

# MERCHANT APPLICATION



Rev 7.1

## GENERAL INFORMATION

Legal Business Name: \_\_\_\_\_ Doing Business As: \_\_\_\_\_  
 Billing Address: \_\_\_\_\_ Business Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
 Federal Tax ID: \_\_\_\_\_ # of Locations \_\_\_\_\_ Business Phone: \_\_\_\_\_ Business Fax: \_\_\_\_\_  
 Account Contact Name: \_\_\_\_\_ Time in Business \_\_\_\_\_ Business Hours: \_\_\_\_\_  
 Years: \_\_\_\_\_ Months: \_\_\_\_\_ to \_\_\_\_\_ to \_\_\_\_\_  
 Account Contact Email: \_\_\_\_\_ Phone # \_\_\_\_\_ Contact Fax# \_\_\_\_\_ Website URL: \_\_\_\_\_

## BUSINESS INFORMATION

Ownership Merchant Type: Has applicant ever processed before?  Yes  No  
 Sole Proprietorship  Retail  Internet If Yes, please attach 3 months statements  
 Partnership/General Ltd.  Restaurant  Home based Has applicant ever been terminated?  Yes  No  
 Corporation – Sub Chapter S  With Tips  Mail/Telephone If Yes, by whom? \_\_\_\_\_  
 Corporation – Publicly Held  Large Volume  Hotel/Lodging (Please attach an explanation regarding your termination)  
 Corporation – Closely Held Number of days until Product/Service is delivered: \_\_\_\_\_  
 Corporation – Other Credit Card Swiped \_\_\_\_\_ Specific Type of Business and Product(s)/Service(s) sold: \_\_\_\_\_  
 Limited Liability Corp Credit Card Keyed (MOTO) \_\_\_\_\_  
 Non-Profit Credit Card Keyed (Internet) \_\_\_\_\_  
 Government Agency Credit Card Keyed w/ imprint \_\_\_\_\_ Card Descriptor Name \_\_\_\_\_  
 Total = 100% Does Applicant own or rent current Equipment?  Own  Rent

## OWNER INFORMATION

Owner/Partner/Officer Name: \_\_\_\_\_ % of Ownership: \_\_\_\_\_ DOB: \_\_\_\_\_ Phone: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
 Title: \_\_\_\_\_ Home Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
 Owner/Partner/Officer Name: \_\_\_\_\_ % of Ownership: \_\_\_\_\_ DOB: \_\_\_\_\_ Phone: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
 Title: \_\_\_\_\_ Home Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

## REFERENCES

Primary Supplier: \_\_\_\_\_ Account #: \_\_\_\_\_ Phone: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Landlord: \_\_\_\_\_ Own  Rent  Phone: \_\_\_\_\_ Contact: \_\_\_\_\_

## CURRENT EQUIPMENT

Terminal	Manufacturer	Terminal	Printer	Pin pad	Track
Software	Type	Manufacturer	Customer Serv #		

## PRODUCTS/SERVICES

Transaction Pro  Bankcard Acceptance (Visa/MC/Discover)  Debit/ATM Card Acceptance  American Express new sign up (ESA)

## MERCHANT SITE SURVEY \*Photograph of business location (interior & exterior) are required. (Completed by 2CP sales representative)

Specify Business Type \_\_\_\_\_ Type of Building \_\_\_\_\_ Square Footage \_\_\_\_\_  
 Merchandise Sold \_\_\_\_\_ Inspector's Comments \_\_\_\_\_  
 Inspector's Signature \_\_\_\_\_ Date \_\_\_\_\_

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**BANKCARD / DEBIT PRICING**

Salesperson Name: _____ Salesperson ID# _____ Monthly Processing Limit: _____ AVG Ticket: _____																																																																																
Banking Days: _____ Reserve Terms: _____																																																																																
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**AMERICAN EXPRESS**

American Express Rate: \_\_\_\_\_ + \_\_\_\_\_ Trans Fee (+ 30bp Potential Downgrade Fee if Keyed) OR American Express Monthly Flat Fee: \$5.95 (est. volume < \$4,999)  
 Est. Annual Volume: \_\_\_\_\_ Est. Avg Ticket: \_\_\_\_\_  Monthly Gross Pay  Daily Gross Pay (Pay Freq:  3 Day  15 Day  30 day)

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 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 name and address of the agency furnishing the report. I also authorize American Express to use the reports from consumer reporting agencies for marketing and administrative purposes. 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 purchases of goods and/or services, or otherwise indicating it intention to be bound, the entity agrees to be bound by the Terms and Conditions.

Signature: X \_\_\_\_\_ Date: \_\_\_\_\_

**DISCOVER**

I agree to accept Discover® Network Cards. Discover Network will deliver a starter kit with my merchant services agreement and materials.

**NON-BANKCARD ACCOUNTS**

AMEX <input type="checkbox"/> New <input type="checkbox"/> Existing	MID# _____	Diners <input type="checkbox"/> New <input type="checkbox"/> Existing	MID# _____
Discover <input type="checkbox"/> New <input type="checkbox"/> Existing	MID# _____	JCB <input type="checkbox"/> New <input type="checkbox"/> Existing	MID# _____

**SIGNATURES/AUTHORIZATION TO ACH**

# ATTACH COPY OF VOIDED CHECK HERE

(or on a separate page)

MERCHANT acknowledges that Bank and Processor as referenced below, will determine all Rates, Charges, Reserves and Limit Authorizations, collectively "Fees". Bank will notify MERCHANT of the approved Fees and MERCHANT, by evidence of MERCHANT'S first settled transaction, agrees to such approved Fees. MERCHANT and each Personal Guarantor warrants and certifies that all the information submitted under this application is true, correct and complete and that Bank and Processor are relying on such information in its approval process and in setting the applicable Fees. For this purpose, MERCHANT and each Personal Guarantor, if any, agree that Bank and Processor are authorized to investigate and confirm the information contained or submitted herein and may utilize credit bureau/agencies and/or its own agents. MERCHANT agrees and understands that the Merchant Processing Agreement shall not take effect until the MERCHANT has been approved by Bank and Processor.

By signing this Merchant Processing Application, I acknowledge that I have also received the Merchant Processing Agreement. I have read the Merchant Processing Agreement and understand it. I understand that the Merchant Processing Agreement is incorporated into this Application and that both documents constitute my contract with Bank and Processor. I declare under penalty of perjury under the laws of the state of California and under the laws of the state in which my business is located that all of the information contained in this Merchant Processing Application and Agreement and all attachments thereto are true, correct and complete.

Merchant Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_ Merchant Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

First Data Services, LLC \_\_\_\_\_ Date \_\_\_\_\_ Wells Fargo Bank, N.A. \_\_\_\_\_ Date \_\_\_\_\_

All corporations and limited liability companies must have their obligations guaranteed by a principal or other creditworthy individual. As a primary inducement to Bank and Processor to enter into this Agreement with Merchant, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, guarantees the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Bank and Processor pursuant to this Agreement, as it now exists or as it may be amended from time to time, whether before or after termination or expiration and whether or not Guarantors has received notice of any amendment. If Merchant breached this Agreement, Bank and Processor may proceed directly against Guarantor or any other person or entity responsible for the performance of this Agreement, without first exhausting its remedies against any other person or entity responsible therefore to do it, or any security held by Bank.

Signature, An Individual \_\_\_\_\_ Date \_\_\_\_\_ Signature, An Individual \_\_\_\_\_ Date \_\_\_\_\_

Articles Of Incorporation Option

# MERCHANT APPLICATION



Rev 7.1

## MERCHANT PROCESSING AGREEMENT

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 10.1, below, between the business indicated on the merchant application ("Merchant" or "you"), 2C Processor USA, LLC ("2CP"), and First Data Services LLC (2CP and First Data Services LLC are collectively referred to as Processor) and Wells Fargo Bank, N.A. ("Bank").

- 1. SERVICES**
- 1.1. Subject to Association/sponsoring bank/and/or debit networks Rules; services may be performed by one or more of our affiliates, including the provision of terminals or other equipment and local support functions in connection with our Agreement.
- 2. OPERATING PROCEDURES; ASSOCIATION/SPONSORING BANK/AND/OR DEBIT NETWORKS RULES**
- 2.1. You agree to follow the procedures and terms of the Agreement in connection with each Card transaction and to comply with all applicable Association/sponsoring bank/and/or debit networks Rules. From time to time, we may amend the Operating Procedures, by providing you with at least 30 days' prior written notice, and those provisions will be deemed incorporated into our Agreement. However, for changes in the Association/sponsoring bank/and/or debit networks Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and the Operating Procedures, the General Terms will govern.
- 3. SETTLEMENT OF CARD TRANSACTIONS**
- 3.1. We will only be required to settle Card transactions for Cards specified in your Application. Promptly after presentation of Sales Drafts pursuant to the Operating Procedures, we will initiate a transfer of the applicable settlement funds to you.
- 3.2. All settlements for VISA and MasterCard Card transactions will be net of credits/refunds, adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you.
- 3.3. All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our final audit, Chargebacks (including our related losses), fees and fines imposed by the Association/sponsoring bank/and/or debit networks. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to you. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or such earlier date as may be specified.
- 3.4. We will not be liable for any delays in receipt of funds earned in debit/credit entries caused by third parties including but not limited to any Association/sponsoring bank/and/or debit networks or your financial institution. In addition to any other remedies available to us under Agreement, you agree that should any Event of Default occur, we may, upon at least 24 hours' written notice, change processing or payment terms to suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of Agreement, until we have had reasonable opportunity to investigate such event. In cases of fraud or similar cause, no prior notice shall be required, but we shall notify you in writing within three business days after effectuating a suspension of credits or other payments, which shall state our reason for the belief that such fraud or similar cause exists.
- 4. FINANCIAL ACCOMMODATION**
- 4.1. The parties acknowledge that our Agreement creates a contract for the extension of financial accommodations within the meaning of Section 365(c) of the Bankruptcy Code. During the term of our Agreement, the Client shall use us as their exclusive provider of all Services.
- 5. FEES; ADJUSTMENTS; COLLECTIONS OF AMOUNTS DUE**
- 5.1. You shall be charged a fee for the Services, which shall be calculated and payable pursuant to our Agreement and any additional pricing supplements. You acknowledge that the fees agreed to are based upon the qualification of your transactions for certain reduced interchange fees as set by the applicable Association/sponsoring bank/and/or debit networks. If your Card transactions fail to qualify for the reduced interchange fees, we will process such Card transactions at the higher applicable interchange fees and you shall be charged an additional fee for each non-qualifying transaction at a rate of 0.85% for Card present mid-qualified transactions, 1.87% for Card present non-qualified transactions, 0.95% for mid-qualified card not present transactions and 2.08% for Card not present non-qualified transactions, unless otherwise noted above.
- 5.2. In any particular month in which Merchant's keyed transaction percentage is a minimum of 15% higher than that represented in the Merchant Processing Application, than Merchant could be subject to a 5% discount surcharge to the total monthly volume of all keyed transactions. Such fee shall be in addition to any other applicable discount fees.
- 5.2.1. Tickets, which exceed the approved monthly volume, shall be subject to a 1% surcharge.
- 5.2.2. In any particular month in which Merchant's Visa, MasterCard, and Discover processing volume exceeds the approved monthly volume, merchant may be subject to a 5% discount surcharge.
- 5.3. The fees for Services set forth in our Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in our Agreement and your method of doing business. If the actual volume or average ticket size are not as expected or if you significantly alter your method of doing business, we may adjust your discount fee and transaction fees without notice.
- 5.4. The fees for Services set forth in our Agreement may be adjusted to reflect increases or decreases by Association/sponsoring bank/and/or debit networks in interchange, assessment and other Association/sponsoring bank/and/or debit networks fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association/sponsoring bank/and/or debit networks or third party.
- 5.5. If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire, notwithstanding any lesser amount shown in our Agreement.
- 5.6. To the extent the Automated Clearing House (ACH) settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association/sponsoring bank/and/or debit networks, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH settlement process and/or through direct instructions to (or such other agreements as we deem appropriate) the financial institution where your Settlement Account is maintained for amounts due under our Agreement and under any agreements with us or our affiliates for any related services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. In the event that any such entries to your Settlement Account are rejected, you hereby authorize us to assess a management fee for any month in which entries are rejected to your Settlement account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under our Agreement and under any other agreements with us or our affiliates for any related services have been paid in full.
- 5.7. If you agree to pay any fines imposed on us by any Association/sponsoring bank/and/or debit networks resulting from Chargebacks and any other fees or fines imposed by an Association/sponsoring bank/and/or debit networks with respect to your acts or omissions.
- 5.8. If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage of 1% per month, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentage reported by VISA or MasterCard.
- 5.9. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within 45 days after any debit or credit is or should have been effected. If you notify us after such time period, we may, in our discretion, assist you, at your expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.
- 6. CHARGEBACKS**
- 6.1. You shall be responsible for all Chargeback amounts relating to Card transactions as set forth in the Operating Procedures.
- 6.2. You shall reimburse us for Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.
- 7. REPRESENTATIONS; WARRANTIES; LIMITATIONS ON LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES**
- 7.1. Without limiting any other warranties hereunder, you represent and warrant as to each Card transaction submitted under our Agreement that:
  - 7.1.1. The card transaction represents a bona fide sale/rental of merchandise or services not previously submitted;
  - 7.1.2. The Card transaction represents an obligation of the Cardholder for the amount of the Card transaction;
  - 7.1.3. The amount charged for the Card transaction is not subject to any dispute, setoff or counterclaim;
  - 7.1.4. Card transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Card transactions expressly authorized by our Agreement, the merchandise or service was actually delivered to or tendered to the person entering into the Card transaction simultaneously with your submission of the Card transaction for processing;
  - 7.1.5. Card transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonor of a personal check);
  - 7.1.6. You have no knowledge or notice of any fact, circumstances or defense which would indicate that the Card transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectibles of the Cardholder's obligation arising from such Card transaction or relieve the Cardholder from liability with respect thereto;
  - 7.1.7. The Card transaction submitted to us was entered by you and the Cardholder; and
  - 7.1.8. The Card transaction was made in accordance with these General Terms, Association/sponsoring bank/and/or debit networks Rules and the Operating Procedures.
- 7.2. OUR AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER OUR AGREEMENT.
- 7.3. NOTWITHSTANDING ANYTHING IN OUR AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WE, OUR AFFILIATES OR ANY OF OUR/THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.4. NOTWITHSTANDING ANYTHING IN OUR AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 13), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO OUR AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THE AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.
- 8. CONFIDENTIALITY**
- 8.1. Unless you obtain consent from us and each applicable Association/sponsoring bank/and/or debit networks, Card issuing Bank and Cardholder, you must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all record containing Cardholder account numbers and Card imprints. You may not retain or store magnetic strip data after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.
- 8.2. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions.
- 9. ASSIGNMENTS**
- 9.1. Any transfer or assignment of our Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such assignment or transfer hereof.
- 9.2. Upon notice to you, another VISA and MasterCard member may be substituted for Bank under whose sponsorship our Agreement is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of Bank, including without limitation, full responsibility for its bankcard program and such other obligations as may be expressly required by applicable Association/sponsoring bank/and/or debit networks Rules. Subject to Association/sponsoring bank/and/or debit networks Rules, we may assign or transfer our Agreement and our rights and obligations hereunder and/or may delegate our duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to you or your consent.
- 9.3. Except as set forth in Section 9 and as provided in the following sentence, our Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign our Agreement. First Data, L.L.C. reserves the right to assign this Agreement in whole or in part.
- 10. TERM; EVENTS OF DEFAULT**
- 10.1. Our Agreement shall become effective upon Processor and Banks acceptance and approval of Client's Merchant Processing Application and Agreement.
- 10.2. The initial term of our Agreement shall commence and shall continue in force for 36 months after it becomes effective. Each year, unless either party provides the other with a written notice of termination at least 30 days prior to the expiration of the then existing term, our Agreement shall automatically renew for successive one-year terms. In the event that Client terminates this Agreement before the end of the contract term in this Section or in any automatically renewed one-year term, Client may be charged a \$390.00 Termination Fee for such early termination. Client's obligations with respect to the Monthly Minimum Processing Fee will end simultaneously with 2C Processor USA, LLC's receipt of said \$390.00 Termination Fee.
- 10.3. If any of the following events shall occur (each an "Event of Default"):
  - 10.3.1. A material adverse change in the business, financial condition, business procedures, prospects, products or services of; or
  - 10.3.2. Any assignment or transfer of voting control of you or your parent; or
  - 10.3.3. A sale of all or a substantial portion of your assets; or
  - 10.3.4. Irregular Card sales by you, excessive Chargebacks or any other circumstances which, in our sole discretion, may increase our exposure of your Chargebacks or otherwise present a financial or security risk to us; or
  - 10.3.5. Any of your representations or warranties in our Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
  - 10.3.6. You shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in our Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 11; or
  - 10.3.7. You shall default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our affiliates; or
  - 10.3.8. You shall default in the payment due, of any material indebtedness for borrowed money or any material trade payable (other than any trade payable subject to a good faith dispute so long as you are actively pursuing resolution of such dispute); or
  - 10.3.9. You shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator if itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
  - 10.3.10. Your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; then, upon the occurrence of (1) an Event of Default specified in subparagraphs 10.3.4 or 10.3.9 above, we may consider our Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, our Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.
- 10.4. Neither the expiration nor termination of Agreement shall terminate the obligations and rights of the parties pursuant to provisions of our Agreement which by their terms are intended to survive or be perpetual or irrevocable and such provisions shall survive the expiration or termination of our Agreement.
- 10.5. If any Event of Default shall have occurred and be continuing, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, including, without limitation, exercising our rights under Section 11.
- 10.6. Our Agreement may be terminated by us prior to the then-current expiration date upon at least 90 days' advance written notice, if your Card transactions fail to conform to your volume or average transaction size representations.
- 10.7. If our Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Combined Terminated Merchant File maintained by VISA and MasterCard. You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by VISA or MasterCard. Furthermore, you agree to waive and hold us harmless from and against any and all claims, which you may have as a result of such reporting.
- 10.8. After termination of Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, credits and adjustments resulting from Card transactions processed pursuant to Agreement and all other amounts due or which thereafter may become due.
- 11. RESERVE ACCOUNT; SECURITY INTEREST**
- 11.1. You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 11. We shall set the initial amount of such Reserve Account in our sole discretion, based upon your processing history and the potential risk of loss to us.
- 11.2. The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or an Event of Default, reserve account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its affiliates; (ii) one or more deductions or offsets to any payments otherwise due to you; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, you pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of our Agreement by any party, an immediate Reserve Account may be established in the manner provided above. We will hold any Reserve Account for the greater of ten (10) months after termination of our Agreement or for such longer period of time as is consistent with our liability for Card transactions in accordance with Association/sponsoring bank/and/or debit networks Rules. Your funds held in a reserve account may be held in a commingled Reserve Account for the reserve funds of our Clients, without involvement by an independent escrow agent.
- 11.2.1. Misconduct of transactions may result in the forfeiture of reserves and any pending settlement.
- 11.3. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.
- 11.4. To secure your obligations to us and our affiliates under our Agreement and any other agreement for the provision of related equipment or related services ("Obligations"), you hereby grant us a lien and security interest in and to any of your funds pertaining to the Card transactions contemplated by our Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you. In addition to any rights granted under applicable law, we are hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your Obligations, whether such Obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as may be reasonably requested to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in our Agreement.
- 12. FINANCIAL AND OTHER INFORMATION**
- 12.1. Upon request, you will provide us quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principals. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of our Agreement as we may reasonably request. You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept our Agreement and our continuing evaluation of the financial and credit status of you. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records deemed appropriate.

# MERCHANT APPLICATION



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- 12.2. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.
- 13. INDEMNIFICATION**
- 13.1. You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses (including attorneys' fees and collection costs) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by you under our Agreement, or arising out of your or your employees' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders.
- 13.2. We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under our Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with our Agreement.
- 14. EARLY TERMINATION**
- 14.1. The parties agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law, if (a) you breach our Agreement by improperly terminating it prior to the expiration of the applicable term of the Agreement, or (b) our Agreement is terminated prior to the expiration of the applicable term of the Agreement due to an Event of Default, then we will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that the early termination fee set forth in this Agreement may be a reasonable pre-estimate of our probable loss without limitation.
- 14.2. Notwithstanding any other provision of our Agreement, we may terminate our Agreement at any time by providing 30 days' advance notice to you.
- 15. SPECIAL PROVISION REGARDING JCB AND DINERS CLUB**
- 15.1. If you accept JCB cards, you must retain original JCB Sales Drafts and JCB Credit Vouchers for a period of at least 120 days from the date of the JCB Card transaction and you must retain microfilm or legible copies of JCB Sales Drafts and JCB Credit Vouchers for a period of at least three (3) years following the date of the transaction.
- 15.2. If you accept JCB cards and/or Diners Club you agree to be bound by their rules. You also agree to be bound by all other provisions of our Agreement, which are applicable to JCB and Diners Club.
- 16. MISCELLANEOUS**
- 16.1. No party shall be liable for any default or delay in the performance of its obligations under our Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, elements of nature or other acts of God; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercial reasonable efforts to commence performance or observance as soon as practicable.
- 16.2. We have substantial facilities in the State of California and many of the services provided under our Agreement are provided from these facilities. Our Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of law provisions). In performing its obligations under our Agreement, each party agrees to comply with all laws and regulations applicable to it. The exclusive venue for any actions or claims arising out of or related to our Agreement shall be in the appropriate state or federal court located in Los Angeles, California. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER OUR AGREEMENT.
- 16.3. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, shall be sent by mail, courier or facsimile (facsimile notices shall be confirmed in writing by courier), if to you at your address appearing in the Application and if to us at P.O. Box 11478 Marina Del Rey, CA 90295, with a copy to Attention: General Counsel's Office, First Data, L.L.C., 3925 NW 120<sup>th</sup> Avenue, Coral Springs, FL 33065 and shall be deemed to have been given (i) if sent by mail or courier, when received, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received.
- 16.4. The headings contained in our Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of our Agreement.
- 16.5. The parties intend every provision of our Agreement to be severable. If any part of our Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.
- 16.6. Our Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, supersedes any previous agreements and understandings and, except as expressly provided in our Agreement, can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of our Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.
- 16.7. The parties acknowledge that the VISA and MasterCard Association/sponsoring bank and/or debit networks Rules give VISA and MasterCard certain rights to require termination or modification of our Agreement with respect to transactions involving VISA and MasterCard Cards and the VISA and MasterCard Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Association/sponsoring bank and/or debit networks Rules with respect to our Agreement's applicability to transactions involving such other Cards.

## ELECTRONIC FUNDING AUTHORIZATION

All payments to Client shall be through the Automated Clearing House (ACH) and shall normally be electronically transmitted directly to the demand deposit account you have designated or any successor account (DDA) designated to receive provisional funding of Client's Card sales pursuant to the Agreement. Neither The Wells Fargo Bank, N.A., First Data, L.L.C., nor 2C Processor USA, LLC can guarantee the timeframe in which payment may be credited by Client's depository institution (DEPOSITORY). Client hereby authorizes The Wells Fargo Bank, N.A. and its authorized representative, including First Data, L.L.C. and 2C Processor USA, LLC, to access information from the DDA and to initiate credit and/or debit entries by bank wire or ACH transfer and to authorize DEPOSITORY to block or to initiate, if necessary, reversing entries to such account. This authorization is without respect to the source of any funds in the DDA, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees and assessments and Chargeback amounts of whatever kind or nature due to 2C Processor USA, LLC, First Data, L.L.C. or the Wells Fargo Bank, N.A. under terms of this Agreement whether arising prior to or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until 2C Processor USA, LLC, First Data, L.L.C. and the Wells Fargo Bank, N.A. have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged twenty five dollars (\$25.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies 2C Processor USA, LLC and First Data, L.L.C. that ACH's can be processed or (ii) a new electronic funding agreement is signed by Client. Client's Depository must be able to process electronic transfers via ACH.

## FUNDING ACKNOWLEDGEMENT

Automated Clearing House (ACH) The Client acknowledges that the funds for Visa/MasterCard/Diners Club/Debit Network transactions will be processed and transferred to the DEPOSITORY within the time frame specified in the Application.

## ADDITIONAL FEE INFORMATION

If Client's MasterCard & VISA transaction(s) fail to qualify for the interchange level contemplated in the rates set forth in the Application, Client will be billed an additional fee as described in this Merchant Processing Agreement for said transactions. Additionally, each foreign Visa/MasterCard transaction submitted could be subject to the Visa International Service Assessment (ISA) fee and/or MasterCard Cross Burden fee of .40%. In addition to the debit card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network. A Monthly Minimum Processing Fee will be calculated beginning in the month in which the Client's Application is approved. The Minimum Processing Fee may be \$20.00. A \$35.00 annual service fee may be assessed at the end of each anniversary year date.

Your initial MasterCard and VISA rates are stated on your Application and may be adjusted from time to time including to reflect:

- Any increases or decreases in the interchange and/or assessment portion of the Service Fee
  - The appropriate interchange level as consistent with the qualifying criteria of each transaction submitted by Client, and
  - Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by 2C Processor USA, LLC or First Data Services LLC when such costs are included in the Service Fee.
- Merchant acknowledges responsibility for the return to 2CP, of working terminals upon conclusion of the Lease or Rental period and/or in conjunction with termination of the Processing Agreement. Merchant understands and agrees to the value of leased or rented equipment at Retail Price, plus 6% annual interest.

## FREE TERMINAL OFFER AGREEMENT (if applicable)

**Retails**  
Processor desires Merchant's processing business and is offering a FREE Terminal incentive to do so.

Merchant accepts payment of incentive under the following conditions:

### Terms & Conditions

- Processor agrees to provide merchant (a) FREE \_\_\_\_\_ rental as an incentive ("Equipment");
- Merchant agrees to Merchant Support Club agreement (see MERCHANT SUPPORT CLUB AGREEMENT);
- Merchant agrees to sign-up with American Express and Discover at no sign-up or monthly statement cost to Merchant;
- Merchant agrees Equipment is property of Processor at all times and is being provided for merchant's use free of charge;
- Should Merchant terminate higher account early, Merchant agrees to return Equipment within 5 business days of cancellation notice receipt by processor or Merchant agrees to be debited \$\_\_\_\_\_ via Automated Clearing House (ACH) to the account (DDA) provided by Merchant in this agreement. Any fees incurred by processor in any effort to recover said equipment will be reimbursed by Merchant.

## MERCHANT SUPPORT CLUB AGREEMENT (if applicable)

**Retail**  
Merchant desires to subscribe to Processor's Merchant Support Club for the services below at the proscribed fee(s).

### Terms & Conditions

- Processor agrees to provide merchant FREE paper supplies as requested by merchant via merchant's Merchant Account\*
- Processor agrees to one (1) FREE Equipment (referred to in the FREE TERMINAL OFFER in this Agreement) replacement for any reason, Merchant agrees to return original damaged or unusable Equipment to Processor within 5 business days or be subject to being debited \$\_\_\_\_\_ and violation of this Agreement
- Processor agrees to provide merchant FREE TPro™ online reporting
- Processor agrees to provide merchant FREE Merchant Statement Reconciliation – once per month\*\*
- Processor agrees to provide merchant FREE Statement History copies\*\*\*
- Merchant agrees to be charged \$9.95 per month, for the remaining term of their Merchant Processing Agreement, via their Merchant Account
  - \* Not to exceed 12 Rolls per month per terminal printer – paper only for Merchant's use, not for resale
  - \*\* Not to exceed one month of reconciliation per month; any excess will be charged \$5.00 per month to be reconciled
  - \*\*\* Not to exceed one year of statements; any excess will be charged at \$5.00 per month

## ADDRESSES FOR NOTICES

First Data Services L.L.C.:  
1307 Walt Whitman Road  
Melville, NY 11747  
Attn: Merchant Services

Wells Fargo Bank, N.A.  
1200 Montego Way  
Walnut Creek, CA 95498  
Attn: Merchant Services

2C Processor USA, LLC:  
Customer Service & POS Help Desk 1-800-325-4021  
P.O. Box 11478  
Marina del Rey, CA 90295

If this application for business credit is denied you may obtain a written statement of the specific reasons for the denial. To obtain the statement, please contact 2CP Credit Initiation, P.O. Box 11478, Marina del Rey, CA 90295 or 1-800-325-4021 within sixty (60) days from the date notification. We will send you a written statement with reasons for the denial within thirty (30) days of receiving your request.

## DEBIT SUPPLEMENT TO THE MERCHANT PROCESSING AGREEMENT

This supplement to the Merchant Processing Agreement – Debit ("Supplement") is entered into by and between Merchant, identified on the Merchant Processing Application, ("Sponsored Merchant") and First Data, L.L.C. and the Wells Fargo Bank, N.A. ("Sponsor"), a national banking association organized and existing under the laws of the United States.

Whereas the parties desire to enter into an agreement that will allow Sponsored Merchant to participate in electronic funds transfer networks as identified on Exhibit A ("Networks") and Sponsor, who is a Network participant, desires to sponsor Sponsored Merchant as a participant in such Networks:

Now, therefore, the parties agree as follows:

- The terms of the Merchant Processing Agreement shall apply to the accepting and processing of POS Transactions.
- Confidentiality.
  - Sponsored Merchant acknowledges that information provided under the terms of this Agreement is proprietary and confidential. Except as set forth below, Sponsored Merchant will hold and use any and all such information in confidence and will not copy, transfer, or disclose such information or any part or parts of it, in any form to any person or permit its employees, agents or representatives to do so, without the prior written consent of Sponsor.
  - Sponsored Merchant shall not disclose any information pertaining to a cardholder's account to any person or entity other than to Sponsor, the Network or other parties, including the agents or employees of Sponsored Merchant, to whom such information must be disclosed to permit the completion of the POS transaction or as may be required by law.
  - Sponsored Merchant shall grant access to each of the Sponsored Merchant's terminals and to any reports, logs or information of data pertaining to Sponsored Merchant's terminals, to authorized agents of the Sponsor and the Network for audit and inspection and for other purposes deemed necessary by the Sponsor or Network.
- Fees.
  - Sponsored Merchant agrees to pay the Network Fees and the Debit Fee, as set forth in either (1) the Application or (2) Exhibit A, as applicable. Fees are subject to change without notice.
  - Sponsored Merchant shall be responsible for the payment of federal, state and local taxes, as well as other expenses, fees and charges imposed upon the Sponsored Merchant or Sponsored Merchant's POS Transactions by any governmental authority.
- Term.

This Agreement commences upon the date of execution and shall continue until terminated by either party upon thirty (30) days prior written notice. Notwithstanding the foregoing, Sponsor may terminate this Agreement immediately in the event of any security risk to the Networks.
- Definitions. (a) "POS Transaction" shall mean:
  - payment to Sponsored Merchant from a deposit account maintained by a Cardholder with a card issuing Network participant for goods or services purchased or leased by a Cardholder;
  - the receipt of cash from an account by Cardholder in a transaction that is ancillary to Cardholder's purchase of goods or services from Sponsored Merchant using a card issued by a Network participant;
  - the receipt of cash by a Cardholder from an Account; or
  - receipt at Cardholder's request of a response from a card issuing Network participant the meaning of which has been predetermined by agreement between Cardholder and card issuing Network participant concerning the availability of a Cardholder's funds.

### EXHIBIT "A"

Network:	Network Fees:	Network:	Network Fees:
MAC	\$ 0.1625 + 0.65%	ACCEL	\$ 0.16 + 0.65%
NYCE	\$ 0.1875 + 0.75%	AFFN	\$ 0.13 + 0.55%
MAESTRO	\$ 0.1750 + 0.75%	PULSE	\$ 0.17 + 0.74%
INTERLINK	\$ 0.19 + 0.75%	STAR (includes HONOR)*	\$ 0.1825 + 0.75%

Most common Debit Fee as stated on the Merchant Processing application per transaction plus Applicable Network Fee – Exhibit "A" may change per respective Debit Network changes (this Exhibit not all inclusive, rates may vary by Merchant type).