



FIRST AMERICAN
Technology Driven Payments

100 Throckmorton Street, Suite 1800 • Fort Worth, Texas 76102
(817) 317-9100 • Fax: (866) 460-5475 • www.first-american.net

Application ID: 388016
Office: 200002
Rep: 650082

Merchant ID: _____ SIC/MCC: 5399

MERCHANT APPLICATION & AGREEMENT

BUSINESS NAME(S) (please print clearly)

EXACT LEGAL NAME (AS SHOWN ON FEDERAL TAX RETURN): FAPS TEST		BUSINESS DBA NAME FAPS TEST 2 5 20	
MAILING/BILLING ADDRESS 11 JONES ST		PHYSICAL STREET ADDRESS (IF DIFFERENT FROM MAILING ADDRESS): 11 JONES ST	
CITY, STATE, ZIP LAS VEGAS, NV 89113		CITY, STATE, ZIP LAS VEGAS, NV 89113	
CORPORATE PHONE # 817 555 5555	FAX #	DBA PHONE #: 817 555 5555	DBA CONTACT NAME JOHN DAVIS
CORPORATE EMAIL XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		DBA EMAIL ADDRESS XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	
WEBSITE ADDRESS			

Mail Monthly Statement: Yes No

Mail Correspondence To: Physical Street Address Mailing/Billing Address

MERCHANT PROFILE (be accurate-must be approved by bank)

TYPE OF OWNERSHIP: Sole Proprietor		FEDERAL TAX #: XXXXXXXXXX
TYPE OF GOODS OR SERVICES SOLD MERCH		Have you ever accepted Visa/MasterCard/American Express/Discover/PayPal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list name of most recent processor:
Has this business or any associated principal been terminated as a Visa/MasterCard, Discover, PayPal or American Express merchant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Has MERCHANT or any associated principal identified below filed bankruptcy or been subject to involuntary bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date:
YEARS APPLICANT OWNED BUSINESS 1	# OF LOCATIONS:	HOURS OF OPERATION: M-F: SAT/SUN:

TICKET SIZE **BANKCARD SALES PROFILE (be accurate)** **MERCHANT TYPE**

Requested Ticket Size*: AVERAGE \$50.00	HIGH \$500.00	Card Swipe: 100%	<input checked="" type="checkbox"/> Retail	<input type="checkbox"/> Lodging/Car Rental
Monthly Volume*: AVERAGE \$1500.00	HIGH \$3000.00	Manual with Imprint, Card Present: 0%	<input type="checkbox"/> Restaurant	<input type="checkbox"/> B2B
Annual Volume*: \$20000.00		Mail/Telephone Order: 0%	<input type="checkbox"/> Service	<input type="checkbox"/> City/Government
*The Ticket Size and Monthly Volume amounts are subject to credit approval		Internet: 0%	<input type="checkbox"/> Seasonal	
			<input type="checkbox"/> Internet	

BANK ACCOUNT INFORMATION (attach voided check)

NAME OF BANK	BANK CONTACT:	BANK PHONE #
CHECKING ACCOUNT # X	ROUTING/TRANSIT #: (9 DIGITS)	DATE OPENED:
Total: 100%		<input type="checkbox"/> MOTO

OWNERS / CERTIFICATION OF BENEFICIAL OWNER(S)

1. LEGAL FIRST NAME: JON	FULL LEGAL MIDDLE NAME: D	LEGAL LAST NAME: DOE	TITLE: OWNER	DATE OF BIRTH: XXXXXXXXXX	SSN: XXXXXXXXXX	PHONE #: 817-555-5555
RESIDENCE ADDRESS 11 JONES ST			CITY LAS VEGAS	STATE NV	ZIP 89113	% OWNERSHIP 100
2. LEGAL FIRST NAME:	FULL LEGAL MIDDLE NAME	LEGAL LAST NAME	TITLE	DATE OF BIRTH	SSN:	PHONE #
RESIDENCE ADDRESS			CITY	STATE	ZIP	% OWNERSHIP

Federal Beneficial Owner(s) regulations require the above information for each individual who owns 25% or more of the legal entity or an individual responsible for managing the legal entity (e.g., Chief Executive Officer, Chief Financial Officer, Managing Member, General Partner, President, Vice President, Treasurer).

BUSINESS TRADE SUPPLIERS

NAME:	PRODUCT PURCHASED:	CONTACT:	PHONE:
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MERCHANT SITE SURVEY REPORT (to be completed by sales representative)

MERCHANT LOCATION
 Retail Location with Store Front Office Building Residence Warehouse Other:

THE MERCHANT:
 Owns Leases the Business Premises Landlord/Business Premises Owner Name & Phone Number:

I hereby verify that this application has been fully completed by the 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.

REPRESENTATIVE SIGNATURE	OFFICE #	REP #	DATE
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Rates & Fees

VISA® / MASTERCARD® / AMERICAN EXPRESS® / DISCOVER® / PAYPAL™ CREDIT/CHECK CARD RATES

Card Types to be Accepted(Visa/MasterCard): Both Credit/Business Consumer Signature Debit

Please note: If MERCHANT elects not to accept "both", additional registration is required by Visa and MasterCard, and approval of the merchant account will be delayed until all necessary forms are submitted.

Credit

Qualified Discount Rate: 1.75% Transaction/Authorization Fee: \$0.20

Mid-Qualified Surcharge: 1.51% Non-Qualified Surcharge: 1.98%

American Express Opt Blue® One Rate

Discount Rate: 3.25% Transaction Fee: \$0.25

The above Discount Rate(s) are for Qualified Check Card and/or Credit Card Transactions only. Discount Rates are based on several factors, including but not limited to: Merchant's business type, method of sale, processing procedures, and type of card accepted for payment. The previously mentioned factors and/or deviations from the standards established by Visa/MasterCard/Discover/PayPal will result in increased Discount Rates. Visa/MasterCard/Discover/PayPal transactions that do not fall within the above Qualified Discount Rates will be charged an additional 1.51% for Mid-Qualified transactions and 1.98% for Non-Qualified transactions. See paragraph 27 of the Merchant Credit Card Processing Terms & Conditions for additional information. In addition to the Per Item Fee, the Transaction Fee listed above will also be assessed on each check card transaction.

If Merchant accepts debit or EBT transactions and Debit/EBT fees on the Merchant Application and Agreement are not completed, debit and EBT transactions will be assessed with the transaction/authorization fee listed above and debit interchange will be billed at pass-through rates.

American Express rates are based on the actual amount of each transaction and will be assessed a 0.30% charge for any non-swiped or digitally enabled transactions. See the American Express Card Acceptance Terms & Conditions for additional information and terms of use. AMEX prepaid transactions will be processed at the AMEX Discount Rate stated above. Eligible Merchants will be set up with the above listed AMEX rate(s) through American Express' OptBlue program, if available. If Merchant's account is not eligible for the OptBlue program, Merchant will be set up directly with American Express under their current rates.

OTHER FEES† (See paragraph 27 in the Merchant Credit Card Processing Terms & Conditions for information relating to these and other fees.)

Annual Fee: \$95.00

Batch/Settlement Fee: \$0.25 per batch

Chargeback Fee: \$25.00 per item

Monthly Maintenance Fee: \$7.50 per month

Regulatory Compliance Fee: \$3.42 per month

Return Draft Fee: \$30.00 per item

Daily Discount Monthly Discount

Monthly Funding Fee Cap:

Monthly Funding Fee Percent:

AVS Fee: \$0.025 per transaction

Breach Fee: \$4.95 per month

DDA/DBA Change Fee: \$35.00 per request

Monthly Minimum: \$25.00

Retrieval Fee: \$10.00 per item

Voice Authorization Fee: \$0.95 per request

The Monthly Funding Fee Cap applies to each card brand.

Would Merchant like to receive American Express marketing materials? Yes No

(See the American Express Card Acceptance Terms & Conditions for additional information.)

†Additionally dues, fees, and assessments ("DF&A") will be assessed on each transaction. DF&A for each card brand will be reflected as a separate line item on Merchant's monthly statement. The following brand-related fees may be assessed or be itemized on Merchant's statements: Auth Processing Fee for VS Credit (AUTH PRC CR VS), Auth Processing Fee for VS DB (AUTH PRC DB VS), Auth Processing Fee for VS International Credit (AUTH PRC CR INTL VS), Auth Processing Fee for VS International DB (AUTH PRC DB INTL VS), Non-Settle Fee for VS (NON STL VS TRAN), Transaction Integrity Fee for VS (TIF FOR VS TRAN), Zero Floor Limit for VS (NO AUTH VS TRAN), Cross Border Fee for VS (XBRD FOR VS VOL), International Assessment Fee for VS (INTL FOR VS VOL), Fixed Acquirer Network Fees for VS (NTWK FEE FOR VS), Base II System File Transmission Fee for VS (TRANSMISSION VS), Network Acquirer Brand Usage Fee or NABU / Safety Net for MC (BRND USG FEE/SAFETY NET MC), Processing Integrity Fee-Preauthorization (PREAUTH-MC), Processing Integrity Fee-Undefined Authorization (UNDEF AUTH-MC), Processing Integrity Fee-Final Authorization (FNL AUTH-MC), Processing Integrity Fee-Final Authorization-Minimum (FNL AUTH MIN-MC), Nominal Amount Authorization MC (NOM AMT AUTH-MC), Global Acquiring Program Fee for MC (ACQ PRG MC VOL), Cross Border Fee for MC (XBRD FOR MC VOL), Network Fee for MC (NTWK FEE FOR MC), Digital Enablement Fee for MC (DGT ENBL MC VOL), Merchant Location Fee for MC (MER LOC FEE-MC), Excessive Authorization Attempts-MC (EXCESSIVE AUTH ATTEMPTS-MC), Acquirer Interchange Compliance Downgrade Fee-MC (INT COMP DWNGRD-MC), Acquirer Transaction Fee-Quantity based 3D Secure MasterCard Identity Check (3DS VOL FEE-MC), Acquirer Transaction Fee-Amount based 3D Secure MasterCard Identity Check (3DS TRANS FEE-MC), Data Usage for DS (DAT USG DS TRAN), International Processing Fee for DS (INTL PRC DS VOL), International Service Fee for DS (INTL SRV DS VOL), Inbound Fee for AX (INBOUND AX VOL), Assessment fee for AX (ASSESSMENT FEE-AX), Non-Swiped Transaction Fee for AX (NONSWIPE AX VOL) and Non-swiped Application-initiated Transaction Fee (NONSWIPE APP INT AX VOL).



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ACKNOWLEDGEMENTS

Merchant and each Guarantor by signing below acknowledge to have received and read the Merchant Application & Agreement and the Merchant Processing Terms & Conditions as part of an application for Merchant Processing and related services

Member Bank Disclosure: The responsibilities listed below do not supersede terms of the Merchant Application & Agreement or Merchant Terms & Conditions and are provided to ensure Merchant understands the important obligations of each party

Member Bank (Acquirer) Information:	
Acquirer Name:	Fifth Third Bank, N.A.
Acquirer Address:	Attn: Relationship Manager, 38 Fountain Square Plaza, Cincinnati, OH 45263
Contact Phone:	817-317-2996
Acquirer Phone:	866-250-9764

- | Important Member Bank (Acquirer) Responsibilities: | Important Merchant Responsibilities: |
|--|---|
| 1. Fifth Third Bank, N.A. is the only entity approved to extend acceptance of MasterCard® and 1 Visa® products directly to a Merchant | Ensure compliance with cardholder data security and storage requirements. (See ¶21 of the Merchant Processing Terms & Conditions) |
| 2. Fifth Third Bank, N.A. must be a principal (signer) to the Merchant Agreement. | Maintain fraud and chargebacks below acceptable thresholds |
| 3. Fifth Third Bank, N.A. is responsible for educating Merchants on pertinent MasterCard® and 3 Visa® Operating Regulations with which Merchants must comply | Review and understand the terms of the Merchant Agreement |
| 4. Fifth Third Bank, N.A. is responsible for settlement of funds to the Merchant | 4. Comply with MasterCard®, Visa®, American Express®, Discover®, and PayPal™ Operating Regulations |
| 5. Fifth Third Bank, N.A. is responsible for all funds held in reserve that are derived from settlement. | |

ACKNOWLEDGEMENTS

Debit/Credit Authorization: MERCHANT hereby authorizes Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC and First American Payment Systems, L.P. ("Bank") to initiate Automated Clearing House ("ACH") debit/credit entries to any bank account for all fees, costs, and amounts due to Bank or payable to MERCHANT pursuant to this Merchant Application & Agreement and ACH rules and regulations. In the event that a credit or debit entry is erroneously initiated, MERCHANT authorizes Bank immediately to correct such error. The authorizations set forth herein shall remain in full force and effect until all obligations of MERCHANT to Bank have been performed in full and Bank has received payment of all fees, costs, and amounts due or which may become due from MERCHANT. This authorization extends to all entries including, but not limited to, lease, rental or purchase agreements for POS terminals and/or accompanying equipment and amounts due for supplies and materials. MERCHANT/Applicant authorizes the Bank, American Express, and any other credit reporting agency employed by Bank, or any other agent of Bank, to make inquiries the Bank deems appropriate including but not limited to background investigations, credit reports, and other lawful sources to screen, investigate, verify, monitor or research any information obtained from merchant or contained herein for the purpose of this application or any application for accompanying POS terminal(s) or equipment financing. MERCHANT authorizes Bank to release information disclosed on the Merchant Application & Agreement and/or information regarding MERCHANT's transactions and experiences between Bank and MERCHANT to Bank's vendors, affiliates, third parties or business partners, and to use stated information for marketing and administrative purposes. MERCHANT may not change or alter its account information without thirty (30) days prior written notification to Bank and the execution of any forms or instruments deemed reasonably necessary by Bank.

MERCHANT and/or Guarantor certifies that the information supplied in the Merchant Profile Section is accurate and acknowledges that the requested amounts must be approved by Bank. Any variance to this information as approved by Bank could result in delayed and/or withheld settlement of funds. Also, see paragraph 28 of the Merchant Processing Terms & Conditions.

This Agreement shall continue in full force and effect for a term of 36 months from approval by Bank and is subject to an Early Termination Fee of no less than \$495.00*. Also, see paragraph 23 of the Merchant Processing Terms & Conditions.

All parties mutually agree that this is a commercial contract between businesses, not a consumer contract.

IMPORTANT NOTICE: All information contained in this application was supplied by Merchant and/or Guarantor. First American Payment Systems, L.P. and/or Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of First American Payment Systems, L.P. and/or Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC. First American Payment Systems, L.P. may exercise the legal rights and receive the benefits of Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC of all provisions, terms and conditions hereof.

Assignment of Application/Agreement: This application and, if accepted by assignee hereunder in accordance with the terms and conditions of this application, this Agreement may be assigned by Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, and/or First American Payment Systems, L.P. (hereinafter defined as "Bank"), or their respective affiliates or subsidiaries, to third parties without prior notice to MERCHANT. In the event of such assignment, all rights and obligations of Bank set forth in this application and this Agreement will be assumed by such third party or parties. **By signing below, MERCHANT hereby consents to such assignment.**

MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN ACCEPTED BY FIRST AMERICAN PAYMENT SYSTEMS, L.P., AND/OR FIFTH THIRD BANK, N.A., AN OHIO BANKING CORPORATION, MEMBER FDIC AND A MERCHANT NUMBER IS ISSUED.

MERCHANT and each Guarantor by signing below acknowledge to have received, read, and be bound by the Merchant Application & Agreement and the Merchant Processing Terms & Conditions. By signing below, MERCHANT acknowledges no verbal agreements or representations have been made and MERCHANT and Guarantor have relied solely on the Merchant Application & Agreement and the Merchant Processing Terms & Conditions. The undersigned personally warrants and represents that the persons identified in numbers 1 and/or 2 have the authority to execute the Merchant Application & Agreement and the Merchant Processing Terms & Conditions on behalf of the herewith named entity and bind the entity to the Merchant Processing Terms & Conditions.

By signing below, the undersigned hereby certifies, to the best of their knowledge, that the information provided in the Owners/Certification of Beneficial Owner(s) section is complete and correct.

PRINT LEGAL NAME OF MERCHANT BUSINESS AS SHOWN ON FEDERAL TAX RETURN - DO NOT SIGN INCOMPLETE DOCUMENT

FAPS test

Jon Doe

#1 FROM APPLICATION - SIGNATURE

owner

TITLE

2/5/2020 11:08:47 AM

DATE

#2 FROM APPLICATION - SIGNATURE

TITLE

DATE

INDIVIDUAL GUARANTY (NO TITLES)

The undersigned jointly and severally (if more than one) unconditionally guarantee to Fifth Third Bank, N.A., an Ohio banking corporation, Member FDIC, First American Payment Systems, L.P., and their successors and assigns ("First American") the full and prompt payment when due and performance of all the obligations of every kind of MERCHANT arising directly or indirectly out of the Merchant Application & Agreement, Merchant Processing Terms & Conditions and all amendments or extensions thereto (collectively the "Agreement") or any document or agreement executed and delivered by MERCHANT in accordance with the terms of the Agreement. This is a continuing guarantee and shall not be discharged or affected by each of the undersigned, shall bind the estate, heirs, administrators, representatives, successors and assigns, and may be enforced by or for the benefit of any assignees or successor of First American. Each of the undersigned hereby consents and agrees that First American may at any time, and from time to time, without notice to or further consent from any Guarantor, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the liability of MERCHANT hereby guaranteed, substitute for any collateral held by it or other collateral of like kind, or of any kind, grant releases, compromises and indulgences with respect to the liability of MERCHANT hereby guaranteed and to any persons or entities now or hereafter liable therefore or hereunder; release any Guarantor of MERCHANT; or take or fail to take any action of any type whatsoever, and no such action which First American shall take or fail to take in connection with the Agreement or for the performance of any obligations or undertakings of MERCHANT, nor any course of dealing with MERCHANT or any other person, shall release any Guarantor's obligations hereunder, affect this Guaranty in any way or afford any Guarantor any recourse against First American. The undersigned agrees, consents and submits to the Courts of the State of Texas, County of Tarrant, and agrees that such courts shall have exclusive jurisdiction and shall be the proper venue for the determination of all controversies and disputes arising hereunder. The undersigned agrees to pay all attorney fees and other expenses incurred by First American. By signing below, each Guarantor hereby agrees: (i) to have read and accepted all terms and conditions of this agreement contained herein, and (ii) that he/she will benefit from the services and financial accommodations provided to MERCHANT's business First American may proceed against any Guarantor with or without joining or first proceeding against MERCHANT or any other persons. The undersigned further unconditionally authorize(s) First American or its agents to investigate the information and references contained herein, and to obtain additional information about Guarantor(s) from credit bureaus and other lawful sources, including persons and companies named in the Agreement.

Jon Doe

GUARANTOR SIGNATURE #1

2/5/2020 11:08:47 AM

DATE

GUARANTOR SIGNATURE #2

DATE



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ApplicationID: 388016
 Merchant DBA: FAPS test 2-5-20
 Office #: 200002
 Rep #: 650082

EQUIPMENT SETUP ORDER

Merchant DBA: FAPS test 2-5-20 SI to Train: Yes No
 Application ID: 388016
 Daily Discount Monthly Discount

Shipping Information

Ship To: Merchant Shipping Method: Overnight

Terminal Profile

Application: Retail
 Special Features:
 High Speed Connection: No
 Comments:

Equipment List

TID	Equipment	Software/Version/Template	Purchase?	Payment
262416	iCT250 V3	CPCU03A-RT / Default Version ID	Reprogram	

Merchant Processing Terms & Conditions

THIS AGREEMENT is made by and between Fifth Third Bank, N. A., an Ohio banking corporation, Member FDIC, and First American Payment Systems, L.P. (collectively "BANK") and "MERCHANT," whose name and address are stated on the Merchant Application & Agreement.

WHEREAS, BANK is engaged in the business of financial transaction processing which includes, but is not limited to, the processing of and providing for the payment of charges created by the holders of bank cards bearing the Visa U.S.A. Inc. ("Visa") MasterCard International Incorporated ("MasterCard"), American Express Travel Related Services Company, Inc. ("American Express"), DFS Services LLC ("Discover") and PayPal ("PayPal") trademarks, as well as certain credit, debit, Electronic Benefits Transfer ("EBT"), and other electronic payment cards, each of such cards (hereinafter referred to as a "bank card"); and

WHEREAS, Fifth Third Bank, N. A., an Ohio banking corporation, Member FDIC, has entered into an agreement with First American Payment Systems, L.P. ("First American") authorizing First American to perform the processing functions, exercise the legal rights and receive the benefits under such agreement; and

WHEREAS, MERCHANT hereby warrants that it is engaged in a lawful business and is duly licensed under the laws of the state, county, and city disclosed by MERCHANT on the Merchant Application & Agreement, to conduct such business; and

WHEREAS, MERCHANT currently accepts or desires to accept bank cards for its customers' charitable donations or purchase of goods and services it provides or anticipates providing; and

WHEREAS, MERCHANT warrants that neither it nor any of its officers, directors, partners, managers or owners has been terminated for any reason by any bank or any processor in connection with any agreement regarding depositing or processing bank card sales or transactions.

NOW, THEREFORE, in consideration of the representations, covenants, and promises made herein, the receipt and sufficiency of which are acknowledged, BANK and MERCHANT agree as follows:

1. **Agreement.** Reference to this "Agreement" includes the Merchant Application & Agreement, these Merchant Processing Terms & Conditions, the additional terms and conditions located at www.MerchantNotification.com, all supplements, schedules, and appendices thereto, any additional location documentation, and any other documents requested by BANK and setting out the terms of any service provided by BANK in connection with the Merchant Application & Agreement. This Agreement is not in full force and effect until accepted by BANK. BANK may adjust or amend the Merchant Profile section with or without notice to MERCHANT prior to accepting the Agreement. MERCHANT acknowledges that BANK will provide transaction processing hereunder through First American or other third parties. MERCHANT agrees that First American may perform the functions of BANK hereunder and that First American may receive the benefits of and enforce the terms of this Agreement against MERCHANT and any third party as an assignee of BANK's rights hereunder, whether or not BANK is a party to such proceeding or transaction.

2. **Bank Card Authorization.** MERCHANT understands and acknowledges that all transactions must be authorized.

3. **Transaction Records.** MERCHANT agrees to balance and deliver to BANK all bank card transactions on the same day they are processed.

4. **Payments.** MERCHANT understands that an authorization is not a guarantee of payment from Bank. All payments to MERCHANT for legitimate and authorized bank card transactions shall be made by BANK through the funds transfer system known as the Automated Clearing House (ACH) pursuant to governing rules adopted by the National Automated Clearing House Association, and shall be electronically transmitted to an account of the MERCHANT. MERCHANT understands that payments are transmitted daily, except on weekends and bank holidays. However, BANK cannot guarantee the timeliness with which any payment may be sent to or credited by MERCHANT's bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, errors can occur and payment to the MERCHANT can be delayed. In such cases, the MERCHANT agrees to assist BANK to help resolve any problems in crediting MERCHANT's account. MERCHANT agrees to provide BANK three (3) days prior written notice of any change of account and to abide by BANK's policies regarding changes to accounts. MERCHANT and not BANK or any processor shall be responsible for verifying that account information is correct on the Merchant Application & Agreement, voided check and all account statements. BANK is not responsible for incorrect account numbers. Unless proper notice is provided by MERCHANT to BANK, MERCHANT shall not change any of its accounts. All payments to MERCHANT for the amount of bank card transactions properly submitted to BANK shall be less discount, credit chargebacks, reserve amounts, transaction fees, statement fees, and other applicable fees all of which are the responsibility of MERCHANT. Any payment made by BANK to MERCHANT shall not be final but shall be provisional credit under the Uniform Commercial Code and is subject to subsequent review and verification by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to transactions described in Sections 8, 9, and 15 of this Agreement unless and until MERCHANT provides to BANK the requested documentation. If MERCHANT fails to provide requested documentation, such payments shall be earned compensation of BANK. Fees and other charges due BANK hereunder may be deducted from amounts due MERCHANT or may be debited against any of MERCHANT's accounts at BANK's sole

discretion. The discount and other fees may be collected by BANK on a daily, monthly, or other basis, as determined by BANK. All reserve amounts may be deducted from amounts otherwise due MERCHANT, debited against MERCHANT's account, or paid directly by MERCHANT through ACH or otherwise at BANK's sole discretion. MERCHANT must notify BANK in writing of any errors on any statement within ninety (90) days after statement is made available on which the error or problem appeared or failed to appear. MERCHANT agrees to examine all statements upon receipt and to verify all credits and debits to any account against all transactions, bank statements and other information indicating activity of BANK and MERCHANT subject to or relating to this Agreement or BANK's obligations hereunder. Save and except BANK's right to funds owed BANK under this Agreement or incorrectly paid to MERCHANT, if no notice of error is received within the ninety (90) day period, the account shall be deemed correct and MERCHANT shall have no recourse for errors. Any amount inadvertently or incorrectly paid to MERCHANT may be debited from any account of MERCHANT, at the sole discretion of BANK and, in any event, remains an obligation of MERCHANT to BANK payable in full and on demand.

5. **Warranties by MERCHANT.** MERCHANT warrants that it shall fully comply with all federal, state, and local laws, rules, and regulations, as amended from time to time, including, but not limited to, the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

As to each bank card sale presented to BANK for payment, MERCHANT warrants that:

(a) MERCHANT has delivered MERCHANT's merchandise to the cardholder signing such sales slip or completed MERCHANT's service described on the slip or delivered such other value in accordance with MERCHANT's underlying agreement with the cardholder;

(b) Unless expressly authorized in writing by BANK and as permitted by Visa, MasterCard and American Express rules and regulations, MERCHANT has not and shall not make any cash advances to cardholder, either directly or by deposit to the cardholder's account;

(c) Neither MERCHANT nor any owner, director, officer, member, partner or employee of MERCHANT ("Affiliates") has advanced any cash to cardholder or any person in connection with the purported bank card sale;

(d) MERCHANT warrants that it shall not, without the cardholder's consent, sell, purchase, provide, or exchange bank card account number information in the form of imprinted sales slips, mailing lists, tapes, or any other media obtained by reason of a bank card transaction or otherwise to any third party other than to MERCHANT's agents for the purpose of assisting the MERCHANT in its business, to BANK, to Visa, to MasterCard, to American Express, to Discover, or to PayPal, or PIN Debit/EBT Networks, or pursuant to a valid subpoena;

(e) MERCHANT warrants that it will not submit any transactions that are not in compliance with both this Agreement and any applicable law, rule, or regulation and hereby indemnifies and holds BANK harmless against any loss or damage BANK may suffer as a result of a breach of this or any other warranty or agreement by MERCHANT;

(f) MERCHANT understands that transactions completed at one location may not be processed at another location;

(g) MERCHANT warrants it has not participated in assisting cardholder in entering PIN into the PIN entry device. MERCHANT also warrants that no photographic, video surveillance, or other recording device is being used which would compromise any cardholder PIN or confidential information;

(h) MERCHANT warrants it has not and will not reverse engineer any software of First American found or used in connection with the operation of the POS equipment

(i) MERCHANT shall not, under any circumstances, present to BANK a sale which has been split into multiple bank card transactions; (j) If an authorization number is required or requested, MERCHANT warrants it shall use only the authorization number obtained through the Voice Authorization Network phone number provided by BANK. MERCHANT shall not use any number given by the cardholder or any type of number which has been obtained from any other source.

(j) MERCHANT is responsible for its employees' actions while in its employ.

(k) MERCHANT will not sell, purchase, provide, exchange or in any manner disclose Card account number, transaction, or personal information of or about a Cardholder to anyone other than BANK, or in response to a valid government demand. This warranty applies to Card imprints, TIDs, carbon copies, mailing lists, tapes, database files, and all other media created or obtained as a result of a Transaction.

6. **Business Changes.** MERCHANT shall provide at least thirty (30) days written notice to BANK for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, or address, change of Sales Profile as described in the Merchant Application & Agreement, any ownership change, or transfer or sale of substantially all of the assets of MERCHANT. At all times MERCHANT shall provide BANK with its current mailing address. BANK shall have the right to charge a fee of no less than twenty dollars (\$20.00) for returned mail items. If BANK receives a returned mail item with no forwarding address, BANK may exercise its right to suspend mailing MERCHANT's monthly statements until such time as the correct address has been provided by MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, utilize the merchant account to process e-commerce transactions or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining BANK's prior written consent to the change, move, or addition. MERCHANT also agrees that prior to any changes, BANK must first accept the change and confirm such acceptance in writing. MERCHANT acknowledges that codes of professional responsibility

Merchant Credit Card Processing Terms & Conditions, continued

and rules and regulations of professional associations if applicable to MERCHANT, may also apply to the transactions covered by this Agreement. MERCHANT may, however, bring any inconsistency between this Agreement and such codes and rules to the attention of BANK and request a modification to this Agreement to eliminate such inconsistency. BANK may, in its discretion, agree to such modification to the extent it is consistent with BANK policy and in conformity with then existing Visa, MasterCard, American Express, Discover, PayPal and PIN Debit/EBT Networks rules, regulations and applicable laws. Until BANK agrees to such modification in writing, the terms of this Agreement shall remain in place.

MERCHANT shall be responsible for any administrative charges of BANK associated with any change requested by the MERCHANT.

7. **Chargebacks.** MERCHANT expressly acknowledges and agrees to any charge or debit made by BANK against any of MERCHANT's accounts as a result of the exercise of chargeback or retrieval rights by a cardholder, issuing bank, processor, or other intermediary pursuant to applicable operating regulations of Visa, MasterCard, American Express, Discover, PayPal, PIN Debit/EBT Networks or other card brands/organizations as the same may be in effect from time to time. MERCHANT also understands and acknowledges that BANK may debit or reduce MERCHANT's bank account regardless of whether the cardholder has returned merchandise. MERCHANT understands that BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback. MERCHANT, whether consented to or not by cardholder, shall not present to BANK for processing any sales slip representing a transaction which has been previously charged back to BANK and returned to MERCHANT. MERCHANT's obligations and BANK's rights under this paragraph shall survive the termination of this Agreement. MERCHANT shall not bill or collect from any cardholder for any transaction for which the cardholder paid with a bank card unless the cardholder exercised a chargeback, the MERCHANT has fully paid for such chargeback, and the MERCHANT otherwise has the right to do so. Without prior notice, BANK shall have the right, at any time, to reduce MERCHANT's bank card transaction proceeds received from issuing banks, debit any of MERCHANT's accounts and/ or demand immediate payment from MERCHANT through ACH or otherwise for any bank card transaction which is disputed, questioned or returned to BANK by the financial institution or company which has issued the bank card (the "Card Issuer") and to chargeback such transaction to MERCHANT in any situation, including but not limited to, the following situations:

- (a) Where goods originally purchased have been returned to MERCHANT by cardholder and cardholder requested a credit slip and such credit slip was not processed by MERCHANT;
- (b) Where the transaction had not been authorized as required;
- (c) Where sales slip covers goods or services other than those described in the Merchant Application & Agreement;
- (d) Where a cardholder contends to the Card Issuer that: (i) goods or services were not received by cardholder or by authorized user; or (ii) goods or services received by cardholder or by authorized user do not conform to what was described on the sales slip; or (iii) goods or services were defective or of unsatisfactory quality;
- (e) Where original sales slip is not received by BANK from MERCHANT when requested by BANK in accordance with this Agreement;
- (f) Where sales slip does not contain a transaction date or the face of such sales slip shows that such date or dollar amount has been altered or incorrectly entered;
- (g) Where the sales slip delivered to BANK contains the imprint or description of a bank card other than the bank card processed;
- (h) Where the transaction was generated through the use of an expired bank card;
- (i) Where the signature on the sales slip is different from the signature appearing on the signature panel of the card or where no signature appears on the signature panel of the card;
- (j) Where a Card Issuer or BANK has information that impropriety or fraud occurred at the time of transaction, whether or not such transaction was properly authorized by the Card Issuer or the cardholder participated in or authorized the transaction, or where the Card Issuer represents that there is no bank card outstanding with the account number used;
- (k) BANK reasonably determines that the transaction record is improper, fraudulent, not a bona fide transaction in MERCHANT's ordinary course of business or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including without limitation, negligence, fraud, impropriety, or dishonesty on the part of card user, cardholder, MERCHANT or Affiliates;
- (l) In any situation where the sales slip was executed or credit given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT hereunder, or MERCHANT's violation of Visa, MasterCard, American Express, Discover, PayPal, or PIN Debit/EBT Networks rules and regulations which has resulted in a transaction being charged back by the Card Issuer;
- (m) As required by bank card brand/organization rules or regulations as they currently exist or as they may be amended from time to time;
- (n) In such other circumstances where BANK determines or suspects in its sole discretion that the transaction may result in a chargeback for any reason, whether or not enumerated under this paragraph and whether or not the transaction results in a chargeback; or
- (o) If with respect to any of MERCHANT's outlets, the ratio of bank card counterfeit and fraud volume to bank card transaction volume or the ratio of the number of bank card chargebacks to the number of bank card transactions exceeds 1% or credits processed exceed ten percent (10%) for any given month. In such event, without limiting other rights hereunder, BANK in its sole and absolute discretion may charge back all bank card sales for all locations.

8. **Improper Transactions; Forward Commitments.** BANK may hold funds, suspend processing, terminate this Agreement with or without notice, or require MERCHANT to process a refund upon any determination by BANK, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any trans-

actions for items or services with a future delivery date or forward commitment, transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement. BANK may also at its sole discretion block, reject, or deny any transaction for any reason. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction(s) is verified, legitimate, and BANK's risk has been mitigated. BANK reserves the right, at its sole discretion, to adjust or amend the Merchant Profile Section of the Merchant Application & Agreement with or without notice to MERCHANT. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of BANK withholding payment to MERCHANT, including but not limited to reversals, returns and/or credits.

9. **Fraudulent Sales/Factoring.** MERCHANT shall not present to BANK directly or indirectly, any transaction (i) not originated as a result of an act directly between cardholder and MERCHANT, (ii) that MERCHANT processes for any other person or business (iii) that results from a transaction outside MERCHANT's normal course of business as described in the Merchant Application & Agreement, (iv) that MERCHANT knows or should have known to be fraudulent, improper, illegal, or not authorized by the cardholder, or (v) that contains the account number of a bank card account issued to MERCHANT. Should MERCHANT do so, BANK may hold funds, suspend processing or terminate this Agreement with or without notice following the determination, at BANK's sole discretion, of improper, fraudulent, suspect, or other questionable transactions, including, but not limited to, transactions varying materially in character from the information represented or disclosed in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK. MERCHANT acknowledges and agrees that BANK shall have no obligation to make any payment to MERCHANT with respect to such transaction(s) unless and until MERCHANT provides to BANK the documentation sufficient for BANK to determine that the transaction is verified and legitimate, and BANK's risk has been mitigated. MERCHANT acknowledges no discount or transaction fees will be refunded as a result of BANK withholding payment to MERCHANT, including but not limited to reversals, returns and/or credits.

10. **Exclusivity.** MERCHANT agrees that it will not use the service of any corporation, entity or person other than BANK for the processing of bank card transactions.

11. **Term; Termination.** The initial term of this Agreement shall commence upon BANK's acceptance hereof (as evidenced by BANK's performance hereunder) and continue in full force and effect for the term set forth in the Acknowledgements section of the Merchant Application & Agreement. Thereafter, the Agreement will automatically renew for additional one-year periods unless MERCHANT gives (and BANK receives) written notice of non-renewal, no less than thirty (30), but no more than ninety (90), days prior to the end of the applicable term. The written notice must contain MERCHANT's signature as it appears on the Merchant Application & Agreement in order to be accepted. Notwithstanding any other provision hereof, the Agreement may be terminated by BANK, with or without cause or reason, and with or without notice. Termination by BANK for any service may (at BANK's option) result in termination of all services. In the event MERCHANT submits bank card transactions to BANK after the date of termination, the bank card transactions may (at BANK's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT prior to the end of the term or by BANK as a result of MERCHANT's breach, BANK will be entitled to recover and MERCHANT shall pay on demand, an early termination fee as set forth in the Acknowledgements section of the Merchant Application & Agreement* for each MERCHANT location. Termination of any ancillary service (i.e., Debit, Check Services, etc.) is subject to an early termination fee of \$100 per service. At its sole and absolute discretion, BANK may also assess liquidated damages in connection with such termination, which shall be the average monthly fees paid by MERCHANT to BANK for the last 12 months (or the number of months this Agreement has been in effect, if less than twelve months) times the number of months remaining in the term, plus any and all additional losses (including consequential damages, costs, expenses and other liabilities) incurred by BANK in connection with such termination. MERCHANT and BANK agree that: (a) the award of liquidated damages is to provide a means of compensation for BANK in the event of a breach by MERCHANT in the form of early cancellation or non-adherence to exclusivity requirement; (b) BANK's damages would be difficult or impossible to prove; and (c) the amount of liquidated damages set forth herein is a fair and reasonable estimate of BANK's damages resulting from any breach or improper termination by MERCHANT. BANK may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement. *[ARKANSAS MERCHANTS - early termination fee is up to fifty dollars (\$50.00)].

12. **Terminated Merchant File/MATCH/CMNF.** MERCHANT may be placed on the Combined Terminated Merchant File, MATCH, or the Consortium Merchant Negative File upon violation of any terms of this Agreement or any bank card brand/organization rules or regulations. MERCHANT hereby releases, indemnifies, and holds BANK harmless for any loss or damage it may incur as a result of BANK's actions hereunder or as a consequence of MERCHANT being placed by BANK or its agents on the Combined Terminated Merchant File, MATCH, CMNF or other applicable list where such events are reported.

13. **Attorneys' Fees and Collection Costs.** MERCHANT shall be liable for and shall indemnify and reimburse BANK for any attorneys' fees, arbitration cost, and expenses incurred by BANK in the enforcement hereof, including but not limited to collecting any amounts or obligations due from MERCHANT. BANK shall assess a collection fee of not less than two hundred dollars (\$200.00) in the collections of any obligation or amounts due by MERCHANT.

14. **Fee Disclosure.** Discount Rate: "Discount Rate" shall mean a percentage of the total transactions submitted to BANK for processing. The Visa, MasterCard, American Express, Discover and PayPal Discount Rate listed in the Merchant Application

Merchant Credit Card Processing Terms & Conditions, continued

& Agreement applies to "Qualified" transactions (American Express - "Tier 1") only. If the version of the application signed by Merchant lists a Credit Card Discount Rate (for Visa, MasterCard, American Express, Discover and PayPal) the rate shall apply to Qualified Credit Card (American Express - "Tier 1") transactions. If the Agreement lists a Check Card Discount Rate it will apply solely to Qualified Check Card transactions. If the Agreement lists a Credit/Check Discount Rate the rate would apply to Qualified transactions for both Credit Cards and Check Cards.

"Qualified" transactions are those in which an authorization was obtained electronically, the transaction was settled within the appropriate time frame, and the transaction meets all other requirements imposed by the bank card brands or BANK. Other transactions are categorized as "Mid-Qualified" or "Non-Qualified" transactions. Mid-Qualified transactions include but are not limited to those transactions where the card is affiliated with a special issuer program or did not meet requirements imposed by the bank card brands or BANK. Non-Qualified transactions include but are not limited to those transactions where the authorization was obtained by calling a voice or Voice Recognition Unit (VRU) authorization number, the card is affiliated with a special issuer program, the transaction was not settled in the appropriate time frame, or the transaction did not meet the requirements imposed by the bank card brands or BANK. These "Mid-Qualified" or "Non-Qualified" transactions may be subject to increased fees and/or Discount Rate as determined by BANK.

"Debit Transaction Fee" shall mean a fee charged on each debit transaction submitted for authorization, regardless of the total amount of the transaction. "EBT Transaction Fee" shall mean a fee charged on each EBT transaction submitted for authorization, regardless of the total amount of the transaction. "Debit Network Fee" shall be charged on each transaction submitted for authorization, regardless of the total amount of the transaction, at a rate set by the BANK or Debit/EBT network, and shall be in addition to the Debit Transaction Fee. "Debit Related Fee" shall mean a fee charged on each transaction submitted for authorization of no less than three cents (\$0.03) per transaction for other debit related costs including, without limitation, debit sponsorship, audit, and network registration.

Also, if you are a mail order telephone order or e-commerce MERCHANT, the bank card brands/organizations require additional data elements to be submitted as a part of the transaction record in order for the transactions to qualify for the lowest possible discount rate. Failure to submit the additional data elements or to meet all other requirements imposed by the bank card brands/organizations will result in the payment of a higher discount rate.

BRAND RELATED FEES:

Auth Processing Fee for VS Credit (AUTH PRC CR VS) (charged on every U.S. issued card authorization)

Auth Processing Fee for VS DB (AUTH PRC DB VS) (charged on every U.S. issued check card authorization)

Auth Processing Fee for VS International Credit (AUTH PRC CR INTL VS) (charged on every international issued card authorization)

Auth Processing Fee for VS International DB (AUTH PRC DB INTL VS) (charged on every international issued check card authorization)

Non-Settle Fee for VS (NON STL VS TRAN) (charged on approved authorizations not settled within 10 days of authorization)

Transaction Integrity Fee for VS (TIF FOR VS TRAN) (charged on credit, check card or prepaid card transactions that do not meet CPS qualifications)

Zero Floor Limit for VS (NO AUTH VS TRAN) (charged on settled transactions that cannot be matched to previously approved authorizations)

Cross Border Fee for VS (XBRD FOR VS VOL) (charged on foreign settled transactions)

International Assessment Fee for VS (INTL FOR VS VOL) (charged on foreign settled transactions)

Fixed Acquirer Network Fees for VS (NTWK FEE FOR VS)

Base II System File Transmission Fee for VS (TRANSMISSION VS) (charged on every settled transaction)

Network Acquirer Brand Usage Fee / Safety Net for MC (BRND USG FEE/SAFETY NET MC) (charged on every authorization)

Processing Integrity Fee-Preauthorization (PREAUTH-MC) (charged per authorization not cleared or reversed within thirty calendar days for pre-authorizations)

Processing Integrity Fee-Undefined Authorization (UNDEF AUTH-MC) (charged per authorization not cleared within seven calendar days for undefined authorizations)

Processing Integrity Fee-Final Authorization (FNL AUTH-MC) (charged per final authorization not cleared within seven calendar days and/or cleared within seven days but the clearing amount differs from the authorization amount)

Processing Integrity Fee-Final Authorization-Minimum (FNL AUTH MIN-MC) (charged per final authorization not cleared within seven calendar days and/or cleared within seven days but the clearing amount differs from the authorization amount)

Global Acquiring Program Fee for MC (ACQ PRG MC VOL) (charged on foreign settled transactions)

Cross Border Fee for MC (XBRD FOR MC VOL) (charged on foreign settled transactions)

Network Fee for MC (NTWK FEE FOR MC)

Digital Enablement Fee for MC (DGT ENBL MC VOL) (charged on card not present transactions)

Merchant Location Fee for MC (MER LOC FEE-MC) (charged monthly)

Excessive Authorization Attempts (EXCESSIVE AUTH ATTEMPTS-MC) (charged per authorization after 20 previously issuer declined attempts on the same account number in a 24 hour period)

Acquirer Interchange Compliance Downgrade Fee-MC (INT COMP DWNGRD-MC) (charged on each downgraded transaction)

Acquirer Transaction Fee-Quantity based 3D Secure MasterCard Identity Check (3DS VOL FEE-MC) (charged on settled transactions that uses 3D Secure Identity Check)

Acquirer Transaction Fee-Amount based 3D Secure MasterCard Identity Check (3DS TRANS FEE-MC) (charged on every authorization that uses 3D Secure Identity Check)

Data Usage for DS (DAT USG DS TRAN) (charged on every settled transaction)

International Processing Fee for DS (INTL PRC DS VOL) (charged on foreign settled transactions)

International Service Fee for DS (INTL SRV DS VOL) (charged on foreign settled transactions)

inbound Fee for AX (INBOUND AX VOL) (charged on foreign settled transactions)

Data Quality Fee for AX (DATA QLT AX VOL) (charged on settled transactions that do not meet data quality standards)

Non-Compliance Fee for AX (NON COMP AX VOL) (charged on settled transactions that do not comply with technical specifications)

Assessment fee for AX (ASSESSMENT FEE-AX) (charged on settled transactions)

Non-Swiped Transaction Fee for AX (NONSWIPE AX VOL) (charged on non-swiped settled transactions)

Non-Swiped Application-initiated Transaction Fee (NONSWIPE APP INT AX VOL) (charged on digital wallet settled transactions)

These fees further outlined above are passed along to the merchant and may include an additional surcharge to cover bank sponsorship fees, bank reconciliation costs and other expenses associated with transaction processing.

OTHER FEES: "Transaction Fee" shall mean a fee charged on each transaction (including each sales draft and each credit draft) regardless of the total amount of the transaction. "Authorization Fee" shall mean the fee charged on each transaction attempted whether approved or declined and whether or not the sale was actually charged. A "Batch Settlement Fee" will be charged on all batch settlements. "Per Item Fee" shall mean the fee charged on each specified settled transaction. A Monthly Minimum fee may be charged, and if so, applies to Visa and MasterCard transactions only. An Annual Fee of not less than ninety-five dollars (\$95.00) per year shall be charged and will be collected via ACH transfer within forty-five (45) days from the approval date of this Agreement and on the first business day of the anniversary month each year thereafter. An Access Fee for Discover (ACCESS FOR DS) will be charged on a monthly basis. An Address Verification Service Fee (AVS) will be charged on transactions for all Card Brands on which the AVS service is utilized. A "Monthly Maintenance Fee" will be charged for general account maintenance and online statement preparation. A "Network Inquiry Fee" may be charged, at the same rate as the applicable authorization or transaction fee, for any non-card specific or non-card identifiable transmission to the host. A "Monthly Funding Fee" may be charged on settled volume for all Card Brands.

Additional fees are charged for use of Wireless terminals. These fees include "Wireless Transaction Surcharge," "Wireless Activation/Reactivation Fee," and "Wireless Monthly Access Fee," and are outlined in the Merchant Application & Agreement, if applicable. Wireless "Monthly Access Fee" includes 1MB of wireless data per wireless SIM card. Data utilized in excess of the 1MB allowance on an individual SIM card in a given month may be charged at the rate of \$3.00 per MB. Limits on monthly maximum data may be set for individual SIMs at BANK's discretion. Using wireless service for application downloads could result in overage fees and/or SIM deactivation due to reaching the maximum data limit.

A "Merchant Benefits Package Monthly Fee" may be charged if MERCHANT wishes to utilize this service. The services included and associated fees are outlined in the Merchant Application & Agreement, if applicable.

MERCHANTS who take advantage of the Next Day Funding Program may be charged a Rate and/or Fee as outlined in the Merchant Application & Agreement.

COMPLIANCE RELATED FEES: MERCHANT agrees to comply with all security standards and guidelines that may be published from time to time by any card brand or organization, including, without limitation, the Payment Card Industry Data Security Standards ("PCIDSS"), the Visa Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection program ("SDP"), the Discover/PayPal-Security Requirements and the American Express® Data Security Operating Policy - United States ("DSOP") (collectively, the "Security Guidelines").

A "Regulatory Compliance Fee" will be charged in regards to application changes, merchant notifications and other requirements, the result of changes in rules regulations, or operating procedures, or any additional requirement imposed by any federal or state governmental agency or regulatory authority. A "PCI Fee" may be charged in association with a PCI DSS compliance program which BANK may make available to MERCHANT either directly or through a third party. BANK shall have the right to charge an annual PCI fee whether or not MERCHANT participates in the program. A "Non-Compliance Fee" may be charged on a frequency to be determined by BANK for merchants who fail to provide certification of PCI compliance, fail to maintain an annual certificate of compliance, or fail to meet any additional requirements imposed by any federal or state governmental agency or regulatory authority. A "Breach Protection Fee" may be charged for coverage in the event of a data compromise in connection with the Breach Protection Program.

BREACH PROTECTION PROGRAM: The Breach Protection Program provided by BANK is administered by RGS Limited, LLC. and is funded by a policy purchased from the Voyager Indemnity Insurance Company. Additional information regarding the terms of the Breach Protection Program is available by going to <https://www.royalgroupservices.com/nadsrpg/>. RGS Limited LLC., Voyager Indemnity Insurance Company or BANK may modify or cancel the Breach Protection program at any time with or without notice. BANK does not warrant nor guarantee the terms and conditions of, or the features of, the Breach Protection Program. The Breach Protection Program does not eliminate the requirements for MERCHANT to become or remain PCI-DSS compliant as referenced in the PCI-DSS Compliance and Customer Information Security section of the Merchant Processing Terms & Conditions. To file a claim on the Breach Protection Program, please call the Claims Hotline at (844) 729-9199.

NON-RECURRING FEES: MERCHANT further understands that BANK will assess Non-Recurring Fees when applicable, as set forth in this paragraph. BANK will assess MERCHANT a fee as well as administrative costs as determined by BANK for each chargeback through ACH, including but not limited to the following: Retrieval Fee (\$10.00 per item), Chargeback Fee (\$25.00 per item), and Return Draft Fee (\$30.00 per item).

Merchant Credit Card Processing Terms & Conditions, continued

Additionally, MERCHANT shall be responsible for other fees including a DDA/DBA Change Fee (\$35.00 per item) and a Voice Authorization Fee (\$0.95 per request).

MERCHANT understands that Early Termination Fees may be charged, by service, as outlined in the Merchant Application & Agreement and Merchant Processing Terms & Conditions, if applicable. MERCHANT understands and agrees that BANK reserves the right to assess any associated fees not previously specified in the "Fees Section" of the Merchant Application & Agreement that are billed to BANK as a result of the device(s) or software used by MERCHANT communicating with any third party host.

POS RELATED FEES: Equipment supplies provided shall consist of (i) replacement of printer receipt paper and (ii) replacement of receipt printer ribbons only. Supplies provided are intended for use with BANK processing services only and BANK reserves the right to limit quantities based upon MERCHANT transaction history. Not applicable to third party POS equipment.

POS Terminal replacement services shall consist of replacement or repair, at BANK's option, of MERCHANT's processing equipment (terminal, printer, pinpad or check reader.) BANK will perform this service if (i) MERCHANT has honored and paid all amounts owed to BANK including, but not limited to, all amounts owed for Chargebacks and ACH rejects, (ii) the equipment has been verified to be in working order with BANK (verification of this shall occur by MERCHANT submitting a transaction to BANK using the equipment that is being requested to be replaced). BANK, at its option, may use refurbished equipment for replacement and at BANK's sole discretion may substitute comparable equipment. BANK shall charge a shipping fee of not less than seven dollars and twenty-five cents (\$7.25) plus applicable tax for each supply request. Additional fees will apply to orders above the standard quantities established by BANK. BANK shall charge a fee not less than seventy-five dollars (\$75.00) for shipping and handling on equipment exchanges or swaps and a fee not less than one-hundred seventy-five dollars (\$175.00) for all premium equipment, including but not limited to, all wireless equipment and select check imagers. MERCHANT is required to return all defective equipment replaced by BANK to BANK. BANK may assess a restocking fee of not less than fifty dollars (\$50.00) on all returned equipment. If equipment is not returned, BANK, at its sole discretion, may assess a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned and a fee of not less than nine-hundred fifty dollars (\$950.00) for each piece of premium equipment not returned, including but not limited to, all wireless equipment and select check imagers. BANK reserves the right to assess a fee, to be determined by BANK, for equipment upgrades when compatible equipment is not available or when MERCHANT's existing equipment is obsolete or no longer supported by BANK.

POS Terminals may be made available for use by MERCHANT free of charge ("complimentary equipment"), at BANK's option. MERCHANT is required to return all complimentary equipment at the termination of the processing agreement with BANK. Failure to return the complimentary equipment may result in BANK assessing a fee of not less than five-hundred dollars (\$500.00) for each piece of equipment not returned and a fee of not less than nine-hundred fifty dollars (\$950.00) for each piece of premium equipment not returned, including but not limited to wireless equipment and check imagers.

In the event MERCHANT accepts a rate or fee reduction on any rate or fee set forth herein, the Term of this Agreement shall automatically be extended for an additional two (2) year term from the date of the then-current contract end date.

BANK shall have the right to adjust charges as necessary to offset any direct or indirect cost to BANK associated with providing services hereunder including, but not limited to, costs associated with collection and administration of chargebacks, fees charged by Visa, MasterCard, American Express, Discover, or PayPal, fees charged by other providers in processing, increases in the cost of living index or changes in rules, regulations, or operating procedures of Visa, MasterCard, American Express, Discover and PayPal or other applicable bank card brand/organization, charges for changes to merchant accounts or information, adjustments in foreign exchange rates, or any additional requirement imposed by any federal or state governmental agency or regulatory authority, or due to any increases in communication costs charged to BANK by common carriers. Such charges shall, without prior notice, become effective as of the date of change. Upon any request from MERCHANT for copies of file information, account research, or other information, BANK may charge fees for such services, including per hour fees as determined by BANK. Without limiting the foregoing, BANK shall have the absolute and unconditional right to introduce new fees and increase Discount Rates, Transaction Fees, Authorization Fees, Per Item Fees, Statement Fees, Access Fees, Monthly Minimums, DF&A, Debit Transaction Fees, EBT Transaction Fees, Debit Network Fees and any other fees for any reason when deemed appropriate in BANK's sole discretion. Said changes may be communicated by statement message and a summary thereof will be available thirty days prior to the implementation at www.firstview.net.

ACCOUNT UPDATER is a service provided by the various Card Brands and is facilitated by BANK on your behalf. Merchant understands and agrees that activation of Account Updater may be delayed due to registration with the Card Brands. BANK does not guarantee the accuracy of data or the results of data used by Merchant. Merchant shall be responsible for all fees associated with Account Updater and shall follow the rules and guidelines set forth by the Card Brands relating to Account Updater.

Merchant agrees and warrants the following:

- (a) To abide by all CARD BRAND RULES applicable to BANK's Account Updater product. MERCHANT acknowledges that BANK is the acquirer of record for processing transactions through Account Updater;
- (b) To request a BANK Account Updater update for every participating VISA account in MERCHANT's customer database at least once every 180 calendar days;
- (c) To submit inquiries only for those accounts with which the MERCHANT has an ongoing customer relationship;
- (d) To update its customer account database within five (5) business days of receiving update from BANK;

- (e) To ensure that information received from BANK is properly, completely, and accurately incorporated into MERCHANT's customer database for use in future transactions;
- (f) To correct erroneous account information within five (5) business days of receipt of error notification from BANK, Visa, or MasterCard;
- (g) Not to request authorization on accounts that have returned a response of "Closed Account";
- (h) Not to submit inquiries to BANK on behalf of any other entity.

DEBIT SURCHARGE: MERCHANT must not impose a surcharge on any Debit/EBT transaction. MERCHANT will be liable for all fines, fees or damages that may be assessed to First American by the Debit/EBT networks or any other brand or network as a result of any such surcharging by MERCHANT.

Debit/EBT network fees may be billed on a pass-through basis.

ADDITIONAL SERVICES: MERCHANT should also review the Merchant Application & Agreement and Merchant Processing Terms & Conditions for fees charged for additional services utilized by MERCHANT, including but not limited to Debit, SecurChex, FirstPay.net, 1stPayMobile, 1stPayPOS Pro and FIRSTADVANTAGE Gift/Loyalty. These fees as well as the Credit service related fees outlined above are listed at www.merchantnotification.com under the FEE DISCLOSURE tab.

15. **Variances.** If in MERCHANT's processing there is a variance from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK or if BANK determines that such variance may otherwise be detrimental to BANK, then BANK shall have no obligation to pay MERCHANT any settlement funds until MERCHANT has provided to BANK documentation sufficient for BANK to determine that the variance is verified and legitimate, and BANK's risk has been mitigated. MERCHANT further acknowledges that BANK, at its sole discretion, may hold or delay settlement of funds, suspend MERCHANT's processing, terminate this Agreement, or require MERCHANT to run a return/credit on a transaction with or without notice upon the occurrence of any of the events specified above. MERCHANT shall immediately notify BANK in writing if variances occur from the information, amounts or percentages included, represented, or disclosed by MERCHANT in the Merchant Profile Section of the Merchant Application & Agreement as approved by BANK. For purposes hereof, BANK's determination shall be binding upon MERCHANT. MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses or damage it may incur as a result of BANK's actions hereunder, or as a consequence of the settlement funds being held, delayed or suspended. MERCHANT also agrees to pay all fees associated with processing any transaction, regardless if funds are held, delayed, suspended or if MERCHANT is required to run a return/credit.

16. **MERCHANT Reserve Account.** BANK may require the MERCHANT or any guarantor to establish a reserve account against current and future indebtedness, or for any transaction which might become subject to a chargeback for any reason. Any reserve will be held by BANK for a period of time as is consistent with BANK's liability (up to 120 days from the date scheduled for last delivery of goods or services to cardholder, not to exceed 540 days from the processing date). BANK, in its sole and absolute discretion, may estimate the amount of the potential losses, fees, and costs and require MERCHANT or any guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement. MERCHANT also understands and agrees that BANK may withhold and retain any and all settlement funds in order to establish a Merchant Reserve Account without notice to MERCHANT. MERCHANT understands and agrees that all reserve funds may be retained and used to offset: 1) any loss which was created prior to establishing the reserve account 2) any current fees or losses due from time to time to BANK, hereunder and 3) any transaction which might result in a loss at a future date as determined by BANK. Reserves shall be held and placed in a non-segregated, non-interest bearing account in BANK's name and MERCHANT will have no right of access to said account. Further the Reserve Account shall not be deemed property of MERCHANT during the period of time the funds are held by BANK.

This Agreement will constitute a security agreement under the Uniform Commercial Code. MERCHANT grants to BANK a security interest in and lien upon all of the following (collectively, the "Secured Assets"): (i) all funds at any time in the designated account, (ii) the reserve account, (iii) future transactions, (iv) all funds, deposits, deposit accounts, monies, securities, and other property now or hereafter in the possession of or on deposit with, or in transit to BANK or any other direct or indirect subsidiary or affiliate of BANK, whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts; and (v) all of MERCHANT's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement. MERCHANT warrants and represents that no other person or entity has a security interest in the Secured Assets. These security interests and liens will secure all of MERCHANT's obligations under this Agreement and any other agreements between MERCHANT and BANK, including but not limited to MERCHANT's obligation to pay any amounts due to BANK. With respect to such security interests and liens, BANK will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity and the right to perfect such security interests as required by the Uniform Commercial Code. In addition to the security interests in the Secured Assets, BANK shall have, a contractual right of setoff against the Secured Assets without notice to MERCHANT.

17. **Arbitration.** Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved exclusively by arbitration in Fort Worth, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

18. **Waiver.** The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or

any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

19. **Taxes.** MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

20. **Indemnification.** MERCHANT hereby releases, indemnifies and holds BANK harmless for any losses, claims, costs or damages to MERCHANT or any third party as a result of BANK's acts or omissions under this Agreement, including, as a consequence of BANK's own negligence. The indemnification provisions herein shall survive the termination of this Agreement.

21. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state without regard to the conflicts of law principles of such state. The parties hereby agree that venue of any action under this agreement shall be exclusively in the state district courts located in Fort Worth, Tarrant County, Texas.

22. **Notices.** If to BANK, all written notices under this Agreement shall be delivered to:

Merchant Services
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

If to MERCHANT, the proper notice shall be the address stated on the records of BANK. Notice to MERCHANT may be by letter, facsimile and/or the MERCHANT's monthly statement.

If such transmitted notice is by MERCHANT to BANK, the original of any communication shall also be mailed to BANK on the date of the transmission and it shall not be deemed served until the mailed copy is received and confirmed by BANK.

Any notice of termination of this Agreement must be in writing and must contain MERCHANT's signature, as it appears on the Merchant Application & Agreement.

23. **Entire Agreement Changes.** This Agreement, along with the additional terms and conditions located at www.MerchantNotification.com and any applicable supplements contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by BANK.

If any term, provision, covenant or condition of this Agreement is determined by any local, state or federal court or law enforcement agency to be invalid, illegal, void or unenforceable in any jurisdiction, then such provision, covenant or condition shall, as to such jurisdiction, be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted, then such provision shall as to such jurisdiction, be deemed to be excised from this Agreement and any such invalidity, illegality or unenforceability with respect to such provision shall not invalidate or render unenforceable such provision in any other jurisdiction, and the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Additional American Express Card Acceptance Requirements

High CV Merchant. In the event MERCHANT's American Express annual charge volume exceeds \$1,000,000 in a rolling twelve month period or is greater than \$100,000 in any three consecutive months, MERCHANT will be considered a High CV Merchant by American Express and will be required to enter into a direct merchant card acceptance agreement with American Express. Upon any conversion to a direct agreement with American Express, MERCHANT will be bound by American Express' then current Card Acceptance Agreement and to any pricing and fees set by American Express.

Marketing and Communications. Upon agreement by MERCHANT to accept American Express transactions, MERCHANT consents to receive commercial marketing communications from American Express. After account setup, MERCHANT may contact BANK directly and request to opt-out of future marketing communications from American Express. This will not preclude MERCHANT from acceptance of important transactional or relationship communications from American Express. After a request to opt-out is received, MERCHANT may continue to receive marketing communications while BANK and American Express updates its records to reflect MERCHANT's request.

Merchant shall not assign to any third party any payments due to it under this Agreement, and all indebtedness arising from charges will be for bona fide sales of goods and services (or both) or charitable contributions at its establishments free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future transaction receivables to BANK, its affiliated entities and/or any other cash advance funding source that partners with BANK or its affiliated entities, without consent of American Express.

Rights and Obligations. MERCHANT agrees that American Express shall have third-party beneficiary rights to enforce this Agreement, but shall hold no obligations to the MERCHANT.

*Please visit www.americanexpress.com/merchantopguide for a full copy of the American Express Merchant Operating Guide.

Next Day Funding Terms & Conditions

The following Terms & Conditions apply only if MERCHANT has been accepted into the Next Day Funding Program.

NEXT DAY FUNDING is available for Visa®, MasterCard®, American Express®, Discover®¹ and PayPal™ card transactions and PIN based debit transactions only. Next Day Funding is subject to BANK approval and subject to all provisions of the Merchant Processing Terms & Conditions. Qualifying funds are deposited on the next business day, excluding weekends and bank holidays.

Upon execution of this agreement and acceptance into the Next Day Funding Program, MERCHANT acknowledges and agrees to the Next Day Funding Rate or Monthly Fee, effective the first day of the month of acceptance. MERCHANT further acknowledges that the Next Day Funding Rate or Monthly Fee are fees to participate in the Next Day Funding Program and not a guarantee that all transactions processed will qualify for Next Day Funding.

In order to enable Next Day Funding, MERCHANT must assist in the download/reprogram of the terminal/software application. Failure to do so will result in processed transactions settling under standard funding guidelines and funds will not be eligible for Next Day Funding.

MERCHANT must Batch transactions out at least five minutes prior to the designated cut-off time ("Cut-Off Time"). All Cut-Off Times are Central Standard Time. It is MERCHANT's sole responsibility to batch MERCHANT's terminal by the designated Cut-Off Time. Transactions batched after Cut-Off Time will be treated as batched on the following business day. Next Day Funding of Merchants may be impacted by circumstances beyond BANK's control, such as disruptions in network processing or processing delays by a third party intermediary. BANK reserves the right to adjust or change Cut-Off Time at its sole discretion. For additional detail regarding Next Day Funding, please go to: www.merchantnotification.com.

MERCHANT agrees and understands that MERCHANT is not guaranteed to be accepted into this program. Even if accepted into this program, MERCHANT may be removed from this program at any time at the sole discretion of BANK.

¹ Merchants who have a direct relationship with Discover® (Discover® Retained) or American Express® are excluded from Next Day Funding.