



Merchant Services Application and Agreement

MERCHANT INFORMATION

DBA NAME/OUTLET NAME:		LEGAL NAME (IF DIFFERENT THAN DBA):	
PHYSICAL STREET ADDRESS (NO P.O. BOX):		LEGAL ADDRESS:	
CITY, STATE, ZIP:		CITY, STATE, ZIP:	
DBA PHONE:	FAX:	CORP. PHONE:	FAX:
CONTACT NAME AT THIS ADDRESS:		CONTACT NAME AT THIS ADDRESS:	
E-MAIL:		E-MAIL:	
CUSTOMER SERVICE PHONE # (REQUIRED FOR ALL MERCHANTS):		WEB SITE ADDRESS (REQUIRED FOR INTERNET MERCHANTS):	

BUSINESS PROFILE (PLEASE INCLUDE BUSINESS FORMATION DOCUMENTS WITH APPLICATION)

TYPE OF OWNERSHIP:			
<input type="checkbox"/> SOLE PROPRIETORSHIP	<input type="checkbox"/> PARTNERSHIP GENERAL/LIMITED	<input type="checkbox"/> LIMITED LIABILITY CORP.	<input type="checkbox"/> TAX EXEMPT/NON-PROFIT
<input type="checkbox"/> CLOSELY HELD CORP.	<input type="checkbox"/> PUBLICLY HELD CORP.	<input type="checkbox"/> GOVERNMENT (FED/STATE/LOCAL)	<input type="checkbox"/> OTHER:
YEARS IN BUSINESS:	# OF LOCATIONS:	LENGTH OF CURRENT OWNERSHIP:	FEDERAL TAX ID/SSN:
LOCATION OF BUSINESS:			
<input type="checkbox"/> OFFICE SUITE <input type="checkbox"/> RETAIL STOREFRONT <input type="checkbox"/> PRIVATE RESIDENCE <input type="checkbox"/> OTHER (SPECIFY):			
TYPE OF GOODS/SERVICE(S) YOU SELL:		INTENDED USE OF ACH DIRECT'S SERVICE(S):	
HAS BUSINESS OR ANY PRINCIPAL BEEN TERMINATED AS A VISA/MC MERCHANT (TMF)? <input type="checkbox"/> YES <input type="checkbox"/> NO			
HAS MERCHANT OR ANY PRINCIPAL DISCLOSED HEREIN FILED BANKRUPTCY OR BEEN SUBJECT TO INVOLUNTARY BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, EXPLAIN:			

BUSINESS BANK INFORMATION (ATTACH VOIDED CHECK AND TWO MONTHS STATEMENTS TO THIS APPLICATION -- NO DEPOSIT SLIPS)

SETTLEMENT BANK ACCOUNT INFORMATION	
TRANSIT ROUTING/ABA NUMBER (NINE DIGITS):	DDA/CHECKING ACCOUNT #:
ALTERNATE BANK ACCOUNT FOR BILLING (IF DIFFERENT THAN SETTLEMENT ACCOUNT)	
TRANSIT ROUTING/ABA NUMBER (NINE DIGITS):	DDA/CHECKING ACCOUNT #:

OWNER/OFFICER INFORMATION (MUST BE GREATER THAN 50.1% OWNERSHIP - USE ADDITIONAL OWNER/OFFICER FORMS IF NECESSARY)

PRIMARY OWNER/OFFICER NAME:		% OWNERSHIP:		OWNER/OFFICER NAME:		% OWNERSHIP:	
SOCIAL SECURITY #:		TELEPHONE #:		SOCIAL SECURITY #:		TELEPHONE #:	
ADDRESS:		CITY:		ADDRESS:		CITY:	
STATE:	ZIP:	YEARS THERE:	OWN/RENT:	STATE:	ZIP:	YEARS THERE:	OWN/RENT:
DRIVER'S LICENSE #:		DATE OF BIRTH:		DRIVER'S LICENSE #:		DATE OF BIRTH:	
E-MAIL ADDRESS:				E-MAIL ADDRESS:			

PLEASE REMIT APPLICATION TO: (OVERNIGHT DELIVERY RECOMMENDED)

BE SURE TO INCLUDE THE FOLLOWING MATERIALS:

- VOIDED CHECK FROM THE ACCOUNT TO BE USED FOR THE SETTLEMENT OF FUNDS (SETTLEMENT ACCOUNT)
- COPY OF TWO (2) MONTHS BANK STATEMENTS FROM THE SAME ACCOUNT AS THE VOIDED CHECK
- BUSINESS FORMULATION DOCUMENTS (DBA, ARTICLES OF INCORPORATION, ETC)

FOR OFFICE USE ONLY

ISO ID: _____ SIC: _____ SALES REP: _____



Merchant Services Application and Agreement

ECHECK/ACH PROCESSING (COMPLETE IF APPLICABLE)

ACH PROCESSING FEES

MONTHLY STATEMENT: \$ _____ PER ITEM: \$ _____ RETURNED FEE: \$ _____ DISCOUNT FEE: _____ %

ESTIMATED MONTHLY VOLUME

	FOR DEBIT TRANSACTIONS (SALES)		FOR CREDIT TRANSACTIONS (REFUNDS/COMMISSIONS/DIRECT DEPOSIT)
MONTHLY VOLUME:	\$ _____		MONTHLY VOLUME: \$ _____
AVERAGE TICKET:	\$ _____		AVERAGE TICKET: \$ _____
MAXIMUM TICKET:	\$ _____		MAXIMUM TICKET: \$ _____

TRANSACTION TYPES

_____ % FACE-TO-FACE (PPD/CCD/BOG/POP)	_____ % SINGLE
_____ % INTERNET ORDER (WEB)	_____ % RECURRING
_____ % MAIL ORDER (ARC)	100 % TOTAL
_____ % TELEPHONE ORDER (TEL)	
_____ % FAX (PPD/CCD)	
100 % TOTAL	

NSF FEE REBATE PROGRAM

DO NOT COLLECT NSF FEES COLLECT \$ _____ PER NSF ITEM _____ % REBATE

VERIFICATION/AUTHENTICATION SERVICES (CHECK ALL THAT APPLY)

ATM VERIFY \$ _____ /ITEM NCN VERIFY \$ _____ /ITEM ID VERIFY \$ _____ /ITEM

CREDIT CARD PROCESSING (CHECK ALL THAT APPLY)

MASTERCARD/VISA: NEW ACCOUNT REQUESTED EXISTING IF EXISTING, PROVIDER: TSYS NOVA FIRST DATA GLOBAL

IF NOVA, FIRST DATA OR GLOBAL: BIN#: _____ TERMINAL ID (TID) #: _____ MID #: _____

IF TSYS: BIN#: _____ TERMINAL ID (TID) #: _____ AGENT #: _____ CHAIN #: _____ STORE #: _____ TERMINAL #: _____

DISCOVER: NEW ACCOUNT REQUESTED EXISTING - MID# _____

AMERICAN EXPRESS: NEW ACCOUNT REQUESTED EXISTING - MID # _____

PRODUCTS UTILIZED (CHECK ALL THAT APPLY)

VIRTUAL TERMINAL TRANSPORTER WEBPAY SOFT TERMINAL
 DIRECT INTERFACE/API DIRECT BILLING OTHER - SPECIFY _____

OTHER FEES (COMPLETE IF APPLICABLE)

GATEWAY MONTHLY: \$ _____ GATEWAY PER TRANSACTION: \$ _____ ONE-TIME SETUP FEE: \$ _____
CHARGEBACK FEE: \$ **15** MONTHLY MINIMUM: \$ _____

PERSONAL GUARANTY

I/We hereby guarantee to ACH Direct, its successors and assigns, the full, prompt, and complete performance of Merchant and all of Merchant's obligations under the Merchant Services Application and Agreement (the "Agreement"), including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under the Agreement, whether arising before or after termination of the Agreement. This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the Agreement, unless specifically discharged or amended. I/We understand that my/our obligations are independent of Merchant's obligations. I/We understand that I/we have no right to enforce a remedy which ACHD now has or may later have against Merchant nor to participate in security now or later held by ACHD. I/We hereby waive any notice of acceptance of this guaranty, notice of nonpayment or nonperformance of any provision of the Agreement by Merchant, and all other notices or demands regarding the Agreement. I/We agree to promptly provide to ACH Direct any information reasonably requested by ACH Direct from time to time concerning my/our financial condition(s), business history, business relationships, and employment information. I/We have read, understand, and agree to be bound by the Terms & Conditions provided to Merchant and those terms and conditions contained in the Merchant Application and Agreement.

SIGNATURE OF GUARANTOR _____, an individual NAME PRINTED _____ DATE _____

SIGNATURE OF WITNESS _____, an individual NAME PRINTED _____ DATE _____

MERCHANT AUTHORIZATION AND ACCEPTANCE OF TERMS AND CONDITIONS

This Merchant Services Application and Agreement ("MSAA"), along with the Terms and Conditions attached hereto, serves as the Merchant Agreement by and between ACH Direct, Inc. ("ACHD") and the Merchant named above ("Merchant" "you"). A copy of the Terms and Conditions, version number v07.07, has been provided to you. As a duly authorized signatory of Merchant, the undersigned certifies the following: 1) You have received a copy of the Terms & Conditions and that Merchant agrees to be bound by all terms and conditions contained therein and as may be modified or amended in compliance with those terms; 2) You understand that IF MERCHANT SUBMITS A TRANSACTION TO ACHD HEREUNDER, MERCHANT WILL BE DEEMED TO HAVE ACCEPTED THE MERCHANT SERVICES TERMS & CONDITIONS; 3) All information provided in this MSAA and supporting documents is true and accurate; 4) Merchant authorizes ACHD to debit and/or credit the account(s) listed above, or other accounts maintained by Merchant, for any amounts owed in accordance with the MSAA and the Terms and Conditions; 5) Merchant authorizes ACHD to order a credit report on Merchant and/or any affiliate that is listed on the MSAA or any supporting document; 6) Merchant will use the Verification and/or Authentication Services provided by ACHD for a purpose that is permissible under section 604(a) of the Fair Credit Reporting Act and that Merchant will follow proper procedures for adverse action notification to its customers, as provided in Appendix B to the Terms and Conditions.

SIGNATURE: _____	DATE: _____	SIGNATURE: _____	DATE: _____
PRINTED NAME: _____	TITLE: _____	PRINTED NAME: _____	TITLE: _____

MERCHANT SERVICES TERMS AND CONDITIONS

1. DEFINITIONS.

Unless otherwise defined herein or in Appendix A attached hereto, all capitalized terms used in these Terms and Conditions have the meaning assigned to those terms in the current rules and regulations of the National Automated Clearing House Association ("NACHA").

2. SERVICES, USE, LICENSE.

ACH Direct, Inc. ("ACHD") and its affiliates provide verification, customer identification, credit card processing and Automated Clearing House ("ACH") services (the "Services") to ACHD's customers ("Merchant(s)") engaged in the business of selling goods or services. ACHD will provide the Services selected by Merchant on the Merchant Services Application and Agreement ("MSAA"). Subject to these Terms and Conditions, ACHD hereby grants to Merchant a non-exclusive and non-transferable license to access and use ACHD's products and services contracted for under the MSAA and Merchant hereby accepts such license and agrees to utilize and access the selected Services in accordance with the practices and procedures established by ACHD. Merchant may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its customers, unless otherwise notified by ACHD. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of ACHD's Proprietary Property, as defined in Section 3 below, in whole or in part, is granted except as expressly provided by these Terms and Conditions. Neither Merchant nor any of its affiliates shall reverse engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in these Terms and Conditions or the MSAA shall be construed to provide Merchant with a license of any third-party proprietary information or property.

3. OWNERSHIP.

All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to ACHD's products and services (the "Proprietary Property"), are and will remain the sole and exclusive property of ACHD, whether or not specifically recognized or perfected under applicable law. ACHD shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing ACHD products or services and/or any new programs, upgrades, modifications or enhancements developed by ACHD in connection with rendering any services to Merchant (or any of its affiliates), even when refinements and improvements result from Merchant's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in ACHD by virtue of Merchant's agreement to these Terms and Conditions or otherwise, Merchant hereby transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to ACHD all rights, title, and interest which Merchant or any of its affiliates may have in and to such refinements and improvements. All reference to any of ACHD's service marks, trademarks, patents or copyrights, or those of ACHD's partners or

vendors, shall be made in compliance with the requirements of Appendix C.

4. ACH PROCESSING SERVICES.

a. Description of Services - ACHD shall use information provided by Merchant to send Merchant's ACH Transactions to the ACH Network. For Debit Entries, ACHD shall first send a debit transaction through its ODFI to the ACH Network which is then forwarded to the Receiver's account. All funds collected on behalf of the Merchant will be transmitted to a custodial account located with ACHD's ODFI. After any applicable hold time, ACHD will submit to the end-of-day settlement process any items that have not been returned or rejected. For Credit Entries, ACHD will submit all Credit Entries to the end-of-day settlement process. ACHD shall then schedule these items to be sent through its ODFI to the ACH Network which is then forwarded to the Receiver's account after the expiration of any applicable hold time.

b. Accepting ACH Transactions - ACHD shall accept Transactions on a 24-hour basis. Transactions received after the designated cut-off time will be included in the next day's processing. ACHD is responsible only for processing Transactions that are received by ACHD in the proper format, pre-approved by ACHD and on a timely basis.

c. Modifying ACH Transactions - At Merchant's request, ACHD will make reasonable efforts to reverse, modify, or delete an entry after it has been submitted by Merchant prior to being submitted to the ACH Network. All requests must be made in writing, signed by an individual pre-authorized by Merchant to make such requests and faxed or delivered to ACHD. Merchant agrees that ACHD will not be held responsible for any losses, directly or indirectly, incurred by Merchant or other third parties as a result of ACHD's failure to accomplish the requested modification or deletion before the Transaction has been submitted to the ACH Network. Further, Merchant acknowledges that once a Transaction is submitted to the ACH Network, it cannot be modified or deleted.

d. Rejecting or Returning ACH Transactions - ACHD may delay or reject any Transaction without prior notification to Merchant for any reason permitted or required under the Rules or Regulations or if, ACHD has reason to believe such Transaction is fraudulent or improperly authorized. ACHD shall have no liability to Merchant by reason of the rejection of any such Entry. ACHD shall make available to Merchant details related to the receipt of any returned or rejected Entries from the ACH Network and shall credit or charge such Entries to the end-of-day settlement process. Unless Merchant receives notification that an entry has been returned or rejected, Merchant should consider the item as paid. ACHD may, but shall have no obligation to retransmit a returned or rejected Transaction.

e. Processing Limits - ACHD may impose a cap on the dollar amount of Transactions it will process for Merchant. These limits may be changed by ACHD from time to time, upon notice to Merchant. If Merchant exceeds the established limits, ACHD may temporarily

suspend Transaction processing or temporarily hold the funds that are in excess of the established limits.

f. Holding of Funds - The standard hold time of Merchant's funds for Debit and Credit Entries is four (4) Business Banking Days. Merchant may request a reduction of hold time on Debit and/or Credit Entries by submitting the applicable form provided by ACHD and supporting documents. ACHD may require separate security safeguards from Merchant to support such a reduction but is under no obligation to grant Merchant's request. Should ACHD observe any irregular Transaction or fraudulent activity by Merchant, or as required by law, ACHD reserves the right to place a longer hold time without prior written notice to Merchant.

g. Security Deposit - Should ACHD determine that a security deposit or "Reserve" is required, such deposit shall be established through an addendum to the MSAA, signed by both parties and may be revised based on periodic review of Merchant's transaction volumes, amounts and return ratios. This Reserve shall be used by ACHD to offset any returned items or charge-backs that ACHD is unable to collect from Merchant's Settlement account or other means as prescribed herein. Merchant hereby grants a security interest in any such Reserve funds held by ACHD to secure Merchant's existing and future obligations to ACHD under these Terms and Conditions and the MSAA. The Reserve funds shall be held by ACHD for ninety (90) calendar days beyond the date of the last item processed by ACHD on Merchant's behalf. In the event ACHD has reason to believe that Merchant has acted in a fraudulent manner or has not obtained proper authorization, ACHD may extend the hold on Merchant's Reserve funds up to the maximum time allowed by law.

h. Settlement and Finality - At the close of each Business Banking Day, ACHD will calculate Merchant's Settlement Amount, including all applicable debits, credits, fees and adjustments. In the event the sum total of the Settlement Amount is a non-zero value, ACHD will initiate a Settlement Entry to Merchant's Settlement Account. Positive totals will result in a Credit Entry to Merchant's Settlement Account; negative totals will result in a Debit Entry to Merchant's Settlement Account. In the event that a Debit Entry to Merchant's Settlement Account is returned for any reason, all Credit Entries initiated by Merchant may be cancelled or reversed at ACHD's discretion.

i. Receiver Authorization. Merchant shall obtain authorization from Receiver prior to requesting a debit and/or credit to Receiver's account. Merchant shall retain proof of Receiver's authorization for a period of two (2) years after receipt of the authorization, or for the appropriate period designated by any applicable Rules or Regulations and shall provide such proof of authorization to ACHD or its ODFI upon request. If Merchant fails to provide such proof within five (5) Business Banking Days, ACHD may impose a fine of up to \$100 per occurrence. Merchant shall cease initiating Transactions to a Receiver immediately upon receipt of any actual or constructive notice of that Receiver's termination or revocation of authority. Merchant may re-initiate Transactions to a Receiver only upon receiving new authorization from Receiver.

j. ACH Chargebacks. Merchant will be charged a chargeback fee on a per occurrence basis, for every ACH Chargeback (defined in Appendix A) posted to Merchant's account. Additionally, ACHD will regularly monitor Merchant's chargebacks. Using limits established by NACHA as a standard for review, ACHD reserves the right to suspend and/or terminate Merchant's access to the Services should Merchant's chargeback ratio exceed

allowable limits in any given calendar month. ACHD will make reasonable efforts to provide Merchant with notice and a time to cure its excessive chargebacks prior to suspending or terminating Merchant's access to the Services. In compliance with the Rules, Merchant authorizes ACHD to provide to ODFI and NACHA Merchant's company and contact information as well as transaction details should Merchant's ACH chargeback ratio exceed the allowable limits in any given calendar month.

k. Ceasing Activities. Merchant shall cease initiating Transactions immediately upon receipt of any actual or constructive notice of Receiver's termination or revocation of authority. Additionally, Merchant shall not re-submit any Transaction unless it is returned for insufficient funds (R01) or uncollected funds (R09) or unless a new authorization is obtained from Receiver.

5. ACCOUNT VERIFICATION SERVICES.

If utilizing ACHD's verification and authentication services ("Verification Services"), Merchant will submit a verification transaction inquiry to ACHD. ACHD will then process the transaction and provide Merchant the results of the verification inquiry.

a. Types of Verification Services. Depending on the services Merchant has registered for, as well as the level of participation by the account holder's financial institution, the transaction may be processed through one or more of the following types of verification:

1) *ATMVerify*[®] Level I - Verify whether or not the account number inquired upon is in good standing as of the time of the inquiry, and whether or not sufficient funds exist within the specified account to cover the amount specified as part of the verification transaction.

2) *ATMVerify*[®] Level II - Verify the current status of the banking account as of the last reported Business Banking Day, as reported by the participating financial institution.

3) *NCNVerify*[™] - Verify whether or not the account number inquired upon is currently listed in one or more national databases of bad check writers.

b. DISCLAIMER. None of ACHD's Verification Services can verify that the name provided by Merchant as the account holder matches the actual owner of the account number submitted by Merchant.

c. PERMISSIBLE USES. IN ADDITION TO COMPLIANCE WITH FAIR CREDIT REPORTING ACT REQUIREMENTS AS REFERRED TO IN APPENDIX B ATTACHED HERETO, MERCHANT SHALL USE THE VERIFICATION SERVICES ONLY IN CONNECTION WITH PAYMENTS PRESENTED TO MERCHANT BY ITS CUSTOMERS IN EXCHANGE FOR GOODS OR SERVICES.

d. No Retention of Data. Merchant acknowledges and agrees that it shall not retain, store, compile or aggregate the results of verification inquiries received from ACHD except as required by applicable law or to perform its obligations under this Agreement.

e. Representation by Merchant. Each request for data through the Verification Services shall constitute a representation, warranty and certification by Merchant that the data (i) shall be used and disclosed only in accordance with the terms of the Agreement, and in accordance with any applicable Rules or laws; (ii) shall be used solely for the intended use as stated by Merchant on the MSAA and that use is in compliance with the permissible uses under the FCRA and U.S. Code sections listed in these Terms and Conditions and attached Appendices; (iii) Merchant will follow proper procedures for adverse action notification to its customers, as provided in Appendix B to the Terms and Conditions attached hereto; and (iv) Merchant acknowledges it has

implemented security measures to prohibit the unauthorized access to the information provided.

f. **Audit.** Merchant agrees to cooperate fully with ACHD in conducting a review of Merchant's use of the Verification Services to verify that Merchant is using the services in compliance with this Agreement.

g. **Immediate Termination.** ACHD reserves the right to immediately terminate Merchant's access to the Verification Services should ACHD have reason to believe that Merchant is using the Verification Services for a purpose other than a permissible use.

6. CUSTOMER IDENTIFICATION SERVICES.

If utilizing ACHD's ID Verify Services, Merchant will submit a request to ACHD for verification of consumer information. ACHD will use its best efforts to verify the information provided by comparing that information against various national databases of consumer information records. ACHD will then provide the results of its investigation to Merchant.

a. **Permissible Uses.** Merchant agrees it will ONLY use this service to effectuate one or more of the following, in accordance with the Gramm-Leach-Bliley Act and 16 CFR Part 313.14, 15:

- 1) To protect against or prevent actual or potential fraud; unauthorized transactions, claims, or other liability.
- 2) For required institutional risk control or for resolving consumer disputes or inquiries.
- 3) To persons holding a legal or beneficial interest relating to the consumer.
- 4) To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- 5) To comply with Federal, State or local laws, rules and other applicable legal requirements.
- 6) As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes.

b. **Prohibited Business Activities.** Merchant confirms that it is NOT involved in any of the following business activities:

- 1) Investigative companies including private investigators and detective agencies except those licensed for - and exclusively practicing, investigative work for employment purposes.
- 2) Bail bond companies.
- 3) Any company or individual listed in the EVS/ACHD Customer Alert Notifications.
- 4) Dating Services.
- 5) Internet people locator services to locate lost loves, friends, family members, or for personal reasons, such as dating.
- 6) Adoption search firms.
- 7) Diet centers.
- 8) Credit clinics; credit repair companies; and credit counseling firms.
- 9) Media agencies; news agencies; and journalists.
- 10) Businesses operating out of a residence except as provided by ACHD policy.
- 11) Any fraudulent or illegal activity, such as identity theft, harassment, stalking.
- 12) Any company or individual who is known to have been involved in credit fraud, or other unethical business practices.

7. RECEIVING REPORTS AND TRANSACTION FILES.

Merchant is responsible for communicating with ACHD's Host Processing System to receive daily reports and/or transaction files. ACHD is under no obligation to transmit this data to Merchant.

8. PRICING AND PAYMENT.

Merchant shall pay for all products and services according to the MSAA, and as those fees may be amended by ACHD from time to time in accordance with these Terms and Conditions. Said fees shall be due and payable by Merchant within thirty days' (30) of receipt of services unless otherwise agreed upon between the parties. Fees will differ depending on type of services and/or level of services Merchant has requested and may be modified by ACHD upon a minimum of thirty (30) days' written notice to Merchant. ACHD is authorized to obtain payment for these fees and any other amounts due under the MSAA, including late fees, by directly debiting Merchant's specified bank account(s). A \$25.00 fee shall be assessed for any return of a debit processed to Merchant's account. Failure to pay any amount due to ACHD within the time period or on the terms set forth in this section shall constitute a material breach of the MSAA and these Terms and Conditions by Merchant. ACHD shall assess a late fee of one and one-half percent (1½%) per month on all amounts due and payable after the monthly deadline. In addition to imposing such late fees, ACHD may elect to terminate Merchant's access to the Services in accordance with Section 24 below. Further, ACHD shall have the right to offset against any amount payable by ACHD to Merchant under any provision of these Terms and Conditions, any amounts owed ACHD by Merchant, or any damages sustained by ACHD as a result of Merchant's violation, breach or non-performance of its obligations under these Terms and Conditions. In the event the funds in Merchant's designated account are insufficient to cover Merchant's obligations, Merchant agrees to submit payment of amounts owing to ACHD upon demand and through alternative means. Unless otherwise agreed upon, ACHD may debit any alternative account maintained by Merchant for the amounts due and owing without further notice to or approval from Merchant.

9. TAXES.

Merchant is solely responsible for payment of any taxes (including sales or use taxes, transfer taxes, excise taxes, intangible taxes, property taxes, and similar taxes and duties) resulting from Merchant's acceptance of the license granted hereunder and use of ACHD's products and services, excluding, however, any taxes payable by ACHD as a result of income earned by ACHD hereunder. Merchant shall reimburse ACHD should ACHD be charged for any tax obligation of Merchant. Merchant shall hold ACHD harmless from all claims and liability arising from Merchant's failure to report or pay such taxes.

10. NSF FEE REBATE PROGRAM.

Merchant may request that ACHD collect the NSF fee, allowable under the laws of Merchant's domiciliary state, from a designated Receiver upon any return of an ACH transaction from that Receiver either for Insufficient Funds (NSF) or Uncollected Funds. ACHD shall rebate Merchant a percentage of any such funds collected from Receiver, as established on the MSAA..

11. INVESTIGATIVE REPORT.

Merchant is on notice that an investigative or Consumer Report may be made in connection with the MSAA. Merchant authorizes ACHD or any Credit Bureau or any

Credit Reporting Agency employed by ACHD or any of its agents to investigate the references given or any other statements or data obtained from Merchant, or any of its principals, in connection with the MSAA or for the purpose of obtaining services from ACHD. Subsequent Consumer Reports and inquiries may be required or used in conjunction with an update, renewal or extension of the MSAA.

12. VOLUME AND FINANCIAL RE-EVALUATION.

ACHD reserves the right to re-evaluate Merchant's financial position at its own discretion throughout the course of ACHD's business relationship with Merchant. Such re-evaluation may result in modification of the fee structure, reserve amount, applicable discount fees or termination of the agreement between Merchant and ACHD in accordance with these Terms and Conditions.

13. CONFIDENTIALITY.

Merchant acknowledges that the products, services and information relating to ACHD's products and services (including without limitation these Terms and Conditions) contain confidential and proprietary information developed by, acquired by, or licensed to ACHD (the "Confidential Information"). Merchant will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Merchant nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity, except to those of Merchant's employees or affiliates who require access for Merchant's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. This Section will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, or (iii) is disclosed under force of law, governmental regulation or court order. Merchant acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to ACHD. As such, if ACHD becomes aware of Merchant's breach or threatened breach of this Section 13, ACHD may suspend any and all rights granted to Merchant under the MSAA and these Terms and Conditions and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to ACHD.

14. REPRESENTATIONS AND WARRANTIES.

a. ACHD's Representations and Warranties. ACHD represents and warrants to Merchant that:

- 1) ACHD's agreement to provide its products and services to Customer and to perform the Services hereunder does not violate any agreement or obligation between ACHD and any third party.
- 2) To the best of ACHD's knowledge, none of the products or services being provided to Merchant under the MSAA will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.
- 3) To the best of ACHD's knowledge, none of its products or services violates any international, federal, state, or local law or regulation relating to individual privacy.
- 4) When executed and delivered by ACHD, the agreement with Merchant will constitute the legal, valid, and binding obligation of ACHD, enforceable in accordance with its terms.

b. Merchant's Representations and Warranties.

Merchant understands and agrees that ACHD's ODFI is a third party beneficiary of Merchant's representations and warranties herein. Merchant represents and warrants to ACHD that:

- 1) Merchant's agreement to license ACHD's products and services and to engage ACHD to perform the Services hereunder does not violate any agreement or obligation between Merchant and any third party.
- 2) To the best of Merchant's knowledge, neither any information delivered by Merchant to ACHD in support of the MSAA and these Terms and Conditions nor Merchant's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.
- 3) None of the activities for which Merchant has engaged the services of ACHD shall violate any international, federal, state, or local law or regulation relating to individual privacy. Neither Merchant nor any of its affiliates will use the ACHD products and/or services for (i) any unlawful, fraudulent, libelous, defamatory, threatening, abusive or otherwise objectionable usage of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations.
- 4) When executed and delivered by Merchant, the agreement with ACHD will constitute the legal, valid, and binding obligation of Merchant, enforceable in accordance with its terms.
- 5) If applicable, Merchant represents and warrants that with respect to all ACH Transactions originated by ACHD on behalf of Merchant that (i) each Receiver has authorized the debiting and/or crediting of its account (ii) each Transaction is for an amount agreed by the Receiver and (iii) each Transaction is in all other respects properly authorized (iv) Merchant shall provide proof of authorization for any Transaction to ACHD upon request within five (5) Business Banking Days.

15. INDEMNIFICATION.

Merchant bears all responsibility for its own employees' actions while in Merchant's employ. Merchant shall indemnify and hold harmless ACHD and its officers, directors, employees, and agents, from and against any and all claims, demands, actions, losses, damages, liabilities, expenses, expenditures, and costs including but not limited to attorneys' fees and other costs of defense, including settlement costs, that relate to or result from (i) any material breach of Merchant's representations and warranties contained herein, (ii) any alleged violation by Merchant of any applicable law, Rule or Regulation, or (iii) any action of Merchant, its agents or employees in connection with any Transaction subject to these Terms and Conditions. Further Merchant acknowledges that ACHD may rely solely on identifying numbers provided by Merchant to determine the bank and account in question for each Transaction even if the numbers identify a bank or account holder that differs from the one Merchant has identified by name. Merchant shall indemnify ACHD for any losses, liabilities, costs or expenses ACHD or any third party suffers or incurs as a result of an incorrect account or other identification. All disputes between Merchant and its Receiver(s) relating to any Transaction will be settled by and between Merchant and Receiver. Merchant agrees that ACHD bears no responsibility or involvement in any such dispute.

16. LEGAL AND REGULATORY COMPLIANCE.

Merchant is solely responsible for ensuring that Merchant's policies and procedures meet the requirements of the Rules and Regulations, including Rules provisions for self-auditing. ACHD bears no responsibility for any lack of compliance with these Rules and Regulations by Merchant and directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such. Merchant agrees not to initiate entries that violate the laws of the United States, including but not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It is Merchant's responsibility to obtain information regarding OFAC enforced sanctions. Merchant may obtain further information from the OFAC Compliance Hotline at (800) 540-OFAC.

17. RULES AND REGULATIONS VIOLATIONS.

Merchant shall reimburse ACHD for any fines or loss of funds imposed on ACHD for any violation of the Rules or Regulations by Merchant. ACHD shall provide Merchant written notice of any such fine. In the event Merchant fails to comply with this remedy within thirty (30) days' of notice, Merchant shall be assessed a fee of \$100.00 per item in violation of the Rules or Regulations, in addition to any fees imposed by NACHA, ODFI or any other governmental or legal authority. Assessment of such additional fee will in no way limit ACHD's right to pursue action under Section 4j above, or to obtain other remedies available under applicable law.

18. LIMITS OF LIABILITY.

a. Errors of Others - ACHD shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Transactions may be originated or through which ACHD may receive or transmit information, and no such entity shall be deemed an agent of ACHD.

b. Damages Waiver - ACHD shall not be liable to Merchant or any third party for any special, consequential, incidental or punitive damages of any kind or nature incurred in relation to the MSAA and these Terms and Conditions, whether or not (i) any claim for these damages is based on tort or contract; or (ii) ACHD knew or should have known the likelihood of such damages occurring under the circumstances. Merchant shall not assert any such claim against ACHD or its subsidiaries or affiliated companies or their respective officers, directors, or employees. ACHD's maximum liability hereunder for any claims whatsoever shall not exceed the total amount of all fees paid by Merchant to ACHD during the three-month period preceding the origination of the claim giving rise to liability. No claim may be brought by Merchant or any of its affiliates more than one (1) year after the accrual of the claim. The limitations of liability contained in this section shall apply without regard to whether other provisions of the Terms and Conditions have been breached or have proven ineffective.

c. ODFI Liability - Merchant understands and agrees that ACHD has full and exclusive power to provide ODFI with directions on Merchant's behalf. ODFI has no liability whatsoever for ACHD's acts, omissions or representations and is not responsible for any loss caused by ACHD. ACHD is not an agent of ODFI and has no authority to act or make commitments on behalf of ODFI. ODFI will not be monitoring ACHD's transactions in respect of Merchant's funds. All Merchant complaints and claims arising out of the MSAA shall be made solely

to ACHD. IN NO EVENT SHALL ODFI BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, NOR SHALL ODFI HAVE LIABILITY IN ANY EVENT IN EXCESS OF THE FEES IT RECEIVES FOR HANDLING MERCHANT'S TRANSACTIONS. Merchant agrees that these limitations are reasonable given the fact that no compensation is being paid to ODFI by Merchant.

19. NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS.

Merchant shall regularly and promptly review all Transactions and other communications from ACHD and shall immediately notify ACHD upon discovery of any and all discrepancies between Merchant's records and those provided by ACHD, the ODFI or Merchant's bank, or with respect to any transfer that Merchant believes was made without proper authorization. Upon notification by Merchant, ACHD will use its best efforts to reverse the Transaction notified of. However, Merchant acknowledges that the Transaction may have progressed beyond ACHD's ability to control by the time of such notice and under such circumstances, Merchant accepts full responsibility for all losses, liabilities, costs or expenses Merchant, ACHD or any third party suffers or incurs as a result of ACHD's inability to reverse the transaction.

20. ACHD SERVICE POLICY.

Merchant acknowledges and understands that ACHD does not warrant that the Services will be uninterrupted or error free and that ACHD may occasionally experience delays or outages due to disruptions that are not within ACHD's control. Any such interruption shall not be considered a breach of the MSAA by ACHD. ACHD shall use its best efforts to remedy any such interruption in service as quickly as possible.

21. DISCLAIMER OF WARRANTIES.

Except as otherwise specifically provided herein, ACHD's products and services are provided hereunder "As Is" without warranty of any kind. Except as otherwise specifically provided herein, to the maximum extent permitted by law, ACHD expressly disclaims any and all warranties, conditions, representations, and guarantees with respect to the ACHD products and services, whether express or implied, arising by law, custom, prior oral or written statements, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. No representation or other affirmation of fact, including, without limitation, statements regarding capacity, suitability for use or performance of the ACHD products or services, whether made by employees of ACHD or otherwise, which is not contained in these Terms and Conditions, shall be deemed to be a warranty by ACHD for any purpose, or give rise to any liability of ACHD whatsoever.

22. FORCE MAJEURE.

Neither party shall be liable for, or be considered in breach of or default under the MSAA on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

23. TERM AND TERMINATION.

The MSAA shall have an initial term of one (1) year from and after the Effective Date and shall automatically renew for successive one (1) year periods unless either party provides thirty (30) days' written notice of termination to the other party. Merchant agrees and acknowledges that should the MSAA be terminated for any reason prior to the expiration of the initial term of one (1) year, Merchant shall be assessed an early termination fee of \$99.00, payable to ACHD along with any and all other financial obligations due ACHD in connection with any transaction processed by ACHD on behalf of Merchant (whether before or after such termination). An exception to this early termination fee will be made should Merchant terminate without cause within the first 30 calendar days of the initial term.

ACHD may immediately terminate the MSAA without prior notice under the following conditions: (i) in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due; (ii) if ACHD reasonably determines that Merchant has violated any term, condition, covenant, or warranty of the MSAA or Terms and Conditions; (iii) if ACHD determines in its sole discretion that Merchant has abused its privileges under the MSAA; or (iv) ACHD determines that the type of business in which Merchant is engaged is or becomes an industry or business that ACHD is prohibited from providing its services to.

Upon the effective date of termination of the MSAA, Merchant's rights hereunder to use the Services shall cease, but Merchant's obligations in connection with any transaction processed by ACHD on behalf of Merchant (whether before or after such termination) shall survive termination. Promptly upon termination of the MSAA for any reason, Merchant shall return or destroy, as requested by ACHD, all materials pertaining to the Services, including all copies thereof.

24. AMENDMENT OR MODIFICATION OF TERMS.

Unless otherwise provided for in these Terms and Conditions, ACHD reserves the right to amend the terms of its agreement with Merchant upon at least ten (10) days written notice to Merchant. Merchant's continued use of the Services after receipt of such notice shall indicate Merchant's acceptance of the new terms. These Terms and Conditions are subject to such modifications, changes, and additions as may be required, or deemed to be required by ACHD, by reason of any applicable Rule or Regulation.

25. ASSIGNMENT.

The rights granted under the MSAA and these Terms and Conditions are and shall be personal to Merchant and shall not be assigned by any act of Merchant or by operation of law, without the prior consent of ACHD, which shall not be unreasonably withheld. Any attempt on the part of Merchant to sub-license or assign to third parties its rights or obligations hereunder without such consent shall constitute a material breach of its agreement with ACHD and grounds for termination of the MSAA. ACHD may assign its rights and obligations under the MSAA without the approval of Merchant, but shall provide notice of such assignment to Merchant.

26. NOTICE.

Any notice required to be given by either party hereunder, excluding notice of changes in fees, shall be in writing and delivered personally to the other designated party, or sent by any commercially reasonable means of receipted delivery, addressed, to that party at the address most recently provided in writing. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

27. LEGAL FEES.

In the event of any dispute arising out of or related to the MSAA or these Terms and Conditions, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery.

28. GENERAL PROVISIONS.

The agreement between the parties hereto shall be binding on the parties only upon execution of the MSAA by an authorized representative of both parties. The MSAA shall be governed by and construed in accordance with the internal laws of the state of Texas, and the parties consent to the jurisdiction and venue of the federal and state courts sitting in Collin County, Texas. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of the MSAA or these Terms and Conditions. Should any term, clause or provision hereof be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties. The MSAA along with these Terms and Conditions constitute the entire understanding of the parties, and revoke and supersede all prior agreements between the parties and are intended as a final expression of their agreement. Except as otherwise provided for herein, these Terms and Conditions shall not be modified or amended except in writing signed by the parties hereto and specifically referring to these Terms and Conditions. The MSAA may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

29. MERCHANT AUTHORIZATION.

The MSAA and these Terms and Conditions become an effective agreement when signed by an authorized representative(s) of Merchant and ACHD. Further, Merchant agrees to notify ACHD of any important changes in the information provided in the MSAA or any attachments thereto. Merchant acknowledges notification that all payments by check will be converted to an ACH payment and electronically deposited to ACHD's bank account. If any payment is returned unpaid Merchant authorizes ACHD to electronically debit the item and an additional \$25.00 processing fee from Merchant's account provided in the MSAA.

APPENDIX A DEFINITIONS

ACH Network - Automated Clearing House Network is a batch processing, store-and-forward system that accumulates and distributes ACH transactions that are received from ODFI (defined below) and are forwarded to the specified RDFI (defined below) according to the specific schedules established by the participants.

ACH Transactions - All Entries, including but not limited to Debit and Credit Entries (defined below) that are transmitted through the ACH Network.

Affiliate - a business entity effectively controlling or controlled by another or associated with others under common ownership or control.

ACH Chargeback - Any ACH item which is returned designated with the following return codes: R05, R07, R10, R29 and R51.

Business Banking Day - Monday through Friday, normal operating hours, excluding Federal holidays.

Credit Entry - An ACH Transaction that is intended to deposit funds into a Receiver's (defined below) account which has been withdrawn from Merchant's Settlement Account (defined below).

Debit Entry - An ACH Transaction that is intended to withdraw funds from a Receiver's account for deposit into Merchant's Settlement Account (defined below).

NACHA - National Automated Clearing House Association responsible for establishing, revising and enforcing the Operating Rules for the ACH Network.

Operating Rules (the "Rules") - the operational rules established by NACHA which govern all transactions and parties utilizing the ACH Network.

ODFI - Originating Depository Financial Institution is the financial institution that receives ACH Transactions from Merchant through ACHD and then forwards these Transactions (defined below) to the ACH Network.

Originator - A Merchant who has contracted with ACHD to initiate ACH entries, on their behalf, to the ACH Network.

RDFI - Receiving Depository Financial Institution is the financial institution that receives the ACH Transactions from the ODFI through the ACH Network and posts these Transactions to the accounts of Receivers (defined below).

Receivers - An organization or individual consumer that has authorized Merchant to initiate an ACH Transaction to an account they maintain with a financial institution (RDFI).

Regulations - All federal, state and local regulations that govern Internet business, consumer information and Transactions (as defined below), including but not limited to the FCRA, federal Regulation E and Title 31 of the Code of Federal Regulations Part 210.

Returned Entries - Any Transaction returned or rejected by ACHD, ODFI or RDFI.

Settlement Account - An account established and maintained by Merchant with a financial institution through which the deposit of funds for Debit Entries and the extractions of funds for Credit Entries are made.

Settlement Entry - a Debit or Credit Entry to Merchant's Settlement Account which corresponds to the net amount owed Merchant by ACHD at the end of each Business Banking Day.

Transactions - Any transfer of data or information from Merchant to ACHD in a format pre-approved by ACHD, including but not limited to ACH Transactions, Debit Entries, Credit Entries, Verification Entries and Authentication Entries.

APPENDIX B
FAIR CREDIT REPORTING ACT REQUIREMENTS

1. The following is a list of permissible uses for the data received through ACH Direct's Verification and Authentication Services (the "Services") in accordance with section 604(a) of the Fair Credit Reporting Act ("FCRA"):

- 1) In response to a court order or Federal grand jury;
- 2) In accordance with the written instructions of the consumer to whom the information relates;
- 3) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
- 4) For employment purposes;
- 5) In connection with the underwriting of insurance involving the consumer;
- 6) To determine the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status;
- 7) As a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation;
- 8) Otherwise having a legitimate business need for the information, including:
 - a) in connection with a business transaction that is initiated by the consumer;
 - b) to review an account to determine whether the consumer continues to meet the terms of the account.
- 9) For use by state and local officials in connection with the determination of child support payments, modifications or enforcement thereof.

2. Representations by Merchant. Each request for data through the Services shall constitute a representation, warranty and certification by Merchant that the data (a) shall be used and disclosed only in accordance with the provisions of the MSAA, the Terms and Conditions and this Appendix B, and in accordance with any applicable Rules or laws; and (b) shall be used solely for the intended use as provided in the MSAA. ACHD reserves the right to immediately terminate Merchant's access to the Services should ACHD have reason to believe that Merchant is using the Services for a purpose other than a permissible use as provided for in Section 5 and 6 of the Terms and Conditions and this Appendix B. Merchant acknowledges it has implemented security measures to prohibit the unauthorized access to the information provided.

3. In compliance with FCRA requirements, Merchant is hereby instructed to provide to any and all customers whose payments are declined by Merchant based upon information received from ACHD, a means through which the customer may investigate and challenge non-acceptance of the payment. Merchant shall provide a notice of such procedure to its declined customers in writing, in a form substantially similar to the following:

"We regret to inform you that we were unable to accept your payment based on financial account information received from the below named company:

ACH Direct, Inc.
500 W. Bethany Drive, Suite 200
Allen, Texas 75013
866-290-5400, Option 2
or ask for Customer Service – Verification Services

You have the right to be told the nature of the financial account information that was provided by this company upon making a written request to the company at the contact information provided above within sixty (60) days of receipt of this notification. "

APPENDIX C
TRADEMARK USAGE GUIDELINES

1. ACH Direct list of trademarks:



PaymentsGateway™
VirtualTerminal™
SoftTerminal™
DirectBilling™
ATMVerify®
IDVerify™
ATMCheck®
DirectRecovery™
Transporter™

2. Only a graphic provided by ACH Direct may be used to display the ACH Direct logo.
3. The required font for all ACH Direct trademarks, including the ACH Direct logo is Verdana
4. The appropriate designation (™ or ®) must be used at least the first time an ACH Direct trademark (including the name “ACH Direct”) appears in a publication, but need not be used each time the trademark is used in a publication if it is used in a way that the reader is clearly placed on notice. Use the following standards to decide when and how to designate a trademark:
- a. If there are multiple uses of the trademark throughout a publication, an explanatory note on the cover sheet or title page of the publication in the following format will be sufficient:
- “ACH Direct is a trademark of ACH Direct, Inc., used under license” or
(when registered) “ACH Direct is a registered trademark of ACH Direct, Inc., used under license”
- b. The note described in (a) above may not always be appropriate, particularly if the document is such that portions of it may be used separately without reference to its beginning. If so, use the following guidelines:
- Display a trademark each time it appears in a table of contents, a chapter or section heading, or a picture or figure caption.
 - Mark a trademark the first time it is used in each part of a publication, which is likely to be independently referenced.
 - If in doubt, use additional markings rather than fewer.
- c. Always mark the trademark on covers of publications, in advertisements and press releases.
- d. If in doubt, mark the trademark the first time it is used on each page of copy.
5. How to use the ACH Direct logo correctly:
- Maintaining consistency in the use of the ACH Direct logo is essential for protecting the value of the ACH Direct brand.
 - Do not redraw or alter the logo in any way
 - Do not attempt to recreate the logo with a similar font
 - Only one logo should appear on any surface of your design
 - Do not use multiple repeated logos close together to form patterns, chains or borders of any kind
 - Do not use the ACH Direct logo as a bullet point
 - Do not use the logo as a background for text or headings
 - Make sure there is enough clear space around the logo; provide minimum ½ inch white space on all sides (exceptions must be approved in advance of use by ACH Direct)
 - If displaying ACH Direct logo on printed material and in color, appropriate PMS colors must be maintained (color numbers: 429 and 555)
 - Logo may be displayed only in appropriate colors or black
 - Logo cannot be “reversed out” or displayed on a colored background

Merchant Application

Card Accept

Please check each card you wish to accept.
Note: acceptance of card types not selected will result in discount downgrades.
 All VISA®/MasterCards/Discover Cards
 VISA® Credit MasterCard Credit Discover
 VISA® Debit MasterCard Debit

Pricing Category

Retail Lodging ARU
 Restaurant Supermarket Auto Rental
 MO/TO Pay at Pump Internet

Pricing Information

Rates are for all card acceptance types selected above.

	VISA® Rate% + Per Item	MasterCard Rate% + Per Item	Discover Rate% + Per Item
Qualified	%+\$.00	%+\$.00	%+\$.00
Rewards Qual	%+\$.00	%+\$.00	%+\$.00
Mid-Qual	%+\$.00	%+\$.00	%+\$.00
Non-Qual	%+\$.00	%+\$.00	%+\$.00
Other Tier <input type="checkbox"/> Debit <input type="checkbox"/> Supermarket <input type="checkbox"/> Quick Pay/Small Ticket	%+\$.00	%+\$.00	%+\$.00

	VISA® Rate% + Per Item	MasterCard Rate% + Per Item	Discover Rate% + Per Item
_INT DIFF			
Qualified	%+\$	%+\$	%+\$

	VISA® Rate% + Per Item	MasterCard Rate% + Per Item	Discover Rate% + Per Item
_INT PLUS			
Qualified	%+\$	%+\$	%+\$

Fees

Fee Type	Amt. \$	Per Authorization \$	
Application Fee	0.00	VISA®	.25
Installation/Training	0.00	MasterCard	.25
Wireless Set-Up Fee	.00	Discover	.25
Account Maintenance	20.00	Debit	.25
Statement Fee (per mo.)	10.00	ARU Auth Fee	.65
Chargeback Fee (per occur.)	20.00	Foreign Network	.00
Retrieval Fee (per occur.)	5.00	WEX	.00
Return Item Fee/NSF(per occur)	20.00	Voice Auth Touch Tone	.65
Internet	0.00	Voice - Operator Assisted	.95
Membership Fee <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Quarterly	35.00	Voice - With AVS	2.20
Minimum Discount (per mo.)	0.00	Voice - Bank Referral	4.00
Batch Header Fee Monetary	.25		
Other		Other	
Other		Other	

Point of Sale (Equipment or Software)

Purchase				Software/Wireless	
Qty	POS Description	Equip Code	Price per Unit	Fee per Unit	Frequency
			\$	\$	
			\$	\$	
			\$	\$	

Merchant Owns			Software/Wireless		Wireless Coverage	
Qty	POS Description	Equip Code	Reprogram Fee per Unit	Fee per Unit	Frequency	Zip Coverage
			\$.00	\$.00		
			\$	\$		
			\$	\$		

All applicable state and local taxes will be applied.

Other Card Types Existing

	SE #	Auth Fee
Amex	_____	(10 digits) \$
EBT	_____	(5 digits) \$
Diners Club	_____	(10 digits) \$
JCB	_____	\$

Other Card Types New

American Express:
 ESA
 Amex Rate _____ %
 Or
 Amex Flat Fee Option: \$ _____
 Monthly Volume: \$ _____

Discover:
 Discover Membership Fee: \$ _____

JCB:
 JCB Rate: _____ % \$ _____

WEX **Voyager**

Debit Net-works

ACCL (Accell) AFFN ALAS (Alaska) INKL (Interlink) ITS (Shazam) CU24
 MSTO (Maestro) NETS NYCE PULSE STAR (Explore) Other

DCC

DCC Rebate % Set Up Fee \$

Reporting

MCP # Users Monthly Fee \$ Set Up Type (check one) MID CHN ENT Set Up Fee \$
 ACS Remote ID Set Up Fee \$ Monthly Fee \$

Merchant Application

Merchant Representations and Certifications. By signing below, the applicant merchant (“Merchant”) and its representative(s) represent and warrant to NOVA Information Systems, Inc. (“NOVA”), with offices at 7300 Chapman Highway, Knoxville, TN 37920, and U. S. Bank National Association (“Member”), with offices at U. S. Bancorp Center, 800 Nicollet, Minneapolis, MN 55402, (collectively, “we” or “us”) that (i) all information provided in this merchant application (“Merchant Application”) is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant; and (ii) the persons signing this Merchant Application are duly authorized to bind Merchant to all provisions of this Merchant Application and the Agreement. The signature by an authorized representative of Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction to us, shall be the Merchant’s acceptance of and agreement to the terms and conditions contained in the Agreement including, without limitation, this Merchant Application and the Terms of Service (“TOS”). Merchant agrees to comply with the Agreement, and all applicable laws, rules, and regulations including the rules and regulations of the Payment Networks, and understands that failure to comply will result in termination of processing services. Capitalized terms shall, unless otherwise defined in this Merchant Application, have the same meaning ascribed to them in the TOS.

Merchant agrees to establish and maintain sufficient funds in an account to accommodate all transactions including, but not limited to, Chargebacks, returns, adjustments, fees, fines, penalties and any other payments due under the Agreement. Merchant authorizes us to credit/debit that account as necessary.

Merchant understands that we may take any of the following actions if necessary to protect ourselves from financial loss: establish, or require Merchant to establish, a reserve account; impose a processing limit or cap on the dollar amount of sales transactions that we will process for Merchant, which may be changed from time to time with or without notice to Merchant; and/or suspend the processing of sales drafts for as long as necessary to investigate suspicious, unusual or excessive deposit activity.

Merchant must obtain an Authorization Code via electronic terminal or similar device before completing any transaction. Merchant understands that an AUTHORIZATION CODE IS NOT A GUARANTEE OF ACCEPTANCE OR PAYMENT OF A TRANSACTION. RECEIPT OF AN AUTHORIZATION CODE DOES NOT MEAN THAT MERCHANT WILL NOT RECEIVE A CHARGEBACK FOR THAT TRANSACTION.

If Merchant terminates within one year of the date set forth below, Merchant will immediately pay NOVA, as liquidated damages, an early termination fee equal to \$295, in addition to all other amounts owed. If Merchant terminates at any time during the second or third year of the date set forth below, the Merchant will pay, as liquidated damages, a termination fee equal to \$195, in addition to all other amounts owed. Merchant agrees that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by Merchant’s early termination. NOVA will use best efforts to debit the Merchant’s account in the amount of the applicable termination fee within sixty (60) days of receipt of Merchant’s written notice of termination.

Merchant and its representative(s) authorize us prior to our acceptance of this Merchant Application and from time to time thereafter, to investigate the individual and business history and background of Merchant, each such representative and any other officers, partners, proprietors, and/or owners of Merchant, and to obtain credit reports or other background investigation reports on each of them that we consider necessary to review the acceptance and continuation of this Merchant Application. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to us.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. This means we will ask for certain information and identifying documents to allow us to identify you.

Merchant further acknowledges and agrees that any information provided in connection with this Merchant Application and all other relevant information may be supplied by us to our affiliates. This Merchant Application may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same Merchant Application. Delivery of executed counterparts of this Merchant Application may be accomplished by a facsimile transmission, and a signed facsimile or copy of this Merchant Application shall constitute a signed original.

Merchant DBA Name

 SIGN HERE


Signature Printed Name & Title Date

Signature Printed Name & Title Date

USBLGL040101

Merchant Application

Personal Guaranty. As a primary inducement to us to accept this Merchant Application, the undersigned Guarantor(s), by signing the Merchant Application, 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 us (including, without limitation, chargebacks) pursuant to the Merchant Application and Agreement, as may be amended from time to time, with or without notice. Guarantor(s) understand further that we may proceed directly against Guarantor(s) without first exhausting our remedies against any other person or entity responsible therefore to them or any security held by us or Merchant. This guarantee will not be discharged or affected by the death of the Guarantors, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any of our successors. Guarantor(s) understand that the inducement to us to accept this Merchant Application is consideration for the guaranty and that this guaranty remains in full force and effect even if the guarantor(s) receive no additional benefit from the guaranty.

Signature		Printed Name	SSN#	Date
Signature		Printed Name	SSN#	Date

Corporate Resolution:

I certify that I hold the office indicated below of Merchant and am the keeper of the records of that company, organized and existing under the laws of the state indicated below and that the following is a correct copy of certain resolutions adopted at a meeting of the board of directors/general partnership/manager or members of a limited liability company, as appropriate, in accordance with the by-laws or other governing document of the company held on the ____ day of _____ (month), ____ (year):

1. Resolved, that any one of the following officers of the company:

Name (print)	Signature	Title
_____	_____	_____
_____	_____	_____
_____	_____	_____

is authorized to:

- A) execute on behalf of this company an Merchant Application and any agreements or other necessary documents including any amendments;
- B) execute any document requested from time to time be executed in furtherance of the Merchant Application or relationship resulting therefrom;
- C) perform all acts that may be necessary to carry out the intent of the Merchant Application and this Corporate Resolution.

2. Resolved, that the Merchant Application and the resulting relationship is ratified and approved;

3. Resolved, that the entities receiving this Merchant Application are authorized to rely upon this Corporate Resolution until advised in writing by a like certification of any changes and are authorized to rely on such changed certification.

Secretary/Officer/Non-Member Manager (LLC)/Member (LLC)/General Partner/Owner [circle one]:

Signature	Printed Name & Title	Date	State in which Merchant is organized
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Submitted By:

To the best of my knowledge, I certify that the information provided in this Merchant Application was provided by the Merchant and is true, complete and accurate. I further certify that the signatures were provided by the Merchant's owner(s) or officer(s), as appropriate.

Sales Representative Signature	Printed Name	Rep ID #	Date
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FOR OFFICE USE ONLY:

Accepted by NOVA Information Systems, Inc.: _____

Accepted by Member: _____