

**MERCHANT APPLICATION**

BUSINESS NAMES

Legal Name:	DBA Name:
Legal Address:	DBA Address (No PO Box):
Legal City, State, Zip:	DBA City, State, Zip:
Legal Phone #: Contact:	DBA Phone #:
Cust. Svc. # (if different):	Website Address: www.
Fax #:	Email Address (required to receive E-statement availability notification):

MERCHANT PROFILE

Type of Ownership:  Sole Proprietor  Partnership  Not For Profit  Corporation  Limited Liability Company

Type of Goods or Services Sold: \_\_\_\_\_ SIC Code: \_\_\_\_\_

Do you currently process Credit Cards?  Yes  No  
If yes, submit three current months' processing statements

Name of current processor: \_\_\_\_\_

Has Merchant or any associated principal disclosed below filed bankruptcy or been subject to any involuntary bankruptcy?  No  Yes  
If yes, date filed: \_\_\_\_\_

Processing Profile:

<input type="radio"/> Retail	Card Swiped	%
<input type="radio"/> Restaurant	Manual Key Entry with Imprint, Card Present with Signature	%
<input type="radio"/> Lodging	Mail/Telephone Order	%
<input type="radio"/> Service	eCommerce	%
<input type="radio"/> Mail/Telephone Order	TOTAL MUST EQUAL 100%	
<input type="radio"/> eCommerce		

Federal Tax # (9 digits, no dashes): [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] # of Locations: \_\_\_\_\_ Years in Business: \_\_\_\_\_ Years Owned Business: \_\_\_\_\_

Bank Name: \_\_\_\_\_ Routing #: [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] Checking Account #: \_\_\_\_\_ Bank Phone # (10 digits, no dashes): [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

**MEMBER BANK INFORMATION**

HSBC Bank USA, National Association, Merchant Support Group  
P. O. Box 3263, Buffalo, NY 14240 716-841-6360

**IMPORTANT MEMBER BANK RESPONSIBILITIES**

1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant.
2. A Visa Member must be a principal (signer) to the Merchant Agreement.
3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
4. The Visa Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa Member is responsible for all funds held in reserve that are derived from the settlement.

**IMPORTANT MERCHANT RESPONSIBILITIES**

1. Merchant must ensure compliance with cardholder data security and storage requirements.
2. Merchant must maintain fraud and chargebacks below thresholds.
3. Merchant must review and understand the terms of the Merchant Agreement.
4. Merchant must 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 these specific responsibilities.

\*\*\*\* Payment Card Industry Data Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PA DSS") compliant or you (merchant) must validate PCI DSS compliance (see #1(b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.\*\*\*\*

1. Have you ever experienced an Account Data Compromise ("ADC")?  Yes  No If yes, provide date of compromise: \_\_\_\_\_  
a) Have you validated PCI DSS compliance?  Yes  No If yes, go to #1(b); If no, go to #2  
b) Date of compliance, Report on Compliance ("ROC") or Self Assessment Questionnaire ("SAQ"): \_\_\_\_\_  
c) What is the name of your Qualified Security Assessor ("QSA")? \_\_\_\_\_ or SAQ (circle one): A, B, C, or D  
d) Date of last scan: \_\_\_\_\_ Approved Scanning Vendor's name: \_\_\_\_\_
2. Are you using a "dial-up" terminal or Touch Tone Capture ("TTC")?  Yes  No
3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Number ("FCN"), electronically?  Yes  No  
a) If yes, where is card data stored?  Merchant's location only  Merchant's Headquarters/Corp office only  Primary Service Provider  Both Merchant and Service Provider(s)  
 Other Service Provider: \_\_\_\_\_  All Apply
4. What Primary Service Provider/Software Developer did you purchase your POS application from (i.e., software, gateway)? \_\_\_\_\_  
a) What is the name of the Service Provider/Software Developer's application? \_\_\_\_\_ Software Version #: \_\_\_\_\_  
b) Do your transactions process through any other Service Provider (i.e., web hosting companies, gateways, corporate office)?  Yes  No  
c) If yes, name the other Service Provider: \_\_\_\_\_

CARDHOLDER DATA STORAGE COMPLIANCE

OWNER(S) OR OFFICER(S)

(Individual Ownership Must be Equal to or Greater than 50%)

1 Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:
2 Name:	Title:	Date of Birth:	Social Security #:	% Equity Ownership:
Residence Address:	City:	State:	Zip:	# yrs: Home Phone #: Driver's Lic. #: ST:

MERCHANT SITE SURVEY REPORT

(To Be Completed by Sales Representative)

Merchant Location:  Retail Location with Store Front  Office Building  Residence  Other: \_\_\_\_\_

Area Zoned:  Commercial  Industrial  Residential Is inventory/merchandise amount consistent with type of business?  Yes  No

If No, explain: \_\_\_\_\_

The Merchant:  Owns  Leases the Business Premises Landlord Name & Phone #: \_\_\_\_\_

Does the Merchant use a Fulfillment House?  Yes  No If yes, was the Fulfillment House inspected?  Yes  No

Further comments by Inspector (required): \_\_\_\_\_

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

Verified and Inspected by: \_\_\_\_\_ Date: \_\_\_\_\_

Representative Print Name \_\_\_\_\_ Representative Signature \_\_\_\_\_

**RATE SCHEDULE**    Interchange Plus    Discount Rate

Visa Credit Card Discount Rate:	_____ %	MasterCard Credit Card Discount Rate:	_____ %
Visa Offline Debit Discount Rate:	_____ %	MasterCard Offline Debit Discount Rate:	_____ %
American Express Discount Rate:	_____ %	Discover Credit Card Discount Rate:	_____ %
Bankcard Transaction Fee:	_____ Per Item	Discover Offline Debit Discount Rate:	_____ %
Non-Bankcard Transaction Fee:	_____ Per Item	EBT Transaction Fee:	_____ Per Item
Offline Debit Transaction Fee:	_____ Per Item	Gift Card Transaction Fee:	_____ Per Item
Debit Transaction Fee (Plus Debit Network Fees):	_____ Per Item	Loyalty Card Transaction Fee:	_____ Per Item
Visa Authorization/Settlement Network Access/Usage Fee:	\$ 0.05 Per Item	Voice Authorization Fee:	\$ 1.50 Per Call
MasterCard Authorization/Settlement Network Access/Usage Fee:	\$ 0.05 Per Item	Annual Fee (billed in advance for the following year):	\$79.00 Per Year
Discover Authorization/Settlement Network Access/Usage Fee:	\$ 0.05 Per Item	ACH Reject Fee:	\$25.00 Per Item
Bank Service Fee:	_____ Monthly	Retrieval Fee:	\$10.00 Per Item
Monthly Minimum:	\$25.00 Monthly	Chargeback Fee:	\$25.00 Per Item
AVS Surcharge:	\$ 0.05 Per Item	Online Access Fee:	\$10.00 Monthly
Batch Fee:	_____ Per Batch	Statement Fee:	_____ Monthly
Split Batch Fee (additional):	\$ 0.15 Per Batch	Gateway Activation Fee:	_____ One Time
Wireless Activation Fee:	\$35.00 One Time	Gateway Access Fee:	_____ Monthly
Wireless Access Fee:	\$23.00 Monthly	eCommerce/Gateway Item Fee:	_____ Per Item
Wireless Item Fee:	\$ 0.12 Per Item	MICROS Transaction Fee (if applicable):	\$ 0.09 Per Item

I/We understand and agree to the following: 1) That my/our discount rate as stated above will be charged on all electronically authorized payment card transactions that are in batches closed daily (qualified rate). 2) That all payment card transactions that do not meet the requirement stated in number 1 above may be charged up to 2.19% + \$0.10 higher than my/our discount rate. Discover Network/Visa/MasterCard business transactions may be charged up to 2.19% + \$0.10 above qualified rate. 3) Merchants may be charged a Cross Border transaction assessment of up to 0.75%, in addition to the applicable rate, on transactions when the country code of the Card Issuer differs from the country code of the Merchant. 4) Merchants may be charged an Association Acquirer Support Fee of up to 0.45% on certain transactions. 5) POS high speed processing and/or gateway activation may be subject to a one time set up fee of up to \$150.00, depending on provider. 6) If Interchange/Cost Plus: All transactions will be assessed the current, published interchange rates, dues, and assessments in addition to the basis points as stated above. The published rates for Visa and MasterCard can be viewed at: [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com). 7) An early closure fee of \$495.00 will be paid to Benchmark if the Merchant Processing Agreement is not terminated in accordance with the Terms and Conditions.

**AMERICAN EXPRESS**

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions. American Express transaction fees: \$0.10 for Retail + 0.30% Downgrade for CNP and Key Entered Transactions, and \$0.15 for Services, Wholesale & all other Merchant types.

**DEBIT/CREDIT AUTHORIZATION**

**STAPLE VOIDED CHECK HERE** Merchant authorizes any party to the Agreement to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which any such parties are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives written notice of revocation as required by this Agreement.

INVESTIGATIVE CONSUMER REPORT: An investigative or consumer report may be made in connection with application. MERCHANT authorizes ANY PARTY TO THE AGREEMENT or any of their agents to investigate the references provided or any other statements or data obtained from MERCHANT, and from any of the undersigned personal guarantor(s), or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

**AVERAGE TICKET SIZE:** \_\_\_\_\_ **\*HIGHEST TICKET SIZE:** \_\_\_\_\_ **MONTHLY VOLUME:** \_\_\_\_\_

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4c, 9 and 13b of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT. \*Highest ticket for informational purposes only.

**IMPORTANT NOTICE:** All information contained in this application was completed or supplied by all contracting parties. Any change in printed terms shall be of absolutely no force or effect unless specifically agreed to in writing by all contracting parties. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing.

**FOR ALL CORPORATIONS CORP. RESOLUTION**

The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the herewithin named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

**PERSONAL GUARANTY (NO TITLES)**

By signing below, the undersigned Guarantor(s) jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations under the attached Merchant Processing Agreement, as such Agreement now exists or as may be amended from time to time, with or without notice. Guarantor(s) understands further that any party to the Merchant Processing Agreement may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity or any security being held pursuant to the Merchant Processing Agreement. Guarantor(s) waive trial by jury with respect to any litigation arising out of or relating to this personal guaranty. This guaranty will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns, and may be enforced by or for the benefit of a successor of any party to the Merchant Processing Agreement. Guarantor(s) understand that the inducement to the parties to enter into the Merchant Processing Agreement is consideration for this guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

**AGREED AND ACCEPTED**

X \_\_\_\_\_  
#1 From Application—Signature Date

X \_\_\_\_\_  
#2 From Application—Signature Date

**If Merchant submits a transaction hereunder, Merchant will be deemed to have accepted the Terms and Conditions of the Merchant Processing Agreement.**

X \_\_\_\_\_  
#1 From Application—Signature Date

X \_\_\_\_\_  
#2 From Application—Signature Date

X \_\_\_\_\_  
Accepted by

X \_\_\_\_\_  
Accepted by HSBC Bank USA, National Association

X \_\_\_\_\_  
Accepted by Global Payments Direct, Inc.

EQUIPMENT/ADDITIONAL SERVICES

**Equipment:**  Purchase from BMS  Reprogram Merchant's existing equipment

**If purchase, choose equipment:**  Terminal  Printer  PINPad  Software  Other: \_\_\_\_\_

**Choose shipment method:**  Overnight  2nd Day  Ground

**Must choose one:**  Starter Kit  Starter Package (includes manual imprinter)

**If lease, indicate:**  LSI  Other: \_\_\_\_\_

**TERMINAL TYPE:**

<input type="radio"/> NURIT 3020 (repro only)	<input type="radio"/> VERIFONE VX570 <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> HYPERCOM T7 Plus
<input type="radio"/> NURIT 2085	<input type="radio"/> OMNI 3200 SE (repro only)	<input type="radio"/> HYPERCOM T7P <input type="radio"/> FRICTION <input type="radio"/> THERMAL
<input type="radio"/> NURIT 2085+ (repro only)	<input type="radio"/> OMNI VX510 LE	<input type="radio"/> HYPERCOM T77 (repro only) <input type="radio"/> FRICTION <input type="radio"/> THERMAL
<input type="radio"/> NURIT 8320 (repro only) <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> OMNI VX510	<input type="radio"/> PC Charge
<input type="radio"/> NURIT 8320 Lite (repro only)	<input type="radio"/> OMNI 3740 (repro only) <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> PC Software (repro only): _____
<input type="radio"/> NURIT 8400 <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> OMNI 3750 (repro only) <input type="radio"/> DIAL <input type="radio"/> IP	<input type="radio"/> Other: _____
<input type="radio"/> NURIT 8400 Lite		

**WIRELESS TERMINAL TYPE: (NOTE: NEW MSI SIM CARD REQUIRED FOR ALL GPRS REPROGRAMS)**

Way MTT 15XX Wireless Combo KIT/MTT/SIM# \_\_\_\_\_

NURIT 8000 Wireless (GPRS) (repro only) S/N \_\_\_\_\_

NURIT 8000 Wireless (RAM) (repro only) S/N \_\_\_\_\_ MAN/ESN# \_\_\_\_\_

NURIT 8010 Wireless (GPRS) S/N \_\_\_\_\_

NURIT 8020 Wireless (GPRS) S/N \_\_\_\_\_

EXADIGM XD2100 (repro only)

CDMA F# \_\_\_\_\_ UID# \_\_\_\_\_

GSM/GPRS S/N \_\_\_\_\_

Other: \_\_\_\_\_

By signing this application it is agreed that BMS shall not be held responsible for (a) any wireless terminal repairs or (b) providing a replacement wireless terminal due to equipment failure. The terminal manufacturer shall handle all wireless terminal repairs and replacements. I also understand that due to the complexity of these wireless terminals, the manufacturer may not be able to provide a replacement while completing repairs. In addition, I further agree that a wireless terminal is NOT covered by participation in the BMS Supply/Replacement Program. BMS will not be responsible for any problems with the wireless services provided pursuant to this agreement. **See Rate Schedule for Wireless Fees.** Fees are subject to change.

**TERMINAL APPLICATION:**

WITH TIPS  WITHOUT TIPS  LODGING  MOTO Merchant Refund Policy:  No Refund  Exchange Only  In-Store Credit Only

**PERIPHERALS (ADD ON EQUIPMENT):**

**PINPad Type:**  HYPERCOM PINPad S9  HYPERCOM PINPad P1300  HYPERCOM PINPad 1320  VERIFONE PINPad 1000SE

**Check Equipment:**  MAGTEK Reader  MAGTEK Imager  RDM Imager

**Other:**  VIVOTECH VIVOpay:  3000  4000  MAGTEK Mini Swipe Card Reader USB:  PC Charge

Other: \_\_\_\_\_

Equipment selection may be subject to availability/processing requirements.

**ADDITIONAL SERVICES:**

Check Advantage\* List Existing Merchant #: \_\_\_\_\_

Other Check Service: \_\_\_\_\_ List Existing Merchant #: \_\_\_\_\_

Gateway:  Authorize.Net  PayPal  Other: \_\_\_\_\_

Gateway Administrator email address (required): \_\_\_\_\_

Debit  QPS  MasterCard PayPass™/Visa payWave  Supermarket  EBT\*  Merchant Advance Program

Other Card Types: NEW EXISTING LIST EXISTING MERCHANT NUMBERS

<input type="radio"/> AMERICAN EXPRESS	<input type="radio"/>	<input type="radio"/>	_____
<input type="radio"/> DISCOVER	<input type="radio"/>	<input type="radio"/>	_____
<input type="radio"/> DINERS CARD/CARTE BLANCHE	N/A	<input type="radio"/>	_____
<input type="radio"/> JCB	N/A	<input type="radio"/>	_____
<input type="radio"/> VOYAGER*	<input type="radio"/>	N/A	Supplied by BMS
<input type="radio"/> WRIGHT EXPRESS*	<input type="radio"/>	N/A	Supplied by BMS

Upon Approval of Visa/MasterCard/Discover processing, allow 48-72 hours for new non-bankcard(s) to be added.

\*Addendum/Application Required

**SPECIAL INSTRUCTIONS (requests are subject to management approval, please print clearly):**

Request change of ownership. Existing MID number to close: \_\_\_\_\_

Request to pick up equipment/starter kit at: \_\_\_\_\_

Request to ship equipment to:  Merchant  ISO  Other: \_\_\_\_\_

Other: \_\_\_\_\_

Merchant elects to receive monthly merchant account statements via U.S. Mail to:  
 Legal Address or  DBA Address





## 15. Use of Trademarks and Confidentiality.

A. **Use of Trademarks.** Your use of Visa, MasterCard and Discover trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover, or other cards' promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover, or others endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover or others in stating eligibility for your products or services.

B. **Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks").** You are prohibited from using the Discover Program Marks other than as expressly authorized in writing. You shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you pursuant to this Agreement or otherwise approved in advance in writing. You may use the Discover Program marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance in writing. You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover Program Marks.

C. **Confidentiality.** i. **Cardholder Information.** You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers and (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. ii. **Prohibitions.** You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of MSI, Global and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. iii. **Disclosure.** You authorize MSI, Global and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

D. **Return to Bank.** All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of MSI, Global and Bank and will be immediately returned to MSI upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by MSI, Global and Bank arising out of the failure to return or destroy such materials following termination.

## 16. General Provisions.

A. **Entire Agreement.** This Agreement as amended from time to time, including the Rules and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. **Exclusivity.** During the initial and any renewal term of this Agreement, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by MSI, Global and Bank as contemplated by this Agreement without MSI, Global and Bank's written consent.

C. **Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

D. **Assignability.** This Agreement may be assigned by MSI, Global or Bank but may not be assigned by Merchant directly or by operation of law, without the prior written consent of MSI, Global and Bank. If Merchant nevertheless assigns this Agreement without the consent of MSI, Global and Bank, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

E. **Notices.** Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

### MEMBER BANK INFORMATION

HSBC Bank USA, National Association  
Merchant Support Group  
P. O. Box 3263  
Buffalo, NY 14240  
716-841-6360

Debit sponsorship provided by either Wells Fargo Bank N.A. or JP Morgan Chase N.A., as applicable.

F. **Bankruptcy.** You will immediately notify MSI, Global and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include MSI, Global and Bank on the list and matrix of creditors as filed with the Bankruptcy Court whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to MSI, Global and Bank under applicable Rules or Law.

G. **Choice of Law/Attorney's Fees/Venue/Jury Trial Waiver.** Should it be necessary for MSI, Global, or Bank to defend or enforce any of its rights under this Agreement in any collection or legal action, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses including reasonable attorney's fees, as a result of such collection or legal action. Without limiting the generality of the foregoing, you agree to reimburse MSI, Global, and/or Bank, or any agent acting on their behalf, as applicable, for all costs and expenses, including reasonable attorney's fees, incurred by MSI, Global, Bank or their agent in any action arising out of, relating to, or in connection with this Agreement, without regard to whether there has been an adjudication on the merits in any such action. You waive trial by jury with respect to any litigation arising out of, relating to, or in connection with this Agreement. MSI, Global, Bank, you, and Guarantor agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of, relating to, or in connection with (i) this Agreement, (ii) the relationships which result from this Agreement, or (iii) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of New York, notwithstanding any conflicts of laws rules, and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. MSI, Global, Bank, you, and Guarantor agree that all actions arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall only be brought in either the courts of the State of New York sitting in Suffolk County or in the United States District Court for the Eastern District of New York, and hereby irrevocably and unconditionally submit to the personal jurisdiction of those courts in any such action.

H. **Amendments.** MSI or Global will notify you on your monthly statement of any new or increased fees. Except for any fee increases imposed by Visa, MasterCard, Discover, or the debit network, you may cancel the Agreement without charge if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

I. **Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by MSI, Global or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

J. **Independent Contractors.** MSI, Global, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other, except as provided in 6.C and 7.A(i).

K. **Employee Actions.** You are responsible for your employees' actions while in your employment.

L. **Survival.** Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, and 16.G will survive termination of this Agreement.

## 17. E-statements.

A. **Merchant Account Statement.** Upon opening a merchant processing account you will automatically have access to your monthly merchant account statement electronically (an "E-statement") by viewing it on line. 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, your 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 MSI's compliance with delivery of your monthly merchant account statement. You can print the E-statement or save the file to your computer's hard drive or other disk in order 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 an 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, upon 30 days written notice to MSI. 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 on line requires a personal computer with Adobe Acrobat and internet access through a standard web browser. The product version levels must be supported by the respective vendors (i.e., Adobe, Apple, Mozilla, and Microsoft). MSI 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 MSI in electronic format, it is your obligation to notify MSI in writing immediately.

B. **Reporting Of Errors.** You must promptly view all E-statements, and immediately notify MSI 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. That written notice must be received by MSI within 30 calendar days after the E-statement containing the asserted error is first made available. Your failure to notify MSI of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against MSI for any loss or expense relating to any asserted error for 60 calendar days immediately following MSI's receipt of your written notice. During that 60 day period, MSI will be entitled to investigate the asserted error and we will notify you of the results of our investigation.

C. **Miscellaneous.** MSI shall not be responsible for: (i) consequential or incidental damages caused by services performed by MSI, 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. MSI may change, suspend, or terminate all or any aspect of this service upon written notice to you.

## 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 otherwise store 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, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize MSI, Global or Bank 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.