

Please read this entire document. Complete every section that applies to you based on the instructions provided. This application must be signed and dated.

- ☐ Merchant application and agreement signed and dated
- ☐ Articles of incorporation (a copy of the certificate, and articles of association of the business)
 - If the corporation is owned by another corporation, then articles must be obtained for that organization as well; i.e., articles of incorporation are required for the ultimate beneficiaries (does not apply to publicly traded companies)
- ☐ Completed and signed Annex B (to be completed with your EU company details)
- ☐ Two pieces of ID for each ultimate beneficiary
- ☐ Void check showing legal name and company address/letter from financial institution confirming bank details
- ☐ Most recent audited or reviewed financials (P&L and balance sheet) or corporate tax returns
- ☐ Three (3) months of most recent processing statements, if available
- ☐ If applying for an e-commerce account, website(s) must be fully functional and must contain, at a minimum: Secure Payment Page, Return/Refund Policy, Terms and Conditions, Privacy Policy, Shipping Policy, Currency of Transaction, Contact Information and a complete description of goods/services sold. A list of all web site URLs that will be accepting credit cards must be provided and you must also include a non-expiring user name and password for each site.
- ☐ If applying for MOTO, copies of any brochures, ads, or catalogs, as applicable, and a complete description of your business model, including but not limited to target market, advertising, description of goods and services being sold, return policy, and a description of how orders are placed, processed, and fulfilled
- ☐ If applicable:
 - Copies of any legal agreements between your business and vendors providing content, products, and other fulfillment and shipping services
 - Copies of any scripts used by call centers or verification departments as well as call center training materials, including procedural manuals and operational flows

PLEASE NOTE THAT EACH ITEM LISTED ABOVE IS REQUIRED BEFORE YOUR APPLICATION CAN BE ACCEPTED.

Once the application has been completed and signed and the required documentation gathered, please email or fax the complete package to:

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NOTES/EXCEPTIONS: This section is reserved for Sales Representative use only.



OPL Payments Ltd. is a registered
ISO/MSP of Israel Credit Cards

MERCHANT PROCESSING APPLICATION AND AGREEMENT



BUSINESS INFORMATION

Merchant Name (DBA or Trade Name) _____			Corporate Legal Name (If different) _____		
Location Address _____			Corporate Address (If different) _____		
City _____ State _____ Country _____ Zip _____			City _____ State _____ Country _____ Zip _____		
Contact Name _____		Contact Email _____			
Contact Telephone # _____		Contact Fax # _____		Customer Service # _____	
Federal Tax # _____	Information to Appear on Cardholder's Statement (Max. 25 characters, including phone number and spaces) Business Name _____ Phone # _____			Company Web Site _____ (If applicable)	
EU Company Registration Number _____		EU Country of Registration _____		EU Date of Incorporation _____	
Monthly Payment Card Volume \$ _____	Average Ticket Amount \$ _____ Highest Ticket Amount \$ _____	Does This Location Currently Take Payment Cards? <input type="checkbox"/> No <input type="checkbox"/> Yes Will You Be Keeping Your Account? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Leaving Current Processor? _____ _____			
Do You Need the Ability to Process Recurring Transactions? <input type="checkbox"/> No <input type="checkbox"/> Yes		Fully Describe the Product or Service Being Offered. _____ _____ _____			
Years in Business _____ Years Processing (If different) _____					
Ownership <input type="checkbox"/> Corporation <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Government <input type="checkbox"/> Non-Profit (Must provide 501-C, or other proof) <input type="checkbox"/> LLC State: _____					
Principals (Must equal at least 51% of ownership)					
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Date of Birth (dd/mm/yy) _____ Home Address _____ City _____ State _____ Country _____ Zip _____ Home Phone _____ Cell Phone _____ Email Address _____					
Principal Name First _____ Middle _____ Last _____ % Ownership _____ SSN _____ Driver's License _____ Title _____ Date of Birth (dd/mm/yy) _____ Home Address _____ City _____ State _____ Country _____ Zip _____ Home Phone _____ Cell Phone _____ Email Address _____					
Have Merchant or Owners/Principals Ever Had a Processing Agreement Terminated by a Bank? <input type="checkbox"/> No <input type="checkbox"/> Yes Reason for Termination _____					
Have Merchant or Owners/Principals Ever Filed For <input type="checkbox"/> Business Bankruptcy <input type="checkbox"/> Personal Bankruptcy If Yes, Indicate Year _____					
Key Supplier References (List two contacts below) Trade _____ Name _____ Contact # _____ Trade _____ Name _____ Contact # _____			Method of Card Acceptance (Total must equal 100%) Credit Card Swiped _____% MOTO _____% Internet _____% If MOTO or Internet, will you be using a non-OPL Payments Gateway? If so, please name: _____		

MERCHANT PROCESSING APPLICATION AND AGREEMENT



MERCHANT APPLICATION ACCEPTANCE

By executing this Merchant Application on behalf of the merchant described above (the "Merchant"), the undersigned individual(s): (i) represent(s) and warrant(s) that all information contained in this Merchant Application is true, correct and complete as of the date of this Merchant Application, and that such individual(s) have the requisite corporate power and authority to complete and submit this Merchant Application and make and provide the acknowledgements, authorizations, and agreements set forth below, both on behalf of the Merchant and individually; (ii) acknowledges that the information contained in this Merchant Application is provided for the purpose of obtaining, or maintaining a merchant account with OPL Payments Ltd. ("ISO") and Israel Credit Cards Ltd. ("Bank") on behalf of the Merchant; (iii) authorize, ISO and Bank to investigate the credit and legal history of the Merchant and each person listed on this Merchant Application or signing the Personal Guarantee; * and (iv) agree, on behalf of the Merchant and in the event this Merchant Application is accepted and executed by ISO and Bank, to all of the terms and conditions set forth in the Merchant Agreement attached to this Merchant Application and the Fee Schedule set forth above. By executing this Merchant Application, each of ISO and Bank accept this Merchant Application, and agree to all of the terms and conditions set forth in the Merchant Agreement attached to this Merchant Application and the Fee Schedule set forth on the Merchant Application Page. As provided in Section 6.1, the term of this Agreement shall be three (3) years. Merchant may terminate this agreement, in accordance with the procedures of Section 38, without cause or penalty within 45 days after the Agreement becomes effective, after which time termination or abandonment of the Agreement without cause may result in assessment of Early Termination Fees.

*In the event that an individual listed on this application is a Canadian resident, OP Payments Inc. shall have the authority to make any inquiries with any third party we consider necessary to confirm your registration with us. This includes your authorization to order a credit report and verifying the information you provide against third-party databases. In the case of US residents, OPC Payments Inc. shall have this same authority, including your authorization to order a credit report. In the case of EU residents, OPL Payments Ltd. shall have this same authority, including your authorization to order a credit report.

Merchant

Israel Credit Cards Ltd.

Principal #1 _____ Title _____ By _____ Title _____

Principal Name _____ Date _____ Name _____ Date _____

Principal #1 _____ Title _____ **OPL Payments Ltd.**

Principal Name _____ Date _____ By _____ Title _____

By signing above Merchant further acknowledges that they have read, understand and agree to be bound by the terms of PCI Compliance as described on this site: www.visa.com/cisp. Name _____ Date _____

INTERVENTION BY GUARANTOR

The Guarantor hereby intervenes and agrees, by signing this Schedule, to guarantee jointly and severally, unconditionally and irrevocably, the continuing full and faithful performance and payment by Client of each of its duties and obligations to OPL pursuant to the Agreement, whether or not Guarantor has a current direct affiliation with the Client or has accurate knowledge of the Client's activities with respect to the Processing Services, whether or not before or after termination or expiration and whether or not Guarantor has received notice of any amendment. If Client breaches the Agreement, OPL may proceed directly against the Guarantor or any other persons or entity responsible for the performance of the Agreement without first exhausting its remedies against any other person or entity responsible therefore to it, or any security held by OPL. (Capitalized terms in this Schedule that are not herein defined shall have the meanings ascribed to them in the Agreement. Guarantor acknowledges that OPL has provided Guarantor with a copy of the Agreement for its reference.)

Guarantor agrees that any liability will not be limited or cancelled on the basis that (i) the Agreement cannot be enforced against the Client; (ii) the Client or OPL agree to changes in the terms of the Agreement; (iii) OPL releases the Client, or any other guarantor, from any of their obligations; (iv) any Regulatory Authority or law, regulation, or order affects Client's or OPL's rights under the Agreement; and/or (v) anything else happens that may affect OPL's rights against the Client or any other guarantor; and, in each case, whether or not Guarantor is so advised or notified.

Guarantor further agrees that (i) OPL can delay enforcing any of its rights under this guaranty without losing them; (ii) OPL can demand payment from Guarantor without first seeking payment from the Client or any other guarantor; and (iii) Guarantor will pay all court costs, attorneys' fees and collection costs incurred by OPL in connection with enforcement of the Agreement and this Schedule, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court.

Client and Guarantor agree that, if and when either Client or Guarantor fails to pay any amount as provided in the Agreement or in any other agreement between OPL and Client (or any principal of Client), or fails to satisfy any liability or to fulfill any obligation thereunder promptly when required (collectively, an "Unpaid Obligation"), OPL shall have the right, at any time and following notice to Client and Guarantor, at OPL's sole discretion either (i) to set-off and apply against the Unpaid Obligation any sums at any time credited by or owing from OPL to Guarantor sufficient to satisfy the Unpaid Obligation or any portion thereof; or (ii) to make demand upon Guarantor for immediate payment of the Unpaid Obligation or portion thereof, with which demand Guarantor immediately shall comply. The rights and remedies of OPL hereunder are in addition to other rights and remedies (including, without limitation, other rights of set-off) that OPL may have, and Guarantor agrees that the terms of this Intervention by Guarantor shall take precedence in the event of any conflict between the terms of this Intervention by Guarantor and the terms of any other agreement, including any agreement between OPL and Guarantor.

If Guarantor is a corporation, limited liability company or any other entity other than an individual, the individual signing this Schedule on behalf of Guarantor represents and warrants that he or she has authority and hereby intends to bind the Guarantor to the obligations set forth herein and shall be personally liable for such obligations in the event he or she subsequently is alleged or determined not to have such authority or intent.

Signature (Principal #1)

Signature (Principal #2)

X _____, an individual X _____, an individual

Printed Name _____ Date _____ Printed Name _____ Date _____

Name and Title (If Guarantor is a company) _____ Name and Title (If Guarantor is a company) _____

CORPORATE CERTIFICATION

I certify that I am the elected and qualified _____ (title) of the corporation whose full legal name appears on the Merchant Application. I certify that the corporation has duly adopted, in accordance with the corporation's articles and bylaws, a resolution that is still in force and effect that authorizes me and any of the following person(s) to act on behalf of the corporation to contract with Bank and ISO and to act on behalf of the corporation in all matters relating to the Merchant Card Processing Agreement. I further certify that Bank and ISO may rely on this authorization until either or both receive actual notice of any change and further certify that the following are the name(s), genuine signature(s) and title(s) of the person(s), other than me, so authorized.

Signature X _____ Title _____

Printed Name _____

Signature X _____ Title _____

Printed Name _____

MERCHANT PROCESSING APPLICATION AND AGREEMENT



SCHEDULE A – PRICING

Discount and Transaction Fees	US Dollar \$ (USD)	Canadian Dollar \$ (CAD)	Pound Sterling £ (GBP)	Euro € (EUR)	Hong Kong Dollar \$ (HKD)	Japanese Yen ¥ (JPY)
Blended Discount Rates (Visa/MC)	%	%	%	%	%	%
Per-Transaction Fees <i>(these fees are for all submitted authorizations)</i>	\$	\$	£	€	\$	¥
Monthly Volume (Per Currency)	\$	\$	£	€	\$	¥
Set-up Fees						
Application (Non-refundable)	\$	\$	£	€	\$	¥
Recurring Billing Setup	\$	\$	£	€	\$	¥
Monthly Fees	Rate		Rate	Rate	Rate	Rate
Account Maintenance	\$	\$	£	€	\$	¥
Online Reporting	\$	\$	£	€	\$	¥
Minimum Processing	\$	\$	£	€	\$	¥
Secure Gateway	\$	\$	£	€	\$	¥
Recurring Billing	\$	\$	£	€	\$	¥
HRMP Monthly Fee	\$	\$	£	€	\$	¥
Other Fees (If Applicable)	Rate		Rate	Rate	Rate	Rate
Per Chargeback	\$	\$	£	€	\$	¥
Per Wire	\$	\$	£	€	\$	¥
Per Failed Wire	\$	\$	£	€	\$	¥
Per Transaction Address Verification Service	\$	\$	£	€	\$	¥
Per Secure Gateway Transaction	\$	\$	£	€	\$	¥
Per 3D Secure Transaction	\$	\$	£	€	\$	¥
Annual Membership	\$	\$	£	€	\$	¥
High Risk Registration	\$	\$	£	€	\$	¥
Other, Specify: _____ (If applicable)	\$	\$	£	€	\$	¥
Special Terms	\$	\$	£	€	\$	¥

SCHEDULE B – AUTHORIZATION FOR FUNDS TRANSFER

Beneficiary Information	Beneficiary Bank	Intermediary Bank
Name	Bank Name	Bank Name
Address	Branch Address	Branch Address
City	City	City
Prov./State	Prov./State	Prov./State
Country	Country	Country
Account Number	Swift Code	Swift Code
	Bank Code (ABA/Sort Code)	Bank Code (ABA/Sort Code)
	IBAN	

This Authorization is to remain in full force and effect until Bank or ISO has received written notification from Merchant or an authorized Agent of its termination in such time and manner as to provide Bank a reasonable opportunity to act on it. **PLEASE ATTACH A VOIDED BUSINESS CHECK FOR EACH ACCOUNT.**

NOTE: An Authorization for Funds Transfer should be completed for every unique bank account for which a merchant is requesting funds.

SCHEDULE C – RESERVES, SECURITY DEPOSIT, AND TRANSACTION SETTLEMENT

RESERVES

Following the _____ (_____) month of operation (and every month thereafter) the reserves generated from the first (1st) month of operation (and every month thereafter) will be forwarded to the Merchant.

Unless otherwise required by Bank, the amount of the Reserve Account shall be _____% of the total of all approved and settled Transactions, over the previous _____ (_____) month period, unless increased in accordance with Section 24 and this Schedule. In the event of termination, all reserves shall be held until the beginning of the _____ (_____) month, rather than repaid each month.

The amount of the Reserve Account shall be amended if the percentage of Chargebacks exceeds 1% of overall processing volume.

SECURITY DEPOSIT

In addition to the foregoing reserves, merchant shall provide, as a condition of entering into the Agreement, a static Reserve of _____, which shall be held throughout the term of the Agreement, and until the beginning of the _____ (_____) month following termination of the Agreement, unless otherwise amended by Bank or OPL Payments Ltd.

TRANSACTION SETTLEMENT

Transactions will be settled _____ (e.g., X times per week) and _____ days (business ☐ or calendar ☐ – check one) in arrears.

MERCHANT PROCESSING APPLICATION AND AGREEMENT



MOTO/INTERNET QUESTIONNAIRE

1. Will you accept payment for products/services on your Web site? ☐ Yes ☐ No ☐ I do not have a Web site.
If No, go to 2. Otherwise, provide the name of your SSL provider (e.g., Verisign, Thawte, Entrust, Other – specify) _____
2. What % of your products/services will be sold/delivered in the following markets (total must equal 100%)?
North America _____% Europe _____% Other Markets _____%
3. What percentage do you sell to Business _____% Consumers _____%
4. Briefly outline your return policy. ☐ Greater than 30 Days ☐ Less than 30 Days ☐ No Returns ☐ Other (Please Specify) _____
If No Returns, why are refunds not provided? _____ (If no refunds, go to 9)
5. What percentage of refunds (to your total monthly sales) is usual? _____. How many days does a refund usually take? _____ days
- 6 Do you refund 100% of the purchase price? ☐ Yes ☐ No If No, please provide further details. _____
7. Describe in detail products/services sold, including pricing. *Use separate sheet if necessary.* _____
8. When do you charge the customer? ☐ Shipment/Completion of Service ☐ Order
9. In the case where a product is shipped, is the shipment traceable? ☐ Yes ☐ No Is a delivery receipt requested? ☐ Yes ☐ No
10. Please state the normal "turnaround time" from when you receive the order to the customer receiving the goods/services. _____ days.
11. Do you take advance deposits (a percentage of the full value or a fixed part-payment paid in advance)? ☐ Yes ☐ No
If Yes, what % of the final price is paid as a deposit? _____% What fixed deposit is taken? \$ _____
12. Where is your product warehoused? Address _____ City _____ State/Zip _____
13. Do you own the product/inventory at the time of sale? ☐ Yes ☐ No
14. Are there any other companies involved in accepting, shipping, or fulfilling the service or product or the billing of the customer?
☐ Yes ☐ No If Yes, who are they and what do they do? *Use separate sheet if necessary.* _____
15. How do you advertise? (Catalogs, magazines, TV, Internet, etc. List all that apply. _____
16. Who enters credit card information into the processing system? ☐ Consumer ☐ Fulfillment Center ☐ Merchant ☐ Other _____
17. Is your processing seasonal (mild fluctuations can be answered as "No")? ☐ Yes ☐ No If Yes, please check the busiest months.
Jan ☐ Feb ☐ Mar ☐ Apr ☐ May ☐ June ☐ July ☐ Aug ☐ Sept ☐ Oct ☐ Nov ☐ Dec ☐

18. Do you take payments for memberships, subscriptions, or packages? ☐ Yes ☐ No If Yes, please provide the usual breakdown of transactions (by % of total sales) and their respective price points.

Membership/Subscription Period	Package (e.g., 10 credits or 5 passes)	Price Point	Percentage of Sales
Weekly <input type="checkbox"/>			
Monthly <input type="checkbox"/>			
Quarterly <input type="checkbox"/>			
Six-Monthly <input type="checkbox"/>			
Annually <input type="checkbox"/>			
Other <input type="checkbox"/>			

19. If packages or memberships are sold, what is the average amount of time it takes a customer to use up their package? _____
20. If memberships or subscriptions are sold, how do you manage the recurring payments? ☐ OPL's RB Module ☐ Other _____
21. Do you capture the Consumer Billing Address (AVS) on any of your transactions? ☐ Yes ☐ No
22. If Yes, in the case where there is no AVS match, would you like us to decline the transaction or send you the response so that you can make the appropriate decision? ☐ Decline ☐ Send Response
23. Do you capture the Card Validation Value (CVV) from the back of the card on any of your transactions? ☐ Yes ☐ No
24. If Yes, in the case where there is no CVV match, would you like us to decline the transaction or send you the response so that you can make the appropriate decision? ☐ Decline ☐ Send Response
25. Do you perform VBV/MCSC (Verify by Visa/MasterCard Secure Code) with any of your transactions? ☐ Yes ☐ No
26. If No, are you interested in implementing this fraud mitigation tool through OPL Payments? ☐ Yes ☐ No

MERCHANT PROCESSING APPLICATION AND AGREEMENT



The parties to this Agreement are:

Israel Credit Cards Ltd., an Israeli corporation, whose address is 13 Tfuzot Israel, Givatayim 53583 Israel ("**Cal**");
OPL Payments Ltd., a company incorporated under the laws of England and Wales, whose address is Quern House, Mill Court, Great Shelford, Cam-
bridge. CB22 5LD, United Kingdom ("**ISO**"),
and MERCHANT whose name and address is as stated on the attached Merchant Application
("Merchant").

In consideration of the mutual promises and covenants contained in this Merchant Agreement ("Agreement"), the parties agree as follows:

1. **Definitions:** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context explicitly requires otherwise:
 - a. **Address Verification** shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
 - b. **Card Association(s)** shall mean a world wide incorporated body regulating and processing specific brands of credit cards, namely: VISA, MasterCard International and Diners Club International.
 - c. **Authorization** shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not yet reported the Card lost or stolen. All Transactions require Authorization.
 - d. **Authorization Center** shall mean the facility or facilities designated from time to time by Cal or ISO to which Merchant shall submit all requests for Authorization.
 - e. **Business Day** shall mean any day other than (i) a Friday or Saturday, or (ii) a holiday in Israel and/or in the state where the Merchant has its establishment (iii) a day on which banking institutions in Israel are authorized by law or by a regulatory order to be closed.
 - f. **Card(s)** shall mean credit cards of the brands specified in Annex A.
 - g. **Cardholder** shall mean the person or the entity that are authorized to use a Card.
 - h. **Chargeback** shall mean any debit of Cal by the Credit Card Association or, by a Credit Card issuer, in accordance with the Credit Card Association's regulations.
 - i. **Forced Sale** shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
 - j. **Full Recourse Transactions** shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.
 - k. **Issuer** shall mean a member of a Card Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.
 - l. **Merchant Statement** shall mean an itemized statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
 - m. **Non-Qualified Transactions** shall mean: (i) any Transaction submitted for processing more than 24 hours past the time the Authorization occurred; (ii) any Transaction missing required data.
 - n. **Pre-Authorized Recurring Order Transactions** shall mean Transactions that have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
 - o. **Qualified Transactions** shall mean: (i) Visa and MasterCard retail transactions in which the Card is swiped; (ii) Visa Card Not Present telephone, mail or Internet Transactions processed with Address Verification Service (AVS); or (iii) MasterCard telephone, mail or Internet transactions or (iv) Transactions that are part of a special registered program approved by the Associations.
 - p. **Services** shall mean the transaction processing services provided by Cal under this Agreement.
 - q. **Transaction** shall mean the acceptance of a Card or information embossed on the Card, for payment for goods sold and/or leased and/or services provided to Cardholders by Merchant, and receipt of payment from Cal, whether the Transaction is approved, declined, or processed as a forced sale. The term "Transaction" also includes credits, errors, returns and adjustments. A transaction may be done only in the currencies listed in the application.
2. Merchant agrees to participate in the card processing services program established by Cal.
3. During the term of this Agreement, subject to the terms and conditions of this Agreement, ISO agrees to perform certain services, on behalf of the Merchant in order to allow Merchant to accept and process Transactions. Cal and/or ISO shall provide Merchant with the Services indicated on Annex A, as amended from time to time, during the term of this Agreement, subject to the terms and conditions of this Agreement.
4. Omitted.
5. In the performance of its duties hereunder, ISO shall be an independent contractor, and not an employee or agent of Cal.
6. **Compliance with association rules:** Merchant agrees to comply with the bylaws, rules, regulations, policy statements and guidelines of the Card Associations.
7. **Term:** This Agreement shall become effective when signed by all parties and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for a successive terms of three (3) years each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Cal incurred while this Agreement was in effect.
8. Merchant shall establish a demand deposit account at a financial institution designated by Cal ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Cal to debit all amounts Merchant owes Cal or ISO hereunder from the Operating Account, at times deemed appropriate by Cal. Merchant waives any claims for loss or damage arising out of any charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained. Merchant may not make changes in Operating Account without Cal's consent.

MERCHANT PROCESSING APPLICATION AND AGREEMENT



9. Upon, or at any time after, execution of this Agreement, Cal may establish a Merchant Reserve Account at any financial institution designated by Cal ("Merchant Reserve Account") for all future indebtedness of Merchant to Cal or ISO that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Cal from time to time may determine in its sole discretion. Cal may fund the Merchant Reserve Account by deduction from payments due to Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Cal. The Merchant Reserve Account will be maintained for a minimum of 6 months after the date on which this Agreement terminates or until such time as Cal determines that the release of the funds to Merchant is prudent, in the best interest of Cal, and commercially reasonable, and that Merchant's account with Cal is fully resolved. Upon expiration of this 6-month period (or longer, as the case may be), any balance remaining in the Reserve Account will be paid to Merchant. Cal will inform Merchant in writing of any charges debited to the Merchant Reserve Account during this period. The calculation of the Merchant Reserve Account shall be as described in Annex C. Merchant may not make changes in Merchant Reserve Account without Cal's consent.
10. Merchant hereby agrees that Cal may appoint a trustee, on its own discretion, to manage the Merchant Reserve Account with accordance to the terms specified in this agreement with regard to the Merchant Reserve Account.
11. Merchant shall pay Cal all fees specified on Annex B, as amended by Cal, from time to time. For each Transaction, Cal will charge Merchant as :
 - a. An amount equal to a specified percentage of the total cash price of each Transaction ("Merchant Discount Rate");
 - b. A specified amount per Transaction ("Transaction Fee");
 - c. A specified amount per Authorization ("Authorization Fee").

The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on Annex B. The Merchant Discount Fees are based on sales, not net sales. Merchant agrees that Cal will deduct Merchant Discount Fees from the Operating Account or Merchant Reserve Account on a daily basis. Merchant also agrees to pay Cal the amount of any fees, charges, fines or penalties assessed against Cal by any Card Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such parties. Merchant shall pay Cal for any other services provided to Merchant by Cal and for all other fees, including, but not limited to monthly service fees, Chargebacks and set-up fees provided for in this Agreement, as shown on Annex B.

12. All amounts Merchant owes Cal may be charged to the Operating Account or Merchant Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Cal holds for, or on behalf of, Merchant.
13. As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Cal a security interest in the funds held in the Operating Account and in the Merchant Reserve Account. Merchant will execute and deliver to Cal such documents, in a satisfying form, as Cal may reasonably request in order to perfect Cal's security interest in the Operating Account and Merchant Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Cal to be necessary or desirable. Cal is authorized to file financing statements relating to the Operating Account and the Merchant Reserve Account without Merchant's signature where authorized by law.
14. Merchant appoints Cal as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Cal or ISO.
15. In processing Transactions, Merchant shall use only software programs provided by ISO or approved by ISO ("Software") and related equipment installed or approved by ISO, subject to Cal's approval, and the following additional terms:
 - a. The software to be provided or installed, the quantity of such Software and the location for installation are set forth on Annex A. The Software shall be suitable for processing the Services;
 - b. Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's computer hardware running the Software;
 - c. Merchant shall permit telephone equipment installers and computer hardware installers to enter its premises to install, replace, retrofit, inspect, relocate, disconnect, remove, repair or maintain telephone lines and equipment and computer hardware;
 - d. Merchant shall provide the information required by the merchant input form provided to Merchant by ISO and shall promptly notify ISO and Cal of any changes in this information;
 - e. If Merchant is using Software, Merchant acknowledges receipt of a copy of the Software User's Guide. Merchant will use and operate the Software only in accordance with the Software Users' Guide, as amended from time to time by Cal or ISO;
 - f. Merchant acknowledges that the installation of the Software and equipment is subject to: (1) the availability of suitable communication lines, equipment terminals and related equipment; and (2) the cooperation of Merchant with the electric and communication companies. Cal will have no liability to Merchant if any installation is delayed or cannot be completed. ISO will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of ISO;
 - g. All Software shall be installed and operated in accordance with the instructions provided by ISO.
16. Merchant acknowledges that its use of the Software is in accordance with the terms of the license granted by ISO. The Software is owned by ISO. It is licensed to Merchant and not sold. The Software and accompanying printed materials, if any, are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Merchant is prohibited from copying the Software and accompanying printed materials. Merchant shall not sell, lease, encumber or otherwise dispose of the Software. Merchant acknowledges that the proper functioning of the Software requires computer hardware suitable to operate the Software application. ISO will not have any liability to Merchant if the Software fails to operate because of Merchant's inappropriate, inadequate or faulty computer hardware, because of the failure of Merchant, its employees and agents to operate the Software properly in accordance with the instructions provided by ISO or because of the neglect or misuse of the Software by Merchant, its employees or agents. If the Software fails to operate for any other reason not attributable to Merchant, the liability of ISO shall be limited to the repair or replacement of the Software. Cal shall have no liability to Merchant for any Software.
17. Data Connection: In the event Merchant requires the installation of a dedicated data connection for electronic transmissions to ISO, Merchant shall make arrangements for such installation and the maintenance thereof with ISO. ISO shall coordinate the installation and maintenance of the dedicated data connection. Merchant shall pay ISO for all costs related to the installation and maintenance of the dedicated data connection.

MERCHANT PROCESSING APPLICATION AND AGREEMENT



18. Documenting Transactions. Merchant shall submit the following information to Cal in connection with Transaction processing:
- a. The DBA ("Doing Business As") name of Merchant, name of Merchant and Merchant's address;
 - b. Merchant's customer service telephone number if the Transaction is a mail, telephone or Internet Transaction;
 - c. Merchant's Internet address and e-commerce indicator;
 - d. The Merchant Number assigned to Merchant by Cal;
 - e. The Card account number, validation date and/or expiration date of the Card, if one appears on the Card;
 - f. The address and telephone number of Cardholder and Visa CVV2 or MasterCard CVC2 number if the Transaction is a mail, telephone or Internet Transaction;
 - g. The Name, address and telephone number of Cardholder; and
 - h. Such additional information as may from time to time be required by Cal and/or the relevant Issuer.
- Merchant shall not submit a Transaction to Cal (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Cal that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Card Associations.
19. Authorization for Full Recourse Transactions. Merchant shall obtain Authorization of Transactions as follows:
- a. All Full Recourse Transactions are at Merchant's risk. As to each Full Recourse Transaction, Merchant warrants to Cal that the person whose name is submitted to Cal as Cardholder made the purchase. Upon breach of this warranty, Cal may charge back the Transaction to Merchant. If Cal charges back the Transaction to Merchant: (i) Merchant shall pay Cal the amount of the Transaction, any Chargeback fee on Annex B, plus any Card Association fine or assessment; and (ii) Cal may charge all such amounts to the Operating Account or Merchant Reserve Account without prior notice to Merchant;
 - b. All Full Recourse Transactions must be electronically authorized via Software application and, in addition to the information required in Section 19 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholder's address and Address Verification results; and (iii) in lieu of the Cardholder's signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;
 - c. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Cal. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre-authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Cal that the Card covering the pre-authorization is not to be honored; and
 - d. Merchant shall verify Cardholder's address with the Card Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall perform address verification in order to qualify for the Qualified Merchant Discount Rate.
20. Merchant shall not do any of the following with respect to any Transaction:
- a. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
 - b. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
 - c. Establish a minimum or maximum dollar Transaction amount;
 - d. Obtain multiple Authorizations for amounts less than the total sale amount;
 - e. Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
 - f. Extend credit for or defer the time of payment of the total cash price in any Transaction;
 - g. Honor a Card except in a Transaction where a total cash price is due and payable;
 - h. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
 - i. Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in Merchant's application for card processing services initially submitted to and approved by Cal;
 - j. Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
 - k. Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
 - l. Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
 - m. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
 - n. Use the Software or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
 - o. Use the Software or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
 - p. Draw or convey any inference concerning a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
 - q. Disclose any information obtained through the Software to any person except for necessary disclosures to affected Cardholders, Cal and/or the Issuer;
 - r. Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;

MERCHANT PROCESSING APPLICATION AND AGREEMENT



- s. Disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
 - t. Disburse funds in the form of cash;
 - u. Accept a Card to collect or refinance an existing debt;
 - v. Issue a transaction credit for returned goods or services acquired in a cash transaction;
 - w. Make any cash refund to a Cardholder who has made a purchase with a Card. All transaction credits will be issued to the same Card account number as the sale; or
 - x. Accept a card for sales by third parties.
21. **Prohibition of Furnishing Account Information:** Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.
22. **Reconciliation of Transactions:**
- a. **Electronically Transmitted Transactions:** Transactions will be settled in accordance with Annex B. Cal shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled summary Transaction total of all of Merchant's total summary Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Cal or ISO hereunder; (iv) all taxes, penalties, fines, charges and other items incurred by Cal that are reimbursable pursuant to this Agreement; and (v) all rates, fees and charges described on Annex B.
 - b. **Reconciliation of Transactions:** Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Cal for payment, and shall notify Cal and ISO immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Cal nor ISO shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Cal for settlement.
 - c. **Provisional Credit:** Any credits to the Operating Account are provisional only and subject to revocation by Cal until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Cal may withhold payment for a Transaction to Merchant, for any reason, for a period of time not to exceed seven Business Days from the processing date of a Transaction.
23. **Adjustments and Returns:** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Cal the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Card Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.
24. **Chargebacks.** The acceptance by Cal of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for: (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) as follows:
- a. No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Cal, or the Transaction was submitted to Cal or ISO thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
 - b. The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been canceled and Merchant was so notified prior to the Transaction;
 - c. The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
 - d. The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date;
 - e. The information required in Sections 18 and 19(b) above was not submitted to Cal;
 - f. Cal or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
 - g. The Cardholder makes a written complaint to Cal or Issuer that the Cardholder did not make or authorize the Transaction;
 - h. A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
 - i. The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
 - j. The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
 - k. A Transaction is charged back by an Issuer;
 - l. Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Cal shall not be obligated to accept a Transaction for credit to the Operating Account. If Cal has credited the Operating Account or Merchant Reserve Account for such a Transaction, Cal may return the Transaction to the Merchant, and Merchant shall pay Cal the amount of the Transaction. Merchant agrees that Cal, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Merchant Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Cal holds for or on behalf of Merchant. If Merchant disagrees with Cal's decision to charge back a Transaction, Merchant must so notify Cal in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

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Without limiting the generality of any other provision of this Agreement, if Cal or ISO, take legal actions against Merchant for any Chargebacks or any amounts due to Cal or ISO hereunder, Merchant shall pay the costs and attorneys' fees incurred by Cal and/or ISO, whether suit is commenced or not.

25. Merchant Statement. At least once per month, Cal, or ISO under Cal's direction, shall provide Merchant with a Merchant Statement. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.
26. Retention of Original Sales Information: Merchant shall retain the information required by Sections 18 and 19(b) for seven years from the date of the Transaction. At the request of Cal, Merchant shall provide such information to Cal or ISO, as directed by Cal, within five (5) days of receipt of a request from Cal. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.
27. Recovery of Cards. Merchant will use its best efforts to reasonably and peaceably recover and retain any Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the terminal or Software; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card that it has reasonable grounds to believe is counterfeit, fraudulent or stolen.
28. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Cal, Cal may terminate this Agreement. Cal reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:
 - a. The Cardholder's name;
 - b. The Card account number;
 - c. The date and time the Cardholder asserted the claim or defense;
 - d. The nature of the claim or defense; and
 - e. The action that Merchant took in an attempt to resolve the dispute.

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

29. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except if required so by this Agreement or by law, and not before Cal and ISO are notified of the disclosure.
30. Card Associations' and Issuers' Requirements. Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Card Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Cal directly or through ISO. Subject to the prior written consent of Cal and upon such conditions as authorized by Cal, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
31. Compliance with Applicable Law. Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions.
32. Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Cal or ISO are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Cal or ISO. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Cal or ISO shall be entitled to recover any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.
33. Limit of Liability. In addition to all other limitations on the liability of Cal and ISO contained in this Agreement, neither Cal nor ISO shall be liable to Merchant or Merchant's customers or any other person for any of the following:
 - a. Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
 - b. Any loss caused by a Transaction downgrade resulting from defective or faulty Software regardless if owned by Cal, ISO or Merchant;
 - c. The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Cal, ISO or any other person for any reason; or
 - d. Interruption or termination of any Services caused by any reason except for failure of ISO to repair or replace Software or to use due care in selecting computer hardware installers; and in such cases, any liability shall be solely that of ISO and the liability of ISO shall be limited to a waiver of terminal or software fees due under this Agreement.

NEITHER CAL NOR ISO SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY CAL OR ISO PURSUANT TO THIS AGREEMENT.

MERCHANT ACKNOWLEDGES THAT CAL HAS PROVIDED NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SOFTWARE INSTALLED OR PROVIDED BY ISO AND THAT CAL HAS NO LIABILITY WITH RESPECT TO ANY SOFTWARE. CAL MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM CAL'S OR ISO'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, CAL'S AND ISO'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

34. Limitation on Damages. In no case shall Merchant be entitled to recover damages from ISO or Cal that exceed the fees retained by Cal and ISO pursuant to this Agreement during the one month period immediately prior to the event giving rise to the claim for damages.
35. Indemnification. Merchant agrees to indemnify and hold Cal and ISO harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Cal or Cal's affiliates, ISO or affiliates of ISO) arising out of any of the following:

MERCHANT PROCESSING APPLICATION AND AGREEMENT



- a. Merchant's failure to comply with this Agreement;
 - b. Any act or omission of Merchant;
 - c. Merchant's failure to comply with the Software User's Guide;
 - d. Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
 - e. Merchant's failure to comply with any applicable law, rule or regulation;
 - f. Fees and fines levied against Cal or ISO as the result of Merchant exceeding one or more Association thresholds or standards. If any such fee or fine is imposed on Cal or ISO as a result of the activities of more than one merchant, such fee or fine will be assessed to merchant proportionately, as determined by Cal.
 - g. Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
 - h. The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
 - i. Merchant's selection of an Internet service provider or other telecommunication services provider;
 - j. The theft of or damage or destruction to any Software; or
 - k. Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.
36. **Credit Investigation and Cal Auditing.** Cal may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Cal to complete Cal's audit. Merchant authorizes parties contacted by Cal to release the credit information requested by Cal, and Merchant agrees to provide Cal a separate authorization for release of credit information, if requested. Merchant shall deliver to Cal such information as Cal may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. Upon request by Cal or ISO, Merchant shall provide to Cal and ISO its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement
37. **Termination of Agreement by Cal and ISO.** Cal may terminate this Agreement upon 30 days' prior written notice to the other parties. In addition, Cal and ISO jointly may terminate this Agreement without notice to Merchant under any of the below listed circumstances. Any such notice of termination by Cal is effective upon mailing.
- a. Any information concerning Merchant obtained by Cal is unsatisfactory to Cal in Cal's sole discretion;
 - b. Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or ISO or Cal believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation;
 - c. Chargebacks are excessive in the opinion of Cal;
 - d. Breach of this Agreement by Merchant;
 - e. Any representation or warranty made by Merchant in this Agreement is not true and correct;
 - f. Merchant files a petition under any bankruptcy or insolvency law;
 - g. Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Cal hereunder;
 - h. Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Cal;
 - i. Any insurance policy obtained by Cal, ISO or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;
 - j. Merchant fails to provide financial statements suitable to Cal on request; or
 - k. ISO does not or cannot perform its duties under this Agreement and Cal determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement. Cal is not obligated to provide replacement of Services if ISO does not or cannot perform.
- Cal may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.
38. **Termination of Agreement by Merchant.** Merchant may terminate this Agreement upon at least 30 days prior written notice to the other parties if Cal amends Annex B pursuant to Section 40 to increase the rates, fees, or charges Merchant pays hereunder, except for changes originating from a Card Association. Upon termination notice, merchant shall pay OPL an Early Termination Fee equal to the greater of: i) the number of remaining months in the term or subsequent renewal terms of the Agreement after notice of termination or discontinuation of processing by Merchant, times \$50.00 per month; or ii) the number of remaining months in the term or subsequent renewal terms of the Agreement multiplied by 0.25% times the average Visa USA and MasterCard International monthly amounts settled during the prior six months (or, if less than six full months have elapsed, then all previous months' amounts settled); or iii) a flat termination fee of \$2500.00. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of this Agreement. Bank's rights of termination are non-cumulative.
39. **Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Cal and/or ISO may set off any amounts due to Cal and/or ISO under this Agreement against any property of Merchant in the possession or control of Cal or ISO.
40. **Exclusivity.** Merchant shall submit all Transactions made during the term hereof solely to Cal for processing. At Cal's discretion, Cal shall permit Merchant to process with Cal on a non-exclusive basis, provided that Merchant provide to Cal, prior to the execution of this Agreement and at any time during the term of the Agreement upon request by Cal, processing statements indicating the total amount and volume of Transactions processed with other banks (detailing settlements, refunds and chargebacks).

MERCHANT PROCESSING APPLICATION AND AGREEMENT



41. Amendments to this Agreement. From time to time Cal may amend this Agreement as follows:
- Amendment to Cards and/or Services. Cal may amend or delete Cards or Services listed in Annex A by notifying Merchant in writing of any amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Cal shall notify Merchant of the fees to be for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Cal has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
 - Amendment to Fees and Charges. From time to time, Cal may change all rates, fees and charges set forth on Annex B. Cal will provide written notice to Merchant of all amendments. Cal may change the rates, fees and charges without prior written notice for due cause, such as Merchant's sales volume or average Transaction amount not meeting Merchant's projections as contained in Merchant's application for card processing services. If notice is required, Cal will give written notice on the Merchant Statement. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement unless Merchant terminates this Agreement in accordance with Section 37.
 - Amendments to all other Provisions. Cal may amend this Agreement in any manner other than as described in Section 41(a) or 41(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Cal in such written notice.
42. Assignment. This Agreement may not be assigned by Merchant without the prior written consent of Cal. Cal may assign this Agreement without limitation. Assignment of this Agreement by Cal shall relieve Cal of any further obligations under this Agreement.
43. Financial Accommodations. Cal, ISO and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.
44. Waiver. To the extent that Merchant becomes a debtor under any law regarding liquidation and/or bankruptcy, and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Cal for relief from any automatic stay granted by law, to enforce any of Cal's rights or claims under this Agreement.

If to CAL:

Cal – Israel Credit Cards Ltd.
13 Tzufot Israel St.,
Givatayim, 53583 Israel

With a Copy to:

Mr. Baruch Alfia
Cal – Israel Credit Cards Ltd.
13 Tzufot Israel St.,
Givatayim, 53583 Israel

If to ISO:

Managing Director
OPL Payments Ltd.
Quern House
Mill Court
Great Shelford
Cambridge. CB22 5LD
United Kingdom
Fax: +44 (0) 1223 554027

If to MERCHANT:

The undersigned Merchant

45. In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.
46. This Agreement, together with the Annexes attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto. Notwithstanding, an agreement between Cal and ISO or between Cal and Merchant that explicitly provides otherwise shall prevail.
47. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.
48. Notices. Except for notices provided by Cal to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:
- Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.
49. This Agreement shall be governed and construed in accordance with the laws of the State of Israel, without regard to internal principles of conflict of laws.
50. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
51. No Waiver. Any delay, waiver or omission by Cal to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
52. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

ANNEX A – CARDS, SERVICES, AND EQUIPEMENT/SOFTWARE**1. Cards available to Merchant**

Cal currently provides Card services from the following card issuers:

Visa, MasterCard and Diners Club transaction processing services.

2. Services available to Merchant

As of the date of this Agreement, Merchant has requested and Cal has approved Merchant's use of the following services:

Authorization services for Visa, MasterCard, and Diners Club

Card Transaction processing services for Visa, MasterCard and Diners Club

3. Software Applications

ISO shall provide the following access method(s) to Merchant:

Real-time Internet Payment Gateway

Web-based Virtual Terminal

Online Web-based transaction reporting

Chargeback handling and management reporting

Online merchant accounting statements

ANNEX B

To

Israel Credit Cards Ltd.

Re: Agreement between Israel Credit Cards Ltd. and _____, (hereinafter "the Merchant") (hereinafter "the Agreement")

Since I am licensed to act as an advocate of the Merchant, I hereby confirm to you as follows:

1. I confirm that the name of the Merchant is _____.
2. I confirm that the identifying number of the Merchant at the place of its incorporation is _____.
3. I confirm that the official date of incorporation of the Merchant is _____.
4. The present address of the Merchant is _____. *A*
5. I confirm that the bank account number of the Merchant, which is _____ at _____ branch at _____ bank in _____, is registered in the name of the Merchant, on which _____ is/are the authorized signatory(ies).
6. The guarantor of the Merchant is/are: *B*
 - a. _____
 - b. _____

Attached hereto a copy of guarantor(s)' ID/passport/incorporation certificate.

7. Attached hereto are certified copies of the Merchant's incorporation certificate and documents of incorporation. *C*
8. Attached hereto is a certified letter confirming that the merchant is a registered and active company.
9. I confirm that the Merchant duly passed a resolution on _____ to sign the Agreement.
10. I confirm that the list of the duly authorized signatories on behalf of the Merchant includes:
 - a. _____
 - b. _____
 - c. _____

Attached hereto are copies of the above mentioned authorized signatories' IDs/passports.

11. The details (name, address, ID number, occupation, etc.) of the principals of the Merchant (not included under Paragraph 10 above) are:
 - a. _____
 - b. _____
 - c. _____
12. I do hereby confirm that on _____, _____ *D*, who identified herself/himself/themselves with _____ *E*, did hereby appear before me, and signed the Agreement and the declaration below before me.

Sincerely,

_____, Adv. *F*

ANNEX B

To
Israel Credit Cards Ltd.

Re: Agreement between Israel Credit Cards Ltd. and _____, (hereinafter "the Merchant") (hereinafter "the Agreement")

We hereby confirm to you as follows:

1. Mr./Ms. _____ represents us regarding the Agreement.
2. The beneficiaries *G* of the Merchant are *H*:
 - a. _____
 - b. _____
 - c. _____
3. The controlling persons/entities of the Merchant are *I*:
 - a. _____
 - b. _____
 - c. _____

Merchant: _____

Date: _____

By: _____

- A. Full address
- B. Name + ID/passport number + birth/incorporation date + gender + address
- C. For these purposes, "certified copy" means a copy certified by an Israeli attorney, or if what is involved is a foreign corporation, which has been certified by an attorney holding a license to practice law in that country; a copy certified by the authority which issued the document; an Israeli diplomatic or consular representative abroad; or an official of a banking corporation to whom the aforesaid document has been exhibited.
- D. Date + names
- E. Identifying document should include picture.
- F. The advocate that executed the above confirmation
- G. "Beneficiaries" - for whom the Merchant is acting, and if the same is/are not a "person" - the controlling entities/persons of the same. "Control" - the ability to direct the activity of a corporation, not inclusive of an ability resulting only from acting as director or other officer of the corporation.
- H. Name + ID/passport number and all the controlling entities going up to a person
- I. Name + ID/passport number or name + birth/incorporation date + birth/incorporation country, and all the controlling entities going up to a person