



Merchant Services Agreement

Effective Date: _____

This Merchant Services Agreement (this "Agreement") is entered into as of the Effective Date by and between Bankers' Bank of the West ("Bank") with its principal address at 1099 18th Street, Denver Colorado 80202,

_____ ("Agent Institution")
and _____ ("Merchant").

Merchant has signed and filed with Bank a Merchant Application to accept the Visa, MasterCard, and Discover cards (collectively "Cards") when presented by consumer for the purchase of goods or services. Merchant understands that Bank is engaged in the business of providing for a fee electronic credit and debit card authorization processing, data capture, clearing and settlement services.

In addition to being bound by the provisions of this Agreement and the Merchant Application, Merchant agrees to be bound by the terms and provisions set forth by all Visa, MasterCard, and Discover regulations including without limitation, all regulations in the Card Acceptance Guide.

In consideration of the mutual covenants herein the Bank, Agent Institution, and Merchant agree as follows:

Execution of the Merchant Application and Merchant Services Agreement does not guarantee approval for processing. In their sole and absolute discretion Bank and Agent Institution may accept or reject Merchant's Merchant Application. Each person signing the Merchant Application authorizes the Bank or any credit reporting agency employed by the Bank to make any inquiries it deems appropriate to investigate, verify, research data contained in the Merchant Application. During the term of the agreement, each person signing the Merchant Application authorizes the Bank to perform periodic audits to include inquiries from the reporting agency employed by the Bank to ensure Merchant continues to meet Bank Approval.

Presentation of the first Transaction, including any test transaction, by Merchant to Bank signifies Merchant's acceptance and agreement to be bound by this Merchant Agreement.

1. Honoring Cards

- a. Merchant shall accept without discrimination all valid cards when properly presented for payment by a cardholder. Cardholder means the person whose name is embossed upon the face of the card being presented for payment.
- b. Merchant shall not establish a minimum and/or maximum transaction amount on any Debit Card transaction, or post signs indicating that they require minimum and/or maximum transaction amounts as a condition for honoring the Debit Card.
- c. Merchant may establish a minimum transaction on Credit Card transactions with a dollar amount of \$10.00. Merchant must post signs indicating requirement as a condition of accepting the Credit Card.
- d. Merchant agrees that they cannot assess any additional charges such as surcharges or finance charges in connection with any Card transaction. Merchant may offer discounts on cash purchases.
- e. Merchant shall not require the cardholder to disclose any personal information such as home or business telephone numbers, address, or driver's license, except that if Card is not signed by the cardholder Merchant may ask to see a cardholder's identification only to validate the individual using the Card.
- f. Merchant shall not disclose cardholder account information to third parties except as required by law.
- g. Merchant shall examine each Card presented to determine that the Card presented is valid, not expired, and the signature on the back of the Card matches the signature on the sales slip.
- h. Merchant shall not honor any Card that is not yet effective or that has expired or for which the security features give reasonable cause to believe the Card has been altered.

2. Advertising

- a. Merchant shall adequately display any advertising or promotional materials provided or required by Bank, Visa USA, Inc. (Visa), MasterCard International (MasterCard), and Discover (Discover).
- b. Merchant shall have the right to use or display the proprietary names and symbols associated with Cards only while the agreement is in effect, or until Merchant has been notified by Bank, Visa, Master Card, or Discover to cease such usage.
- c. Merchant shall comply with all applicable Visa, MasterCard, and Discover rules and regulations concerning the use of service marks and copyrights owned by Visa, MasterCard, or Discover respectively. Use of promotional materials and marks shall be limited to informing the public the Cards will be accepted at Merchant's place of business.

3. Accounts

Merchant agrees to maintain a demand deposit account in good standing at the Agent Institution incorporated by reference in the Merchant Application and Merchant Services Agreement, for the purposes of posting settlements, fee assessments, and charge-backs. In the event there are not sufficient funds in the demand deposit account to cover Merchant obligations: (1) Bank may make deductions from payments due Merchant from transactions; (2) Merchant agrees to pay on demand for all amounts due as required by Bank; (3) Merchant agrees to maintain a demand deposit account in good standing at Agent Institution for a period of 180 days following termination or expiration of this Agreement to allow for residual processing and charge-backs; (4) Merchant agrees to examine all statements provided by Bank and Agent Institution relating to the Merchant's account(s) and promptly notify Bank in writing of any errors, Merchant's written notice of any such errors must include: the date, dollar amount, and any other information necessary to identify the erroneous statement entry; (5) Merchant's notice must be received at Bank within 30 days after date of applicable monthly statement; (6) Failure to notify Bank within such 30 days, Merchant is deemed to have accepted its statement and to have waived any claim(s) Merchant may have relative to such statement; (7) Bank is not responsible for any interest, NSF, accounting, bank, or related fees due to untimely and inaccurate deposits and billing errors.

If at any time Bank suspects fraud, money laundering or violation of the Operating Rules, Bank may, in its sole and absolute discretion and in addition to any other remedies the bank may have: (1) Refuse to process suspect transactions; (2) Process transactions and retain the funds received from processing until such time suspect transactions are found to be valid or invalid; (3) Suspend processing.

4. Reserve Account

At any time and for any reason, Bank may require, and Merchant agrees to deposit, funds or other security with Agent Institution. The Reserve Account will be held to protect Bank against the risk of unauthorized transactions, fraud, or termination for cause, and the Reserve Account funding shall be immediate if required by Bank. Bank will be entitled to the funds in the Reserve Account to satisfy any obligation of Merchant under this Agreement. Bank's entitlement to funds in the Reserve Account will be until such time all claims and obligations under this Agreement are satisfied. Failure to fund the Reserve Account when requested may result in immediate termination of Agreement at Bank's sole discretion.

5. Merchant's Business

- a. Merchant is responsible for any acts of fraud or the misconduct of Merchant's employees, consultants, advisors, and/or contractors for the use, unauthorized use, or misuse of the Merchant's equipment, POS equipment, or software.
- b. Merchant shall provide Agent Institution with immediate notice of change of business practices to include: (1) Intent to transfer or sell any part of its assets or liquidate; (2) Change the basic nature of its business, including, without limitation, selling any products or services not related to its current business; (3) Change in ownership or transfer of control of business; (4) Enter into any joint venture or partnership; (5) Business closure - Merchant is obligated under Section 3. Accounts subpart 3.

Failure to provide notice as required may be deemed a material breach and shall be subject to grounds for termination of this Agreement.

6. Authorization

- a. Merchant shall obtain authorization on all Card sales: (1) If Merchant cannot for any reason obtain an electronic authorization, Merchant shall call the designated processing center for a voice authorization and shall print the authorization number legibly in the designated area of the sales slip; (2) If the authorization is denied, Merchant shall not complete the Card transaction; (3) Merchant shall not divide a single sale into two or more sales transactions or two or more Cards to avoid or circumvent Card or Merchant authorization limits; (4) Merchant understands that an authorization indicates only the absence of negative credit at the time of authorization; (5) An authorization is not a guarantee of payment and an authorization will not waive any provision of this Agreement or validate an otherwise invalid transaction or a transaction involving the use of an expired Card; (6) Receiving an authorization shall not relieve the Merchant of liability for charge-back on any transaction for which the Merchant did obtain an authorization at the time of transaction.

7. Lodging Transactions

- a. Merchant must estimate transaction amounts for authorization based on the following: (1) Cardholder's intended length of stay; (2) Room Rate; (3) Applicable Tax; (4) Service Charge Rates; (5) Estimation of ancillary charges

8. Car Rental Transactions

- a. Merchant must estimate transaction amounts for authorization. If insurance is waived at time of rental, Merchant must not include charges that cover potential vehicle damages or the insurance deductible amount. The Merchant must base authorization on the following: (1) Cardholder's intended car rental period; (2) Rental Rate; (3) Applicable Tax; (4) Mileage Rates; (5) Other allowed charges

9. Compliance with Law

- a. During the term of this Agreement, Merchant confirms that it is, and shall be, in full compliance with all federal and/or state laws, statues, and regulations, as well as rules and operating regulations as set forth by the Card Associations.

10. Security of Information

- a. Merchant understands that it must comply with the Rules, including without limitation, those related to: (1) Cardholder information security issues; (2) Non-disclosure of Cardholder information and transaction documents; (3) Retention and storage of cardholder transaction data; (4) Merchant must retain transaction receipt data for a period of two (2) years, the storage of data must be in an area limited to authorized personnel only.
- b. Merchant hereby certifies that it and any outside agent that it utilizes to submit transactions complies with the payment card industry (PCI) and data security standards (DSS) instituted by the Card Associations. Merchant agrees to pay any fines and penalties that may be assessed against Bank, Agent Institution, and/or Merchant by the Card Associations for non-compliance.
- c. Merchant is required to employ the services of a qualified security assessor and approved scanning vendor approved by the data security council to ensure compliance of the PCI and DSS requirements.
- d. Merchant must immediately notify Bank and Agent Institution of any suspected or confirmed loss or theft of cardholder data including, without limitation: (1) Cardholder card account information; (2) Cardholder Transaction receipt information.

11. Card Not Present Transactions

Merchant may accept Card Not Present transactions based on type of business stated on the Merchant Application and as authorized by the Bank. Card Not Present to include: (1) telephone "TO"; (2) mail orders "MO"; (3) Pre-authorized orders "PO"; (4) Electronic Commerce; (5) Recurring Transactions. Merchant understands that the Bank is not obligated to provide consent to process Card Not Present Transactions and that any consent by Bank may be subject to conditions.

Merchant understands that authorizations are required on all "TO", "MO", "PO", Electronic Commerce, and Recurring Transactions. Merchant agrees to the following: (1) Card Not Present Transactions do not require the signature on the sales draft; (2) Transactions require card number, valid expiration, AVS, and CVV2/CVC2 as part of the authorization; (3) Recurring and "PO" transactions require a written request from the cardholder for such goods and services, the frequency, amount, and duration of charge; (4) The Merchant agrees to retain the cardholders written authorization and must provide a copy of the authorization to the Bank upon request; (5) Merchant agrees not to deliver goods or perform services covered by a pre-authorized order after being advised that the "PO" has been canceled or the Card has not been honored; (6) Merchant shall not process sales prior to the delivery of product and service, violation of which could result in immediate termination of this Agreement, at Bank's sole and absolute discretion.

Merchant understands that all transactions processed in a Card Not Present environment are High Risk and are subject to a higher incidence of chargebacks, and such Authorization does not guarantee the validity and collectability of the transaction.

If at any time the volume of Card Not Present transactions exceeds historical monthly volume, or Bank suspects fraud, money laundering, or violations, Bank may at its sole and absolute discretion: (1) suspend Merchant account; (2) retain funds from processing until such time excess or suspect transactions are found to be valid or invalid; (3) Request Agent Institution to hold demand deposit account funds; (4) Request Agent Institution to hold a Reserve.

12. Terminal hardware, Software, Gateway, or any Third Party Service Provider (TPSP) or Internet Processing Service Provider (IPSP).

- a. Merchant is required to notify Bank if Merchant elects to employ the services of a TPSP or IPSP as their agent to process Merchant's Visa, MasterCard, or Discover transactions. It is specifically understood that any and all terminals, hardware, software, gateway, TPSP, and/or IPSP products used in connection with the Bank Card system by the Merchant must be certified and/or registered within Visa, MasterCard, and Discover, and must follow the compliance rules and regulations as set forth by Visa, MasterCard, and/or Discover. Failure to adhere to the afore-specified requirements, would be grounds for immediate termination of the Merchant's membership in the Bank Card system and this Agreement, and in such event, Bank may terminate this Agreement. Merchant agrees: (1) not to store any cardholder account or personal information on computers or any other non-secure device; and (2) access to transaction information is limited to authorized personnel only.
- b. Merchant agrees to assume full responsibility and liability for any failure of the TPSP or IPSP services agent to comply with card regulations, including any violation and as such fees, fines, or penalties for compliance or certification failure will be charged to Merchant.
- c. If Merchant's payment device connects through an Internet Connection, utilizes a TPP third party processor/software, or has an internet shopping cart, Merchant is required to employ a Qualified Security Assessor and/or Approved Scanning Vendor by the Data Security Council. Merchant is required to have its system scanned once a quarter. Annually, Merchant must complete a self-assessment questionnaire with a passing compliant rating.
- d. Failure for the Merchant and Agent to meet PCI (Payment Card Industry) and DSS (Data Security Standards) compliance can result in immediate termination.

Bank has contracted with SecurityMetrics, Inc., a Qualified Security Assessor and Approved Scanning vendor, to ensure Merchant and Agent compliance.

13. Chargebacks

The Bank has the right to chargeback to the Merchant, by debiting the Merchant's demand deposit account at Agent Institution, any fees, fines, assessments, penalties, and chargebacks that Bank and/or Merchant may incur, purchase, or accept from the Card Associations as provided in the applicable rules and regulations of Visa, MasterCard, and Discover programs. The most common causes for chargebacks include: (1) The transaction record or any material information on a sales slip (including but not limited to the account number, expiration date of the Card, Merchant description, transaction amount, or date is illegible, incomplete, or otherwise indiscernible, is not endorsed, or is not delivered to Bank within the required time limits); (2) Merchant did not receive prior authorization; (3) The sales slip does not contain the imprint of a Card that was valid, effective, and unexpired on the transaction date, except that no imprint is required for sales slips generated electronically; (4) The transaction was one for which prior authorization was required but prior authorization was not obtained, or a valid authorization number is not correctly and legibly included on the transaction record; (5) The transaction record is a duplicate of a previously paid sale, or is one of two or more transaction records generated in a single transaction in violation of this Agreement; (6) The cardholder disputes the execution of the sales slip or other transaction record or the sale, delivery, quality, or performance of the goods or services purchased; (7) Merchant fails to provide any sales slip or credit slip to Bank in accordance with this Agreement.

The foregoing list is for information purposes only and is not intended to be an exhaustive list of events that may cause a chargeback.

14. Settlement

- a. Subject to the provisions of any warranty of Merchant hereunder and of any chargeback rights, Bank shall accept valid transaction records from Merchant during the term of this Agreement and shall credit Merchant's designated demand deposit account maintained at Agent Institution
- b. Bank will credit the demand deposit account for the total amount represented.
- c. Merchant is required to maintain funds in their demand deposit account for the processing of any chargebacks and month end processing fees as represented on the Schedule A – Fee Schedule of the Merchant Services Agreement.
- d. Any payment made by the Bank to the Merchant shall not be final, but shall be subject to subsequent review and verification by Bank and/or Agent Institution.

- e. Funds in the demand deposit account shall be available to Merchant for withdrawal as of the opening of business on the second day after deposit thereof, provided that, if Bank receives chargebacks or complaints regarding Merchant which give Bank reasonable cause to believe or suspect that a significant amount (by number or dollar size) of transactions may subsequently be charged back, Bank may place an administrative hold on funds in the demand deposit account held at Agent Institution and prohibit withdrawals until such time as Bank is provided with security for withdrawals or Bank otherwise in its sole judgment determines the risk as acceptable.
- f. If Merchant chooses to purchase equipment, Bank will assess all equipment charges to include, equipment, equipment downloads, taxes, mail, etc. to the Merchant's demand deposit account.

15. Liability

- a. Should Bank have reasonable cause to believe or suspect that Merchant is not complying or does not intend to comply with the terms and conditions of this Agreement? Bank may suspend and/or terminate the Merchant's account from processing future sales, credit transactions, and any other account activity, including but not limited to withdrawals and transfers.
- b. Bank shall not be liable or responsible for any errors, delays, equipment malfunctions or failures, or any other acts or omissions by Bank or its officers, agents, employees, or independent contractors, except where Bank has failed to act in good faith.
- c. Bank shall not be liable for acts or omissions by Merchant's hired Agents, third party suppliers of equipment, software, or communication failure where transaction may be processed, authorized and settled.
- d. The National Network Card Organizations maintain merchant lists such as the Member Alert to Control High-risk Merchant list, known as the (MATCH). This list contains merchants that have had their merchant agreements terminated for cause. The Bank is required to process every Merchant Application received through the MATCH system. If there is a match, Merchant agrees that the Bank and Agent Institution has the right to immediately close the Merchant Account for cause. If the Bank and Agent Institution terminate the account for cause, Merchant agrees that Bank may, as required, report Merchant's business name and other principal owner information to the Card Organizations.

16. Indemnification

Merchant agrees to indemnify and hold Bank harmless from any and against Card Association fines or penalties imposed on Bank resulting from Merchant's activities, acts or omissions, attorney's fees, and other liabilities or expenses by reason of, or in consequence of, any claim arising from any violation by the Merchant or any failure by the Merchant to comply with applicable law or regulation and/or with any provisions of the Agreement. The Merchant will reimburse the Bank for any legal and any other expenses reasonably incurred by Bank in connection with investigating or defending any such loss, damage, claim, or liability.

17. USA Patriot Act

Federal regulations require financial institutions with which the Bank has relationships to verify the identity of every person who seeks to open an account. As a result of Merchant's status as an account holder with Agent Institution, Merchant shall provide documented verification of Merchant's identity, such as a driver's license or passport, for individuals applying for the Merchant Account. Bank reserves the right to verify Merchant's identity through other methods as Bank deems appropriate in its sole discretion.

18. Guaranty

Guarantor(s) who sign on the Owner/Guarantor signature line(s) on the Merchant Application, agree to be bound, jointly and severally, by the terms and provisions of the Merchant Processing Agreement to the same extent and in the same manner as Merchant, and unconditionally and irrevocably guarantee, jointly and severally, the full and faithful performance of each and all of Merchant's duties and obligations to Bank under this Agreement.

19. Confidentiality

Merchant shall safeguard all confidential information supplied to Merchant by Bank and/or Agent Institution to include the terms of this agreement. Merchant shall only use confidential information for the purposes of this Agreement and shall not disclose confidential information to any person, except as Bank and/or Agent Institution may agree in advance and in writing. At Bank's or Agent Institution request Merchant shall return or destroy all of confidential information in its possession.

20. Internal Revenue Code 6050W

- a. Under Section 6050W of the Internal Revenue Code, Merchant will receive a Form 1099-K reporting the gross dollar amount of card transactions processed through the Merchant Account in each year.
- b. The amounts reportable under 6050W are subject to backup withholding requirements. Merchant will be charged back-up withholdings if: (1) Merchant fails to provide its taxpayer identification number (TIN) to Bank; (2) if the IRS notifies Bank that the TIN (when matched with the name) provided by Merchant is incorrect. Accordingly, to avoid backup withholding, it is very important that Merchant provides Bank with the correct name and TIN used when filing tax returns that include the transactions for its business.

21. Security Interest

To secure all obligations of Merchant to Bank arising from this Agreement, Merchant hereby grants Agent Institution a security interest in all deposits, regardless of source to Merchants designated account and other bank accounts established in Merchant's name, said security interest may be set off or otherwise be exercised at the request of the Bank to the Agent Institution without notice or demand of any kind by making an immediate withdrawal from or freezing said accounts upon Bank's reasonable determination that a breach of any obligation of Merchant under this agreement has occurred. Bank has a general lien and right of offset upon all funds on deposit at Agent Institution for or from Merchant.

22. Term and Termination

The original term of this Agreement shall commence with an acceptance hereof (as evidenced by an authorized signature hereon), and shall continue for a period of two (2) years after the date on which Merchant's first sales slip is presented for settlement. This Agreement shall automatically renew for one (1) year term unless, 30 days prior to any renewal terms either party hereto gives written notice to the other that it does not wish to renew said Agreement. Upon the effective date of termination Merchant's right to use sales slips, credit slips, other forms, and promotional materials provided by Bank shall cease, but each party's obligations in connection with any transaction records accepted by Bank (whether before or after such termination), including without limitation Merchant's chargeback obligations, shall survive such termination. Bank may terminate this agreement for cause without prior written notice if the Merchant: (1) Breaches any provisions of the Agreement; (2) Violates any law or regulation; (3) Commits any willful or dishonest act. Merchant's failure to meet the original term of the Agreement without cause to terminate will result in a charge to the Merchant. Said charge will be an amount equal to the Monthly Fee as set forth in the Schedule A – Fee Schedule, times the number of months remaining in the term of the Agreement.

23. Fees

Attached to this Agreement and incorporated herein by reference is a Schedule A – Fee Schedule which contains the Discount Fee, Transaction Fees, and other terms/fees in effect on the commencement date of this Agreement. The Merchant understands that the Transaction Processing Rates as set forth on the Schedule A – Fee Schedule are conditional upon the Merchant meeting the processing requirements of Visa, MasterCard, and/or Discover, including but not limited to: (1) the processing requirements for time limits for depositing transactions; (2) processing authorizations and the handling of all swiped and keyed processed transactions. Bank and/or Agent Institution may increase Processing Fees by providing Merchant thirty (30) days advance written notice, which may be delivered in the form of a statement message, email, fax, and/or direct letter.

24. Governing Law

This Agreement shall be governed by and enforced pursuant to the laws of the State of Colorado.

25. Agreement

This Agreement, including the Merchant Application and any other documents executed in conjunction herewith, constitutes the entire agreement between the parties. Merchant should retain a copy for its records; an executed copy will be on file at Bankers' Bank of the West.

IN WITNESS WHEREOF, Bank and Merchant have executed this Agreement as of the Effective Date on page one (1).

Bank: Bankers' Bank of the West

Merchant: _____

Signature:  _____

Signature: _____

Printed Name: Mary Ann Elliott-Supples

Printed Name: _____

Title: Senior Vice President

Title: _____

Agent Institution: _____

Authorized Signer: _____

Title: _____