subject to examination by authorized representatives of Federal and State governmental agencies and IMS is authorized to furnish any such agency reports, information and other data as may be required under applicable laws, rules and any other actions Merchant may deem appropriate in response.

LEGAL COMPLIANCE

Both the Merchant and IMS understand and agree that both parties shall be responsible for their own compliance with all Federal, State, and local laws, rules, and regulations that are applicable with respect to this Agreement, including without limitation to, statutes, regulations and judicial decisions relating to the establishment and sharing of the POS Terminals, consumer protection, antitrust and franchise laws and shall hold the other party harmless against any and all liability or expenses related thereto.

GUARANTORS

As a primary inducement to IMS to enter into this Agreement with Principal and/or the signed Guarantor(s), by signing the Application/Agreement, the Merchant jointly and severally, unconditionally and irrevocably guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to IMS pursuant to this Agreement, as it now exists or is amended from time to time, with or without notice. Guarantor(s) understands further that IMS may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by IMS or Merchant. This guarantee 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 IMS. Guarantor(s) understand that the inducement to IMS to enter into this Agreement is consideration for this guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receives no additional benefit from the guaranty.

REGULATIONS

It is understood and agreed by the parties hereto that the performance of the Services is or might be subject to regulation examination by authorized representatives of Federal and State regulatory agencies, and that IMS is authorized to submit or furnish any agency such reports, information, assurances or other data as may be required by them under applicable laws and regulations, provided IMS provides Merchant with reasonable advance notice of such action and an opportunity to object or take any other actions Merchant may deem appropriate in response. The Merchant and IMS will notify each other upon receipt of such requests so that each party may have an opportunity to object or take other actions, whichever that party deems appropriate in response.

Entire Agreement – This Agreement, including all matters incorporated by references herein, constitutes the entire Agreement between parties and supersedes all previous negotiations, commitments and writings.

Waivers – Failure by IMS to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same provision in the future. All waivers must be signed by the waiving party.

Non-Assignability – This Agreement shall not be assigned by either party without the prior written consent of the other Party and any assignment without such consent shall be void.

Amendments – Except as otherwise provided herein, no amendment to this Agreement shall be effective or bind any Party unless set forth in writing and signed by the duly authorized representatives of the parties.

Headings – The titles and headings preceding the text of the paragraphs of this Agreement have been inserted solely as a convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, interpretation or effect.

Severability – If any provision of this Agreement is held invalid or unenforceable by any court of financial jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, and enforceable on the parties.

Choice of Law: Jurisdiction – The parties stipulate that at the option of IMS, that the exclusive venue for any action between them shall be: (i) at the United States District Court, Central District of California located within the county of Los Angeles in the state of California or (ii) the Van Nuys Judicial District (Municipal Court) or Northwest District (Superior Court) located within the county of Los Angeles. In the event the United States District Court is chosen as the venue and to the extent that Federal law is governed by State law, this Agreement shall be construed in accordance with and governed by California law as applied to contracts that are executed and performed entirely in California. In the event that a state court is chosen, the same standard will apply.

FORCE MAJEURE

IMS may not be held liable for failure to perform due to any contingency beyond its reasonable control such as acts of God, acts of any Government, war or other hostility, civil disorder, weather, fire, power failure, labor dispute, like causes and any other similar to different contingency.