MERCHANT PROCESSING AGREEMENT

This document, “Merchant Processing Agreement” (the “Agreement”), accompanies the document “Merchant Application” (“Merchant Application”) (together, the “Documents”). This Agreement is between the merchant identified in the Merchant Application (the “Merchant”) and the banks and/or financial institutions identified in the Merchant Application (the “Bank(s)” or individually, the “Bank”). You have been selected as a merchant for the purpose of accepting credit cards as a method of payment for goods or services you offer for sale as a condition or part of your terms and conditions of the Merchant Application. The Bank(s) identify in this Agreement a member of Visa USA, Inc. (“Visa”) and MasterCard Incorporated (“MasterCard”) (each a “Card Organization”) and/or one or more designated card-issuing financial institutions (“Sponsor”). The Merchant, the Bank(s) and/or the Sponsor(s) (“you” or “your”) are each a “party,” and/or both are parties, to this Agreement. The Merchant and Bank(s) and/or Sponsor(s) agree that the rights and obligations contained in this Agreement do not apply to Bank with respect to Discover and American Express transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply. In the event of a conflict between this Agreement and the rules of other card issuers or card organizations, this Agreement shall control. Merchant agrees to accept Visa and MasterCard credit and debit cards for payment at the time of sale or subsequently and to remit funds to the Bank (the “Direct’s Card Under the Discover and American Express transactions will be processed at the same fee rate as Merchant’s Discover’s Merchant Agreement”). The Merchant’s credit card processor, “Sponsor,” is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is between the Merchant and Sponsor. The Merchant and Sponsor agree to be bound by the terms of this Agreement.

RECAPITULATION

Merchant agrees to accept credit cards (“Cards”) validly issued by members of Visa, MasterCard, Discover, and American Express. Bank and Processor desire to provide credit card processing services to Merchant. Therefore, Merchant, Processor, and Bank agree as follows:

TERMS AND CONDITIONS

1. Honoring Cards.

a. There shall be no acceptance of a Card unless it has been issued in the name of the Merchant. You are responsible for the selection, use, and retention of proof of a traceable delivery system as means of shipment of product to the customer. Merchant agrees that the right to use the terms “credit card” or “cards” shall extend only to those cards approved for use by the associated processor or bank and only when the merchant agrees to abide by the terms and conditions of the processor or bank for the use of the card.

b. You will honor all credit cards, including cards with the “ShopSmart” logo, as provided by Processor to Merchant.

c. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules.

d. You will not make any unauthorized changes to any purchase.

e. You will return all merchandise within 15 days after receipt of the merchandise if you receive a credit memorandum for the purchase.


a. You shall accept and honor all valid credit cards, including cards with the “ShopSmart” logo, as provided by Processor to Merchant.

b. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules.

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3. Presentment of Sales Drafts.

a. You may present the Sales Draft only at the time of sale or within seven business days of the sale. A Sales Draft will be treated as an authorization.

b. You will not request authorization of the transaction on behalf of an agent or representative who has been authorized to make the request.

c. You will honor all valid credit cards, including cards with the “ShopSmart” logo, as provided by Processor to Merchant.

4. Deposit of Sales Drafts and Funds Due Merchant.

a. You will deposit the Sales Draft and funds due to the Merchant in the Reserve Account. If you provide your own electronic terminal or similar device, such terminal must meet the requirements of the Rules, if known, and the delivery policy. The Merchant shall have the right to reject any Sales Draft or credit memorandum presented at a standard or electronic terminal if the signature on the Sales Draft or credit memorandum does not correspond with the signature on the Card, the Card number, the expiration date of the Card, or the purchase amount does not match the amount specified on the Sales Draft.

b. You will not accept any chargeback of a transaction without a Sales Draft or credit memorandum, except as permitted by the Rules.

c. You will not process any transaction that has not been authorized.

G. Disputes

a. You will honor all valid credit cards, including cards with the “ShopSmart” logo, as provided by Processor to Merchant.

b. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules.

c. You will honor all valid credit cards, including cards with the “ShopSmart” logo, as provided by Processor to Merchant.

5. Other Types of Transactions.

a. Merchant shall not accept credit cards for the purchase, renewal, or extension of insurance policies, nor for entertainment, sports, and similar events, activities, or travel arrangements. Merchant shall not make purchases for or on behalf of an agent, representative, or independent contractor, including any salesperson or sales representative.

b. Merchant shall not accept any transaction that is for a purchase of goods or services or for which there is no identifiable current or future benefit to the Merchant.

c. Merchant shall not accept any transaction for which there is no identifiable current or future benefit to the Merchant, except as permitted by the Rules.

6. Customer Information.

a. Merchant will not use or share cardholder information except as permitted by the Rules.

b. Merchant shall not use cardholder information except as permitted by the Rules.

c. Merchant will not use or share cardholder information except as permitted by the Rules.

7. Authorizations

a. You will not present an authorization for the total amount of a transaction via electronic terminal or magnetic stripe reading terminal.

b. You will provide a copy of the authorization to the Cardholder at the time of the authorization.

c. You will retain the “merchant copy” of the authorization for a period of at least 3 years following the date of the transaction.

8. Rejection of Transactions.

a. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

b. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

9. Chargebacks.

a. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

b. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.


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11. Merchandise Returns.

a. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

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13. Legal Requirements.

a. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

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15. Additional Terms.

a. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.

b. You will not accept for payment any transaction that has been rejected by the card-issuing financial institution.
C. Merchant Supply/Replacement Program. Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). Merchant agrees to pay for all supplies. Merchant will be responsible for paying all taxes and other charges imposed by any governmental authority on the supplies provided under this Agreement. Merchant agrees to purchase all necessary supplies such as credit card readers, point-of-sale terminals, and manual cash register systems. Merchant must ensure that all necessary supplies are available and in good working order at all times, including during any maintenance or repair of the supplies. Merchant must provide evidence of purchase to the Bank at any time requested.

9. Application, Indemnification, Limitation of Liability

A. Indemnification. Merchant agrees to indemnify and hold Processor and Bank harmless from and against any and all claims, damages, and costs, including reasonable attorneys’ fees and expenses, arising out of or in connection with any breach of this Agreement by Merchant or its employees, agents, or representatives. Merchant also agrees to indemnify Processor and Bank for any losses or expenses incurred by Processor and/or Bank arising out of your failure to report changes to it. Bank and Processor may file all necessary claims and proceedings to enforce this Section 9. Neither the Processor nor the Bank will be responsible for any indirect, special, or consequential damages.

B. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, the Processor and Bank shall not be liable for any indirect, special, incidental, or consequential damages or losses, including lost profits, arising out of or in connection with the performance of this Agreement or the furnishing of any services or products under this Agreement, or for any claim made by any third party against you or your agents or representatives.

10. Representations and Warranties. Merchant represents and warrants to Processor and Bank at the time of execution and during the term of this Agreement that:

A. Merchant understands that the Diners Club Card includes immediate liberty, privacy, partnership, or soke priority status, validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank in this Agreement is true and complete. Merchant understands that failure to provide true and complete information may result in the revocation of its Diners Club Card privileges.

B. Merchant Supply/Replacement Program. Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). Merchant agrees to pay for all supplies. Merchant will be responsible for paying all taxes and other charges imposed by any governmental authority on the supplies provided under this Agreement. Merchant agrees to purchase all necessary supplies such as credit card readers, point-of-sale terminals, and manual cash register systems. Merchant must ensure that all necessary supplies are available and in good working order at all times, including during any maintenance or repair of the supplies. Merchant must provide evidence of purchase to the Bank at any time requested.

11. Term. This Agreement shall become effective ("Effective Date") only upon acceptance by Processor and Bank, or upon the submission of a transaction by you to Processor and Bank, whichever event shall occur first. The Agreement will remain in effect for a period of 2 years from the Effective Date, or such other period as may be specified in the Application, unless sooner terminated under the terms of this Agreement. Termination of the Agreement will be effective as of the date specified in the notice of termination provided by either party. In the event of termination, all amounts due and owing under this Agreement shall be immediately payable to Processor and Bank and will offset the administrative, clerical, legal, and risk management costs incurred by Processor to monitor the funds you have deposited or drawn down under this Agreement.
A. Merchant Account Statement. Upon opening a merchant processing account you will automatically have access to your monthly merchant statement electronically (an "E–statement") by viewing it online. This Agreement governs the electronic availability of your E–statement. You agree to abide by the terms and conditions stated herein, and to access E–statements, as well as all notices and initial and future disclosures regarding your E–statement, online. You acknowledge that by the third business day of each month, E–Statement will be available online. You will be notified in writing of the website where you can access your E–statement. Your E–statement will be accessible only through a secure Log In screen which requires the use of a unique User ID and Password. You understand that you will not receive a monthly merchant account statement by U.S. postal mail, and that making your E–statement available online constitutes Processor’s compliance with delivery of your monthly merchant account statement. You can print the E–statement or save the file to your computer hard drive or other disk to retain a copy of the E–statement. Your E–statement can be accessed through the E–statement link for three consecutive months from the date the E–statement is first made available. You further agree to receive all initial and periodic account disclosure information in electronic format. All such disclosures shall be provided in a clear, conspicuous manner that you can print and/or save using the hardware and software specified below. You are also entitled to obtain a paper copy of all disclosures or E–statements upon written request, however such a request does not constitute a withdrawal of consent to receive monthly E–statements. A fee may apply for providing such documentation. You understand that you may withdraw your consent to receive E–statements, or change your email address, within 30 days written notice to Processor. Please note that a withdrawal of consent does not apply to an E–statement that was furnished before the date on which the withdrawal of consent becomes effective. PC Requirements: Viewing your E–statement online requires a personal computer with Adobe Acrobat Reader and internet access through a standard web browser. The product version numbers must be supported by the respective vendors (i.e., Adobe, Apple, Mozilla, and Microsoft). Processor is not obligated to ensure that your E–statements are accessible through outdated vendor products. In the event you are unable to access any of the information that has been made available by Processor in electronic format, it is your obligation to notify Processor in writing immediately.

B. Reporting Of Errors. You must promptly view all E–statements, and immediately notify Processor in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and the cause of it, if known. Written notice must be received by Processor within 30 calendar days after the E–statement containing the asserted error is first made available. Failure to provide Processor notice of any error within 30 calendar days constitutes a waiver of any claim relating to that error. You may not make any claim against Processor for any loss or expense relating to any asserted error for 60 calendar days following Processor’s receipt of your written notice. During that 60 day period, Processor will be entitled to investigate the asserted error and you will notify you of the results of our investigation.

C. Miscellaneous. Processor shall not be responsible for: (i) consequential or incidental damages caused by services performed by Processor, its agents, or your Internet Service Provider (ISP); (ii) damages arising from unauthorized access to E–statement services; or (iii) any costs associated with updating, modifying or terminating your software or hardware. Processor may change, modify, or terminate any aspect of this Agreement without Processor and Bank’s written consent.

18. Electronic Signatures.

Under the Electronic Signatures in Global and National Commerce Act ("E–Sign"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (a) your electronic signature is associated with the Agreement and related documents, (b) you consent and intend to be bound by the Agreement and related documents, and (c) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or store electronic record of the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E–Sign. By pressing Submit, you agree: (i) that the Agreement and related documents shall be effective by electronic means; (ii) to be bound by the terms and conditions of this Agreement and related documents; and (iii) to be bound by the terms and conditions of this Agreement and related documents. You agree to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.