



6472 South Quebec Street Englewood, CO 80111  
800-863-5995

**MERCHANT APPLICATION AND PROCESSING AGREEMENT**



320 Old Country Road, Garden City, NY 11530  
800-996-0213

**MERCHANT BUSINESS INFORMATION**

DBA NAME:		LEGAL NAME:	FEDERAL TAX ID #:
PHYSICAL ADDRESS:		MAILING ADDRESS:	
CITY, STATE, ZIP:	COUNTY:	CITY, STATE, ZIP:	
BUSINESS PHONE:	CELL PHONE:	BUSINESS WEBSITE:	
FAX NUMBER:	MANAGER CONTACT:	EMAIL ADDRESS:	

**OWNER / OFFICER INFORMATION (MUST BE GREATER THAN 50% OWNERSHIP)**

PRIMARY:	TITLE:	PRIMARY:	TITLE:
SOCIAL SECURITY #:	DOB:	SOCIAL SECURITY #:	DOB:
RESIDENTIAL ADDRESS:	PHONE:	RESIDENTIAL ADDRESS:	PHONE:
CITY, STATE, ZIP:	OWNERSHIP%:	CITY, STATE, ZIP:	OWNERSHIP%:

**BUSINESS BANK ACCOUNT INFORMATION (PLEASE ATTACH A VOIDED CHECK FOR VALIDATION)**

BANK NAME:	BANK ACCOUNT #:	BANK ROUTING #:
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**CARD PROCESSING INFORMATION**

DO You Currently Accept Credit Cards?		Terminal Type & Model:	
Current Processor Name: <small>Attach Previous Processing Statements (3 MO.)</small>		Check Reader:	Pin Pad
<b>TRANSACTION &amp; TICKET INFORMATION</b>		Reprogram Terminal:	YES NO Current Terminal Type:
<b>ACCOUNT TYPE</b>		Gateway or POS Type:	
Low Ticket: \$ _____	Card Swipe: _____ %	Does your terminal need the following: TIP LINE AUTO BATCH TIME: _____	
Average Ticket: \$ _____	Manually Keyed: _____ %	EBT CARDS (state certificate must be provided) Other: _____	
High Ticket: \$ _____	Website: _____ %	<b>MOBILE ONLY:</b> PHONE CARRIER: _____ PHONE MODEL: _____	
Average Monthly: \$ _____	Call Center: _____ %		

**ESQUIRE BANK DISCLOSURE**

**Important Bank Responsibilities:**  
 1. Esquire Bank is the only entity approved to extend acceptance of VISA products directly to a Merchant.  
 2. Esquire Bank must be a principal signor to the Merchant Agreement.  
 3. Esquire Bank is responsible for educating Merchants on pertinent VISA Operating Regulations with which Merchants must comply.  
 4. Esquire Bank is responsible for and must provide settlement funds to the merchant.  
 5. Esquire Bank is responsible for all funds held in reserve that are derived from settlement.  
**Important Merchant Responsibilities:**  
 1. Ensure compliance with cardholder data security and storage requirements.  
 2. Maintain Fraud and Chargebacks below thresholds.  
 3. Review and understand the terms of the Merchant Agreement.  
 4. Comply with Visa Operating Regulations.  
**The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the VISA Member-Esquire Bank is the ultimate authority should the merchant have any problems.**

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

**BUSINESS PROFILE INFORMATION & MERCHANT SITE SURVEY**

Year Business Started	Length of Current Ownership:	Type of Business/Services Sold:	How is the Product/Service Delivered:
Location of Business:	Retail Store Front	Residence	Office Building
Other: _____	Area Zoned:	Commercial	Residential
Industrial	Square Footage:	250-500	501-2,000
Over 2,000	Photos Provided:		
<b>TYPE OF OWNERSHIP:</b>	Major Cross Streets:	Business Premises is: Owned by merchant Leased If lease, provide contact Name/Number:	
Proprietorship	Does the inventory & merchandise appear to match the type of business? If no, please explain:		
Partnership	Describe the merchants refund /return policy:		
Corporation	Additional comments:		
LLC			
Other			

**Agent/ISO Acceptance and Information**

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

**Agent Name:** \_\_\_\_\_ **Contact Number:** \_\_\_\_\_ **Office #:** \_\_\_\_\_

### Electronic Debit/Credit Authorization

Early Termination Fee \$295.00

Merchant hereby authorizes Bank in accordance with this Agreement to initiate debit/credit entries to merchant's deposit account, as indicated below. This authority is to remain in full force and effect until (a) Bank has received written notification from Merchant of its termination, in such a manner as to afford Bank reasonable opportunity to act on it and (b) all obligations of Merchant to Bank that have arisen under this agreement have been paid in full. This authorization extends, but is not limited, to such entries to this account which concern discount fees, transaction fees, chargebacks, penalties, service fees, return item fees, lease, rental and purchase charges, check services, warranty services, internet services or other services offered by EPS, involving Point Of Sale ("POS") and processing equipment.

#### PRICING SCHEDULE A – Credit Card Processing

#### Pin Based Debit

Card Discount Rate: _____%    Offline Debit: _____%	American Express SE #: _____	Discount Rate _____%
Cost Plus Pricing: _____%    Per Item Fee: \$ _____ (+VS/MC/DS Cost of Interchange)	Annual Fee \$99.50	Per Item Fee \$ 0. _____
AUTH FEE                      RETAIL                      MOTO	Annual PCI-DSS Compliance \$99.50	Admin Fee \$10.00
VS/MC/DS                      \$0.25                      \$0.35	Monthly PCI Non –Compliance* \$19.95	Encryption Fee \$20.00
Other                              \$0.25                      \$0.35	Warranty Program	An encrypted pin pad is needed to accept pin based debit.
Wireless*                      \$0.15                      \$0.15	1 Terminal \$9.95	SIC/MCC Code: _____
AVS                                \$0.04                      \$0.04	2 Terminals \$14.95	
Voice Auth Set Up            \$4.95                      \$4.95	Warranty Includes Free Repair & Replacement	
Per Voice Auth                \$0.95                      \$0.95		
Monthly Administration Fee \$10.00		
Minimum Discount Fee \$25.00		
Internet/Gateway Fee* \$15.00		
Mobile Monthly Fee* \$12.95		
Wireless Access Fee* \$25.00		
Chargeback Fee \$25.00		
Retrieval Fee \$12.50		

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

#### EQUIPMENT PRICING

Terminal / Gateway Monthly \$ \_\_\_\_\_ I authorize an ACH the account provided on this application for the total amount of \$ \_\_\_\_\_

Terminal / Gateway One-Time \$ \_\_\_\_\_ I authorize a charge my credit card information below for the total amount of \$ \_\_\_\_\_

Other: \_\_\_\_\_ \$ \_\_\_\_\_ Card Number # \_\_\_\_\_ EXP: \_\_\_\_\_ CVV : \_\_\_\_\_

#### EZ Payment Plan and Single Check Conversion

<b>CHECK SERVICE REQUESTED:</b>	Program Registration Fee <b>\$320.00</b>	Average Check Amount: \$ _____	Monthly Administration Fee \$10.00	Batch upload Fee \$5.00
<input type="checkbox"/> No Credit Check 90 day EZ Payment Plan _____%	<b>\$1.00</b>	High Check Amount: \$ _____	Monthly Minimum \$25.00	Recurring Check \$10.00
<input type="checkbox"/> Single Check Conversion _____%	<b>\$0.45</b>	Average Monthly Check Volume \$ _____	Online Set Up Fee \$59.95	Return Items \$25.00
			Extended Batch Cut-Off 1% of batch	Change of Account \$5.00

An account set up fee of \$50.00 will be debited from the first check in the series when multiple checks are used in a single transaction. Fee payment not otherwise covered in this Agreement shall be debited from merchants account on or about the 5th of each month for activity in the prior calendar month. An annual fee of \$99.50 is billed each year regardless of time of enrollment and cannot be waived or refunded. When applicable, in consideration for the granting of the license and use of the software, licensee agrees to pay developer a recurring monthly gateway fee of \$19.95 of the term of this agreement and any subsequent renewals. Extended Batch Cut-off is charged to any batch received after 1:00PM MST but must be received by 3:30PM MST.

#### PCI-DSS Data

Does Merchant use any independent servicer that stores, maintains, or transmits cardholder information:  YES  NO If Yes, Please provide the following for each servicer:  
 Name: \_\_\_\_\_ Phone Number/Contact: \_\_\_\_\_  
 Does the merchant use: \_\_\_\_\_ Software Type: \_\_\_\_\_ Terminal Type: \_\_\_\_\_

X \_\_\_\_\_ Merchants Signature                      Printed Name                      Date                      X \_\_\_\_\_ Merchants Signature                      Printed Name                      Date

#### PERSONAL GUARANTEE AND ACCEPTANCE

The undersigned personally, and in his or her capacity of and for any named entity he/she represent, unconditionally guarantees the Bank and Electronic Payment Systems, LLC (EPS) the performance of this Agreement including but not limited to: payment of all sums due and owing; adherence to all terms and conditions of this agreement and any attachments hereto; and agrees to pay any attorney's fees and costs associated with enforcement of the terms, conditions, and agreements contained herein. Bank and/or EPS shall not be required to first proceed against Merchant for enforce or see any other remedy before proceeding against the undersigned. This is a continuing guaranty and shall not be discharged or affected by the death or the undersigned, shall bind the heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Bank or EPS. The terms of this guaranty shall be for the duration of the Merchant Processing Agreement and all attachments thereto and shall guarantee all obligations which may arise or accrue during the terms thereof. Enforcement may be sought subsequent to any termination.

X \_\_\_\_\_ Personal Guarantor (No Title)                      X \_\_\_\_\_ Personal Guarantor (No Title)

The undersigned personally, and in his or her capacity of and for any named entity herein represents and warrants that all information provided by Merchant in the Merchant Application and Processing Agreement, and if elected as a service, the EPS 90 Application and Purchase Agreement, and any other documents thereto, is true and correct. Also, the undersigned authorizes the Bank and/or EPS or its representative to investigate the credit of each person and/or entity listed on the Merchant Application and represents that he/she has the authority to provide such information. **MERCHANT HEREBY AGREES AND ACCEPTS ALL TERMS AND CONDITIONS CONTAINED HEREIN AND OUTLINED IN THE ARTICLES 1.01 THRU 3.14(L) and articles 1-7 of the MERCHANT APPLICATION. RESPECTIVELY FOR THE MERCHANT PROCESSING AGREEMENT, AND IF ELECTED AS ASERVICE, ARTICLES 1 THRU 8(b) RESPECTIVELY OF THE ARTICLES, TERMS AND CONDITIONS OF THE EZ PAYMENT PLAN APPLICATION AND PURCHASE AGREEMENT. FURTHERMORE, MERCHANT ACKNOWLEDGES RECEIPT OF A PHYSICAL COPY OF THIS AGREEMENT WHICH CONTAINS THE AFOREMENTIONED ARTICLES AND OTHER TERMS AND CONDITIONS THAT GOVERN THIS AGREEMENT, INCLUDING THE TWO (2) YEAR PROCESSING TERM FOUND IN SECTION 3.05 OF THE TERMS AND CONDITIONS.**

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

X \_\_\_\_\_ Merchant Signature                      Printed Name /Title                      Date                      X \_\_\_\_\_ Merchants Signature                      Printed Name/Title                      Date

#### For Office Use Only

Accepted by Esquire Bank\* Garden City, NY 11530\* 800-996-0213                      Accepted by Electronic Payment Systems, LLC\* Englewood, CO\* 800-863-5995

X \_\_\_\_\_ Accepted By                      Date                      X \_\_\_\_\_ Accepted By                      Date

In consideration of the mutual covenants and agreements herein Esquire Bank ("Acquirer"), Electronic Payment Systems ("EPS"), acting on behalf of and for Acquirer, and the undersigned merchant ("Merchant") have agreed as follows as of the date of acceptance by Acquirer and issuance of a valid payment system:

## ARTICLE 1 - CARD TRANSACTIONS

### 1.1 Honoring Cards

- (a) Merchant shall honor without discrimination all valid cards of the type(s) made available for processing by EPS and Acquirer (collectively, "Cards") when properly presented as payment by customers in connection with a bona fide, legitimate business Transaction.
- (b) Merchant shall not refuse to accept, through an increase in price or otherwise, any cardholder to pay any surcharge at the time of sale or to pay any part of any charge imposed on Merchant by Acquirer except as expressly permitted by, and under terms and conditions that comply with, applicable law and Card Association (as that term is defined below) rules and regulations.
- (c) Merchant shall not establish minimum or maximum amounts for transactions completed with Cards ("Transactions").
- (d) Merchant shall not require a cardholder to provide identification information such as telephone number, address or driver's license number as a condition of completing a Transaction, unless such identification is required by MasterCard International, Inc. ("MasterCard"), Visa U.S.A. Inc. ("Visa") and Discover Network rules and regulations and is permitted by the law of the state in which the Transaction takes place (for example, in mail order Transactions). MasterCard, Visa and Discover are referred to herein and after as the "Card Associations."
- (e) Merchant may not make a photocopy of a Card under any circumstances and may not request that the cardholder provide a photocopy of the Card as a condition for honoring the Card.

### 1.2 Advertising

- (a) Merchant shall display adequately any advertising or promotional material approved by Acquirer and/or EPS to inform the public that Cards will be honored at Merchant's place of business. Such display, however, are not required unless a card processing company at or required locations, is a transportation company subject to government regulation, or is otherwise expressly exempted from this requirement by law or the Card Associations.
- (b) Merchant shall not display or use advertising or promotional materials containing Acquirer's name or symbol which might cause a customer to assume that Merchant honors Cards only issued by Acquirer.
- (c) Merchant shall have the right to use or display the proprietary names and symbols of the Card Associations only while this Agreement is in effect or until Merchant is notified by Acquirer or any appropriate Card Association to cease such usage.
- (d) Merchant shall comply with all applicable rules and regulations concerning the use of service marks and copyrights owned by any Card Association.
- (e) Merchant shall use the proprietary Card Association names and symbols only to indicate that Cards are accepted for payment and shall not indicate, directly or indirectly, that Acquirer or any Card Association endorses Merchant's products or services.
- (f) Merchant shall not refer to any Card Association in stating eligibility for its products, services or memberships.

### 1.3 Card Examination

- (a) Merchant agrees to confirm that the customer presenting the Card in each Transaction is the appropriate cardholder.
- (b) Merchant agrees to examine the Card to determine if the Card is included on each Card presented to Merchant. Merchant shall compare the embossed account number on the face of the Card with the account number indented on the signature panel.
- (c) Merchant shall, prior to completing any Transaction, check the validity date and expiration date of the Card and shall not honor any Card that is not valid or that has expired, without proper authorization.
- (d) Where the magnetic stripe on the Card is read in connection with a Transaction, Merchant shall compare the embossed account number on the Card to the number displayed or printed by the terminal to ascertain that they are the same.
- (e) Except in connection with a mail order, telephone order, eCommerce or pre-authorized Transaction, Merchant shall not complete the Transaction without presentation of the Card by the cardholder and a proper examination by the merchant.
- (f) If the signature panel on any Card presented to Merchant is blank, Merchant shall:
- review positive identification to determine that the customer presenting the Card is the appropriate cardholder. Such identification must consist of a current official government identification document (such as a passport or driver's license) that bears the cardholder's signature; and
  - request authorization.
- (g) In the case of a Visa Card, Merchant shall compare the printed issuing bank identification number, which is directly above or below the first four digits of the embossed account number, with the embossed account number. If the printed number and the embossed number do not match, Merchant shall not accept or process the Transaction.

### 1.4 Authorization

- (a) Before honoring any Card, Merchant shall request authorization from Acquirer's designated authorization center.
- (b) Authorization may be received via an approved authorization system (electronic or otherwise) with a system or service approved for use by Acquirer and EPS.
- (c) Authorization number or positive account number verification response codes, as appropriate, shall be printed legibly in the designated area on the sales slip.
- (d) If authorization is denied, Merchant shall not complete the Transaction and seek alternative forms of payment for their goods and/or services.
- (e) Merchant shall be liable to Acquirer, regardless of any authorization, if Merchant completes a Transaction when the cardholder is present but does not have his or her Card, the cardholder does not sign the sales slip, the signature on the sales slip does not match the signature appearing on the Card, or the signature panel on the Card is blank.
- (f) In no event shall an authorization be deemed to be Acquirer's representation that the particular Transaction is in fact a valid, authorized or undisputed Transaction entered into by the cardholder or an authorized user of the Card.
- (g) An authorization for a restaurant Transaction in which a gratuity is added to the sales slip by the cardholder is valid if the total Transaction amount is within 20% of the authorization amount.
- (h) If authorization is obtained for the estimated amount of a car rental Transaction, Merchant shall disclose to the cardholder the amount authorized on the rental date.
- (i) Merchant acknowledges that EPS and/or Acquirer will monitor Merchant's daily deposit activity. The deposit activity should remain consistent to the "approved" monthly volume and average ticket amount noted on the original Merchant Agreement and Application or subsequently adjusted by Acquirer and/or EPS. If merchant should exceed the "approved" average ticket or monthly volume, Merchant acknowledges that Merchant may be required to provide information that Acquirer may suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. When appropriate and deemed, in the sole and absolute opinion of EPS, to be of no impact to the investigation, EPS and/or Acquirer will make a good faith effort to notify Merchant of any such suspension. Merchant acknowledges and agrees that EPS and/or Acquirer shall have no liability for any losses, either direct or indirect, which Merchant may attribute to its suspension of Merchant's funds.
- (j) In all cases the final delivery and/or performance of all goods and/or services shall be consistent with the industry standard for delivery of the goods and/or services offered and shall not exceed ninety (90) days from the date of the original Transaction.

### 1.5 Completing the Transaction Record

- When honoring a Card in connection with a Transaction, Merchant agrees to:
- Enter on the Merchants sales slip or invoice the Transaction date, a description of the goods or services sold, and the price thereof (including any applicable taxes) in detail sufficient to identify the Transaction.
  - Obtain the signature of the customer on the sales slip or invoice after the Transaction amount is identified in the "Total" column.
  - Obtain the signature of the customer on the credit card processing machine/device/POS receipt or other document utilized by the authorization vehicle.
  - Compare the signature on the sales slip and the signature panel of the Card and, if the Card has a photograph of the cardholder, to ascertain that the customer resembles the person depicted in the photograph, and if either identification is uncertain, or the account numbers are not the same or Merchant otherwise questions the validity of the Card, to not accept or process the Transaction.
  - Deliver a true and completed copy of the sales slip to the customer at the time of delivery of the goods or performance of the services or point of transaction terminal Transactions, at the time of the Transaction.
  - When requested by Acquirer or EPS, Transaction records must be produced for all Transactions including but not limited to the Merchants copy of the credit card processing machine/device/POS receipt and Merchants invoice.
  - Whenever the account number cannot be read from the magnetic stripe, Merchant shall key-in the card data, follow normal authorization procedures, and complete the approved Transaction using a manual imprint.

### 1.6 Multiple Transaction Records, Partial Consideration

- (a) Merchant must include on one (1) Transaction record the entire amount due for the Transaction except in the following instances:
- The Transaction involves purchases made in separate departments of a multipoint-of-sale store;
  - The Transaction involves delayed or amended charges for a vehicle rental Transaction in which:
    - the cardholder consented to be liable for such charges;
    - such charges consisted of ancillary or corrected charges, such as taxes or fuel fees, and not charges for loss, theft, damage, or traffic violations; and
    - Merchant sends the cardholder a copy of the amended or add-on-sales drafts (sales drafts for such items as delayed delivery or amended charges may be deposited without the cardholder's signature provided that Merchant has cardholder's signature on file, and the words "Signature on File" are entered onto the signature panel of the sales draft).
  - The customer pays a portion of the Transaction amount in cash, by check, with any other card, or any combination of such payments at the time of the Transaction, and further provided that Merchant obtains authorization for that part of the Transaction affected with a Card;
  - All or a portion of the goods or services are to be delivered or performed at a later date and the customer signs two separate sales slips, one of which represents a deposit and the second of which represents payment of the balance, and the balance sales slip is completed only upon delivery of the goods or performance of the services, in which case Merchant agrees:
    - to note on the sales slips the word "deposit" or "balance" as appropriate and the words "Delayed Delivery";
    - to obtain prior authorization and note the authorization date and approval code on the sales slips; and
    - to note on the "balance" sales slip until all goods are delivered or all the services are performed; or
    - if Merchant is obligated to retain the installment payment offered in accordance with Section 1.7.
- (b) Merchant agrees not to divide a single Transaction between two or more Transaction records to avoid obtaining an authorization.
- (c) For sales processed at electronic P.O.S. terminals, multiple items individually billed to the same account will not be considered a violation of this Agreement if separate authorizations are obtained for each item.

### 1.7 Telephone Order, Mail Orders, eCommerce, Preauthorized Orders and Installment Orders

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

- except in the event of an eCommerce Transaction, print legibly on invoice or sales slip sufficient information to identify the Merchant and the cardholder, including Merchant's name and address, the first four (4) and the last five (5) digits of the Card account number, the cardholder's name, and any company name; and
  - except in the event of an eCommerce Transaction, print legibly on the signature line of the sales slip the letter "TO," "MO" or "PO" ("Recurring Transaction" for Visa Transactions), as appropriate;
  - obtain authorization for every sale for MO, TO and eCommerce Transactions (which authorization must be obtained no more than seven calendar days prior to the Transaction date), and attempt to obtain the expiration date of the cardholder's Card at the time of the authorization inquiry;
  - in any non-imprint Transaction (and where no Card is presented), regardless of whether it is imprinted, Merchant shall be deemed to warrant the customer's true identity as an authorized user of the Card, whether or not authorization is obtained, unless Merchant obtains and notes legibly on the sales slip evidence of the customer's true identity;
  - in connection with a recurring Transaction (or preauthorized order) pursuant to which goods or services are delivered to or performed for a cardholder periodically, Merchant agrees to the following conditions:
    - Merchant must obtain a written request from the cardholder that the recurring Transaction be charged to the cardholder's account.
    - The written request must specify the amount of the recurring Transaction (or allow space for cardholder to specify a minimum and maximum amount if the recurring transaction is for a varying amount) and the frequency of the recurring charges, and the length of time for which the preauthorized order is to remain in effect.
    - Before receiving a preauthorized order, Merchant must obtain a subsequent written request from the cardholder containing the information listed above.
    - Merchant must retain the cardholder's written authorization for as long as the preauthorized order is in effect and an additional one (1)-year thereafter, and must provide a copy to Acquirer or EPS upon request.
    - Merchant must not receive any goods or perform services covered by a preauthorization order after being advised that the preauthorization has been canceled or that the Card is not to be honored.
    - Except as provided in Section 1.6, a recurring Transaction may not include partial payments to Merchant for goods or services purchased in a single Transaction, or for periodic payments of goods or services payable through the installment terms, including but not limited to:
      - Merchant must inform the cardholder that he or she has the right to receive, at least 30 days prior to each scheduled Transaction date, written notice of the amount and date of the next charge. Cardholder may elect to receive the notice:
        - for every charge;
        - only when the Transaction amount does not fall within the specified range shown on the order form; or
        - only when the Transaction amount will differ from the most recent charge by more than an agreed-upon amount.
- (d) Merchant may offer cardholders an installment payment plan for its mail/telephone order and eCommerce merchandise subject to the following conditions:
- Merchant's promotional material must clearly disclose the installment terms, including but not limited to:
    - whether the plan is available only for selected items or for the total amount of any order; and
    - how shipping and handling charges and applicable taxes will be billed. The material also must advise cardholders who are not billed in the Transaction currency of Merchant that the installment billing amounts may vary due to fluctuations in the currency conversion rates.
  - No finance charges may be added by Merchant. The sum of the installment Transactions may not exceed the total sales price of the merchandise on a single Transaction basis.
  - Authorization is required for each installment Transaction. Merchant's floor limit is zero.
  - Merchant may not request a return of the first installment Transaction with Acquirer until the merchandise is shipped. Subsequent installment Transactions must be deposited:
    - at intervals of 30 days or more; or
    - on the anniversary date of the Transaction (i.e. the same date each month).
  - In addition to Merchant's name, an appropriate installment Transaction descriptor (e.g. "one of five," "two of five," etc.) must be included in the Merchant name field of the clearing record.
- (e) except in the event of an eCommerce Transaction, an imprint of the Card is required whenever the Card is present.

### 1.8 Vehicle Rental Transactions

Regardless of the terms and conditions of any written preauthorization form, the sales slip amount for any vehicle rental Transaction shall include only that portion of the Transaction, including any applicable taxes, evidencing a bona fide rental of personal property by Merchant to a customer and shall not include any consequential charges. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Transaction.

### 1.9 Returns and Adjustments, Credit Slips

- (a) If, with respect to any Transaction, any merchandise is accepted for return or any services are terminated or canceled, or any price adjustment is allowed by Merchant (other than involuntary refunds by airlines or other carriers, which may be accepted without Merchant's consent where otherwise required by law or governmental regulations), Merchant shall not make any cash refund to the cardholder but shall deliver promptly to Acquirer a credit slip evidencing such refund or adjustments.
- (b) Each credit slip shall be signed and dated by Merchant and include the Transaction date, a description of the goods returned, services canceled or adjustment made and the amount of the credit in sufficient detail to identify the Transaction and the embossed data from the Card and Merchant's imprinter plate.
- (c) The refund or adjustment shall be indicated on a credit slip and may not exceed the original Transaction amount.
- (d) The Merchant may limit its return, adjustment, refund or exchange policies provided that proper disclosure is made at the time of the Transaction and purchased goods or services are delivered to the cardholder at the time of the Transaction.
- (e) Proper disclosure by the Merchant must be given at the time of the Transaction by printing the following words or similar wording on all copies of the Credit Card sales slip and/or invoice being presented to the cardholder for signature in letters approximately 1.4 inches high and in close proximity to the space provided for the cardholder's signature:
- "NO REFUNDS," may only apply to "Special Orders" (i.e. a non-stock item ordered specifically for the customer); services once the service is provided; consumables, and perishable use items that could not be resold (e.g. single use or disposable products);
- "EXCHANGE ONLY," for a Merchant that only accepts merchandise in immediate exchange for similar merchandise of a price equal to the amount of the original Transaction;
- "IN-STORE CREDIT ONLY," for a Merchant that accepts merchandise, and delivers to the cardholder an in-store credit for the full value of the merchandise returned which may be used only at Merchant's place(s) of business.
- (f) A Merchant may, if permitted by applicable law, stipulate special circumstances agreed by the cardholder (e.g. late delivery, delayed charges or insurance charges) as terms of the Transaction, but under no circumstance shall a purchase be assessed for the use of a Card. The wording to appear on the sales slip shall be any special terms of the Transaction(s).

- (g) Merchant shall not process a credit slip without having completed the purchase Transaction with the cardholder. Merchant must deliver to the cardholder a true and complete copy of the credit slip at the time of the credit slip's processing.
- (h) In no event may the credit exceed the amount of the original Transaction.

### 1.10 Cash Payments, Financing, Split Sales

- (a) Merchant shall not receive any payments from a customer for charges included on any Transaction record resulting from the use of any Card, nor receive any payments from a cardholder to prepare and present a credit slip for the purpose of effecting a deposit to the cardholder's account.
- (b) Factoring is the act of processing a Transaction that is not the result of goods or services provided or sold by the Merchant and for the benefit of others. This includes any Transaction that may generate cash to Merchant or for the benefit of other customers or the Merchant or other parties who are not named on the Transaction under this Agreement.
- (c) Split Sales are Transactions that utilize the same Card, at the same time in incremental amounts to achieve a desired authorization amount. If one Card is used, it must be for the full amount of the sale. This does not apply to installment Orders as described in Section 1.7 above.

### 1.11 Cash Advances

Merchant agrees not to make any cash advance to a cardholder or take any cash advances for themselves, their employees, family members or their company, either directly or by deposit to the cardholder's account. Money orders sent by wire, contribution to charitable and political organizations, tax payments, insurance premium payments for (1) one quarter year or less, alimony and child support payments, and court costs and fines shall not be considered cash advances or withdrawals.

### 1.12 Transactions Acceptable Under This Agreement

Notwithstanding any other Sections or requirements contained herein, Merchant is approved to accept Transactions, as outlined in this Agreement in the normal course of Merchant's business that are genuine to Merchant's business and within the "approved" average ticket volume for Merchant. Transactions should be within the reasonable context of the information provided by Merchant at the time of application and conform to the standards established by S. I. C. (Standard Industry Code) that best identifies Merchant's business.

### 1.13 Prohibited Transactions

- Merchant shall not do any of the purpose:
- Obtain an authorization for the purpose of setting aside the cardholder's credit line for use in future sales;
  - Make any special charge to extract any special agreement or security from any Cardholder in connection with any Transaction;
  - Transmit or accept payment for any Transaction that was not originated directly between Merchant and a cardholder for the sale or lease of goods or the performance of services other than the type indicated in the Merchant Application form to which this Agreement is attached;
  - Honor or accept a Card as payment for any legal services or expenses arising out of or related to:
    - the defense of any crime other than a traffic violation;
    - any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or
    - any bankruptcy, insolvency, compromise, composition or other process affecting cardholder's creditors;
  - Use Merchant's own Card, or one to which Merchant is Card imprints, such as sales slips and credit slips, car rental agreements and merchant's own benefit;
  - Re-process any Transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of cardholder's approval;
  - Initiate a Transaction credit without a prebilled debit equal to the credit;
  - Initiate a Transaction credit without a balance in the Operating Account at least equal to the credit;
  - Use any equipment related to Transactions 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;
  - Use any equipment related to Transactions or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
  - Draw or convey any amount concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
  - Disclose any information obtained through any equipment related to Transactions to any person except for necessary disclosures to affected cardholders, Acquirer and/or the financial institution that has provided relevant information;
  - Disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant;
  - Disburse funds in the form of cash;
    - Accept a Card to collect or refinance an existing debt (whereby originally owed to Merchant or otherwise);
    - Issue a Transaction credit in respect of goods or services purchased as a cash Transaction where a cash Transaction number and Acquirer's account number are returned;
    - Make any cash refund to a cardholder who has made a purchase with a Card (all Transaction credits shall be issued to the same Card account number used in the sale);
    - Require a cardholder to complete a postcard or similar device that includes the cardholder's account number, Card expiration date, signature or any other Card account data in plain view when mailed;
    - Process a Transaction that represents collection of a dishonored check;
    - Accept a Card for the purchase of Scrip (as defined by applicable Visa regulations);
    - Accept any payment directly from a cardholder for prepaid bank charges incurred and processed by Merchant; or
    - Request or use any Card number for any purpose other than payment for goods or services offered or sold by Merchant;
  - Accept a Card for the payment of any illegal products or services.

### 1.14 Disclosure and Storage or Cardholder Account Information

- (a) Except as otherwise required by law, Merchant shall not sell, purchase, provide, or otherwise disclose the cardholder's account information or other cardholder information to any third party other than Acquirer.
- (b) Merchant and/or any agent of Merchant shall store in an area limited to protected personnel and, prior to discarding, shall mutilate in a manner rendering data unreadable, all material containing cardholder account numbers including but not limited to Card imprints, such as sales slips and credit slips, car rental agreements and carbons.
- (c) Neither Merchant nor any agent of Merchant shall retain or store magnetic stripe data subsequent to the authorization of a Transaction.
- (d) Merchant will be responsible for maintaining all records of all Transactions, including but not limited to original sales slips, signed sales drafts, signed credit drafts, work orders, and all other documents that pertain to the sales for which a Card was used as a form of or partial payment of the subject Transaction for a minimum of thirty (30) months from the date of the original Transaction.

### 1.15 Deposits

Notwithstanding any other Sections, conditions, conventions or requirements herein, Merchant may accept deposits for goods and/or services to be performed in a timely manner. A deposit shall not be used as a payment to Merchant and is not to be used as interim financing or a "Cash Advance" as outlined in Section 1.11 above. Deposits, when identified by Acquirer, may be held in a reserve account until satisfactory completion of services and/or delivery of goods can be verified.

### 1.16 Merchant Financial Representations and Commitments

- (a) Merchant has made financial representations in this "Merchant Application and Processing Agreement" that Merchant is asking Acquirer to rely upon to evaluate, underwrite, and approve this Agreement. Acquirer evaluation and underwriting process includes but is not limited to a Risk and Reward analysis based on the financial representations of Merchant. If Merchant fails to honor and meet the representations made it may subject Acquirer to undue financial exposure and possibly harm. A material variance in the Merchant's volume representations on this "Merchant Application and Processing Agreement" will result in a re-evaluation of the Agreement including but not limited acceptance of Merchant for Processing.
- (b) Acquirer and EPS entered into this Agreement to provide services based in part on the fee income the account would generate. Failure of Merchant to meet the financial representations made in this Merchant Application and Processing Agreement would impact Acquirer and EPS of the fee income they negotiated for and Merchant agreed to pay. Merchant agrees to suffer damages for the loss of fee income. To calculate the damages Acquirer will compute the fee income that would have been generated on a monthly basis based on the Merchant's volume representations on this "Merchant Application and Processing Agreement" including all fees that would be due and payable based on the "Pricing Schedule A" and Acquirer will be entitled to collect the fee income otherwise deprived.
- (c) Merchant acknowledges that the damages herein are not a punitive cash but represent a reasonable calculation of the financial harm caused by Merchant for failures to meet the financial representations made by Merchant.

### ARTICLE II - PRESENTMENT, PAYMENT AND CHARGE BACK

#### 2.1 Presentment of Transaction Records to Acquirer

- (a) Merchant may designate a third party (that does not have a direct agreement with Acquirer) as its agent for the purpose of delivering Transactions data-captured at the point of sale by agent when Merchant elects to use such third party as its agent for the direct delivery of data-captured Transactions. Merchant agrees to the following conditions (for the purposes of this Section 2.1, "Merchant" includes any agent designated by Merchant as permitted under this Section):
- Merchant must utilize a third party that is approved by Acquirer;
  - Merchant must provide satisfactory notice to Acquirer that Merchant chooses to exercise the option specified above;
  - The obligation of Acquirer to reimburse Merchant for Transactions is limited to the amount (less the appropriate discount fee) delivered by Merchant's designated agent; and
  - Merchant is responsible for any and all failures by its agent to comply with this Agreement and all applicable rules and regulation of the Card Associations, including, but not limited to, any violations resulting in a charge back.
- (b) Merchant shall present all sales data relevant to a Transaction to Acquirer on the date of the Transaction, except that:
- Merchant and/or agent shall not charge the cardholder and Merchant and/or agent shall present no sales data until goods have been shipped or the services have been performed within (10) calendar days after the date of the cancellation of the order by the customer in connection with the Transaction unless the cardholder agreed to a delayed delivery of goods and/or services and proper disclosures were made at the time of the Transaction;
  - When Merchant requests and receives authorization for delayed presentment and legibly prints on the sales slip the authorization number and the words "Delayed Presentment," Merchant must present sales data within the period permitted for delayed presentment (not to exceed thirty (30) calendar days);
  - If Merchant is obligated by law to retain a sales slip and the period in which it is to be presented is longer than the period of time allowed to present the sales slip within ten (10) bank business days after the date of the cancellation; and
  - When Merchant has multiple locations or offices and accumulates Transaction records at a central facility, Merchant must present the Transaction records to Acquirer by the date of the Transaction, and, for all purposes other than the calculation of the Merchant has multiple locations, Merchant must deliver the Transaction records in such a manner that Acquirer is able to identify the Transactions originating at each location.
- (c) When requested, Merchant must deliver the credit data to Acquirer within one (1) business day.
- (d) Merchant shall not present to Acquirer, directly or indirectly, any Transaction record that Merchant knows or should have known to be fraudulent or not authorized by the cardholder, that results from a Transaction outside Merchant's normal course of business, that results from a Transaction not involving Merchant, that contains the account number of a Card account issued to Merchant, or that was not the result of a Transaction between Merchant and a cardholder.
- (e) If the transmission of sales data or credit data from Merchant to Acquirer is in the form of electronic data, Merchant shall preserve a copy of the sales and credit slips as per Section 1.14 (d).
- (f) Merchant agrees to indemnify and hold Acquirer or another financial institution, at times deemed appropriate by Acquirer or EPS, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any and all claims for loss of damage arising out of any charges or debts to the Operating Account.
- (g) Merchant shall control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Acquirer receives payment from or through the Card Associations will be settled to a daily card and Acquirer will deliver payment to Merchant on the date of the Transaction or within such period of time as may be practicable by effecting a credit to the Operating Account equal to the total amount of the primary Transaction total of all of Merchant's total paid summary Transactions since the previous credit less any contractual deductions or diversions. Notwithstanding the foregoing, Acquirer may, in its sole and absolute discretion, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Acquirer receives payment in connection therewith from or through the Card Associations. In either case, Acquirer and/or EPS may, if necessary or appropriate, reduce any credit made to the Operating Account, and/or Acquirer or EPS may require the Merchant to make any Transaction payment to the Operating Account equal to:
- the sum of all cardholder charges denied, refunded or charged back;
  - all refunds processed on account of cardholders during said shift time period;
  - the rates, fees and charges, including chargebacks, Merchant owes Acquirer or EPS hereunder;
  - any amount necessary to fund a reserve account or pledge account;
  - all taxes, penalties, charges, fees and other items incurred by Acquirer that are reimbursable pursuant to this Agreement; and
  - any amount Acquirer previously credited to the Operating Account that Acquirer determines, in good faith, was incorrectly so credited.

#### 2.2 Operating Account and Reconciliation

- (a) Prior to accepting any Cards, Merchant will establish a demand deposit account at Acquirer, or at a financial institution approved by Acquirer (the "Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant hereby irrevocably authorizes Acquirer to debit all amounts Merchant Acquirer or EPS hereunder from the Operating Account, whether maintained at Acquirer or another financial institution, at times deemed appropriate by Acquirer or EPS, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any and all claims for loss of damage arising out of any charges or debts to the Operating Account.
- (b) Merchant shall control and disburse all Transaction-related settlement funds to Merchant. Transactions with respect to which Acquirer receives payment from or through the Card Associations will be settled to a daily card and Acquirer will deliver payment to Merchant on the date of the Transaction or within such period of time as may be practicable by effecting a credit to the Operating Account equal to the total amount of the primary Transaction total of all of Merchant's total paid summary Transactions since the previous credit less any contractual deductions or diversions. Notwithstanding the foregoing, Acquirer may, in its sole and absolute discretion, effect a credit to the Operating Account in connection with any Transaction prior to the point in time Acquirer receives payment in connection therewith from or through the Card Associations. In either case, Acquirer and/or EPS may, if necessary or appropriate, reduce any credit made to the Operating Account, and/or Acquirer or EPS may require the Merchant to make any Transaction payment to the Operating Account equal to:
- the sum of all cardholder charges denied, refunded or charged back;
  - all refunds processed on account of cardholders during said shift time period;
  - the rates, fees and charges, including chargebacks, Merchant owes Acquirer or EPS hereunder;
  - any amount necessary to fund a reserve account or pledge account;
  - all taxes, penalties, charges, fees and other items incurred by Acquirer that are reimbursable pursuant to this Agreement; and
  - any amount Acquirer previously credited to the Operating Account that Acquirer determines, in good faith, was incorrectly so credited.
- (c) Merchant will reconcile each settled Transaction within fifteen (15) days after the date on which the Transaction is submitted to Acquirer for payment, and will notify Acquirer and EPS immediately of any discrepancies or errors Merchant suspects as a result of such reconciliation. Neither Acquirer nor EPS will 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 Acquirer for settlement.
- (d) Any crediting of the Operating Account, whether maintained at Acquirer or another financial institution, at times deemed appropriate by Acquirer or EPS, through the ACH Banking Network or by a manual debit of the Operating Account, shall be subject to Acquirer's review and may be subject to Acquirer's approval and, if necessary, to Acquirer's retention of funds for settlement of chargebacks, cardholder or Card Associations. Acquirer or EPS may withhold payment for a Transaction to Merchant, for any reason in the sole and absolute discretion of Acquirer and/or EPS, until such time as the Transaction has been verified as legitimate by the relevant issuing bank, all times related to the possibility of the Transaction resulting in a chargeback has elapsed, or Acquirer and/or EPS receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate chargeback risk.

### 2.3 Insecurity

- (a) Notwithstanding Section 2.2, Acquirer may withhold payment to Merchant, suspend Merchant's ability to process Transactions, or prohibit Merchant's access to funds then on deposit for any of the following reasons:

- Acquirer or EPS in their sole and absolute discretion is suspicious of any Transaction records;
  - Merchant's sales amounts exceeds the stated volume noted on the Merchant Application and Processing Agreement and exceeds an amount or amounts that are typically generated during a particular period;
  - Merchant's average ticket exceeds the stated amount(s) noted on the Merchant Application and Processing Agreement;
  - Merchant does not swipe Cards through electronic terminals;
  - Merchant fails to authorize any relevant Transaction;
  - Merchant's suspicious retrieval requests exceed Acquirer and EPS suspicious retrieval requests against Merchant's account as prior activity;
  - Excessive chargebacks, in the sole and absolute discretion of Acquirer and EPS, are debited against Merchant's account as prior activity; or
  - Merchant may, in its sole and absolute discretion, determine that withholding funds or preventing the withdrawal of funds previously deposited into the Operating Account is necessary to cover anticipated charges from Card activities;
  - A debit by Acquirer to Merchant's Operating Account is returned unpaid for any reason.
- (b) At the time of Application or at any time thereafter, Acquirer and/or EPS may require the establishment of a reserve account at Acquirer ("Reserve Account"), for all indebtedness of Merchant to Acquirer or EPS that may arise out of or relate to the obligations of Merchant under this Agreement, including but not limited to; chargebacks; fees, fines, judgments, and liabilities in such an amount sufficient to allow for settlement of all such obligations. Merchant shall maintain the Reserve Account at all times. Merchant shall not be allowed to draw from the Reserve Account until the time may make adjustments based on performance of the account. Acquirer may fund the Reserve Account by deducting amounts from payments due to Merchant, by effecting a charge against Merchant's Operating Account or against any of Merchant's accounts at Acquirer, or by demanding payment from Merchant (which payment Merchant shall make within ten (10) days after receipt of any such demands). The Reserve Account will be maintained for a minimum of six months after the last date on which activity occurred in the Merchant's account or until such time as Acquirer determines that the release of funds to Merchant is prudent, in the best interest of Acquirer, and commercially reasonable, and that Merchant's account with Acquirer is fully reconciled. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant.

### 2.4 Chargeback

- (a) Under any one or more of the following circumstances, Acquirer may charge back to Merchant any Transaction record that Acquirer has accepted, and Merchant shall repay Acquirer the amount represented by the Transaction record plus any associated fees and/or fines:
- The Transaction record or any material information on a sales slip (such as the account number, expiration date of the Card, Merchant description, Transaction amount, or date) is illegible, incomplete, or otherwise indistinguishable, is not endorsed, or is not delivered to Acquirer within the required time limits;
  - The Transaction was one which received a negative account verification service response (or would have received a negative account verification service response if Merchant had contacted the service on the Transaction date) and Merchant did not reject the Transaction or receive prior authorization for the Transaction, as applicable;
  - Electronic authorization was available and Merchant failed to authorize the Transaction;
  - In a key-entered card present Transaction the sales slip does not contain the required imprint of a Card that was valid, effective, and unexpired on the Transaction date;

